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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AN37

Prevailing Rate Systems; Redefinition of the Asheville, NC, and Charlotte, NC, Appropriated Fund Federal Wage System Wage Areas

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a proposed rule to redefine the geographic boundaries of the Asheville, NC, and Charlotte, NC, appropriated fund Federal Wage System (FWS) wage areas. The final rule will redefine Alexander and Catawba Counties, NC, from the Charlotte wage area to the Asheville wage area. These changes are based on a consensus recommendation of the Federal Prevailing Rate Advisory Committee (FPRAC) to best match the counties proposed for redefinition to a nearby FWS survey area.

DATES: *Effective date:* This regulation is effective on August 24, 2016. *Applicability date:* This change applies on the first day of the first applicable pay period beginning on or after September 23, 2016.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, by telephone at (202) 606–2858 or by email at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On April 27, 2016, OPM issued a proposed rule (81 FR 24737) to redefine Alexander and Catawba Counties, NC, from the Charlotte, NC, wage area to the Asheville, NC, wage area. FPRAC, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, reviewed and recommended these changes by consensus. There are no FWS employees stationed in Alexander or Catawba Counties.

The proposed rule had a 30-day comment period, during which OPM received no comments.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

Accordingly, OPM amends 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. Appendix C to subpart B is amended by revising the wage area listings for the Asheville, NC and Charlotte, NC, wage areas to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

NORTH CAROLINA

Asheville

Survey Area

North Carolina:
Buncombe
Haywood
Henderson
Madison
Transylvania

Area of Application. Survey area plus:

North Carolina:
Alexander
Avery
Burke
Caldwell
Catawba
Cherokee
Clay
Graham
Jackson
McDowell
Macon
Mitchell
Polk
Rutherford
Swain
Yancey

* * * * *

Charlotte

Survey Area

North Carolina:
Cabarrus
Gaston
Mecklenburg
Rowan
Union

Area of Application. Survey area plus:

North Carolina:
Anson
Cleveland
Iredell
Lincoln
Stanly
Wilkes

South Carolina:
Chester
Chesterfield
Lancaster
York

* * * * *

[FR Doc. 2016–20172 Filed 8–23–16; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF ENERGY

10 CFR Parts 430 and 431

RIN 1904–AD63

[Docket Number EERE–2016–BT–PET–0016]

Energy Conservation Program: Notice of Partial Grant and Partial Denial of Petitions To Amend the Error Correction Rule

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; partial grant and partial denial of petitions.

SUMMARY: The U.S. Department of Energy (''DOE'') is granting in part and denying in part a series of petitions to amend a recently published rule that established a procedure through which a party can, within a prescribed period after DOE posts a rule establishing or amending an energy conservation standard, identify a possible error in such a rule and request that DOE correct the error before the rule is published in the **Federal Register** (''error correction rule''). DOE also provided an

opportunity for the public to comment on these petitions. This document responds to both the petitions and related comments that were submitted and received in accordance with the timelines established in a prior **Federal Register** notice inviting such petitions and comments.

DATES: This partial grant and partial denial is effective September 23, 2016.

ADDRESSES: All petitions and comments filed in accordance with the timelines set forth in the prior **Federal Register** notice have been entered into docket number EERE–2016–BT–PET–0016. The docket is available for review at *http://www.regulations.gov.* For further information on how to review the docket, contact Mr. John Cymbalsky at (202) 287–1692 or by email: *John.Cymbalsky@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1692 or *John.Cymbalsky@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Energy (''DOE'' or the ''Department'') recently published a final rule establishing a procedure through which an interested party can, within a 30-day period after DOE posts a rule establishing or amending an energy conservation standard, identify a possible error in such a rule and request that DOE correct the error before its publication in the **Federal Register**. *See* 81 FR 26998 (May 5, 2016). In that same issue of the **Federal Register**, DOE also invited the public to submit petitions to amend the error correction rule. DOE provided that it would use its best efforts to issue a public document by August 10, 2016, responding to any such petitions submitted by June 6, 2016, and any timely filed comments responding to those petitions. *See* 81 FR 27054 (May 5, 2016).

DOE received four petitions to amend the rule and several comments responding to those petitions. The submitters of these documents, along with their affiliations, are identified in Table 1.

TABLE 1—LIST OF PETITIONERS/COMMENTERS

Petitioners (P)/Commenters (C)	Organization type	Identifier/Acronym
Air Conditioning, Heating and Refrigeration Institute (P, C)	Heating, Ventilation and Air Conditioning (''HVAC'') Industry Trade Organization.	AHRI.
American Gas Association and American Public Gas Association (C).	Energy Industry Trade Organization	AGA–AGPA.
Appliance Standards Awareness Project, Earth Justice, and Natural Resources Defense Council (P, C).	Energy Efficiency Advocates	Joint Advocates.
Association of Home Appliance Manufacturers (C)	Home Appliance Industry Trade Organization	AHAM.
Hussmann Corporation (P, C)	Refrigeration Equipment Manufacturer	Hussmann.
Lennox International (P, C)	HVAC Manufacturer	Lennox.
Traulsen and Kairak (C)	Refrigeration Product and Equipment Manufacturers	Traulsen-Kairak.
Zero Zone (C)	Refrigeration Equipment Manufacturer	Zero Zone.

NOTE: AHAM filed both joint comments with AHRI as well as separate comments on its own behalf.

II. Summary of and Responses to Comments

At the outset, DOE notes that the petitioners agreed with the fundamental underpinnings supporting the basis for the error correction rule. First, the petitioners—AHRI, Hussmann, the Joint Advocates, and Lennox—all agreed with the stated purpose of the error correction rule—that is, to prevent errors from affecting energy conservation standards applicable to consumer products or commercial equipment. AHRI Petition to Amend, EERE–2016–BT–PET–0016–0005, at 1–2; Hussmann Petition to Amend, EERE–2016–BT–PET–0016–0003, at 1; Joint Advocates Petition to Amend, EERE–2016–BT–PET–0016–0006, at 1; and Lennox Petition to Amend, EERE–2016–BT–PET–0016–0004, at 1. They also generally agreed that errors in need of correction are not common, *see* Lennox Petition, No. 0004, at 1 and Joint Advocates Petition, No. 0006, at 1, and that the process laid out in the error correction rule should not be used as a means to revisit and re-argue issues that have already been raised and addressed during the rulemaking process. *See* AHRI Petition, No. 0005, at 1–2 and Lennox Petition, No. 0004, at 1. AHRI and Lennox also acknowledged that applying the error correction process to direct final rules established under 42 U.S.C. 6295(p)(4) was not warranted, assuming that identification of an error would qualify as an ''adverse comment'' for purposes of 6295(p)(4). *See* AHRI Petition, No. 0005, at 10–11 and Lennox Petition, No. 0004, at 4.

While the petitioners agreed with the need and rationale for the error correction rule, they also suggested several changes to the rule. These suggestions are discussed in the following sections.

A. Time Within Which To File an Error Correction Request, Statutory Deadlines

The error correction rule requires that a party must submit a request for correction ''within 30 calendar days of the posting of the rule.'' 10 CFR 430.5(d)(1). The timelines also prescribe a period within which DOE will submit any corrected rule for publication in the **Federal Register**. *See* 10 CFR 430.5(d) through (f). Petitioners and commenters responded to each of these issues.

First, with respect to potential modifications to the rule, each of the industry petitioners asked that DOE consider providing a longer period of time than the 30 days prescribed by the rule within which to submit an error correction request. *See* 81 FR at 27005. The petitioners asserted that because DOE's standards rulemakings are often both complex and lengthy, additional time beyond the prescribed 30 days should be provided to ensure that any errors in the standards final rule are identified to DOE. The suggested timelines from these petitioners ran from 45 days up to 60 days. *See* Hussmann Petition, No. 0003, at 1; Lennox Petition, No. 0004, at 3; and AHRI Petition, No. 0005, at 8. Among these petitioners, one—AHRI—also suggested that DOE consider extending the time period for submitting error correction requests until the effective date of a rule. According to AHRI, extending the period in this way would ''not further delay the effective date of the rule,'' although AHRI also stated that its approach is ''consistent with the

APA power to postpone effective dates.'' AHRI Petition, No. 0005, at 8–9. In AHRI's view, such an option would also be consistent with DOE's prior view of the meaning of the term ''effective date'' and is supported by the fact that a rule is not necessarily effective upon publication in the **Federal Register**. AHRI Petition, No. 0005, at 8–9. AHRI also asserted that the inadequacy of a 30-day review period is recognized in EPCA by virtue of its inclusion of a 60-day period for parties to challenge a final rule establishing an energy conservation standard in court. *Id.* at 8.

Second, the Joint Advocates argued in favor of an exception to the error correction rule when following the rule's timing provisions for review would conflict with statutorily mandated rulemaking deadlines. In their view, case law suggests that there are only limited circumstances when federal agencies can extend statutory deadlines, none of which apply in the case of an error correction rule. In the event it is needed to avoid potential timing conflicts with statutory deadlines, the Joint Advocates suggested that DOE publicly post a draft of a standards final rule once it is transmitted to the Office of Management and Budget for pre-posting review, in order to provide more lead-time for parties to check for errors. Joint Advocates Petition, No. 0006, at 1–2.

