



November 9, 2020

John Cymbalsky
U.S. Department of Energy
Office of Energy Efficiency and Renewable Energy
Building Technologies Office
Mailstop EE-5B
1000 Independence Avenue SW
Washington, DC 20585-0121

RE: Energy Conservation Program: Clarifying Amendments to the Error Correction Rule; Notice of Proposed Rulemaking and Request for Comment, Docket No. EERE-2020-BT-STD-0015.

Dear Mr. Cymbalsky:

On behalf of the Natural Resources Defense Council, and our more than three million members and online activists, as well as the Appliance Standards Awareness Project, we offer the following comments in response to the Department of Energy's (DOE) proposed amendments to its Error Correction Rule.

1. Nothing in the Error Correction Rule excuses DOE's legal deadlines or otherwise modifies its responsibilities under the Energy Policy and Conservation Act (EPCA).

At the outset, we note that this rulemaking occurs in the context of over two dozen missed legal deadlines by DOE. Nothing in the Error Correction Rule amendments would confer on DOE the authority to delay a rule, nor in any way impact the standards which DOE must select other than providing an opportunity for DOE to correct inadvertent mistakes when publishing the standard. DOE should add language to the Error Correction Rule explicitly noting that the Department's statutory obligations are not disturbed or modified by the rule.

2. The Department should reconsider the time frame for error correction and establish a fixed limit to the error correction comment period.

DOE states that the error correction comment period shall ordinarily last 45 days, but that the Secretary may shorten or lengthen this period at their discretion. We encourage DOE to reassess this time frame, and to establish a firm maximum limit for error correction comments. Specifically, we believe that even for a complex standard, 30 days would be a sufficient amount of time in which to review a pre-publication draft for potential errors. Consequently, DOE should establish that the error correction comment period will not exceed 30 days. DOE could do so while still maintaining the Secretary's discretion with respect to the final rule.

3. We support making the error correction process discretionary.

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The Department's stated expectation is that most products would use the full error correction comment period (45 days, as written in the proposal, or 30 as recommended above). However, while this may be justified for some products, some circumstances may require waiving the normal error correction process. For example, standards that are succinct or easily expressed or that have already been subject to careful review through the rulemaking process may not require an error correction review period. Alternatively, an error correction review period of less than 30 days may be sufficient. Accordingly, we support making the process discretionary. We encourage the Department to clarify that some products may warrant a shorter error correction review period or in some cases no period at all.

4. The Department should clarify when the decision to initiate the error correction process will be made.

We request clarification from DOE regarding the timeline and procedure for error correction. DOE routinely distributes pre-publication versions of rules and notices. Would a decision about whether to have an error correction comment period, and how long such a period would be, be made at the time that the rule is first distributed to the public? Does DOE ever envision a scenario where it would issue a subsequent notice initiating an error correction comment period? Clarifying these issues would help parties know what to expect going forward.

We thank the Department for the opportunity to submit these comments.

Sincerely,



Joseph Vukovich
Energy Efficiency Advocate
Natural Resources Defense Council



Andrew deLaski
Executive Director
Appliance Standards Awareness Project