



DEPARTMENT OF ENERGY

10 CFR Part 205

[DOE-HQ-2025-0011]

RIN 1901-AB68

Application for Presidential Permit Authorizing the Construction, Connection, Operation, and Maintenance of Facilities for Transmission of Electric Energy at International Boundaries

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Department of Energy (DOE or the Department) is publishing this document to respond to comments received on the DFR titled, “Application for Presidential Permit Authorizing the Construction, Connection, Operation and Maintenance of Facilities for Transmission of Electric Energy at International Boundaries,” published on May 16, 2025, and effective September 12, 2025.

DATES: As of [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], the effective date of September 12, 2025 (90 FR 31131), for the direct final rule published May 16, 2025 (90 FR 20753), is confirmed.

ADDRESSES: The docket for this rule, which includes the *Federal Register* notices, comments, and other supporting documents and materials, is available for review at www.regulations.gov.

All documents in the docket are listed in the www.regulations.gov index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure. The docket web page can be found at www.regulations.gov/docket/DOE-HQ-2025-0011. The docket web page contains instructions on how to access all documents, including public comments, in the docket, as well as a summary.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Novak, U.S. Department of Energy, Office of the General Counsel, GC-1, 1000 Independence Avenue, SW, Washington, DC 20585; (202) 586-5281 or DOEGeneralCounsel@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. General Discussion

On May 16, 2025, DOE published a DFR (90 FR 20753) (May 2025 DFR) to rescind the application process codified at 10 CFR 205.320 through 10 CFR 205.329 concerning Presidential permits authorizing the construction, connection, operation, and maintenance of facilities for transmission of electric energy at international boundaries under Executive Order (E.O.) 10485, as amended. DOE stated in that DFR that if significant adverse comments were received by June 16, 2025, DOE would withdraw the DFR or issue a new final rule which responds to those significant adverse comments.

Because DOE received significant adverse comments on the DFR, DOE extended the effective date of the direct final rule to September 12, 2025 (90 FR 31131) to allow enough time to consider and respond to the comments submitted. DOE has reviewed the comments received and is responding to them in this confirmation of effective date.

II. Responses to Comments

DOE received five comments in response to the May 2025 DFR; one in support, one with no objection but with a recommendation to keep certain permit application processes and keep a 30-day public comment period, and three opposing the DFR. Listed is a summary of the comments received and DOE's responses.

Table II.1 List of Commenters from the May 2025 DFR

Commenter	Reference in this DFR	Comment No. in the Docket	Commenter Type
National Federation of Independent Business	NFIB	DOE-HQ-2025-0011-0002	Non-Profit Industry Association
T P	T P	DOE-HQ-2025-0011-0003	Individual

Center for Biological Diversity	CBD	DOE-HQ-2025-0011-0004	Non-Profit Conservation Organization
The Electric Reliability Council of Texas, Inc.	ERCOT	DOE-HQ-2025-0011-0005	Independent System Operator
Bridget C.E. Dooling	Dooling	DOE-HQ-2025-0011-0006	Individual

NFIB commented in support of the DFR, stating that revoking 10 CFR 205.309 through 10 CFR 205.329 will help increase efficiency by removing provisions that burden applicants and allowing applications to be submitted in a simpler fashion “without all the necessary document production and excessive expenses that the revoked regulations previously required.” (DOE HQ-2025-0011-0002 at p. 2-3). DOE acknowledges NFIB’s comments and support for this DFR. The agency’s intent of removing regulatory provisions is to increase efficiency of the Federal permitting process and to enhance consistency with this Administration’s policy priorities focused on alleviating unnecessary regulatory burdens.

ERCOT submitted a comment with no objection to the DFR but encouraged DOE to continue publishing notices of applications for Presidential Permits in the *Federal Register* and holding 30-day public comment periods. ERCOT noted that projects requiring Presidential Permits can impact a variety of entities, including grid operators like ERCOT, and a notice-and-comment period is a valuable opportunity for interested entities to evaluate potential projects and provide DOE important feedback to inform DOE’s review. (DOE-HQ-2025-0011-0005 at p. 1.)

DOE recognizes the value of the public comment period to inform DOE’s decision to issue a Presidential Permit. However, formal notice and comment procedures result in a longer adjudication period for potential Presidential permit applications and are not required under E.O. 10485, as amended. The publication of a notice in the *Federal Register* and the opening of a 30-day public comment period significantly extends the agency’s review and approval process, which ultimately puts an additional burden on applicants. Historically, DOE has received minimal public feedback during the 30-day public comment period. Therefore, DOE declines to adopt the suggestion by ERCOT to continue formally publishing notices in the *Federal Register*

for applications for Presidential Permits. DOE may consider engaging with interested stakeholders through other means during the application process as the public interest may in its judgment require.

Additionally, three comments opposed and asserted that the DFR violates the Administrative Procedure Act (APA) and National Environmental Policy Act (NEPA). For example, commenter T P argued that DOE did not follow proper notice and comment rulemaking procedures and that a Categorical Exclusion (CX) was not appropriate for the DFR because the rulemaking action has the potential for uncertain environmental risks, potential impacts on sensitive resources, and potential for cumulative impacts, which require DOE to perform either an environmental assessment or environment impact statement. (DOE HQ-2025-0011-0003 at p. 1). Additionally, CBD argued that the rule is arbitrary and capricious, did not provide a rational basis for the change, did not provide adequate notice and comment, and that applying a CX was not appropriate for the DFR. (DOE-HQ-2025-0011-0004 at p. 2-4). Further, Dooling stated that the May 2025 DFR did not satisfy the good cause exemption from notice and comment rulemaking under the APA. (DOE-HQ-2025-0011-0006 at p. 4).