Others disagreed with the Joint Advocates' suggestion. *See* Zero Zone, No. 0007, at 1; Lennox, No. 0009, at 2–3; AHRI–AHAM, No. 0012, at 2–5. Zero Zone argued that the Secretary should not be held to an exact time period because it is better to achieve a correct rule through an error correction process than through a court challenge. Zero Zone, No. 0007, at 1. Lennox as well as AHRI and AHAM raised several criticisms of the Joint Advocates' approach. First, they commented that the Joint Advocates' approach would result in prioritizing statutory mandates regarding timing over the statutory mandate providing that DOE may not adopt energy conservation standards unless it finds that the standards are technologically feasible and economically justified. Lennox, AHRI, and AHAM suggest that this statutory conflict should be resolved by prioritizing the correction of errors, particularly because of EPCA's anti-backsliding provision, 42 U.S.C. 6295(o)(1). AHRI and AHAM further stated that this position is supported by case law. *See* AHRI–AHAM, No. 0012, at 3–4. Second, these commenters asserted that rushing to meet a deadline is a type of situation that could lead to rulemaking errors. Third, they warned that not allowing for the correction of errors in a rule could lead to errors resulting in litigation, which could lead to a delay in implementing new standards and result in less energy savings. Fourth, they argued that DOE would be able to manage the competing needs of satisfying any relevant statutorily mandated lead-times and the reviewing period provisions under the error correction rule. Finally, the commenters stated that allowing deadlines to prevail over the error correction process could create an incentive for DOE to delay rulemaking in order to avoid addressing errors. Lennox, No. 0009, at 2–3; AHRI–AHAM, No. 0012, at 2–5.

After further consideration, DOE is extending the amount of time for the submission of error correction requests by 15 additional days—for a total of 45 days after the posting of a final rule. Providing this additional time will better ensure that any potential errors are addressed and corrected prior to the publication of a standards final rule, which will reduce the possibility of promulgating an incorrect energy conservation standard. By taking this step, DOE seeks to increase the likelihood that the public will identify any errors of the types addressed by the error correction rule. Correction of these errors will be beneficial for the reasons discussed in the Final Rule. With respect to providing a longer period of time, such as the 60 days suggested by industry petitioners, in DOE's view, offering a 60-day period as a matter of routine practice for identifying the types of errors addressed by this rule is unnecessary, as these kinds of errors typically can be readily identified well within the time period provided in this rule. DOE also notes that, contrary to AHRI's contention, its approach is consistent with the provision in EPCA that provides entities with 60 days from the date a rule is published in the **Federal Register** [1] to file a petition for review in a court of appeals. Such petitions may address a range of grounds for challenging a final rule, whereas the error correction rule is limited in scope.[2] Accordingly, it should take parties substantially less time to identify errors as defined in the error correction rule and to prepare an error correction request.

AHRI also suggested that DOE extend the period for submitting error correction requests until the effective date of a rule. This suggestion misapprehends the purpose and operation of the error correction rule. AHRI's request, by its nature, would permit error correction requests to be submitted after publication of a rule in the **Federal Register**, because the effective date of a rule necessarily occurs after such publication. But applying the error correction rule to rules that have already been published in the **Federal Register** would make little sense, because the central features of the error correction rule are that DOE delays publishing a rule in the **Federal Register** (for 45 days after posting the rule) to allow for the submission of error correction requests, and that DOE commits to considering properly submitted error correction requests before publishing the rule in the **Federal Register**. After DOE has published a rule in the **Federal Register**, neither outcome is available. As DOE explained in establishing the error correction rule, the anti-backsliding provision in EPCA, 42 U.S.C. 6295(o)(1), makes it particularly important to be able to correct regulatory text before DOE publishes a rule in the **Federal Register**. By contrast, a person submitting an error correction request after publication could just as easily make use of existing statutory mechanisms to ask DOE to amend the published rule. DOE does not see, and AHRI did not explain, why those mechanisms would be inadequate so that a special post-publication error correction process would be warranted.[3]

DOE believes that the pre-publication error correction process set forth in the amended rule is superior to an error correction process permitting the submission of error correction requests during the existing 30-day pre-publication period through the effective date of a rule, which post-dates the publication of a rule in the **Federal Register**. The Joint Advocates argue that ''[e]xtending the error correction process

[1] Henceforward in this document, the words ''published'' and ''publication'' refer to a document being published in the **Federal Register**.

[2] AHRI's request for a reconsideration process that would allow for the consideration of any type of issue with a posted rule is discussed *infra.*

[3] DOE recognizes that because the error correction rule required parties to submit error correction requests within 30 days of a rule's posting (45 days per the amendment described above), while DOE might not publish the rule in the **Federal Register** until later (pursuant to § 430.5(f)), there may, for a given rule, be a period of time in which DOE has not yet published a rule in the **Federal Register** but is not accepting requests under the error correction process. That period is important, because DOE must have some time in which it is able to conclude its consideration of error correction requests and proceed to publish a rule. If DOE committed that it would not publish a rule until it had considered every error correction request submitted before publication—even those submitted well after the 30-day (now 45-day) period—the publication of rules could be significantly delayed. Because compliance dates depend on the dates of publication, that outcome would upset the balance that DOE has struck in committing to a short delay for the sake of correcting errors.

beyond a rule's publication in the **Federal Register** would ignore that DOE lacks the authority to weaken or postpone a standard beyond that point'' under 42 U.S.C. 6295(o)(1), EPCA's anti-backsliding provision. Joint Advocates, No. 0013, at 1. If the Joint Advocates are correct, then AHRI's suggestion that DOE extend the time period for submitting error correction requests beyond publication of a rule in the **Federal Register** is obviously unworkable because DOE would be precluded from granting error correction requests unless doing so resulted in more stringent energy conservation standards.

DOE need not, however, decide in this rulemaking whether the Joint Advocates are correct because, even if EPCA and the APA granted DOE the authority to grant any error correction request submitted after the publication of a standards rule in the **Federal Register**, DOE would still decline to adopt AHRI's suggestion that it extend the current 30-day pre-publication period for submitting error correction requests until the effective date of a rule. Contrary to AHRI's assertion (AHRI Petition, No. 0005, at 8), adopting that suggestion would further delay the energy savings benefits of a standards rule where, among other circumstances, DOE decides to change a standards rule in response to an error correction request submitted after publication of a rule in the **Federal Register**. That is so because such a changed rule would need to be published in the **Federal Register**, and EPCA provides that compliance dates must be set a certain period of time after the ''publication'' of rules in the **Federal Register**. *See* 81 FR at 27,002; *see also supra* note 2. Such a delay is unacceptable, particularly given that DOE has determined that the 45-day period DOE is adopting for the submission of error correction requests is sufficient to permit the public to identify possible errors in its standards rules. Moreover, AHRI's approach would result in substantial uncertainty for the regulated community because manufacturers would not know whether they would be required to conform to standards set forth in rules published in the **Federal Register** until DOE subsequently announced its decision on pending error correction requests. But the very purpose of the EPCA provisions setting compliance dates a certain amount of time after publication of a standard in the **Federal Register** is to provide manufacturers enough time to prepare to implement the new standards. AHRI's suggestion would effectively reduce this period of time in many circumstances (such as where DOE decides, after a rule is published in the **Federal Register**, that it will make no changes to a rule), to the detriment of the regulated community. For all of these reasons, even if DOE could adopt AHRI's suggestion without running afoul of the anti-backsliding provision and other requirements set forth in EPCA and the APA (a question that DOE need not decide), it would not—and does not—adopt that approach.

DOE is also declining to adopt the approach suggested by the Joint Advocates. In DOE's view, ensuring that its energy conservation standards published in the **Federal Register** comport with the judgments DOE has made heavily outweighs the potential costs associated with a modest delay in the **Federal Register** publication of a given standards rule. Moreover, the error correction rule promotes compliance with the statutory mandate that DOE not adopt a standard unless it determines, *inter alia,* that the standard is technologically feasible and economically justified. *See, e.g.,* 42 U.S.C. 6295(o)(2) and 6316(a). By providing the opportunity to file an error correction request to notify DOE of potential errors in the final rule's regulatory text, DOE can more readily identify and correct these errors prior to the rule's publication in the **Federal Register**. An error that could have been identified, if given this opportunity, might otherwise become the basis of a legal challenge that could delay the rule yet further. DOE's error correction process seeks to avoid those legal challenges. In addition, as noted earlier, correcting an error means bringing the regulatory text into harmony with DOE's policy judgment, as reflected in the rest of the rulemaking documents. The resulting regulatory text can be expected to fulfill and balance the multiple goals of EPCA better than the erroneous text would have.

