

# Appendix B: Federal Regulations

## Title 10—Energy, Chapter 11—Department of Energy, Part 420—State Energy Program

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**Title 10—Energy**  
**Chapter II—Department of Energy**  
**Part 420—State Energy Program**

**Subpart A—General Provisions for State Energy Program Financial Assistance**

**Sec. 420.1 Purpose and scope.**

It is the purpose of this part to promote the conservation of energy, to reduce the rate of growth of energy demand, and to reduce dependence on imported oil through the development and implementation of a comprehensive State Energy Program and the provision of Federal financial and technical assistance to States in support of such program.

**Sec. 420.2 Definitions.**

As used in this part:

- Act means title III, part D, as amended, of the Energy Policy and Conservation Act, 42 U.S.C. 6321 et seq.
- Alternative transportation fuel means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquified petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials (including neat biodiesel); and electricity (including electricity from solar energy).
- ASHRAE/IESNA 90.1-1989, as amended means the building design standard published in December 1989 by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, and the Illuminating Engineering Society of North America titled "Energy Efficient Design of New Buildings Except Low-Rise Residential Buildings," with Addenda 90.1b-1992; Addenda 90.1d-1992; Addenda 90.1e-1992; Addenda 90.1g-1993; and Addenda 90.1i-1993, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in Sec. 420.6(b).
- Assistant Secretary means the Assistant Secretary for Energy Efficiency and Renewable Energy or any official to whom the Assistant Secretary's functions may be redelegated by the Secretary.
- British thermal unit (Btu) means the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit at 39.2 degrees Fahrenheit and at one atmosphere of pressure.
- Building means any structure which includes provision for a heating or cooling system, or both, or for a hot water system.
- Carpool means the sharing of a ride by two or more people in an automobile.
- Carpool matching and promotion campaign means a campaign to coordinate riders with drivers to form carpools and/or vanpools.

- Commercial building means any building other than a residential building, including any building constructed for industrial or public purposes.
- Commercially available means available for purchase by the general public or target audience in the State.
- Deputy Assistant Secretary means the Deputy Assistant Secretary for the Office of Building Technologies, State and Community Programs, or any official to whom the Deputy Assistant Secretary's functions may be redelegated by the Assistant Secretary.
- Director, Office of State and Community Programs, means the official responsible for DOE's formula grant programs to States, or any official to whom the Director's functions may be redelegated by the Assistant Secretary.
- DOE means the Department of Energy.
- Energy audit means any process which identifies and specifies the energy and cost savings which are likely to be realized through the purchase and installation of particular energy efficiency measures or renewable energy measures.
- Energy efficiency measure means any capital investment that reduces energy costs in an amount sufficient to recover the total cost of purchasing and installing such measure over an appropriate period of time and maintains or reduces nonrenewable energy consumption.
- Environmental residual means any pollutant or pollution causing factor which results from any activity.
- Exterior envelope physical characteristics means the physical nature of those elements of a building which enclose conditioned spaces through which thermal energy may be transferred to or from the exterior.
- Governor means the chief executive officer of a State, the District of Columbia, Puerto Rico, or any territory or possession of the United States, or a person duly designated in writing by the Governor to act upon his or her behalf.
- Grantee means the State or other entity named in the notice of grant award as the recipient.
- HVAC means heating, ventilating and air-conditioning.
- IBR means incorporation by reference.
- Industrial facility means any fixed equipment or facility which is used in connection with, or as part of, any process or system for industrial production or output.
- Institution of higher education has the same meaning as such term is defined in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

- Manufactured home means any dwelling covered by the Federal Manufactured Home Construction and Safety Standards, 24 CFR part 3280.
- Metropolitan Planning Organization means that organization required by the Department of Transportation, and designated by the Governor as being responsible for coordination within the State, to carry out transportation planning provisions in a Standard Metropolitan Statistical Area.
- Model Energy Code, 1993, including Errata, means the model building code published by the Council of American Building Officials, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in Sec. 420.6(b).
- Park-and-ride lot means a parking facility generally located at or near the trip origin of carpools, vanpools, and/or mass transit.
- Petroleum violation escrow funds. For purposes both of exempting petroleum violation escrow funds from the matching requirements of Sec. 420.12 and of applying the limitations specified under Sec. 420.18(b), this term means any funds distributed to the States by the Department of Energy or any court and identified as Alleged Crude Oil Violation funds, together with any interest earned thereon by the States, but excludes any funds designated as "excess funds" under section 3003(d) of the Petroleum Overcharge Distribution and Restitution Act, subtitle A of title III of the Omnibus Budget Reconciliation Act of 1986, Public Law 99-509, and the funds distributed under the "Warner Amendment," section 155 of Public Law 97-377.
- Plan means a State Energy Program plan including required program activities in accordance with Sec. 420.15 and otherwise meeting the applicable provisions of this part.
- Political subdivision means a unit of government within a State, including a county, municipality, city, town, township, parish, village, local public authority, school district, special district, council of governments, or any other regional or intrastate governmental entity or instrumentality of a local government exclusive of institutions of higher learning and hospitals.
- Preferential traffic control means any one of a variety of traffic control techniques used to give carpools, vanpools, and public transportation vehicles priority treatment over single-occupant vehicles other than bicycles and other two-wheeled motorized vehicles.
- Program activity means one or more State actions, in a particular area, designed to promote energy efficiency, renewable energy, and alternative transportation fuel.
- Public building means any building which is open to the public during normal business hours, including:
  - (1) Any building which provides facilities or shelter for public assembly, or which is used for educational office or institutional purposes;
  - (2) Any inn, hotel, motel, sports arena, supermarket, transportation terminal, retail store, restaurant, or other commercial establishment which provides services or retail merchandise;
  - (3) Any general office space and any portion of an industrial facility used primarily as office space;
  - (4) Any building owned by a State or political subdivision thereof, including libraries, museums, schools, hospitals, auditoriums, sport arenas, and university buildings; and

