



U.S. Department of Energy Determinations & State Certification Process

Introduction

The U.S. Department of Energy (DOE) is required by statute to review the most recently issued energy efficiency codes for residential and commercial buildings, and make a determination as to whether the newly issued code is more energy-efficient than previous versions of the code. If DOE determines that the new code is more energy efficient – known as an “affirmative determination” – this action triggers certain obligations for the states. **States are not required to adopt any codes related to residential buildings.** States that choose not to adopt a code for which DOE has made an affirmative determination may not be eligible for some DOE grants.

The Statute – Title 42 U.S.C. § 6833

The **Energy Conservation and Production Act (ECPA)**, as amended, requires DOE to review the most recently issued version of the residential and commercial energy efficiency building codes and determine whether the most recently issued version delivers improved energy efficiency when compared to the previously issued code. The codes that DOE must review are the International Code Council’s International Energy Conservation Code (IECC) for residential buildings, and the American Society of Heating, Refrigerating and Air-Conditioning Engineers’ (ASHRAE) Standard 90.1 for commercial buildings.

Department of Energy Determination Requirements

- With regard to **residential buildings**, DOE must determine within 12 months of the issuance of a revised IECC whether the revised code “would improve energy efficiency in residential buildings.”
- With regard to **commercial buildings**, DOE must, within 12 months of the issuance of a revised ASHRAE Standard 90.1, determine whether the revised code “would improve energy efficiency in commercial buildings.”

States Requirements

- For **residential buildings**: Within two years after DOE makes an affirmative determination on the most recently issued IECC, a state must certify that it has reviewed its residential building code and determined whether it is appropriate for the state to revise its code to meet or exceed the code receiving an affirmative determination from DOE.

- Before a state makes a final determination, it must solicit public comment and hold a hearing and base its determination on evidence obtained through public comments and the hearing. The state's determination must be in writing and be made available to the public.
- For **commercial buildings**: Within two years after DOE makes an affirmative determination of the most recently issued ASHRAE 90.1 commercial code, a state must certify that it has reviewed ***and updated*** the energy efficiency provisions of its commercial building code in accordance with the revised standard receiving DOE's affirmative determination.
- IF DOE does not issue an affirmative determination for the most recently issued commercial building energy efficiency code, the state code must meet or exceed the prior code receiving an affirmative determination from DOE.

Department of Energy State Assistance Requirements

- DOE must grant deadline extensions to states that demonstrate a good faith effort and significant progress toward compliance.
- DOE must provide technical assistance to states as they implement and improve their residential and commercial building energy efficiency codes, or otherwise promote the design and construction of energy efficient buildings.
- DOE must provide **incentive funding** to states that review, revise, and/or implement energy efficient building codes. As DOE considers whether to provide incentive funding and in what amount, DOE must consider the state's proposal to review the most recently revised code; improve and implement residential and commercial building energy efficiency codes; and promote energy efficiency through the use of these codes.
- DOE must also provide **additional funding** to states that implement a plan to achieve and document at least a 90 percent rate of compliance with residential and commercial building energy efficiency codes to a state, or where the state has no statewide code, to a local government that has adopted and is implementing a residential building code that meets or exceeds the most recent version of the IECC for which DOE has made an affirmative determination; and a commercial building code that meets or exceeds the most recent version of ASHRAE 90.1 that has received an affirmative determination from DOE.

Please note: If Congress and the Secretary of DOE fails to allocate funds targeted for incentive funding or additional funding, DOE cannot, as a practical matter, distribute these funds. According to DOE officials, no funds have ever been allocated as called for in the statute.

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