While providing a pre-publication error correction process may require the expenditure of a modest amount of additional time, in DOE's view, weighing the potential energy savings losses of this relatively small delay against the benefits of correcting errors, given that errors, on occasion, can occur, cuts in favor of providing potential error correction requesters with the additional time provided by the error correction rule to review and identify errors to the Secretary.

B. Overly Narrow Definitions

The error correction rule defined a number of terms related to the error correction process. Among these terms were definitions for ''Error,'' ''Party,'' and ''Rule.'' The rule defined ''Error'' as ''an aspect of the regulatory text of a rule that is inconsistent with what the Secretary intended regarding the rule at the time of posting.'' 10 CFR 430.5(b). That definition also provided three examples of possible mistakes that could give rise to ''Errors''—typographical mistakes, calculation mistakes, and numbering mistakes. *See id.* The term ''Party'' was defined as ''any person who has provided input during the proceeding that led to a rule by submitting timely comments (including ex parte communications properly made within the relevant comment period) in response to a notice seeking comment or by providing substantive input at a public meeting regarding the rulemaking.'' *Id.* Finally, a ''Rule'' was defined as ''a rule establishing or amending an energy conservation standard under the Act.'' 10 CFR 430.5(b).

Industry petitioners viewed these definitions as overly narrow. First, in their view, the definition for ''Error'' should be broadened to include not only the regulatory text of a final rule but errors contained within the accompanying Technical Support Document (''TSD'') and the final rule's preamble discussion. With respect to TSD-related errors, the petitioners noted that the analysis within the TSD may be needed to help identify potential errors, which would necessitate including these TSD-related errors as part of the error correction rule. Additionally, they noted that new information presented in the preamble should be subject to comment since that information is often intertwined with the regulatory text itself. Lennox argued that errors in the preamble should be included because stakeholders will not have had a prior opportunity to comment on new information presented in the preamble discussion of a final rule. AHRI argued that the definition should be amended to make it objective, not subjective, and that stakeholders cannot guess the ''intent'' of the Secretary. Furthermore, AHRI expressed concern that a subjective definition could give rise to unfairness if DOE makes ''post hoc assertions'' about the Secretary's intent that did not in fact exist at the time of the posting of a final rule. *See* AHRI Petition, No. 0005, at 11–13; Lennox Petition, No. 0004, at 5.

Second, some industry petitioners suggested that the rule's definition of the term ''Party'' was too narrow. *See* Hussmann Petition, No. 0003, at 2; Lennox Petition, No. 0004, at 5–6. In their view, this term should be expanded to include contributors to group responses that are filed as

comments during an on-going rulemaking and should not be limited to only the organizations that filed comments responding to a proposal. Lennox stated that an individual's status as a commenter in a rulemaking is irrelevant if the goal of the error correction rule is to correct errors in a given rule. Citing 42 U.S.C. 6305(b), in Lennox's view, the ability to file an error correction request should not hinge on whether a potential error correction requester filed comments in the underlying rulemaking proceeding. It also suggested that both this term and the related requirement that an individual demonstrate how it satisfies the ''Party'' requirement when submitting an error correction request (*see* 10 CFR 430.5(d)(4)) be dropped from the rule. Lennox Petition, No. 0004, at 5–6.

Finally, the industry petitioners viewed the definition of ''Rule'' as too narrow. In their view, this term should include rules besides energy conservation standard rulemakings. The petitioners asserted that this term should include test procedure rulemakings in addition to energy conservation standard rulemakings. According to Lennox, test procedure rules are complex and can have an impact on efficiency ratings when intertwined with energy conservation standards. Lennox Petition, No. 0004, at 2–3. In AHRI's view, adding test procedure rules to the definition would promote transparency. It asserted that test procedure rulemakings are intertwined with efficiency standards and contain voluminous, technical data; are often not issued until after, or simultaneously with, efficiency standards; and have the same ''real-world effect'' as do energy conservation standards. AHRI Petition, No. 0005, at 4–5 n.2 & 7; Lennox Petition, No. 0004, at 2–3. Hussmann suggested that ''all rule types'' should be included as part of this definition. Hussmann Petition, No. 0003, at 1–2.

Commenters responding to these points largely agreed with the industry petitioners. Most commenters generally agreed with AHRI's criticisms of the definition for ''Error.'' Zero Zone, No. 0007, at 1; AHAM, No. 0008, at 2; Lennox, No. 0009, at 1; AGA–APGA, No. 0010, at 1; Traulsen-Kairak, No. 0011, at 1. Most commenters also agreed that the definition of ''Party'' is too narrow. Zero Zone, No. 0007, at 1; Lennox, No. 0009, at 2; AGA–APGA, No. 0010, at 1; Traulsen-Kairak, No. 0011, at 1; AHRI–AHAM, No. 0012, at 2. Zero Zone stated that someone seeing the information for the first time might catch errors that someone familiar with the subject might miss. Zero Zone, No. 0007, at 1. Lennox agreed with Hussmann's petition, stating that the definition should be eliminated entirely because the goal of error correction is to detect errors. Lennox, No. 0009, at 2. AHRI and AHAM added that the source reporting an error is irrelevant because the purpose of error correction is to identify errors. AHRI–AHAM, No. 0012, at 2. Most commenters also agreed that the definition of ''Rule'' is too narrow. Zero Zone, No. 0007, at 1; AHAM, No. 0008, at 2; Lennox, No. 0009 at 1; AGA–APGA, No. 0010, at 2; Traulsen-Kairak, No. 0011, at 1. Zero Zone commented that expanding the definition to include ''[a]ll rules and test procedures'' would ensure accurate federal documents. Zero Zone, No. 0007, at 1. AHAM echoed AHRI's petition, commenting that the error correction process will be more transparent if the definition is broadened. AHAM, No. 0008, at 2.

DOE is declining to adopt any of the suggested changes to the definitions of ''Error'' and ''Rule,'' but it is amending the rule in accordance with the suggested changes regarding the rule's definition of ''Party.'' With respect to the definition of ''Error,'' DOE disagrees that the error correction process should be available to correct mistakes that are not in the regulatory text itself. The purpose of the error correction rule is to prevent an erroneous energy conservation standards regulation from being published because after the compliance date, products (or equipment) subject to a standard may not be sold in the United States unless they meet the standard. As a result, errors in the standards adopted in an energy conservation standards rulemaking can have large economic consequences. By contrast, preambles and technical support documents are generally not legally binding in the same way. An error in one of those documents would not have the consequences that an error in the regulatory text might.

DOE does not rule out the possibility that a mistake contained in a preamble, TSD, or other supporting material might lead the resulting regulatory text to be inconsistent with DOE's determinations in the rulemaking. In such a case, a person might properly file an error correction request that pointed out the mistake in the supporting material in the course of identifying the error in the regulatory text. But accepting input, during the brief error correction window, on mistakes in a preamble, TSD, or other supporting document that did not result in errors in the regulatory text would either be pointless (because the error was harmless) or would essentially mean being open to revisiting the entirety of the rulemaking. DOE declines to establish a general procedure, applicable to every standards rulemaking, requiring it to reconsider every aspect of the rulemaking documents. As discussed in this preamble, having such a general reconsideration procedure would create substantially more delay than the error correction rule; and the delay would not be warranted, because DOE would generally adhere to the policy decisions it has already made.

Because the regulatory text forms the basis of what a regulated entity is legally obligated to perform, this aspect of the final rule should, in DOE's view, remain the focus of the error correction process. While DOE acknowledges that there may be potential value in addressing issues that may arise in the context of the preamble discussion or TSD (and related supporting documents), these documents, by themselves, do not impose any legal requirements on the affected regulated entities. And, to the extent that certain information in these documents creates a question regarding the validity of a particular rule, individuals are free to exercise their options under 42 U.S.C. 6306 to seek a remedy to address any applicable issues that would fall outside of the ambit of the error correction rule.

While DOE appreciates the value of ensuring that the preamble discussion and other supporting documents are free from potential errors, DOE emphasizes that, because regulated entities are held accountable for the provisions contained within the regulatory text, it is vital that this aspect of a standards final rule be correct. To the extent that a given preamble discussion warrants further clarification, DOE is willing—and has—provided supplemental guidance regarding its views. As for corrections to erroneous items within a given TSD or related DOE supporting document, DOE may address these types of issues on a case-by-case basis to eliminate any potential confusion that may arise from conflicts between those supporting documents and the final rule's regulatory text.

AHRI also criticized the definition of ''Error'' as involving an assessment of DOE's ''intent'' regarding a rule. AHRI urged DOE to adopt a definition of ''Error'' that is objective. Although AHRI did not suggest an alternative definition, AHRI contends that without some different definition DOE will be encouraged to provide *post hoc* rationalizations if litigation over a rule arises. DOE does not agree that the definition of ''Error,'' as it stands, encourages *post hoc* rationalizations

during litigation. In the error correction rule, DOE explained that petitions for judicial review of standards rules should be filed after publication of the rule. Consequently, litigation over a given standards rule would arise, if at all, only after the conclusion of the error correction process.