- (5) Any public or private nonprofit school or hospital. Public transportation means any scheduled or nonscheduled transportation service for public use.
- Regional Support Office Director means the director of a DOE Regional Support Office with responsibility for grants administration or any official to whom that function may be redelegated.
  - Renewable energy means a nondepletable source of energy.
  - Renewable energy measure means any capital investment that reduces energy costs in an amount sufficient to recover the total cost of purchasing and installing such measure over an appropriate period of time, and that results in the use of renewable energy to replace the use of nonrenewable energy.
  - Residential building means any building which is constructed for residential occupancy.
  - Secretary means the Secretary of DOE.
  - SEP means the State Energy Program under this part.
  - Small business means a private firm that does not exceed the numerical size standard promulgated by the Small Business Administration under section 3(a) of the Small Business Act (15 U.S.C. 632) for the Standard Industrial Classification (SIC) codes designated by the Secretary of Energy.
  - Start-up business means a small business which has been in existence for 5 years or less.
  - State means a State, the District of Columbia, Puerto Rico, or any territory or possession of the United States.
  - State or local government building means any building owned and primarily occupied by offices or agencies of a State; and any building of a unit of local government or a public care institution which could be covered by part H, title III, of the Energy Policy and Conservation Act, 42 U.S.C. 6372-6372i.
  - Transit level of service means characteristics of transit service provided which indicate its quantity, geographic area of coverage, frequency, and quality (comfort, travel, time, fare and image).
  - Urban area traffic restriction means a setting aside of certain portions of an urban area as restricted zones where varying degrees of limitation are placed on general traffic usage and/or parking.
  - Vanpool means a group of riders using a vehicle, with a seating capacity of not less than eight individuals and not more than fifteen individuals, for transportation to and from their residence or other designated locations and their place of employment, provided the vehicle is driven by one of the pool members.
  - Variable working schedule means a flexible working schedule to facilitate activities such as carpools, vanpools, public transportation usage, and/or telecommuting. [61 FR 35895, July 8, 1996, as amended at 62 FR 26726, May 14, 1997]

**Sec. 420.3 Administration of financial assistance.**

- (a) Financial assistance under this part shall comply with applicable laws and regulations including, but without limitation, the requirements of:
  - (1) Executive Order 12372, Intergovernmental Review of Federal Programs, as implemented by 10 CFR part 1005.
  - (2) DOE Financial Assistance Rules (10 CFR part 600); and
  - (3) Other procedures which DOE may from time to time prescribe for the administration of financial assistance under this part.
- (b) The budget period(s) covered by the financial assistance provided to a State according to Sec. 420.11(b) or Sec. 420.33 shall be consistent with 10 CFR part 600.
- (c) Subawards are authorized under this part and are subject to the requirements of this part and 10 CFR part 600.

**Sec. 420.4 Technical assistance.**

At the request of the Governor of any State to DOE and subject to the availability of personnel and funds, DOE will provide information and technical assistance to the State in connection with effectuating the purposes of this part.

**Sec. 420.5 Reports.**

- (a) Each State receiving financial assistance under this part shall submit to the cognizant Regional Support Office Director a quarterly program performance report and a quarterly financial status report.
- (b) Reports under this section shall contain such information as the Secretary may prescribe in order to monitor effectively the implementation of a State's activities under this part.
- (c) The reports shall be submitted within 30 days following the end of each calendar year quarter.

**Sec. 420.6 Reference standards.**

- (a) The following standards which are not otherwise set forth in this part are incorporated by reference and made a part of this part. The following standards have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A notice of any change in these materials will be published in the Federal Register. The standards incorporated by reference are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.
- (b) The following standards are incorporated by reference in this part:
  - (1) The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), 1791 Tullie Circle, N.E., Atlanta, Georgia 30329, (404) 636-8400/The Illuminating Engineering Society of North America (IESNA), 345 East 47th Street, New York, New York 10017, (212) 705-7913:
    - (i) ASHRAE/IESNA 90.1-1989, entitled "Energy Efficient Design of New Buildings Except Low-Rise Residential Buildings," with Addenda 90.1b-1992; Addenda 90.1d-1992; Addenda 90.1e-1992; Addenda 90.1g-1993; and Addenda 90.1i-1993, IBR approved for Sec. 420.2 and Sec. 420.15.

