

Statement Regarding DOE's Final Rules for Energy Conservation Standards
Subject to Error Correction

Title III of the Energy Policy and Conservation Act of 1975 (EPCA), as amended, establishes a DOE program designed to improve the energy efficiency of consumer products (other than automobiles) and of certain industrial equipment. Through this authority, DOE may, by rulemaking, subject to the requirements of EPCA and the Administrative Procedure Act, establish and/or amend energy conservation standards for a variety of covered consumer products and industrial equipment.

As part of this process, DOE's regulations provide the public with an opportunity to request the correction of errors contained in the regulatory text of a final rule establishing and/or amending an energy conservation standard by posting that rule on DOE's publicly-accessible website for 45 days prior to submission for publication in the Federal Register. With a signed and posted final rule, the Department has concluded its deliberations. The posting of an energy conservation standards rule signals the end of DOE's substantive analysis and decision-making regarding the applicable standards. Consistent with its error correction process, DOE may respond to a request for correction or address an error discovered on DOE's own initiative by submitting to the Office of the Federal Register either the rule as previously posted or a corrected rule. If DOE receives no properly filed error correction requests after posting a rule and identifies no errors on DOE's own initiative, DOE will as soon as reasonably practicable submit the rule, as it was posted to the Office of the Federal Register for publication. If DOE receives a properly filed error correction request after posting a rule and determines that a correction is necessary, DOE will, absent extenuating circumstances, submit a corrected rule for publication in the Federal Register within 30 days after the error correction period.

DOE's purpose for creating the error correction process was to ensure that the legal requirements that regulated entities will need to meet accurately reflect DOE's substantive analysis and decision-making. The corrections that can be made under the error correction process are limited. In adopting its error correction process, DOE provided three examples of possible mistakes that could give rise to "Errors" -- typographical mistakes, calculation mistakes, and numbering mistakes. Disputes with agency policy decisions will not, absent the presence of an error in the regulatory text, constitute a valid basis for a request under the error-correction process. 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. Should DOE decide to reassess its policy decision with regard to a final rule during the error correction process, DOE would engage in additional rulemaking proceedings, including notice and comment.