Moreover, DOE does not agree that because the definition of ''Error'' refers to what DOE ''intended,'' the concept of ''Error'' is inherently subjective. Objective conceptions of intent are common in the law. For example, in interpreting a contract, objective manifestations of intent ordinarily prevail over any contrary claims about what one or the other party actually subjectively intended. With respect to the error correction process, the rule states that a claim of error must be based on evidence in the rulemaking record. Thus, the objective evidence in the rulemaking record will ordinarily illustrate whether the regulatory text contained an Error.

Finally, AHRI noted that in some circumstances a person may conclude that a regulation contains an Error but may not be able to determine what the correct version of the regulation should be. DOE acknowledges that such a situation is in principle possible, and the Department's being notified of the potential Error would be valuable even if the submitter could not state what the correction version of the rule should be. Accordingly, DOE is amending paragraph (d)(2)(i) to permit a person to submit an error correction request without stating the correct substitute text, so long as the person states that it is unable to determine the correct text and explains why.

With respect to the definition of ''Party,'' which delineates who can file an error correction request, DOE is adopting the suggestion that the rule should not restrict to commenters alone the opportunity to submit such requests. As the error correction rule explained, DOE believes that individuals who have availed themselves of the opportunity to comment on DOE's standards rulemakings, at public meetings or via written comments, are in the best position to identify potential errors with a given final rule. Those participating individuals who have provided comments to assist the agency in crafting the final rule's standards have demonstrated both the interest and requisite familiarity with the relevant rulemaking and its underlying analyses and data to help DOE in readily identifying errors that may appear in the final rule's regulatory text. However, DOE recognizes that other persons may, on occasion, be able to identify errors. DOE's original decision to define ''Party'' based on prior participation was based on a desire to avoid the burden of responding to voluminous input from persons who, generally lacking familiarity with a rulemaking, might submit suggestions that were really revisiting the substantive decisions behind the rule rather than error correction requests. In light of the petitions and comments, DOE has become convinced that such improper submissions would probably not be as common as it had thought. A person will likely not undertake the effort to prepare and submit a request during the error correction period without making some assessment that the submission will probably be proper. Improper submissions might occur, of course, but because they would represent unfruitful effort, DOE expects that submitters will try to avoid them. In light of this revised balancing of the considerations related to the term ''Party,'' DOE is dropping the definition and modifying its regulations to reflect that any person may submit an error correction request.

Finally, with respect to which rules would be subject to the error correction rule's provisions, DOE is declining to extend the rule's application beyond rulemakings that establish or amend energy conservation standards. While it is also important to ensure that other rules such as those for test procedures are error-free, DOE has more flexibility to address errors in such rulemakings because there is no question that test procedures can be modified without regard to whether they have already been published or become effective. Accordingly, in DOE's view, while test procedure rulemakings can be complex, potential problems that are discovered in a test procedure's regulatory text can be addressed more readily than with standards rules. DOE also notes that the complexity of test procedure rules, which stems in large part from the very detailed and comprehensive text of the test procedure itself—along with related industry-based testing protocols that are often incorporated by reference—weighs in favor of not including test procedure rulemakings as part of the error correction process. While DOE believes that errors contained in the regulatory text of a standards final rule can be identified within the window prescribed in this rule, the variations in both length and complexity of the regulatory text of test procedures makes the application of this process less workable for these rulemakings. And if a person believed that DOE needed to correct an error discovered in the test procedure, it would be free to file a petition for rulemaking asking DOE to initiate a rulemaking to correct that rule. *See* 5 U.S.C. 553(e).

C. Publication Timing

The error correction rule prescribes a timeline under which DOE will submit a rule to the Office of the Federal Register for publication. If the Secretary determines that a correction is necessary after receipt of a properly filed request, the Secretary will submit a corrected rule for publication in the **Federal Register** within 30 days after the 30-day Request for Correction window (which, as noted above, is being changed to a 45-day window), ''absent extenuating circumstances.'' 10 CFR 430.5(f)(3).

The Joint Advocates objected to the quoted language and argued that the error correction rule should contain a more definitive statement regarding when the corrected rule will be submitted for publication in the **Federal Register**. In their view, DOE's use of the phrase ''absent extenuating circumstances'' in this context creates an ambiguity with respect to when DOE will submit a corrected rule for publication. The Joint Advocates suggested that DOE either drop this phrase or specify exactly how much time the Secretary will take to submit a corrected rule for publication. *See* Joint Advocates Petition, No. 0006, at 2–3.

Lennox indicated in its comments that DOE cannot foresee every possible error and that the complexity of past DOE rulemaking analyses suggests that more than 30 days may sometimes be needed to resolve a given error correction request. In its view, devoting an additional amount of time in favor of ensuring that a standard is correct is preferable to the alternative of having a permanently flawed standard. Lennox, No. 0009, at 3.

DOE is declining to make any change in response to this part of the Joint Advocates' petition. The language in 10 CFR 430.5(f)(3) was crafted to ensure that DOE could adjust to potential situations where additional time beyond the 30-day period for submitting a corrected rule to the **Federal Register** may be required. While DOE will make every effort to adhere to this 30-day timeline, it is not inconceivable that there may be occasions in which an unexpected delay may occur that would necessitate the need for additional time, such as where an error relates to particularly complex engineering analysis. Having this flexibility will help ensure that DOE has sufficient time to thoroughly review all timely error requests it receives and make any necessary corrections that may be

required to the final rule prior to its publication in the **Federal Register**.

D. Clarifying Certain Text

The error correction rule uses the term ''posting'' to refer to the Secretary's action causing a rule under the Act to be posted on a publicly-accessible Web site. *See* 10 CFR 430.5(c)(1). Related provisions at 10 CFR 430.5(d)(3) and 10 CFR 430.5(f)(3) refer to the Secretary's ''issuance'' of a rule. Under the former provision, the rule notes that the evidence to substantiate an error correction request or evidence of the error must be in the rulemaking record ''at the time of the rule's issuance''; under the latter, the rule indicates that upon receipt of a properly filed correction request ''after issuance of a rule,'' DOE will follow a prescribed timeline for submitting a corrected rule to the **Federal Register** for publication.

The Joint Advocates stated that, based on this definition, DOE should replace ''issuance'' with ''posting'' in these two instances in the error correction rule, namely, at 10 CFR 430.5(d)(3) (which describes the point by which evidence supporting an error correction request must be entered into the rulemaking record) and 10 CFR 430.5(f)(3) (which describes the point by which DOE must receive a properly filed error correction request). The Joint Advocates asserted that the term ''issuance'' means publication in the **Federal Register**, which was not what DOE intended at those instances, but rather ''posting.'' The Joint Advocates suggested that the language be corrected to avoid confusion. Joint Advocates Petition, No. 0006, at 3.

Zero Zone commented that it generally disagreed with the Joint Advocates' Petition. Zero Zone, No. 0007, at 1. AHRI and AHAM commented that they agreed with the Joint Advocates that ''issuance'' of a final rule does not occur until publication in the **Federal Register**. AHRI–AHAM, No. 0012, at 5.

In response to the petition and comments, DOE is amending its error correction rule to clarify the point by which evidence supporting an error correction request must be in the rulemaking record (10 CFR 430.5(d)(3)) and the point after which a properly filed error correction request is submitted to DOE (10 CFR 430.5(f)(3)). DOE is clarifying that these points are denoted by the posting date of the final rule. Making this change will help ensure that there is no confusion as to when the supporting evidence must be in the rulemaking record and after which a properly filed request is submitted. DOE notes that it is also clarifying 10 CFR 430.5(c)(3) to more clearly indicate that errors must be identified as provided in 10 CFR 430.5 and that DOE may make any necessary corrections in the regulatory text submitted to the Office of the **Federal Register**.

E. Evidence That May Be Relied Upon in Error Correction Requests and the Scope of the Administrative Record That Would Be Filed in Any Court Challenge to a Final Rule

The error correction rule states that to substantiate an error correction request, the evidence relied upon must be evidence that is ''in the record of the rulemaking at the time of the rule's issuance, which may include the preamble accompanying the rule. The Secretary will not consider new evidence submitted in connection with the request.'' 10 CFR 430.5(d)(3). AHRI petitioned to broaden the scope of evidence that the Secretary could consider to include any new evidence. AHRI Petition, No. 0005, at 6. According to AHRI, there is no precedent for excluding ''new evidence.'' *Id.*

In addition, the preamble to the error correction rule stated that DOE ''consider[ed] the record with respect to a rule subject to the error correction process [to be] closed upon the posting of the rule.'' 81 FR at 26999. AHRI construed this sentence to mean that, in the event of a court challenge to a standards rule, no documents postdating the posting of a rule would be included in the administrative record filed in a court of appeals. AHRI Petition, No. 0005, at 9–10. AHRI argued that exclusion of such documents from an administrative record filed in court would be contrary to the Administrative Procedure Act. *Id.*

Industry commenters agreed with AHRI's suggested approach. Zero Zone, No. 0007, at 1; AHAM, No. 0008, at 2; Lennox, No. 0009, at 1; AGA–APGA, No. 0010, at 1; Traulsen-Kairak, No. 0011, at 1. AHRI also commented that the Joint Advocates indirectly supported AHRI's Petition. According to AHRI, when the Joint Advocates stated that a final rule is not ''issued'' until it is published in the **Federal Register**, their statement supported AHRI's view that the rulemaking record is not yet closed when a rule is ''posted.'' AHRI–AHAM, No. 0012, at 5.