- (2) The Council of American Building Officials (CABO), 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041, (703) 931-4533: (i) The Model Energy Code, 1993, including Errata, IBR approved for Sec. 420.2 and Sec. 420.15.

## Subpart B—Formula Grant Procedures

### **Sec. 420.10 Purpose.**

This subpart specifies the procedures that apply to the Formula Grant part of the State Energy Program, which allows States to apply for financial assistance to undertake a wide range of required and optional energy-related activities provided for under Sec. 420.15 and Sec. 420.17. Funding for these activities is allocated to the States based on funds available for any fiscal year, as described under Sec. 420.11.

### **Sec. 420.11 Allocation of funds among the States.**

- (a) The cognizant Regional Support Office Director shall provide financial assistance to each State having an approved annual application from funds available for any fiscal year to develop, modify, or implement a plan.
- (b) DOE shall allocate financial assistance to develop, implement, or modify plans among the States from funds available for any fiscal year, as follows:
  - (1) If the available funds equal \$25.5 million, such funds shall be allocated to the States according to Table 1 of this section.
  - (2) The base allocation for each State is listed in Table 10.

Alabama	\$381,000
Alaska	\$180,000
Arizona	\$344,000
Arkansas	\$307,000
California	\$1,602,000
Colorado	\$399,000
Connecticut	\$397,000
Delaware	\$164,000
District of Columbia	\$158,000
Florida	\$831,000
Georgia	\$534,000
Hawaii	\$170,000
Idaho	\$190,000
Illinois	\$1,150,000
Indiana	\$631,000
Iowa	\$373,000
Kansas	\$327,000
Kentucky	\$411,000
Louisiana	\$446,000
Maine	\$231,000

<b>Table 10. Base Allocation by State</b>	
Maryland	\$486,000
Massachusetts	\$617,000
Michigan	\$973,000
Minnesota	\$584,000
Mississippi	\$279,000
Missouri	\$518,000
Montana	\$182,000
Nebraska	\$246,000
Nevada	\$196,000
New Hampshire	\$216,000
New Jersey	\$783,000
New Mexico	\$219,000
New York	\$1,633,000
North Carolina	\$564,000
North Dakota	\$172,000
Ohio	\$1,073,000
Oklahoma	\$352,000
Oregon	\$325,000
Pennsylvania	\$1,090,000
Rhode island	\$199,000
South Carolina	\$340,000
South Dakota	\$168,000
Tennessee	\$476,000
Texas	\$1,322,000
Utah	\$242,000
Vermont	\$172,000
Virginia	\$571,000
Washington	\$438,000
West Virginia	\$286,000
Wisconsin	\$604,000
Wyoming	\$155,000
American Samoa	\$115,000
Guam	\$120,000
Northern Marianas	\$114,000
Puerto Rico	\$322,000
U.S. Virgin Islands	\$122,000
<b>Total</b>	<b>\$25,500,000</b>

- (3) If the available funds for any fiscal year are less than \$25.5 million, then the base allocation for each State shall be reduced proportionally.
  - (4) If the available funds exceed \$25.5 million, \$25.5 million shall be allocated as specified in Table 1 and any in excess of \$25.5 million shall be allocated as follows:
    - (i) One-third of the available funds is divided among the States equally;
    - (ii) One-third of the available funds is divided on the basis of the population of the participating States as contained in the most recent reliable census data available from the Bureau of the Census, Department of Commerce, for all participating States at the time DOE needs to compute State formula shares; and
    - (iii) One-third of the available funds is divided on the basis of the energy consumption of the participating States as contained in the most recent State Energy Data Report available from DOE's Energy Information Administration.
- (c) The budget period covered by the financial assistance provided to a State according to Sec. 420.11(b) shall be consistent with 10 CFR part 600.

***Sec. 420.12 State matching contribution.***

- (a) Each State shall provide cash, in kind contributions, or both for SEP activities in an amount totalling not less than 20 percent of the financial assistance allocated to the State under Sec. 420.11(b).
- (b) Cash and in-kind contributions used to meet this State matching requirement are subject to the limitations on expenditures described in Sec. 420.18(a), but are not subject to the 20 percent limitation in Sec. 420.18(b).
- (c) Nothing in this section shall be read to require a match for petroleum violation escrow funds used under this part.

***Sec. 420.13 Annual State applications and amendments to State plans.***

- (a) To be eligible for financial assistance under subpart B of this part, a State shall submit to the cognizant Regional Support Office Director an original and two copies of the annual application executed by the Governor, including an amended State plan or any amendments to the State plan needed to reflect changes in the activities the State is planning to undertake for the fiscal year concerned. The date for submission of the annual State application shall be set by DOE.
- (b) An application shall include:
  - (1) A face sheet containing basic identifying information, on Standard Form (SF) 424;
  - (2) A description of the energy efficiency, renewable energy, and alternative transportation fuel goals to be achieved, including wherever practicable:
    - (i) An estimate of the energy to be saved by implementation of the State plan;
    - (ii) Why the goals were selected;
    - (iii) How the attainment of the goals will be measured by the State;and

