

DEPARTMENT OF ENERGY**Office of Energy Efficiency and Renewable Energy****10 CFR Parts 420 and 450**

[Docket No. EE-RM-96-402]

RIN 1904-AA81

State Energy Conservation Program**AGENCY:** Office of Energy Efficiency and Renewable Energy.**ACTION:** Interim final rule with opportunity to comment.

SUMMARY: The Department of Energy (Department or DOE) amends the regulations for the State Energy Conservation Program to provide for the consolidation of two formula grant programs—the State Energy Conservation Program (SECP) and the Institutional Conservation Program (ICP). DOE removes prescriptive energy audit procedures that are no longer needed and conflict with the President's regulatory reform program. DOE is also incorporating in this rule provisions for competitively awarded financial assistance for a number of State-oriented special project activities.

DATES: This rule is effective July 8, 1996. Written comments [six copies and, if possible, a computer disk] on the interim final rule must be received by DOE no later than August 7, 1996, to ensure their consideration.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of July 8, 1996.

ADDRESSES: All written comments (six copies) are to be submitted to: Thomas P. Stapp, U.S. Department of Energy, Office of Building Technology, State and Community Programs, EE-44, Docket Number EE-RM-96-402, 1000 Independence Avenue, S.W., Washington, DC, 20585, (202) 586-2096.

Copies of the comments, as well as other parts of the record, will be available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays at the following address: DOE Freedom of Information Reading Room, United States Department of Energy, Room 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586-6020.

Copies of the material to be incorporated by reference are available from:

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; and

The Council of American Building Officials (CABO), 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041, (703) 931-4533.

For more information concerning public participation in this rulemaking proceeding, see section IV, "Opportunity for Public Comment."

FOR FURTHER INFORMATION CONTACT:

Thomas P. Stapp, Office of Building Technology, State and Community Programs, Department of Energy, Mail Stop 5G-063, EE-44, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586-2096.

SUPPLEMENTARY INFORMATION:

- I. Introduction and Description of the Program
- II. Rationale for Interim Final Rulemaking
- III. The Revisions to the Rule
- IV. Opportunity for Public Comment
- V. Review Under Executive Order 12612
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- VIII. Unfunded Mandate Review
- IX. Review Under the Regulatory Flexibility Act
- X. Review Under the Paperwork Reduction Act
- XI. Review Under the National Environmental Policy Act
- XII. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996
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I. Introduction and Description of the Program

The conference report accompanying the Balanced Budget Down Payment Act II of 1996, Public Law 104-134, (H.R. Conf. Rept. No. 537, 104th Cong., 2d Sess. (1996)), provided the Department with the opportunity to consolidate two of its formula grant programs consistent with recommendations made in an earlier conference report (H.R. Conf. Rept. No. 402, 104th Cong., 1st Sess. 60 (1995)), which accompanied the Interior and Related Agencies Appropriations Bill, 1996 (H.R. 1977, 104th Cong., 1st Sess. (1995)). Congress, in that earlier report, recommended such a consolidation to provide a more flexible program to be operated by the States. The Department is hereby following that recommendation by consolidating the State Energy Conservation Program (42 U.S.C. 6321 *et seq.*) and the Institutional Conservation Program (42 U.S.C. 6371 *et seq.*) under the name "State Energy Program (SEP)". These two components will constitute the formula grants part of SEP. In the other part of SEP, DOE is providing for financial assistance for a

number of State-oriented competitively awarded special project activities.

The State Energy Program Formula Grants

The approach used to apply for and implement the activities formerly funded under ICP regulations (10 CFR part 455) will be different under SEP. The process for applying for the types of activities formerly funded under SECP will essentially stay the same, and will become the standard approach.

DOE encourages all States to consider including ICP-type activities in their SEP State Plans in 1996 and future years, as appropriate. Following are brief explanations of how the component programs under the formula grants will work in the SEP context.

The State Energy Conservation Program

This program provides grants to States for a wide range of energy-related projects, and such projects will continue to be eligible for funding under SEP, using the same application process, and following the same programmatic requirements. This rulemaking is based on the SECP rule and makes only a few revisions to the SECP process, as discussed further in this document.

