



U.S. Department of Energy Categorical Exclusion Determination Form

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Proposed Action Title: Clarifying Amendments to the Error Correction Rule (ECR)

Program or Field Office: Office of Energy Efficiency and Renewable Energy

Location(s) (City/County/State): Nationwide

Proposed Action Description:

In this final rule, DOE amends its procedures for addressing errors identified in pre-publication draft documents that would establish new or amended energy conservation standards for the various products and equipment that DOE regulates.

Specifically, the amendments contained within this final rule clarify that the Secretary was not, and is not, under a mandatory duty to post pre-publication drafts online, but to do so was, and is, a discretionary and voluntary act. When DOE elects to post a pre-publication draft online, DOE shall follow the procedures set forth in the error correction rule (ECR). DOE will use the ECR only to seek input on the narrow question of whether an error has occurred in the regulatory text of a pre-publication draft document. The final rule also amends language in § 430.5 to clarify that, while DOE will continue to strive to provide a 45-day review period for error correction, DOE retains discretion to provide a shorter period or no error-correction period at all.

Furthermore, this final rule modifies how the ECR process will be applied to identify errors in pre-publication draft documents that might be difficult to remedy due to EPCA’s anti-backsliding provision (42 U.S.C. 6295(o)(1)). These modifications do not impair DOE’s ability to meet its statutorily prescribed deadlines for either establishing or amending energy conservation standards. Instead, these modifications focus solely on DOE’s intent to allow the public to identify possible technical and objective errors in certain pre-publication draft documents. The ECR does not limit DOE’s discretion in determining how to address the submission of any information that DOE already possessed or the receipt of information that may fall outside of the error correction context. Any information, whether submitted from an outside party or identified by DOE on its own, that would affect the policy-making aspects of a given standards rulemaking may be considered by DOE within the context of that rulemaking at any time prior to publication of a final rule. Further, DOE is retaining the existing regulatory requirement to submit for publication a pre-publication draft that has been posted in accordance with the error correction process. See 10 CFR 430.5(f)

DOE has determined that 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.

Categorical Exclusion(s) Applied:

A6 - Procedural rulemakings

For the complete DOE National Environmental Policy Act regulations regarding categorical exclusions, including the full text of each categorical exclusion, see Subpart D of 10 CFR Part 1021.

Regulatory Requirements in 10 CFR 1021.410(b): (See full text in regulation)

The proposal fits within a class of actions that is listed in Appendix A or B to 10 CFR Part 1021, Subpart D.

To fit within the classes of actions listed in 10 CFR Part 1021, Subpart D, Appendix B, a proposal must be one that would not: (1) threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, or similar requirements of DOE or Executive Orders; (2) require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions or facilities; (3) disturb hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases; (4) have the potential to cause significant impacts on environmentally sensitive resources, including, but not limited to, those listed in paragraph B(4) of 10 CFR Part 1021, Subpart D, Appendix B; (5) involve genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species, unless the proposed activity would be contained or confined in a manner designed and operated to prevent unauthorized release into the environment and conducted in accordance with applicable requirements, such as those listed in paragraph B(5) of 10 CFR Part 1021, Subpart D, Appendix B.

There are no extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the proposal.

The proposal has not been segmented to meet the definition of a categorical exclusion. This proposal is not connected to other actions with potentially significant impacts (40 CFR 1508.25(a)(1)), is not related to other actions with individually insignificant but cumulatively significant impacts (40 CFR 1508.27(b)(7)), and is not precluded by 40 CFR 1506.1 or 10 CFR 1021.211 concerning limitations on actions during preparation of an environmental impact statement.

Based on my review of the proposed action, as NEPA Compliance Officer (as authorized under DOE Order 451.1B), I have determined that the proposed action fits within the specified class(es) of action, the other regulatory requirements set forth above are met, and the proposed action is hereby categorically excluded from further NEPA review.

NEPA Compliance Officer: **Andrew Montano** Digitally signed by Andrew Montano
Date: 2024.01.22 11:45:14 -0700

Date Determined: 01/22/2024