- (iv) How the program activities included in the State plan represent a strategy to achieve these goals.
- (3) With respect to financial assistance under subpart B of this part, a goal, consisting of an improvement of 10 percent or more in the efficiency of use of energy in the State concerned in the calendar year 2000, as compared to the calendar year 1990, and may contain interim goals;
  - (4) For the budget period for which financial assistance will be provided:
    - (i) A total program budget with supporting justification, broken out by object category and by source of funding;
    - (ii) The source and amount of State matching contribution;
    - (iii) A narrative statement detailing the nature of State plan amendments and of new program activities.
    - (iv) For each program activity, a budget and listing of milestones; and
    - (v) An explanation of how the minimum criteria for required program activities prescribed in Sec. 420.15 have been implemented and are being maintained.
  - (5) If any of the activities being undertaken by the State in its plan have environmental impacts, a detailed description of the increase or decrease in environmental residuals expected from implementation of a plan defined insofar as possible through the use of information to be provided by DOE and an indication of how these environmental factors were considered in the selection of program activities.
  - (6) If a State is undertaking program activities involving purchase or installation of materials or equipment for weatherization of low-income housing, an explanation of how these activities would supplement and not supplant the existing DOE program under 10 CFR part 440.
  - (7) A reasonable assurance to DOE that it has established policies and procedures designed to assure that Federal financial assistance under subpart B of this part will be used to supplement, and not to supplant, State and local funds, and to the extent practicable, to increase the amount of such funds that otherwise would be available, in the absence of such Federal financial assistance, for those activities set forth in the State Energy Program plan approved pursuant to this part;
  - (8) An assurance that the State shall comply with all applicable statutes and regulations in effect with respect to the periods for which it receives grant funding; and
  - (9) For informational purposes only, and not subject to DOE review, an energy emergency plan for an energy supply disruption, as designed by the State consistent with applicable Federal and State law including an implementation strategy or strategies (including regional coordination) for dealing with energy emergencies.
- (c) The Governor may request an extension of the annual submission date by submitting a written request to the cognizant Regional Support Office Director not less than 15 days prior to the annual submission date. The extension shall be granted only if, in the cognizant Regional Support Office Director's judgment, acceptable and substantial justification is shown, and the extension would further objectives of the Act. [61 FR 35895, July 8, 1996, as amended at 62 FR 26727, May 14, 1997]

***Sec. 420.14 Review and approval of annual State applications and amendments to State plans.***

- (a) After receipt of an application for financial assistance under subpart B of this part and for approval of an amendment, if any, to a State plan, the cognizant Regional Support Office Director may request the State to submit within a reasonable period of time any revisions necessary to make the application complete and to bring the application into compliance with the requirements of this part. The cognizant Regional Support Office Director shall attempt to resolve any dispute over the application informally and to seek voluntary compliance. If a State fails to submit timely appropriate revisions to complete an application or to bring it into compliance, the cognizant Regional Support Office Director may reject the application in a written decision, including a statement of reasons, which shall be subject to administrative review under Sec. 420.19 of this part.
- (b) On or before 60 days from the date that a timely filed application is complete, the cognizant Regional Support Office Director shall—
  - (1) Approve the application in whole or in part to the extent that—
    - (i) The application conforms to the requirements of this part;
    - (ii) The proposed program activities are consistent with a State's achievement of its energy conservation goals in accordance with Sec. 420.13; and
    - (iii) The provisions of the application regarding program activities satisfy the minimum requirements prescribed by Sec. 420.15 and Sec. 420.17 as applicable;
  - (2) Approve the application in whole or in part subject to special conditions designed to ensure compliance with the requirements of this part; or
  - (3) Disapprove the application if it does not conform to the requirements of this part. [61 FR 35895, July 8, 1996, as amended at 62 FR 26727, May 14, 1997]

***Sec. 420.15 Minimum criteria for required program activities for plans.***

A plan shall satisfy all of the following minimum criteria for required program activities.

- (a) Mandatory lighting efficiency standards for public buildings shall:
  - (1) Be implemented throughout the State, except that the standards shall be adopted by the State as a model code for those local governments of the State for which the State's constitution reserves the exclusive authority to adopt and implement building standards within their jurisdictions;
  - (2) Apply to all public buildings (except for public buildings owned or leased by the United States), above a certain size, as determined by the State;
  - (3) For new public buildings, be no less stringent than the provisions of ASHRAE/IESNA 90.1-1989, and should be updated by enactment of, or support for the enactment into local codes or standards, which, at a minimum, are comparable to provisions of ASHRAE/IESNA 90.1-1989 which is incorporated by reference in accordance with 5 U.S.C. 552 (a) and 1 CFR part 51. The availability of this incorporation by reference is given in Sec. 420.6; and
  - (4) For existing public buildings, contain the elements deemed appropriate by the State.