The Institutional Conservation Program

This program provides grants both to schools and hospitals for a variety of energy conservation measures and technical audits of buildings, and to States to administer the program and, since 1993, to provide specialized assistance to institutions. States wishing to continue to undertake such activities under SEP will apply to do so under the rule published today. Grants will no longer be issued by DOE to individual schools and hospitals; the activities would now be covered under one or more of the program activities under the SEP grant to the State, and the State would then provide the funding to the institutions using the financial mechanisms specified in its approved State Plan. The State would also specify the requirements it will place on its schools and hospitals applicants. The regulations covering ICP (10 CFR Part 455) will not apply to grants issued under SEP but States are free to adopt any of the requirements in those regulations to cover ICP-type activities under SEP. ICP-type activities also continue to be eligible for funding under the various Petroleum Violation Escrow (PVE) settlements.

For fiscal year 1996 Congress consolidated the funding for ICP and SECP. DOE believes that having these two programs consolidated into the State Energy Program Formula Grants

part of SEP will make it easier for States to apply for grants and more efficient for both DOE and the States to manage the grants. It should also simplify the process for the ultimate recipients of assistance, such as schools and hospitals, which will now be able to receive assistance directly from their States, rather than from DOE.

Special Projects Financial Assistance

Financial assistance for the special projects now being provided for in this rulemaking covers a range of State-oriented activities to be offered as options in years when funding is available. States will be invited to apply for any of a range of potential activities announced for the fiscal year concerned. The announcement will be made in special project notices of funding availability published in the Federal Register, and in detailed program guidance/solicitation documents.

Activities may include, but may not be limited to, new State-oriented programs based on existing DOE initiatives such as Motor Challenge, Climate Wise, Clean Cities, Rebuild America, and the Federal Energy Management Program, as well as programs for updating State and local government building energy codes.

DOE would then make its selection of projects based on the results of the technical evaluations and on each State's expressed interests/priorities, DOE's priorities, the amount of funding requested, geographical diversity, the responsiveness of the applications to the purposes, requirements and program policy selection factors specified in the special projects guidance/solicitation, and the total funds available for each type of project.

Providing for these projects to be undertaken as part of SEP will result in a more efficient vehicle for funding these more specialized activities, some of which may be new initiatives, and some of which were formerly funded separately. The rationale for covering these projects in a separate part of the rule, and for using a different approach for the application process, is that appropriations for these projects are from a variety of sources different from the source for the formula grants, and the funding must, therefore, be separately tracked. Projects approved for funding will be handled as amendment(s) to the SEP grant.

Energy Audit Procedures and List of Measures

Consistent with section 365(e) of the Energy Policy and Conservation Act (EPCA or the Act), 42 U.S.C. 6325(e), in the late 1970's DOE issued prescriptive

regulations, codified at 10 CFR part 450, containing a list of energy conservation measures and detailed energy audit procedures. The list of measures is no longer needed because the programs that utilized them have not been funded for more than 10 years. Prescriptive energy audit procedures are no longer needed for SEP because States are familiar with developing such procedures in light of their particular facts and circumstances. In lieu of prescriptive regulations, DOE will be providing informally energy audit guidance for States to consider and apply as they deem appropriate. This approach is consistent with the President's regulatory reform program which emphasizes removal of unnecessary categorical requirements in State grant programs.

II. Rationale for Interim Final Rulemaking

In ordinary circumstances, DOE provides an opportunity for public comment prior to making significant final changes in the rules for financial assistance programs. Similarly, DOE ordinarily provides for an effective date 30 days or more following the date of publication so that affected entities have an opportunity to learn of changes and prepare to comply. However, the unusual and extended delay in the enactment of the 1996 appropriation for the State energy conservation grants subject to today's interim rule necessitates that DOE make expedited regulatory changes in order to facilitate early completion of necessary pre-award DOE activities and State plan amendments in light of the decrease in Federal funds for FY 1996. If the appropriation had been enacted on or about October 1, 1995 (the beginning of FY 1996) rather than April 25, 1996, then there would have been enough time for DOE to conduct a normal notice and comment rulemaking, to issue annual grant guidance on applying for funds to the States, and to review State plans and award grants. There would also have been ample time for States to develop and submit their plans reflecting a significant downsizing of their programs and for their employees to begin making appropriate personal plans where necessary.