As for the basis of DOE's rulemaking, in issuing a Presidential Permit, DOE does not act pursuant to its congressionally established authority as a Federal agency, but on behalf of the President pursuant to a delegation of the President's authority under the United States Constitution.¹ It is settled and established law that the President is not an "agency" within the meaning of the Administrative Procedure Act (APA) and that Presidential actions are not subject to NEPA review.² DOE notes that its Presidential permit decisions are subject to review and

¹ 18 FR 5397 (09/09/1953) (preamble).

² *Franklin v. Massachusetts*, 505 U.S. 788, 800 (1992) (holding the President is not subject to judicial review under the APA, given "the separation of powers and the unique constitutional position of the President"); *see also Dalton v. Specter*, 511 U.S. 462, 469–471 (1994); *Portland Audubon Soc'y v. Endangered Species Committee*, 984 F.2d 1534, 1547 (9th Cir. 1993); and, *Greene County. Planning Bd. v. Fed. Power Comm'n*, 528 F.2d 38 (2d Cir. 1975) (holding that issuance of a Presidential permit by DOE's predecessor agency was not subject to judicial review under the Federal Power Act because the issuance of such a permit is "a function rooted in the President's power with respect to foreign relations if not as Commander in Chief of the Armed Forces").

may be modified or revoked by the President.³ Accordingly, DOE stated that the May 2025 DFR was issued pursuant to the President’s directive in E.O. 14192, which instructs the executive branch to reduce regulatory burden wherever possible. Further, E.O. 10485, as amended, allows DOE broad discretion to “issue such rules and regulations, and to prescribe such procedures, as it may from time to time deem necessary or desirable for the exercise of authority delegated to it by [E.O. 10485]” and does not require those procedures to be published in the Code of Federal Regulations.

Although decisions to issue Presidential permits under E.O. 10485 are not subject to the APA, DOE acknowledges that the APA requires that agencies provide all interested persons with fair notice and an opportunity to comment on a rulemaking. *See* 5 U.S.C. 553(b) & (c). The May 2025 DFR provided the public with fair notice of DOE’s changes to its own administrative procedures regarding filing requirements for the 90 FR 20753. *See* 90 FR 20753 (discussing specific administrative changes to the filing requirements). DOE also requested comments on the May 2025 DFR, and stated, if the Department received significant adverse comments, the Department would withdraw the rule or issue a new final rule that responds to such comments. Thus, DOE has provided interested persons with fair notice and an opportunity to comment as required by the APA. So, the lack of discussion of a good cause exemption under 5 U.S.C. 553(b)(B) in the DFR is irrelevant as the notice and comment procedures under 5 U.S.C. 553(b) and (c) have been observed before this rule takes effect. Commenters cannot argue they were denied fair notice and an opportunity to comment solely based on how the notice was labeled. *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2384 (2020) (holding that “[f]ormal labels aside, the [interim final rules] contained all of the elements of a notice of proposed rulemaking as required by the APA”).

³18 FR 5397 (Sec. 4) (“All Presidential Permits... issued hereunder, shall remain in full force and effect until modified or revoked by the President or Secretary of Energy.”)

Lastly, as outlined in Part II of the May 2025 DFR, DOE completed a regulatory review and analyzed this action in accordance with the NEPA and DOE's Implementing Regulations at 10 CFR 1021 (part 1021), as in effect at the time of the DFR's publication. In May 2025, DOE had determined that the DFR qualified for a CX under appendix A6 to subpart D of part 1021, Procedural rulemakings. 90 FR 20753, 20754. In July 2025, DOE revised part 1021 to remove appendix A and, concurrently, DOE issued Implementing Procedures⁴. The actions which were formally identified in appendix A of subpart D to part 1021 now represent actions that are excepted from NEPA based on the definition of "major Federal action" in section 111(10) of NEPA. Therefore, DOE has no obligation to review the DFR pursuant to NEPA.

III. Conclusion

For the reasons discussed in the preceding sections of this document, DOE is not withdrawing the May 2025 DFR, which finalizes amendments to its administrative procedures to update and streamline the general requirements for submitting applications for Presidential Permits. DOE also notes, to the extent that 5 U.S.C. 553 applies to the delay of effective date, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A) and for which no notice or hearing is required by statute. Additionally, this action is not a "substantive rule" for which a 30-day delay in effective date is required under 5 U.S.C. 553(d).

Signing Authority

This document of the Department of Energy was signed on September 08, 2025, by Chris Wright, Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way

⁴ DOE NEPA Implementing Procedures June 30 2025, <https://www.energy.gov/sites/default/files/2025-06/2025-06-30-DOE-NEPA-Procedures.pdf>.

alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on September 09, 2025.

Treena V. Garrett,
Federal Register Liaison Officer,
U.S. Department of Energy.

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