With respect to AHRI's distinct concern about the scope of the administrative record that would be filed in a court of appeals in the event of a challenge to a final standards rule published in the **Federal Register**, DOE notes that it did not intend for the preamble to the error correction rule to make any statements about the contents of such an administrative record. DOE clarifies that an administrative record filed in a court reviewing a final standards rule published in the **Federal Register** would include all documents that are required by law to be part of such a record, including (1) all properly filed error correction requests (including any supporting materials submitted to DOE); (2) DOE's responses to such requests; and (3) the final rule published in the **Federal Register**. DOE believes that this clarification addresses the concerns articulated by AHRI and others that the administrative record not be closed upon the posting of a standards rule. DOE emphasizes, however, that inclusion in the administrative record of supporting materials attached to an error correction request does not mean that DOE must substantively consider such materials. To the contrary, DOE is only obligated to consider such materials if they satisfy all regulatory requirements, including the requirements of Section 430.5(d)(3) discussed in this preamble.

In DOE's view, the posting of an energy conservation standards rule signals the end of DOE's substantive analysis and decision-making regarding the applicable standards. The purpose of the error correction rule is to ensure that the legal requirements that regulated entities will need to meet—as detailed in the regulatory text of a given standards rule—accurately reflect that completed substantive analysis and decision-making. It is not possible for a regulation to be in error, as defined for purposes of the error correction rule, based on evidence first introduced after the substantive decision has been made. Accordingly, such a consideration would be beyond the scope of the error correction process that DOE has developed. It would, essentially, be akin to a request for reconsideration; the submitter would be arguing that, in light of additional evidence, DOE should alter its decision. For the reasons discussed elsewhere in this preamble, DOE declines to expand the scope of the error correction process to encompass requests for reconsideration of its standards rules on any ground.

F. DOE Responses to Error Correction Requests

The error correction rule describes three potential options that could occur after the period for submitting error correction requests expires. *See* 10 CFR 430.5(f). First, if one or more ''properly filed requests'' are submitted and the Secretary determines that no correction is necessary, the Secretary has discretion on whether to provide a

written response. The Secretary may, for example, submit the final rule for **Federal Register** publication as posted, thereby effectively denying any requests. *See* 10 CFR 430.5(f)(1). Second, if no properly filed requests are submitted and the Secretary does not identify any errors, the Secretary will submit the final rule for publication as it was posted. *See* 10 CFR 430.5(f)(2). Finally, if the Secretary receives a properly filed request and determines that a correction is necessary, the Secretary will submit the final rule for publication with the correction included. *See* 10 CFR 430.5(f)(3).

Several petitioners stated that DOE should provide a public response to requests for correction, regardless of whether the Secretary deems that any correction is merited. Hussmann Petition, No. 0003, at 1; Lennox Petition, No. 0004, at 4; AHRI Petition, No. 0005, at 10. Hussmann stated that DOE should do so, either before or at the time of publication of a final rule in the **Federal Register**. Hussmann Petition, No. 0003, at 1. Lennox and AHRI stated that providing a response will promote transparency and should not take much additional time for DOE to prepare, assuming that DOE already analyzed any requests. Lennox Petition, No. 0004, at 4; AHRI Petition, No. 0005, at 10. Lennox added that rejecting an error correction request through a non-response is not acceptable because petitioners incur real costs when submitting a request. Lennox Petition, No. 0004, at 4.

Related to the Secretary's options under 10 CFR 430.5(f), petitioners made reference to a statement in the preamble to the error correction rule under the ''Publication in the **Federal Register**'' section. In particular, DOE indicated that there may be instances where DOE ''may choose not to correct the regulation because it concludes the regulatory text is nonetheless acceptable; for instance, because it considers the error insignificant.'' 81 FR at 27002. Both Lennox and AHRI stated that, especially when an error is considered ''insignificant'' by the Secretary, DOE should provide a public response not only to promote transparency but also to reduce subsequent litigation. AHRI argued that DOE should furnish a rationale or justification explaining why an error is deemed to be insignificant, while Lennox asserted that if DOE is mistaken about an error being insignificant and does not publish a response, the absence of a response could lead ''to unintended actions by stakeholders, including the exploitation of perceived loopholes.'' Lennox Petition, No. 0004, at 4; AHRI Petition, No. 0005, at 10.

Most commenters generally agreed with the petitioners who urged DOE to provide a public response to requests for error correction, including when DOE deems an error to be ''insignificant.'' Zero Zone, No. 0007, at 1; AHAM, No. 0008, at 2; Lennox, No. 0009, at 1; AGA–APGA, No. 0010, at 2; Traulsen-Kairak, No. 0011, at 1.

After giving careful consideration to this issue, DOE has decided to make public brief written indications of its handling of all properly-filed error correction requests. DOE will ordinarily summarize these indications in a single document. In DOE's view, the vast majority of cases in which it grants an error correction request are likely to involve a request that DOE correct a typographical error that appears in a posted, pre-publication version of a rule. In such cases, DOE's written indication addressing the request may note only that DOE made the requested change because the reason for the change may be readily apparent to the public. When requesters have sought to identify a potential error in a posted standards rule and DOE has decided not to make the requested change, an explanation as to why that correction request has not been adopted will usually be helpful in assisting the public with understanding DOE's reasoning, and DOE will provide a brief explanation in those circumstances. Accordingly, DOE is modifying the regulatory text under 10 CFR 430.5(f) to include a provision indicating that DOE will make available a brief written statement indicating the agency's treatment of the error correction requests it received. DOE expects to make such a statement available at around the same time it publishes the rule.

G. Notice and Comment

In a separately filed comment, AHAM asked that the error correction final rule be treated as a proposed rule. It further asked that, upon granting the petition from AHRI, DOE seek stakeholder input in order to ensure that the next version of the error correction process does not suffer from the same deficiencies as the first version. AHAM Comments, No. 0008, at 2.

As an initial matter, DOE notes that the error correction rule was published as a final rule and has already taken effect. Moreover, DOE is not required to provide the public with an opportunity to comment on the error correction rule or any amendments to that rule because it is a rule of agency procedure and practice. *See* 5 U.S.C. 553(b)(A). However, as indicated elsewhere in this document, DOE is amending the error correction rule in part to address some of the suggestions offered by both petitioners and commenters. Accordingly, interested members of the public have been afforded the opportunity to provide input into shaping the final version of the error correction rule being adopted in this document.

H. Response to Petitions Seeking Full Reconsideration Procedures

AHRI's principal request is for DOE to replace the error correction rule with a process that ''provide[s] for the posting of a pre-publication version of final rules under 42 U.S.C. 6293 and 6295 (and the corresponding provisions applicable to commercial equipment, sections 6313 and 6314) for a period of 60 days and allow[s] petitions for reconsideration under the APA during that prepublication period.'' AHRI Petition, No. 0005, at 2–3. Embedded in this request, it appears, are the following five suggested changes to the current error correction rule, all of which AHRI also separately requests, in the alternative, in the event that DOE denies its principal request: (1) Broaden the types of arguments that may be asserted in error correction requests to encompass any grounds for changing a rule, not just arguments identifying an ''error'' as defined in the current rule, *id.* at 3–6; (2) allow the introduction of evidence that is not in the rulemaking record to support error correction requests, *id.* at 6; (3) expand the error correction process to include errors appearing in Technical Support Documents and perhaps other parts of the regulatory record, *id.* at 12–13; (4) expand the error correction process to include rules establishing test procedures, *id.* at 7–8; and (5) extend the 30-day period for submitting error correction requests (prior to publication in the **Federal Register**) to 60 days (also prior to publication in the **Federal Register**),[4] *id.* at 8–9. Lennox supported AHRI's principal request, as did other industry commenters. *See* Lennox Petition, No. 0004, at 2 (supporting ''a 60 day pre-publication period'' for ''Petitions for Reconsideration, as provided for under the [APA]''); AGA–APGA, No. 0010, at 1–2 (supporting pre-publication ''petitions for

[4] AHRI's request in the alternative pertaining to timing also argues that DOE could instead allow error correction requests to be submitted during the existing 30-day pre-publication period and continuing until the effective date of the rule, which follows publication in the **Federal Register**. AHRI Petition, No. 0005, at 8–9; *see also* AGA–APGA, No. 0010, at 2.

reconsideration, as provided for under the [APA]'' and including ''the full range of reconsideration petitions that the APA contemplates''); AHRI–AHAM, No. 0012, at 5 (reiterating AHRI's view that ''many of the main purposes articulated in the Final Rule are best met by allowing for a 60-day pre-publication period in which Petitions for Reconsideration, as provided for under the [APA], will be considered'').