Although the magnitude of the funding reduction has been apparent for some time, DOE had to delay regulatory revisions until an appropriation act became law. It is now so late in FY 1996, which ends on September 30, 1996, that significant delay in changing existing rules could pressure the States into making hasty and ill-considered changes to their programs that would be

highly disruptive. DOE has extensively and informally consulted with the States on the content of today's rule and has reason to believe that it will prove broadly acceptable. In any event, adjustments, if warranted, will be made in the notice of final rulemaking that responds to comments on today's notice and will apply to funds for FY 1997 and thereafter. Simultaneous with publication of this rule, DOE is sending a copy of this notice to each State so that they will be aware of the revised regulations in time to comply. On the basis of the foregoing, DOE has decided to waive prior notice and opportunity for public comment because issuance of a notice of proposed rulemaking is impracticable and contrary to the public interest. For the same reasons, DOE is making today's interim final rule effective immediately.

III. The Revisions to the Rule

List of Subparts and Sections

To provide for the different approaches for the State Energy Program Formula Grants and the special projects financial assistance, DOE has divided the rule into three subparts. Subpart A covers the general provisions for all financial assistance under the program, subpart B covers the Formula Grant procedures, and subpart C covers the implementation of special projects financial assistance.

With the exceptions of § 420.1, § 420.2, § 420.3 (formerly § 420.13), § 420.4 (formerly § 420.10), and § 420.5 (formerly § 420.11), now in subpart A, the sections now found under subpart B comprised the entire former rule. Those sections have been rearranged and in some cases revised to improve the organization of the rule and to accommodate the new subpart format. The new arrangement (with former section numbers noted, if there has been a change) is as follows:

Subpart A—General Provisions for State Energy Program Financial Assistance

- 420.1 Purpose and scope. (same)
- 420.2 Definitions. (same)
- 420.3 Administration of financial assistance. (formerly § 420.13)
- 420.4 Technical assistance. (formerly § 420.10)
- 420.5 Reports. (formerly § 420.11)
- 420.6 Reference sources. (new)

Subpart B—State Energy Program Formula Grant Procedures

- 420.10 Purpose. (new)
- 420.11 Allocations among the States. (formerly part of § 420.3)
- 420.12 State matching contribution. (formerly part of § 420.3)
- 420.13 Annual State applications and State plans. (formerly § 420.4)

- 420.14 Review and approval of annual State applications and State plans. (formerly § 420.5)
- 420.15 Minimum criteria for required program activities for plans. (formerly § 420.6)
- 420.16 Extensions for compliance with required program activities. (formerly § 420.8)
- 420.17 Optional elements of State Energy Program plans. (formerly § 420.7)
- 420.18 Expenditure prohibitions and limitations. (formerly § 420.12)
- 420.19 Administrative review. (formerly § 420.9)

Throughout the rule cross-references have been revised to reflect the new section numbers. Subpart C has been added to the rule to provide for financial assistance for the new special projects. This subpart, with its respective sections, is as follows:

Subpart C—Implementation of Special Projects Financial Assistance

- 420.30 Purpose and scope.
- 420.31 Notice of availability.
- 420.32 Program guidance/solicitation.
- 420.33 Application requirements.
- 420.34 Matching contributions or cost sharing.
- 420.35 Application evaluation.
- 420.36 Evaluation criteria.
- 420.37 Selection.

Subpart A—General Provisions for State Energy Program Financial Assistance

Section 420.1 Purpose and scope

This section has been substantially reduced by eliminating the first sentence of paragraph (a) and all of paragraph (b) and moving paragraph (c) to new § 420.13. The second sentence of paragraph (a) is all that remains, modified to add the reduction of dependence on imported oil as a purpose of the program and to refer to the new State Energy Program name. The deleted wording from paragraphs (a) and (b) was essentially redundant. Former paragraph (c) more appropriately belongs under the section on State applications.

Section 420.2 Definitions

A definition for “alternative transportation fuel” has been added to reflect the program’s renewed emphasis on reducing dependence on imported oil. The text of the definition is based on the definition of alternative transportation fuel in section 301 of the Energy Policy Act of 1992 (Pub. L. 102–486).

The definition for “ASHRAE 90–75” has been deleted because it is now obsolete.

The definition of “ASHRAE/IESNA 90.1–1989” has been revised to add “NA” after “IES”, to add “as amended,” to add the Illuminating Engineering

Society of North America as co-publisher, and to reference addenda to be used as part of this standard and to cite the authority for incorporation by reference.