- (b) Program activities to promote the availability and use of carpools, vanpools, and public transportation shall:
- (1) Have at least one of the following actions under implementation in at least one urbanized area with a population of 50,000 or more within the State or in the largest urbanized area within the State if that State does not have an urbanized area with a population of 50,000 or more:
    - (i) A carpool/vanpool matching and promotion campaign;
    - (ii) Park-and-ride lots;
    - (iii) Preferential traffic control for carpools and public transportation patrons;
    - (iv) Preferential parking for carpools and vanpools;
    - (v) Variable working schedules;
    - (vi) Improvement in transit level of service for public transportation;
    - (vii) Exemption of carpools and vanpools from regulated carrier status;
    - (viii) Parking taxes, parking fee regulations or surcharge on parking costs;
    - (ix) Full-cost parking fees for State and/or local government employees;
    - (x) Urban area traffic restrictions;
    - (xi) Geographical or time restrictions on automobile use; or
    - (xii) Area or facility tolls; and
  - (2) Be coordinated with the relevant Metropolitan Planning Organization, unless no Metropolitan Planning Organization exists in the urbanized area, and not be inconsistent with any applicable Federal requirements.
- (c) Mandatory standards and policies affecting the procurement practices of the State and its political subdivisions to improve energy efficiency shall—
- (1) With respect to all State procurement and with respect to procurement of political subdivisions to the extent determined feasible by the State, be under implementation; and
  - (2) Contain the elements deemed appropriate by the State to improve energy efficiency through the procurement practices of the State and its political subdivisions.
- (d) Mandatory thermal efficiency standards for new and renovated buildings shall—
- (1) Be implemented throughout the State, with respect to all buildings (other than buildings owned or leased by the United States, buildings whose peak design rate of energy usage for all purposes is less than one watt (3.4 Btu's per hour) per square foot of floor space for all purposes, or manufactured homes), except that the standards shall be adopted by the State as a model code for those local governments of the State for which the State's law reserves the exclusive authority to adopt and implement building standards within their jurisdictions;
  - (2) Take into account the exterior envelope physical characteristics, HVAC system selection and configuration, HVAC equipment performance and service water heating design and equipment selection;
  - (3) For all new commercial and multifamily high-rise buildings, be no less stringent than provisions of sections 7-12 of ASHRAE/IESNA 90.1-1989, and should be updated by enactment of, or support for the enactment into local codes or standards, which, at a minimum, are comparable to provisions of ASHRAE/IESNA 90.1-1989; and

- (4) For all new single-family and multifamily low-rise residential buildings, be no less stringent than the Model Energy Code, 1993, and should be updated by enactment of, or support for the enactment into local codes or standards, which, at a minimum, are comparable to the Model Energy Code, 1993, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in Sec. 420.6;
- (5) For renovated buildings:
  - (i) Apply to those buildings determined by the State to be renovated buildings; and
  - (ii) Contain the elements deemed appropriate by the State regarding thermal efficiency standards for renovated buildings.
- (e) A traffic law or regulation which permits the operator of a motor vehicle to make a turn at a red light after stopping shall:
  - (1) Be in a State's motor vehicle code and under implementation throughout all political subdivisions of the State;
  - (2) Permit the operator of a motor vehicle to make a right turn (left turn with respect to the Virgin Islands) at a red traffic light after stopping except where specifically prohibited by a traffic sign for reasons of safety or except where generally prohibited in an urban enclave for reasons of safety; and
  - (3) Permit the operator of a motor vehicle to make a left turn from a one-way street to a one-way street (right turn with respect to the Virgin Islands) at a red traffic light after stopping except where specifically prohibited by a traffic sign for reasons of safety or except where generally prohibited in an urban enclave for reasons of safety.
- (f) Procedures must exist for ensuring effective coordination among various local, State, and Federal energy efficiency, renewable energy and alternative transportation fuel programs within the State, including any program administered within the Office of Building Technology, State and Community Programs of the Department of Energy and the Low Income Home Energy Assistance Program administered by the Department of Health and Human Services. [61 FR 35895, July 8, 1996, as amended at 62 FR 26727, May 14, 1997]

***Sec. 420.16 Extensions for compliance with required program activities.***

An extension of time by which a required program activity must be ready for implementation may be granted if DOE determines that the extension is justified. A written request for an extension, with accompanying justification and an action plan acceptable to DOE for achieving compliance in the shortest reasonable time, shall be made to the cognizant Regional Support Office Director. Any extension shall be only for the shortest reasonable time that DOE determines necessary to achieve compliance. The action plan shall contain a schedule for full compliance and shall identify and make the most reasonable commitment possible to provision of the resources necessary for achieving the scheduled compliance.

***Sec. 420.17 Optional elements of State Energy Program plans.***

- (a) Other appropriate activities or programs may be included in the State plan. These activities may include, but are not limited to, the following:

- (1) Program activities of public education to promote energy efficiency, renewable energy, and alternative transportation fuels;
- (2) Program activities to increase transportation energy efficiency, including programs to accelerate the use of alternative transportation fuels for government vehicles, fleet vehicles, taxis, mass transit, and privately owned vehicles;
- (3) Program activities for financing energy efficiency measures and renewable energy measures—
  - (i) Which may include loan programs and performance contracting programs for leveraging of additional public- and private-sector funds and program activities which allow rebates, grants, or other incentives for the purchase of energy efficiency measures and renewable energy measures; or
  - (ii) In addition to or in lieu of program activities described in paragraph (a)(3)(i) of this section, which may be used in connection with public or nonprofit buildings owned and operated by a State, a political subdivision of a State or an agency or instrumentality of a State, or an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 including public and private nonprofit schools and hospitals, and local government buildings;
- (4) Program activities for encouraging and for carrying out energy audits with respect to buildings and industrial facilities (including industrial processes) within the State;
- (5) Program activities to promote the adoption of integrated energy plans which provide for:
  - (i) Periodic evaluation of a State's energy needs, available energy resources (including greater energy efficiency), and energy costs; and
  - (ii) Utilization of adequate and reliable energy supplies, including greater energy efficiency, that meet applicable safety, environmental, and policy requirements at the lowest cost;
- (6) Program activities to promote energy efficiency in residential housing, such as:
  - (i) Program activities for development and promotion of energy efficiency rating systems for newly constructed housing and existing housing so that consumers can compare the energy efficiency of different housing; and
  - (ii) Program activities for the adoption of incentives for builders, utilities, and mortgage lenders to build, service, or finance energy efficient housing;
- (7) Program activities to identify unfair or deceptive acts or practices which relate to the implementation of energy efficiency measures and renewable energy measures and to educate consumers concerning such acts or practices;
- (8) Program activities to modify patterns of energy consumption so as to reduce peak demands for energy and improve the efficiency of energy supply systems, including electricity supply systems;
- (9) Program activities to promote energy efficiency as an integral component of economic development planning conducted by State, local, or other governmental entities or by energy utilities;
- (10) Program activities (enlisting appropriate trade and professional organizations in the development and financing of such programs) to

provide training and education (including, if appropriate, training workshops, practice manuals, and testing for each area of energy efficiency technology) to building designers and contractors involved in building design and construction or in the sale, installation, and maintenance of energy systems and equipment to promote building energy efficiency;

- (11) Program activities for the development of building retrofit standards and regulations, including retrofit ordinances enforced at the time of the sale of a building;
  - (12) Program activities to provide support for prefeasibility and feasibility studies for projects that utilize renewable energy and energy efficiency resource technologies in order to facilitate access to capital and credit for such projects;
  - (13) Program activities to facilitate and encourage the voluntary use of renewable energy technologies for eligible participants in Federal agency programs, including the Rural Electrification Administration and the Farmers Home Administration; and
  - (14) In accordance with paragraph (b) of this section, program activities to implement the Energy Technology Commercialization Services Program.
- (b) This section prescribes requirements for establishing State-level Energy Technology Commercialization Services Program as an optional element of State plans.
- (1) The program activities to implement the functions of the Energy Technology Commercialization Services Program shall:
    - (i) Aid small and start-up businesses in discovering useful and practical information relating to manufacturing and commercial production techniques and costs associated with new energy technologies;
    - (ii) Encourage the application of such information in order to solve energy technology product development and manufacturing problems;
    - (iii) Establish an Energy Technology Commercialization Services Program affiliated with an existing entity in each State;
    - (iv) Coordinate engineers and manufacturers to aid small and start-up businesses in solving specific technical problems and improving the cost effectiveness of methods for manufacturing new energy technologies;
    - (v) Assist small and start-up businesses in preparing the technical portions of proposals seeking financial assistance for new energy technology commercialization; and
    - (vi) Facilitate contract research between university faculty and students and small start-up businesses, in order to improve energy technology product development and independent quality control testing.
  - (2) Each State Energy Technology Commercialization Services Program shall develop and maintain a data base of engineering and scientific experts in energy technologies and product commercialization interested in participating in the service. Such data base shall, at a minimum, include faculty of institutions of higher education, retired manufacturing experts, and National Laboratory personnel.
  - (3) The services provided by the Energy Technology Commercialization Services Program established under this part shall be available to any

small or start-up business. Such service programs shall charge fees which are affordable to a party eligible for assistance, which shall be determined by examining factors, including the following: the costs of the services received; the need of the recipient for the services; and the ability of the recipient to pay for the services.[61 FR 35895, July 8, 1996, as amended at 62 FR 26727, May 14, 1997]

***Sec. 420.18 Expenditure prohibitions and limitations.***

- (a) No financial assistance provided to a State under this part shall be used:
  - (1) For construction, such as construction of mass transit systems and exclusive bus lanes, or for construction or repair of buildings or structures;
  - (2) To purchase land, a building or structure or any interest therein;
  - (3) To subsidize fares for public transportation;
  - (4) To subsidize utility rate demonstrations or State tax credits for energy conservation measures or renewable energy measures; or
  - (5) To conduct, or purchase equipment to conduct, research, development or demonstration of energy efficiency or renewable energy techniques and technologies not commercially available.
  
- (b) No more than 20 percent of the financial assistance awarded to the State for this program shall be used to purchase office supplies, library materials, or other equipment whose purchase is not otherwise prohibited by this section. Nothing in this paragraph shall be read to apply this 20 percent limitation to petroleum violation escrow funds used under this part.
  
- (c) Demonstrations of commercially available energy efficiency or renewable energy techniques and technologies are permitted, and are not subject to the prohibitions of Sec. 420.18(a)(1), or to the limitation on equipment purchases of Sec. 420.18(b).
  