DOE has explained above why it is rejecting (in part) AHRI's second through fifth requests embedded in its principal suggestion. For the reasons explained below, DOE also rejects AHRI's first request embedded in its principal suggestion (and offered as a standalone request)—that DOE expand the error correction process to encompass requests alleging any grounds for changing a rule.

DOE understands that the ''full'' reconsideration procedure that AHRI describes in its principal request, as well as in item 1 under its alternative request, would encompass the full range of issues germane to a given rulemaking. DOE has considered whether to adopt a reconsideration procedure along the lines suggested by AHRI. Given the practical implications of crafting an error correction process that would allow for full reconsideration of any factual or legal issue implicated by the rulemaking, as discussed in this preamble, DOE declines to broaden the error correction rule to permit petitions asserting any ground for changing a rule.

As AHRI acknowledges, energy conservation rulemakings are an ''enormous undertaking . . . in terms of time, effort and cost, both on the part of stakeholders and DOE.'' AHRI Petition, No. 0005, at 2. In addition, these rulemakings tend to involve an extensive opportunity for comment, both through written submissions in response to notices of proposed rulemaking and notices releasing additional technical information, as well as through oral participation at public meetings held by DOE. Adding a full reconsideration process, in which the Department would specifically review a further round of comment on any matter, would substantially increase the cost of energy conservation rulemakings and the length of time they take. *See* Lennox Petition, No. 0004, at 5 (acknowledging that it is ''important to bring finality to a given rulemaking''). Meanwhile, in DOE's view, given the opportunities for public input that the process already provides, a mandatory general reconsideration period covering all topics would, in many instances, not significantly increase meaningful public participation in rulemakings.

By contrast, DOE developed the error correction rule to invite public input on a narrow but challenging category of problems, namely errors that may occur in formulating the text of regulations and that, if left uncorrected, could result in standards that would be binding on regulated parties but would not accurately reflect DOE's judgment about the appropriate standard level. Obtaining public input on ''errors'' as defined by the rule is particularly valuable because, by their nature, such errors are inadvertent, and thus DOE is unaware of them. In addition, the narrow error correction rule helps avoid the possibility that DOE might inadvertently adopt an energy conservation without having determined that it meets the statutory standards. That is so because many ''errors'' (as defined by the error correction rule) may, if uncorrected, result in the promulgation of standards that DOE did not intend to adopt. For example, if DOE's calculations in the preamble to a final rule suggested that the standard for a given product should be set at one level, but a more stringent standard was inadvertently presented in the regulatory text, that standard would not have been the one DOE intended to adopt as being technologically feasible and economically justified. By contrast, a request to change a rule on a ground other than the identification of an ''error'' (as defined by the error correction rule) does not raise the possibility that DOE adopted a standard in the regulatory text without determining that it was technologically feasible and economically justified. Moreover, reviewing and responding to requests to correct errors as defined in the error correction rule should not be too burdensome because DOE will need to review only a limited scope of materials for each submission. Thus, the error correction rule is specifically tailored to address what the agency views as a critical class of inadvertent errors warranting the creation of an additional limited administrative process apart from the procedures already afforded by EPCA and the APA.

In contrast, the full reconsideration process that AHRI suggests is not closely tailored to address this key problem and would represent a commitment by DOE to revisiting the entire rulemaking record in order to assess the particulars of any issue a person might raise in a reconsideration request. Because of the open-ended nature of such a process, DOE would need to provide interested persons with a period of time to submit reconsideration petitions that is longer than the 45-day period established by the error correction rule (as amended in this document). In addition, it would take DOE significantly more time to consider such petitions and to determine whether to change the rule in response to the petitions. Furthermore, DOE's preparation and issuance of a written response to any such reconsideration requests, as suggested by industry petitioners, would extend the process further. *See* AHRI Petition, No. 0005, at 3.

DOE declines to extend its rulemaking procedures in that fashion. Many standards-setting rules are subject to a statutory deadline. *See, e.g.,* 42 U.S.C. 6295(m)(1) (DOE must determine whether to amend an energy conservation standard for consumer products not later than six years after issuance of a final rule establishing or amending a standard); 42 U.S.C. 6295(m)(3)(A) (under which DOE must issue a rule within two years of the notice of proposed rulemaking for an amended standard); *see also* 42 U.S.C. 6316 (applying section 6295(m), including its two-year window, to a variety of industrial equipment-related energy conservation standards, including (1) electric motors and pumps, (2) commercial refrigerators, freezers, and refrigerator-freezers, (3) automatic commercial ice makers, (4) walk-in coolers and walk-in freezers, and (5) commercial clothes washers). Given the complexity of these rulemakings, these statutory deadlines are difficult to meet in current circumstances, which include considerable periods of time that lie outside of DOE's control. Trying to fit a broad reconsideration process within these already limited time periods would be even more difficult. The broader the issues available for review through an administrative reconsideration process, the greater the strain on departmental resources and the agency's ability to complete its portfolio of rulemaking proceedings within statutory deadlines. *See* Joint Advocates Petition, No. 0006, at 1–2. In addition, DOE takes the timelines in EPCA as signals of congressional concern that standards rulemakings should not be unnecessarily delayed. As the preamble to the error correction rule observed, postponing the publication of a standards rule in the **Federal Register** means delaying the benefits to consumers and to the economy that the new standard will achieve; and it prolongs the uncertainty for manufacturers about what the standard will eventually be. Accordingly, in

DOE's view, the benefits AHRI attributes to a full reconsideration option are limited and outweighed by the delay and resource strain that would follow from the implementation of such a reconsideration process.

DOE also finds unpersuasive AHRI's argument that DOE must entertain pre-publication petitions for reconsideration alleging any grounds for changing a rule because ''5 U.S.C. 553(e) does not limit the grounds on which reconsideration can be pursued.'' AHRI Petition, No. 0005, at 5. Reliance on section 553(e) is inapposite here because DOE is not establishing the error correction process under this section. Through the error correction rule, DOE established a new procedure in addition to and independent of any statutory rights to petition for rulemaking afforded to persons under the APA and EPCA. *See* 5 U.S.C. 553(e) (''Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.''); 42 U.S.C. 6295(n) (''[A]ny person may petition the Secretary to conduct a rulemaking to determine for a covered product if the standards contained either in the last final rule required under subsections (b) through (i) of this section or in a final rule published under this section should be amended.''). To the extent that those authorities permit the filing of petitions seeking to change a rule, that option remains available to the public and is not superseded or limited by the error correction rule in any way. Thus, contrary to AHRI's position, DOE is not required by any statutory, regulatory, or other requirement to broaden the error correction procedure to encompass any ground for changing a standards rule. It is in DOE's sole discretion to determine the scope of the error correction procedure, and, for the reasons described in this preamble, the Department has reasonably concluded that this process should be limited to ''errors'' as defined in the rule. *See Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 543–44 (1978) (''Absent constitutional constraints or extremely compelling circumstances the 'administrative agencies ''should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.'''''') (internal citations omitted).

In its petition to amend the error correction rule, AHRI refers back to certain arguments raised in its brief to the Fifth Circuit in *Lennox Int'l, Inc.* v. *U.S. Dep't. of Energy,* No. 14–60535, concerning AHRI's underlying July 30, 2014 Petition for Reconsideration of DOE's Rule for Walk-In Coolers and Freezers (WICFs), Docket No. EERE–2010–BT–STD–0003, and AHRI argues that DOE must respond to those legal arguments here in order to determine whether the pre-publication error correction process should be broadened to encompass requests to change a posted rule on any ground. *See* AHRI Petition, No. 0005, at 5 (contending that DOE wrongly ''expressed the view in denying [reconsideration of] the walk in cooler/freezer rule that it lacked the power to grant reconsideration petitions''); *see also id.* (arguing that ''DOE must . . . set[] out its current position as to what [*Natural Resources Defense Council* v. *Abraham,* 355 F.3d 179 (2d Cir. 2004),] says about DOE's EPCA reconsideration powers''). However, the relevant parts of DOE's denial of the petition for reconsideration of the Walk-In Coolers and Freezers Rule and AHRI's subsequent Fifth Circuit brief dealt solely with the issue of DOE's authority to grant petitions for reconsideration filed after publication of a rule in the **Federal Register** and before its effective date. The legal arguments raised in that context have no bearing on the validity of DOE's rule establishing a process for correcting errors before publication in the **Federal Register**. Moreover, even if AHRI is correct that DOE has the authority to consider reconsideration petitions submitted after a rule is published in the **Federal Register**, it does not follow that DOE should expand the pre-publication error correction process to encompass petitions alleging any ground as a basis for changing a posted rule, which is a distinct question. Accordingly, DOE declines in this rulemaking to definitively resolve the legal arguments AHRI advanced in its Fifth Circuit brief regarding DOE's authority to consider petitions for reconsideration submitted after a rule is published in the **Federal Register**.