The definition of “Assistant Secretary” has been revised to reflect the new name of the organization, Energy Efficiency and Renewable Energy.

The definition of “Btu” has been deleted because it is more completely defined under “British thermal unit.”

The definition for “building” has been revised to include the exempted buildings formerly included under the definition of “exempted building” which has been deleted.

The definition of “CABO MEC–89” has been deleted because it is out of date; Model Energy Code, 1993 is the version of this standard that should now be used.

The definition for “Deputy Assistant Secretary” has been revised to reflect a reorganization within DOE whereby the Deputy Assistant Secretary for Building Technology, State and Community Programs has assumed responsibility for SEP.

A definition for “Director, State and Community Programs” has been added to provide for this position which has responsibility for DOE’s formula grants to States.

The definition of “energy audit” has been revised primarily to delete the reference to 10 CFR part 450 which has been removed for reasons discussed above, under Energy Audit Procedures and list of measures.

A definition for “energy conservation measure” has been added, to provide for this type of activity which may be more important under SEP now that ICP is included in the program. This definition is based on the one in Section 366 of the Act, 42 U.S.C. 6326 (4). As a conforming change, this term has been substituted for the term “energy conservation building retrofit” wherever that term appeared in the existing rule.

The definition for “exempted building” has been deleted, with types of buildings formerly listed under that definition moved to the definition of “building.”

The definition for “Governor” has been revised to conform to the definition of “State.”

The definition for “HUD minimum property standards” has been deleted because it is out of date. The Model Energy Code, 1993 should now be used instead.

The definition for “industrial plant” is being revised to “industrial facility” because that is the term now used in the rule.

The definition for “major building type” is being deleted because the term is no longer used in the rule.

A definition for “Model Energy Code, 1993” has been added. This standard replaces the former “CABO MEC–89,” which has been deleted, as previously discussed.

The definition for “National energy conservation program” is being deleted because it is no longer used in the rule.

The definition for “petroleum violation escrow funds” has been revised to clarify that the matching requirements referred to are only found in § 420.12 (formerly § 420.3(e)), whereas under § 420.18(b) (formerly § 420.12(b)), there are cost limitations.

The definition of “plan” has been revised to refer to the new State Energy Program.

The definition for “program measure” has been revised to replace the word “measure” with the word “activity.” The term “program activity” now covers what were formerly referred to as “program measures” in some parts of the rule and “programs” in other parts of the rule.

Under the definition of “public building,” a new subparagraph(e) has been added to include public and private non-profit schools and hospitals, reflecting the consolidation of ICP into SEP.

The definition of “renewable-resource energy measure” has been revised to be a definition of “renewable energy measure” and to provide a more detailed description of such measures. This definition is based on the one in section 366 of the Act, 42 U.S.C. 6326(6). In addition, the reference to subpart D (covering Energy Measures) of 10 CFR part 450, is being deleted, for reasons discussed earlier under Energy Audit Procedures and list of measures.

The definition of “State economic product” has been deleted because the term is no longer used in the rule.

The definition of “Support Office Director” has been revised to reflect the new title “Regional Support Office Director.” The new title, and the new Regional Support Office name, are now used throughout the rule wherever the former names appeared.

Section 420.3 Administration of Financial Assistance

Former paragraph (a) (now paragraph (a)(1)) of this section has been revised to provide the current references for the requirement for intergovernmental review and coordination, now found in Executive Order 12372 and its

implementing regulations at 10 CFR part 1005.

Paragraphs (b) and (c) of this section were formerly found under § 420.3 as paragraphs (c) and (e), respectively. Paragraph (b) has been revised to specify that budget periods (for both formula grants and special projects) shall be consistent with 10 CFR part 600.

Paragraph (c) has been revised to add the necessity for subawards to be consistent with this part and 10 CFR part 600.

Section 420.4 Technical Assistance

This section was formerly § 420.10.

Section 420.5 Reports

This section was formerly § 420.11. It now covers all SEP financial assistance under both subpart B and subpart C. The requirement for an annual energy savings report has been deleted because of the marginal need for this particular type of report at this time.

Section 420.6 Reference Standards

This is a new section providing information about the incorporation by reference of two standards, ASHRAE/IESNA 90.1-1989 and The Model Energy Code, 1993, which are referred to in § 420.2 and § 420.15.