- (d) A State may use regular or revolving loan mechanisms to fund SEP services which are consistent with this part and which are included in the State's approved SEP plan. The State may use loan repayments and any interest on the loan funds only for activities which are consistent with this part and which are included in the State's approved SEP plan.
  
- (e) A State may use funds under this part for the purchase and installation of equipment and materials for energy efficiency measures and renewable energy measures, including reasonable design costs, subject to the following terms and conditions:
  - (1) Such use must be included in the State's approved plan and, if funded by petroleum violation escrow funds, must be consistent with any judicial or administrative terms and conditions imposed upon State use of such funds;
  - (2) A State may use for these purposes no more than 50 percent of all funds allocated by the State to SEP in a given year, regardless of source, except that this limitation shall not include regular and revolving loan programs funded with petroleum violation escrow funds, and is subject to waiver by DOE for good cause. Loan documents shall ensure repayment of principal and interest within a reasonable period of time, and shall not include provisions of loan forgiveness.

- (3) Buildings owned or leased by the United States are not eligible for energy efficiency measures or renewable energy measures under this paragraph;
  - (4) Funds must be used to supplement and no funds may be used to supplant weatherization activities under the Weatherization Assistance Program for Low-Income Persons, under 10 CFR part 440;
  - (5) Subject to paragraph (f) of this section, a State may use a variety of financial incentives to fund purchases and installation of materials and equipment under this paragraph including, but not limited to, regular loans, revolving loans, loan buy-downs, performance contracting, rebates and grants.
- (f) The following mechanisms are not allowed for funding the purchase and installation of materials and equipment under this paragraph:
- (1) Rebates for more than 50 percent of the total cost of purchasing and installing materials and equipment (States shall set appropriate restrictions and limits to ensure the most efficient use of rebates); and
  - (2) Loan guarantees. [61 FR 35895, July 8, 1996, as amended at 62 FR 26727, May 14, 1997]

***Sec. 420.19 Administrative review.***

- (a) A State shall have 20 days from the date of receipt of a decision under Sec. 420.14 to file a notice requesting administrative review in accordance with paragraph (b) of this section. If an applicant does not timely file such a notice, the decision under Sec. 420.14 shall become final for DOE.
- (b) A notice requesting administrative review shall be filed with the cognizant Regional Support Office Director and shall be accompanied by a written statement containing supporting arguments. If the cognizant Regional Support Office Director has disapproved an entire application for financial assistance, the State may request a public hearing.
- (c) A notice or any other document shall be deemed filed under this section upon receipt.
- (d) On or before 15 days from receipt of a notice requesting administrative review which is timely filed, the cognizant Regional Support Office Director shall forward to the Deputy Assistant Secretary, the notice requesting administrative review, the decision under Sec. 420.14 as to which administrative review is sought, a draft recommended final decision for concurrence, and any other relevant material.
- (e) If the State requests a public hearing on the disapproval of an entire application for financial assistance, the Deputy Assistant Secretary, within 15 days, shall give actual notice to the State and Federal Register notice of the date, place, time, and procedures which shall apply to the public hearing. Any public hearing under this section shall be informal and legislative in nature.
- (f) On or before 45 days from receipt of documents under paragraph (d) of this section or the conclusion of the public hearing, whichever is later, the Deputy Assistant Secretary shall concur in, concur in as modified, or issue a substitute for the recommended decision of the cognizant Regional Support Office Director.

- (g) On or before 15 days from the date of receipt of the determination under paragraph (f) of this section, the Governor may file an application for discretionary review by the Assistant Secretary. On or before 15 days from filing, the Assistant Secretary shall send a notice to the Governor stating whether the Deputy Assistant Secretary's determination will be reviewed. If the Assistant Secretary grants a review, a decision shall be issued no later than 60 days from the date review is granted. The Assistant Secretary may not issue a notice or decision under this paragraph without the concurrence of the DOE Office of General Counsel.
- (h) A decision under paragraph (f) of this section shall be final for DOE if there is no review under paragraph (g) of this section. If there is review under paragraph (g) of this section, the decision thereunder shall be final for DOE and no appeal shall lie elsewhere in DOE.
- (i) Prior to the effective date of the termination or suspension of a grant award for failure to implement an approved State plan in compliance with the requirements of this part, a grantee shall have the right to written notice of the basis for the enforcement action and of the opportunity for public hearing before the DOE Financial Assistance Appeals Board notwithstanding any provisions to the contrary of 10 CFR 600.22, 600.24, 600.25, and 600.243. To obtain a public hearing, the grantee must request an evidentiary hearing, with prior Federal Register notice, in the election letter submitted under Rule 2 of 10 CFR 1024.4 and the request shall be granted notwithstanding any provisions to the contrary of Rule 2.