AHRI argued in its Fifth Circuit brief in *Lennox* that 42 U.S.C. 6295(o)(1)—which provides that DOE may not prescribe any amended standard that ''increases the maximum allowable energy use . . . or decreases the minimum required energy efficiency'' of a product—does not prevent DOE from reconsidering EPCA standards to make them less stringent when reconsideration is sought after publication in the **Federal Register** but before the effective date of the relevant rule. *See* AHRI Brief in *Lennox,* at 28–38. *But see Natural Resources Defense Council* v. *Abraham,* 355 F.3d 179 (2d Cir. 2004) (interpreting section 6295(o)(1) as applying as of **Federal Register** publication of a standards rule); Joint Advocates, No. 0013, at 1 (same). As the preamble to the error correction rule noted, section 6295(o)(1) does not unambiguously indicate the relevant reference point (*e.g.,* a publication in the **Federal Register**) for determining the ''maximum allowable energy use'' and the ''minimum required energy efficiency.'' 81 FR at 27002.

However, because DOE has established a pre-publication error correction procedure, DOE can leave for another day the questions AHRI has raised about DOE's authority to reconsider rules that have already been published in the **Federal Register**. That is so because, regardless of whether section 6295(o)(1) bars DOE from considering some or all reconsideration petitions submitted after **Federal Register** publication, section 6295(o)(1) does not bar DOE from correcting errors prior to publication in the **Federal Register**. *See* 81 FR 26998, 27002–27003 (May 5, 2016) (discussing § 430.5(g) of the error correction rule and why pre-publication error correction requests do not implicate EPCA's anti-backsliding provision).[5] Indeed, neither AHRI nor any other petitioner or commenter has contended that the error correction rule is inconsistent with section 6295(o)(1).[6]

Similarly, AHRI's Fifth Circuit brief in *Lennox* argued that 42 U.S.C. 6295(n) does not bar DOE from making a standards rule less stringent in response to a petition for reconsideration filed after the rule was published in the **Federal Register** but before the effective date of the relevant rule. *See* AHRI Brief in *Lennox,* at 39–41. Section 6295(n), which addresses ''[p]etition[s] for amended standards,'' applies to ''petition[s] . . . to conduct a rulemaking to determine . . . if the standards contained either in the last final rule required under [42 U.S.C.

[5] To the extent that the preamble to the error correction rule could be construed as having definitively taken a position on whether the anti-backsliding provision is triggered by publication of final rule in the **Federal Register**, *see* 81 FR at 27002, DOE now clarifies that it meant to express the more limited proposition that the anti-backsliding provision permits the pre-publication correction of errors in the manner that the error correction rule establishes.

[6] AHRI ''note[s]'' that ''it would [be] just as consistent with DOE's construction of [section 6295(o)(1)] for DOE to allow for a process for full reconsideration (to any degree, of any aspect) of an energy conservation standard, as contrasted with the limited scope of the error correction rule''—*i.e.,* to allow pre-publication petitions seeking to change a standards rule on any ground. AHRI Petition, No. 0005, at 6 (internal quotation marks omitted). Nonetheless, it is within DOE's discretion to determine the scope of the error correction procedure, and DOE has reasonably concluded that the procedure should be limited to ''errors'' as defined in the rule.

6295(b)–(i)] or in a final rule published under [section 6295] should be amended.'' DOE need not, however, resolve the question raised in the *Lennox* briefs of whether section 6295(n) applies to post-publication reconsideration petitions because, regardless of whether section 6295(n) applies to such petitions, 42 U.S.C. 6295(n) is not implicated by the pre-publication error correction procedures established under the error correction rule.

That conclusion follows from the text of section 6295(n). DOE has, for the most part, already published the ''last final rule[s] required'' by subsections (b) through (i) of section 6295. Thus, for nearly all new standards rules for consumer products and for any standards applicable to commercial equipment, a petition under section 6295(n) would be submitted under the second clause of that subsection, applicable to ''published'' rules. Regardless which clause of 6295(n) may be the basis for a rule (*i.e.,* the ''required'' rules clause or the ''published'' rules clause), DOE interprets that provision to apply no earlier than the date a rule is published in the **Federal Register**. Because error correction requests submitted pursuant to the error correction rule seeking to change a standard in a rule posted on DOE's Web site based on an ''error'' are filed before the rule is published in the **Federal Register**, such requests do not qualify as section 6295(n) petitions. Section 6295(n) thus is irrelevant to whether DOE may consider and grant any given error correction request, and no petitioner or commenter (including AHRI) has argued to the contrary.[7]

As explained in this preamble, DOE has fully considered but is declining to adopt the full reconsideration procedure that AHRI suggests—irrespective of what DOE's legal authority to accept a post-publication petition would be. Because resolution of those legal arguments is not determinative of DOE's basis for rejecting a full reconsideration procedure in the matter at hand, DOE declines to definitively resolve the questions AHRI raises about the Department's authority to reconsider rules that have already been published in the **Federal Register** and is reserving judgment until a more appropriate time on whether and, if so, to what extent it possesses the legal authority to create a reconsideration procedure after a rule's publication in the **Federal Register**. The Department notes, however, that, regardless of the exact point in time when the anti-backsliding provision in section 6295(o)(1) and the amendment provision in section 6295(n) are triggered so as to have an impact on reconsideration requests, as DOE reads the provisions, they do not restrict DOE's correction of rules pursuant to the error correction process it has established. As such, DOE's error correction rule is consistent with both EPCA and the rationale expressed by DOE in its order denying AHRI's petition for reconsideration in the WICF rulemaking.

It is DOE's position that a process to correct errors such as typographical mistakes or calculation errors can be resolved at the administrative level without causing an undue burden on agency resources or the agency's ability to comply with statutory deadlines. The error correction rule, as amended, reflects DOE's balancing between the resource-intensive rulemaking process and its ability to offer an additional administrative process to stakeholders that will reduce the need to pursue judicial review in instances where it is clear that the relevant standard in the posted rule is not the standard the agency had intended to select.

DOE has carefully considered petitioners' request for a full reconsideration procedure but concludes that agency and stakeholder interests will be best served by a streamlined process for correcting the errors described in the amended error correction rule.[8]

III. Procedural Issues and Regulatory Review

A. Administrative Procedure Act

This rule of agency procedure and practice is not subject the requirement to provide prior notice and an opportunity for public comment pursuant to authority at 5 U.S.C. 553(b)(A). The Administrative Procedure Act's exception to the notice-and-comment rulemaking requirement for rules of agency procedure and practice reflects Congress's judgment that such rules typically do not significantly benefit from notice-and-comment procedures, and that judgment is particularly applicable here, where the agency perceives no specific need for notice and comment. In addition, DOE has concluded that seeking further input on this rule—beyond that which has already been provided through the submitted petitions to amend and comments responding to them—would inappropriately divert valuable agency resources from other rulemakings that Congress has directed DOE to complete according to certain statutory timelines.

This rule is also not a substantive rule subject to a 30-day delay in effective date pursuant to 5 U.S.C. 553(d).

B. Review Under Executive Orders 12866 and 13563

This regulatory action is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (''OIRA'') of the Office of Management and Budget (''OMB''). DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. 76 FR 3281 (January 21, 2011). EO 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. As a result, EO 13563 also does not apply to this rule.

[7] Accordingly, DOE rejects AHRI's argument that it ''must reject the 42 U.S.C. 6295(n) rationale it adopted'' when it denied reconsideration of the WICF rule. AHRI Petition, No. 0005, at 6. As explained in this document, 42 U.S.C. 6295(n) plainly does not apply to pre-publication error correction requests, and there is no need to substantively resolve in this rulemaking whether it applies to post-publication reconsideration petitions like the petition filed with respect to the WICF rule.

For similar reasons, DOE rejects AHRI's suggestion that it must substantively resolve the argument AHRI advanced in its *Lennox* brief that DOE ''acted inconsistently with its own action on prior reconsideration petitions'' when it denied reconsideration of the WICF rule on the ground that it lacked authority to consider that petition. AHRI Petition, No. 0005, at 5. The alleged inconsistency concerns DOE's handling of reconsideration petitions submitted *after* rules are published in the **Federal Register**. *See* id. at 5 & n.3 (citing DOE's actions on reconsideration petitions submitted after rules were published in the **Federal Register**). As explained above, there is no need to substantively resolve in this rulemaking how DOE responds to such post-publication reconsideration petitions. DOE's response to the submission at issue in the *Lennox* case nowhere suggested that DOE would be unable to establish a mechanism like the error correction process, as an exercise of its authority to engage in administrative and procedural rulemaking regarding its implementation of EPCA.