Subpart B—State Energy Program Formula Grant Procedures

Section 420.10 Purpose

This is a new section to introduce the purpose of subpart B, which is to set forth the procedures that apply to the State Energy Program Formula Grants.

Section 420.11 Allocation of Funds Among the States

This section has been adapted from paragraphs (a) and (b) of former § 420.3. Paragraph (a) remains the same.

DOE has revised the process (specified under § 420.11(b)) by which grant funds are allocated to the States, to accommodate the inclusion of ICP funds which were formerly allocated to States using a formula different from that used for SECP. The only common element in the two formulas was the population of each State. The other two elements in the ICP formula were regional costs of energy and the sum of a State's heating and cooling degree days. The other two elements in the SECP formula were a provision for dividing a portion of the funds equally among all the States, and the State's estimated energy savings from SECP efforts undertaken in calendar year 1980.

The revised process involves an allocation for each State consisting of: a

base allocation calculated on the program's \$25.5 million available funding for fiscal year 1996 and divided in the same ratio as each State received in fiscal year 1995 in combined funding from appropriations for ICP and SECP, together with a provision that any available funding beyond \$25.5 million be allocated based on a new formula. This revised process serves several purposes: (1) it will reflect and incorporate in the base allocation the historical funding of the two distinct major component programs in SEP that formerly used different funding formulas; (2) it will provide for an equitable adjustment in program funding levels; and (3) it will help maintain the organizational capacity of the States to manage the programs.

Base Allocation

To achieve this, DOE is hereby replacing the former SECP formula with the two-step process discussed above. The base allocation reflects elements from the ICP and SECP formulas in such a way that each State will receive, in fiscal year 1996, a base allocation in the same ratio (based on each State's 1995 allocations from 1995 appropriated funds) as it would have received if ICP and SECP were operated as separate programs. This base allocation, which applies to the first \$25.5 million of funds available, will remain the same in future years, or be adjusted downward if available funds are less than \$25.5 million. Table 1, listing the base allocation by State using the \$25.5 million total, is added after § 420.11(b)(1). Funds available above \$25.5 million will be allocated based on the new formula described below.

Formula Allocation

Funding available for SEP beyond the base \$25.5 million ICP/SECP consolidated funds will be allocated using the new formula based on the following factors: 33⅓ percent divided among the States equally; 33⅓ percent divided on the basis of the population of the participating States; and 33⅓ percent divided on the basis of the energy consumption of the participating States.

The formula for the entire annual allocation is expressed mathematically as $(PA) = (BA) + (FA)$, where (PA) is the total program allocation, (BA) is the base allocation, and (FA) is the formula allocation.

Paragraphs (c) and (e) are now found under new § 420.3, as already discussed under that section.

Paragraph (d) is now found under new § 420.12.

Section 420.12 State Matching Contribution

This section was formerly paragraph (d) of former § 420.3. It has been given a new title, and revised to replace the term "cost sharing" with "match" or "matching" because the Act uses the term "match" in the sense of a percent of the State's Federal allocation, whereas, in this context, a "cost share" would be a percent of the total project cost. To receive financial assistance, each State must contribute a match of no less than 20 percent of the Federal financial assistance allocated to the State. Cash and in-kind contributions may continue to be used to meet this requirement. The sentence in this paragraph requiring that the State's match be identified in the State's application has been moved to § 420.13 where it becomes new § 420.13(b)(4)(ii).

Section 420.13 Annual State Application and State Plans

This section was formerly § 420.4.

The title of this section has been changed to add State plans which must be included with SEP grant applications.

A new paragraph (b)(1) has been added to provide for the submission of an application face page on Standard Form 424.

Former paragraph (b)(1) has been redesignated (b)(2).

Paragraph (b)(3) has been added to this section (it was formerly § 420.1(c)). Since this paragraph refers to a requirement for State plans, DOE felt it was more appropriate to include it in the section covering applications and plans.

Former paragraph (b)(2) has been redesignated (b)(4) to provide for the addition of new paragraphs (b)(1) and (b)(3) and has been revised to add a new (b)(4)(ii) requiring that States include their matching contribution in their applications, as already discussed under § 420.12.