## **Subpart C—Implementation of Special Projects Financial Assistance**

### ***Sec. 420.30 Purpose and scope.***

- (a) This subpart sets forth DOE's policies and procedures for implementing special projects financial assistance under this part.
- (b) For years in which such funding is available, States may apply for financial assistance to undertake a variety of State-oriented energy-related special projects activities in addition to the funds provided under the regular SEP grants.
- (c) The types of funded activities may vary from year to year, and from State to State, depending upon funds available for each type of activity and DOE and State priorities.
- (d) A number of end-use sector programs in the Office of Energy Efficiency and Renewable Energy participate in the funding of these activities, and the projects must meet the requirements of those programs.
- (e) The purposes of the special project activities are:
  - (1) To utilize States to accelerate deployment of energy efficiency, renewable energy, and alternative transportation fuel technologies;
  - (2) To facilitate the commercialization of emerging and underutilized energy efficiency and renewable energy technologies; and
  - (3) To increase the responsiveness of Federally funded technology development efforts to the needs of the marketplace.

### ***Sec. 420.31 Notice of availability.***

- (a) If in any fiscal year DOE has funds available for special projects, DOE shall publish in the Federal Register one or more notice(s) of availability of SEP special projects financial assistance.
- (b) Each notice of availability shall cite this part and shall include:
  - (1) Brief descriptions of the activities for which funding is available;
  - (2) The amount of money DOE has available or estimates it will have available for award for each type of activity, and the total amount available;
  - (3) The program official to contact for additional information, application forms, and the program guidance/solicitation document; and
  - (4) The dates when:
    - (i) The program guidance/solicitation will be available; and
    - (ii) The applications for financial assistance must be received by DOE.

### ***Sec. 420.32 Program guidance/solicitation.***

After the publication of the notice of availability in the Federal Register, DOE shall, upon request, provide States interested in applying for one or more project(s) under the special projects financial assistance with a detailed program guidance/solicitation that will include:

- (a) The control number of the program;
- (b) The expected duration of DOE support or period of performance;
- (c) An application form or the format to be used, location for application submission, and number of copies required;
- (d) The name of the DOE program office contact from whom to seek additional information;
- (e) Detailed descriptions of each type of program activity for which financial assistance is being offered;
- (f) The amount of money available for award, together with any limitations as to maximum or minimum amounts expected to be awarded;
- (g) Deadlines for submitting applications;
- (h) Evaluation criteria that DOE will apply in the selection and ranking process for applications for each program activity;
- (i) The evaluation process to be applied to each type of program activity;
- (j) A listing of program policy factors if any that DOE may use in the final selection process, in addition to the results of the evaluations, including:
  - (1) The importance and relevance of the proposed applications to SEP and the participating programs in the Office of Energy Efficiency and Renewable Energy; and
  - (2) Geographical diversity;
- (k) Reporting requirements;
- (l) References to:
  - (1) Statutory authority for the program;
  - (2) Applicable rules; and
  - (3) Other terms and conditions applicable to awards made under the program guidance/solicitation
- (m) A statement that DOE reserves the right to fund in whole or in part, any, all, or none of the applications submitted.

***Sec. 420.33 Application requirements.***

- (a) Consistent with Sec. 420.32 of this part, DOE shall set forth general and special project activity-specific requirements for applications for special projects financial assistance in the program guidance/solicitation.
- (b) In addition to any other requirements, all applications shall provide:
  - (1) A detailed description of the proposed project, including the objectives of the project in relationship to DOE's program and the State's plan for carrying it out;
  - (2) A detailed budget for the entire proposed period of support, with written justification sufficient to evaluate the itemized list of costs provided on the entire project; and

- (3) An implementation schedule for carrying out the project.
- (c) DOE may, subsequent to receipt of an application, request additional budgetary information from a State when necessary for clarification or to make informed preaward determinations.
- (d) DOE may return an application which does not include all information and documentation required by this part, 10 CFR part 600, or the program guidance/solicitation, when the nature of the omission precludes review of the application.

***Sec. 420.34 Matching contributions or cost-sharing.***

DOE may require (as set forth in the program guidance/solicitation) States to provide either:

- (a) A matching contribution of at least a specified percentage of the Federal financial assistance award; or
- (b) A specified share of the total cost of the project for which financial assistance is provided.

***Sec. 420.35 Application evaluation.***

- (a) DOE staff at the cognizant Regional Support Office shall perform an initial review of all applications to ensure that the State has provided the information required by this part, 10 CFR part 600, and the program guidance/solicitation.
- (b) DOE shall group, and technically evaluate according to program activity, all applications determined to be complete and satisfactory.
- (c) DOE shall select evaluators on the basis of their professional qualifications and expertise relating to the particular program activity being evaluated.
  - (1) DOE anticipates that evaluators will primarily be DOE employees; but
  - (2) If DOE uses non-DOE evaluators, DOE shall require them to comply with all applicable DOE rules or directives concerning the use of outside evaluators.

***Sec. 420.36 Evaluation criteria.***

The evaluation criteria, including program activity-specific criteria, will be set forth in the program guidance/solicitation document.

***Sec. 420.37 Selection.***

- (a) DOE may make selection of applications for award based on:
  - (1) The findings of the technical evaluations;
  - (2) The priorities of DOE, SEP, and the participating program offices;
  - (3) The availability of funds for the various special project activities; and
  - (4) Any program policy factors set forth in the program guidance/solicitation.
- (b) The Director, Office of State and Community Programs makes the final selections of projects to be awarded financial assistance.