[8] AHRI asserts various arguments about how DOE must respond to its petition to amend the error correction rule under two settlement agreements in *Lennox Int'l, Inc.* v. *U.S. Dep't of Energy,* No. 14–60535 (5th Cir.). *See* AHRI Petition, No. 0005, at 2–5. DOE has complied with both settlement agreements because, *inter alia,* this document responding to petitions to amend the error correction rule ''address[es]'' AHRI's request that DOE ''consider establishing a process for full reconsideration (to any degree, of any aspect) of an energy conservation standard.'' Joint Motion Embodying Further Settlement Agreement of All Parties for Dismissal Without Prejudice, *Lennox Int'l Inc.* v. *U.S. Dep't of Energy,* No. 14–60535 (5th Cir.) (filed April 28, 2016). Indeed, for the reasons identified in this document, DOE declines to adopt AHRI's principal suggestion for expanding the error correction rule, and DOE also rejects AHRI's related request that parties be permitted to assert any grounds for changing a rule in their error correction requests.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Because this rule is not subject to the requirement to provide prior notice and an opportunity for public comment, it is not subject to the analytical requirements of the Regulatory Flexibility Act.

D. Review Under the Paperwork Reduction Act

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

E. Review Under the National Environmental Policy Act of 1969

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule is strictly procedural and is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

G. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. 61 FR 4729 (February 7, 1996). Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

K. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under guidelines established

by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

L. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This final rule is not a significant energy action because the ability to correct regulations will not, in itself, have a significant adverse effect on the supply, distribution, or use of energy. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

IV. Approval of the Office of the Secretary

List of Subjects

10 CFR Part 430

Administrative practice and procedure, Energy conservation test procedures, Household appliances.

10 CFR Part 431

Administrative practice and procedure, Energy conservation test procedures, Commercial and industrial equipment.

Issued in Washington, DC, on August 10, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE amends parts 430 and 431 of chapter II of title 10 of the Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION STANDARDS FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.5 is revised to read as follows:

§ 430.5 Error correction procedures for energy conservation standards rules.

(a) *Scope and purpose.* The regulations in this section describe procedures through which the Department of Energy accepts and considers submissions regarding possible Errors in its rules under the Energy Policy and Conservation Act, as amended (42 U.S.C. 6291–6317). This section applies to rules establishing or amending energy conservation standards under the Act, except that this section does not apply to direct final rules issued pursuant to section 325(p)(4) of the Act (42 U.S.C. 6295(p)(4)).

(b) *Definitions.*

Act means the Energy Policy and Conservation Act of 1975, as amended (42 U.S.C. 6291–6317).

Error means an aspect of the regulatory text of a rule that is inconsistent with what the Secretary intended regarding the rule at the time of posting. Examples of possible mistakes that might give rise to Errors include:

(i) A typographical mistake that causes the regulatory text to differ from how the preamble to the rule describes the rule;

(ii) A calculation mistake that causes the numerical value of an energy conservation standard to differ from what technical support documents would justify; or

(iii) A numbering mistake that causes a cross-reference to lead to the wrong text.

Rule means a rule establishing or amending an energy conservation standard under the Act.

Secretary means the Secretary of Energy or an official with delegated authority to perform a function of the Secretary of Energy under this section.

(c) *Posting of rules.* (1) The Secretary will cause a rule under the Act to be posted on a publicly-accessible Web site.

(2) The Secretary will not submit a rule for publication in the **Federal Register** during 45 calendar days after posting the rule pursuant to paragraph (c)(1) of this section.

(3) Each rule posted pursuant to paragraph (c)(1) of this section shall bear the following disclaimer:

NOTICE: The text of this rule is subject to correction based on the identification of errors as defined in 10 CFR 430.5 before publication in the **Federal Register**. Readers are requested to notify the United States Department of Energy, by email at [EMAIL ADDRESS PROVIDED IN POSTED NOTICE], of any typographical or other errors, as described in such regulations, by no later than midnight on [DATE 45 CALENDAR DAYS AFTER DATE OF POSTING OF THE DOCUMENT ON THE DEPARTMENT'S WEBSITE], in order that DOE may make any necessary corrections in the regulatory text submitted to the Office of the Federal Register for publication.

(d) *Request for correction.* (1) A person identifying an Error in a rule subject to this section may request that the Secretary correct the Error. Such a request must be submitted within 45 calendar days of the posting of the rule pursuant to paragraph (c)(1) of this section.

(2)(i) A request under this section must identify an Error with particularity. The request must state what text is claimed to be erroneous. The request must also provide text that the requester argues would be a correct substitute. If a requester is unable to identify a correct substitute, the requester may submit a request that states that the requester is unable to determine what text would be correct and explains why the requester is unable to do so. The request must also substantiate the claimed Error by citing evidence from the existing record of the rulemaking that the text of the rule as issued is inconsistent with what the Secretary intended the text to be.

(ii) A person's disagreement with a policy choice that the Secretary has made will not, on its own, constitute a valid basis for a request under this section.

(3) The evidence to substantiate a request (or evidence of the Error itself) must be in the record of the rulemaking

at the time of the rule's posting, which may include the preamble accompanying the rule. The Secretary will not consider new evidence submitted in connection with a request.

(4) A request under this section must be filed in electronic format by email to the address that the rule designates for correction requests. Should filing by email not be feasible, the requester should contact the program point of contact designated in the rule regarding an appropriate alternative means of filing a request.

(5) A request that does not comply with the requirements of this section will not be considered.

(e) *Correction of rules.* The Secretary may respond to a request for correction under paragraph (d) of this section or address an Error discovered on the Secretary's own initiative by submitting to the Office of the Federal Register either a corrected rule or the rule as previously posted.

(f) *Publication in the* ***Federal Register****.* (1) If, after receiving one or more properly filed requests for correction, the Secretary decides not to undertake any corrections, the Secretary will submit the rule for publication to the Office of the Federal Register as it was posted pursuant to paragraph (c)(1) of this section.

(2) If the Secretary receives no properly filed requests after posting a rule and identifies no Errors on the Secretary's own initiative, the Secretary will in due course submit the rule, as it was posted pursuant to paragraph (c)(1) of this section, to the Office of the Federal Register for publication. This will occur after the period prescribed by paragraph (c)(2) of this section has elapsed.

(3) If the Secretary receives a properly filed request after posting a rule pursuant to (c)(1) and determines that a correction is necessary, the Secretary will, absent extenuating circumstances, submit a corrected rule for publication in the **Federal Register** within 30 days after the period prescribed by paragraph (c)(2) of this section has elapsed.

(4) Consistent with the Act, compliance with an energy conservation standard will be required upon the specified compliance date as published in the relevant rule in the **Federal Register**.

(5) Consistent with the Administrative Procedure Act, and other applicable law, the Secretary will ordinarily designate an effective date for a rule under this section that is no less than 30 days after the publication of the rule in the **Federal Register**.

(6) When the Secretary submits a rule for publication, the Secretary will make publicly available a written statement indicating how any properly filed requests for correction were handled.

(g) *Alteration of standards.* Until an energy conservation standard has been published in the **Federal Register**, the Secretary may correct such standard, consistent with the Administrative Procedure Act.

(h) *Judicial review.* For determining the prematurity, timeliness, or lateness of a petition for judicial review pursuant to section 336(b) of the Act (42 U.S.C. 6306), a rule is considered ''prescribed'' on the date when the rule is published in the **Federal Register**.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 3. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 4. Section 431.3 is revised to read as follows:

§ 431.3 Error Correction procedure for energy conservation standards rules.

Requests for error corrections pertaining to an energy conservation standard rule for commercial or industrial equipment shall follow those procedures and provisions detailed in 10 CFR 430.5 of this chapter.

[FR Doc. 2016–19968 Filed 8–23–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2015–5391; Special Conditions No. 25–630–SC]

Special Conditions: The Boeing Company, Boeing Model 767–2C Airplane; Non-Rechargeable Lithium Battery Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 767–2C airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is associated with non-rechargeable lithium battery installations. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective April 22, 2017.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2432; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION:

Future Requests for Installation of Non-Rechargeable Lithium Batteries

The FAA anticipates that non-rechargeable lithium batteries will be installed in other makes and models of airplanes. We have determined to require special conditions for all applications requesting non-rechargeable lithium battery installations, except the installations excluded in the Applicability section, until the airworthiness requirements can be revised to address this issue. Applying special conditions to these installations across the range of all transport-airplane makes and models ensures regulatory consistency among applicants.

The FAA issued special conditions no. 25–612–SC to Gulfstream Aerospace Corporation for their GVI airplane. Those are the first special conditions the FAA issued for non-rechargeable lithium battery installations. We explained in that document our determination to make those special conditions effective one year after publication of those special conditions in the **Federal Register**, and our intention for other special conditions for other makes and models to be effective on this same date or 30 days after their publication, whichever is later.

Background

On January 18, 2010, The Boeing Company (Boeing) applied for an amendment to type certificate no. A1NM to include a new Model 767–2C airplane. The Model 767–2C airplane is a twin-engine, transport-category freighter derivative of the Model 767–200 airplane currently approved under type certificate no. A1NM. This freighter has a maximum takeoff weight of 415,000 pounds and can be configured to carry up to 11 supernumeraries.

The Model 767–2C airplane incorporates provisions to support subsequent supplemental type