Former subparagraphs (b)(2)(ii), (b)(2)(iii), and (b)(2)(iv) have been redesignated (b)(4)(iii), (b)(4)(iv), and (b)(4)(v), respectively, to allow for new (b)(4)(ii).

Former paragraph (b)(3) has been redesignated (b)(5) to provide for the addition of new paragraphs (b)(1) and (b)(3).

Paragraph (b)(6) (formerly paragraph (b)(4)) of this section, which required States to specify that activities funded under SECP would supplement and not supplant activities funded under ICP or the Weatherization Assistance Program (Weatherization), has been revised by deleting the reference to ICP. Activities

formerly funded under ICP are now being funded under SEP, so supplantation is not an issue.

To continue the renumbering of paragraphs necessitated by the addition of paragraphs (b)(1) and (b)(3), former (b)(5) has been renumbered (b)(7); a new paragraph (b)(8) has been added covering State assurances; and former (b)(6) has been renumbered (b)(9).

Former paragraph (b)(7) has been deleted because it does not relate to the contents of an application.

The wording of a number of paragraphs in this section has been simplified to make the format consistent.

Section 420.14 Review and Approval of Annual State Applications and State Plans

This section was formerly § 420.5

Section 420.15 Minimum Criteria for Required Program Measures for Plans

This section was formerly § 420.6.

Paragraphs (a)(3) and (d)(3) have been revised to refer to ASHRAE/IESNA 90.1-1989 as amended, which is the current citation, as previously discussed under § 420.2, Definitions. Paragraph (d)(4) has been revised to refer to Model Energy Code, 1993 as amended, which is the current citation, as previously discussed under § 420.2, Definitions. The new standards are based upon the requirements of Title III of the Energy Conservation and Production Act, 42 U.S.C. 6831 et seq.

A new paragraph (e)(3) has been added to provide for left turns from one-way streets onto one-way streets at traffic lights (right turns for the Virgin Islands), where appropriate, as required by section 362(c)(5) of EPCA, 42 U.S.C. 6322(c)(5).

Former paragraph (e)(3) has been eliminated. This paragraph provided for a delay in implementing the requirement under paragraph (e)(2) until June 27, 1979. That provision is no longer necessary.

Section 420.16 Extensions for Compliance With Required Program Activities

This section was formerly § 420.8.

Section 420.17 Optional Elements of State Energy Program Plans

This section was formerly § 420.7.

Paragraph (a)(3)(ii) has been revised to add wording at the end to make clear that public and private non-profit schools and hospitals, and local government buildings, which were formerly covered by ICP, are eligible buildings under SEP. It is important to note that local government buildings,

which were eligible only for technical audits under ICP, are also eligible for energy conservation measures under SEP.

New paragraphs (a)(10), (a)(11), (a)(12) and (a)(13) are being added to provide for four new examples of optional elements of State plans which were added to EPCA by section 141(b) of the Energy Policy Act of 1992, Pub. L. 102-486 (EPACT). Those new elements are: program activities to provide training to building designers and contractors to promote energy efficiency ((a)(10)); program activities for the development of building retrofit standards ((a)(11)); support for feasibility studies to facilitate access to capital and credit for energy efficiency projects ((a)(12)); and program activities to facilitate the voluntary use of renewable energy technologies in Federal agency programs ((a)(13)).

Former paragraph (a)(10) has been renumbered (a)(14).

Section 420.18 Expenditure Prohibitions and Limitations

This section was formerly § 420.12.

This section has been renamed because the former name, "Prohibited expenditures," did not reflect the fact that a number of the paragraphs under this section cover expenditures that are, under certain circumstances, allowable.

Paragraph (e) has been revised to change the limitation of 33 percent of a State's allocation to 50 percent, and to clarify that, up to that limit, funds may be used for the purchase and installation of energy conservation measures and renewable energy measures, to allow States more flexibility in this regard. With ICP-typed activities now a component of the consolidated SEP, and with energy conservation measures and renewable energy measures the primary purpose of ICP, DOE does not want to limit States to 33 percent for such expenditures, and believes a 50 percent limit is now appropriate because approximately 50 percent of the appropriated funds for FY 1996 are attributable to ICP.

Paragraph (e)(4), which required that funds under this program be used to supplement, but not supplant, ICP or Weatherization funds, has been revised to delete the reference to ICP. The reasons were previously discussed under § 420.13.

