

Four Energy Conservation Standards: Federal Court Addresses Lawsuit Alleging Department of Energy Violation of Energy Policy and Conservation Act



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A United States District Court (Northern District of California) addressed in a February 15th Order a Motion for Summary Judgment arguing that the United States Department of Energy (“DOE”) violated the Energy Policy and Conservation Act (“EPCA”) by having delayed publishing four energy conservation standards (“Standards”). See *Natural Resources Defense Council, Inc. v. James R. Perry, et al.* Case No. 17-cv-03404-VC.

Plaintiff Natural Resources Defense Council, along with other environmental organizations and certain states, filed suit alleging that the failure to publish violated the EPCA.

DOE had adopted Standards pursuant to the EPCA for:

- Portable air conditioners
- Air compressors
- Commercial packaged boilers
- Uninterruptible power supplies

The Standards were adopted in December 2016. They were posted on the DOE website in order for the public to assess whether any errors were present before they were published in the Federal Register. The opportunity for public comment is known as the “Error Correction Rule.”

In posting the Standards DOE informed the public that it could email the Department notice of any typographical or other errors no later than midnight on February 11, 2017 (or January 19, 2017, depending on the Standard) in order to make any necessary corrections in the regulatory text to be submitted to the Office of the Federal Register for publication.

DOE is stated to denominated the Standards as “pre-publication Federal Register[s]” rules. Three of the four Standards did not receive comments.

The court noted a year has passed since the process ended. None of the Standards have been submitted to the Office of Federal Register for publication. Further, the court stated there had been no explanation for the passage of time other than a statement in oral argument by DOE counsel that it is “still considering” the four Standards.

The court rejected DOE arguments opposing a Motion for Summary Judgment. DOE arguments included:

- The EPCA citizen-suit provision does not give citizens means to sue the DOE for failing to comply with the regulation adopted under the EPCA
- The citizen-suit provision does not apply because the Standards imposes on the DOE to publish energy Standards that have been posted under the Error Correction Rule must be considered discretionary
- Even if the Error Correction Rule requires publication of the Standards, the duty remains discretionary as a matter of timing

The court granted Summary Judgment. DOE is ordered to publish the Standards within 28 days of the court's ruling.

[A copy of the decision can be downloaded here.](#)