Former subparagraphs (e)(6)(i) and (e)(6)(iv) have been deleted because they are no longer necessary, and former subparagraphs (e)(6)(ii) and (e)(6)(iii) have been redesignated new subparagraphs (e)(6)(i) and (e)(6)(ii), respectively.

Former paragraph (e)(7) has been deleted because the same limitation is covered in paragraph (d).

Section 420.19 Administrative Review

This section was formerly § 420.9. It covers decisions made under § 420.14 and does not apply to financial assistance for the special projects in subpart C.

Subpart C—Implementation of Special Projects Financial Assistance

This subpart is being added to specify how DOE will implement financial assistance for these special projects activities under SEP.

Section 420.30 Purpose

This section is being added to provide the purpose of subpart C.

Section 420.31 Notice of Availability

This section is being added to specify the process DOE will use for announcing the availability of funds for special projects financial assistance.

Section 420.32 Program Guidance/Solicitation

This section is being added to provide for the program guidance/solicitation, which will contain the relevant information necessary for States to apply for funding under this subpart.

Section 420.33 Application Requirements

This section is being added to provide general information about applying for financial assistance for these special projects. More detailed application requirements will be provided by DOE in the program guidance/solicitation document.

Section 420.34 Matching Contributions or Cost Sharing

This section is being added to address the possibility of a match or cost share requirement for some, or all, special projects financial assistance, to be specified in the program guidance/solicitation.

Section 420.35 Application Evaluation

This section is being added to provide for the technical evaluations of applications for financial assistance pursuant to this subpart.

Section 420.36 Evaluation Criteria

This section is being added to provide for the evaluation criteria to be applied to applications for financial assistance pursuant to this subpart.

Section 420.37 Selection

This section is being added to provide for program policy factors which may be

applied in selecting special projects for funding under this subpart.

IV. Opportunity for Public Comment

Written Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the matters set forth in this notice.

Comments (6 copies and, if possible, a computer disk) should be identified on the outside of the envelope, and on the documents themselves, with the designation: "State Energy Program, Interim Final Rule, Docket Number EE-RM-96-402." In the event any person wishing to submit a written comment cannot provide six copies, alternative arrangements can be made in advance by calling (202) 586-2096.

Any person submitting information which that person believes to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. DOE shall make a determination of any such claim as set forth in 10 CFR 1004.11 (53 FR 15661, May 3, 1988).

V. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987) requires that regulations, legislation and any other policy action be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or on the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires preparation of a federalism assessment to be used in decisions by senior policy-makers in promulgating or implementing the regulation.

Today's regulatory amendments will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government. Preparation of a federalism assessment is therefore unnecessary.

VI. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, October 4, 1993. Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA).

VII. Review Under Executive Order 12988

Section 3 of Executive Order 12988, 61 FR 4729 (February 7, 1996), instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in Section 3(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. The Department has determined that today's regulatory action meets the requirements of Section 3 (a) and (b) of Executive Order 12988.

VIII. Unfunded Mandate Review

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) places a variety of review and consultative obligations on Federal agencies proposing regulatory actions for Federal intergovernmental mandates. Today's rule does not involve such a mandate because the Unfunded Mandates Reform Act excludes from the definition of "Federal intergovernmental mandate" provisions in a regulation that would impose conditions incident to a financial assistance program (not involving an entitlement) or a duty arising from participation in a voluntary Federal program 2 U.S.C. 658(5). This program is a standard non-entitlement financial assistance program and States are not obligated to participate in it.

IX. Review Under the Regulatory Flexibility Act

There is no need to prepare a final regulatory flexibility analysis of today's interim final regulations under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because they are not subject to a legal requirement for a general notice of proposed rulemaking.

X. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed on the public by today's rules.

XI. Review Under the National Environmental Policy Act

A programmatic environmental assessment has been prepared covering the grant program under the interim final regulations published today which was sent to the States for comment on

March 27, 1996. No comments were received by the end of the 14-day comment period. This programmatic environmental assessment resulted in a finding of no significant impact (FONSI). A FONSI was issued on June 7, 1996. The documents relating to this programmatic environmental assessment are available in the DOE Freedom of Information Reading Room, United States Department of Energy, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020.

XII. Congressional Notification

The final regulations published today are subject to the Congressional notification requirements of the Small Business Regulatory Enforcement Fairness Act of 1996 (Act), 5 U.S.C. 801. OMB has determined that the final regulations do not constitute a "major rule" under the Act, 5 U.S.C. 804. DOE will report to Congress on the promulgation of the final regulations prior to the effective date set forth at the beginning of this notice.

XIII. The Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the State Energy Program is 81.041.

List of Subjects

10 CFR Part 420

Energy conservation, Grant programs—energy, Reporting and recordkeeping requirements, Technical assistance, Incorporation by reference.

10 CFR Part 450

Buildings, Business and Industry, Energy conservation, Housing, Reporting and recordkeeping requirements.

Issued in Washington, DC, on June 26, 1996.

Christine A. Ervin,
Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Chapter II of Title 10, Code of Federal Regulations is amended as follows:

1. Part 420 is revised to read as follows:

PART 420—STATE ENERGY PROGRAM

Subpart A—General Provisions for State Energy Program Financial Assistance

Sec.

420.1 Purpose and scope.

420.2 Definitions.

420.3 Administration of financial assistance.

- 420.4 Technical assistance.
- 420.5 Reports.
- 420.6 Reference standards.

Subpart B—Formula Grant Procedures

- 420.10 Purpose.
- 420.11 Allocation of funds among the States.
- 420.12 State matching contribution.
- 420.13 Annual State applications and State plans.
- 420.14 Review and approval of annual State applications and State plans.
- 420.15 Minimum criteria for required program activities for plans.
- 420.16 Extensions for compliance with required program activities.
- 420.17 Optional elements of State Energy Program plans.
- 420.18 Expenditure prohibitions and limitations.
- 420.19 Administrative review.

Subpart C—Implementation of Special Projects Financial Assistance

- 420.30 Purpose and scope.
- 420.31 Notice of availability.
- 420.32 Program guidance/solicitation.
- 420.33 Application requirements.
- 420.34 Matching contributions or cost-sharing.
- 420.35 Application evaluation.
- 420.36 Evaluation criteria.
- 420.37 Selection.

Authority: Title III, part D, as amended, of the Energy Policy and Conservation Act (42 U.S.C. 6321 *et seq.*); Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*)

Subpart A—General Provisions for State Energy Program Financial Assistance

§ 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.

§ 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 § 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, except for the following:

(1) Any building 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 area for all purposes;

(2) Any building with neither a heating nor cooling system;

(3) Any mobile home; or

(4) Any building owned or leased in whole or in part by the United States.

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 Building Technology, 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 a determination of the energy consumption characteristics of a building which:

(1) Identifies the type, size, energy use level and the major energy using systems of such building or buildings;

(2) Determines appropriate energy conservation maintenance and operating procedures; and

(3) Indicates the need and the estimated cost and energy cost savings, if any, associated with the acquisition and installation of energy conservation measures.

Energy conservation measure means an installation which modifies any building, building system, energy consuming device associated with the building or industrial facility the construction of which was completed prior to May 1, 1989, if such measure has been determined by means of an energy audit to be likely to maintain or improve the efficiency of energy use and to reduce energy costs in an amount sufficient to enable a person to recover the total cost of purchasing and installing such measure within the lesser of—

(1) The useful life of the modification involved; or

(2) 15 years after the purchase and installation of such measure.

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)).

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 § 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 § 420.12 and of applying the limitations specified under § 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 § 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 non-profit 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 non-depletable source of energy.

Renewable energy measure means a measure which modifies any building or industrial facility if such measure has been determined by means of an energy audit to—

- (1) Involve changing, in whole or in part, the fuel or source of the energy used to meet the requirements of such building or facility from a depletable source of energy to a non-depletable source of energy; and
- (2) Be likely to reduce energy costs (as calculated on the basis of energy cost assumptions provided by DOE) in an amount sufficient to enable a person to recover the total cost of purchasing and installing such measure (without regard to any tax benefit or Federal financial assistance applicable thereto) within the lesser of—

- (i) The useful life of the modification involved; or
- (ii) 25 years after the purchase and installation of such measure.

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 carpool, vanpool and/or public transportation usage.

§ 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 § 420.11(b) or § 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.

§ 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.

§ 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.

§ 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, N.W., suite 700, Washington, D.C.

(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 § 420.2 and § 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 § 420.2 and § 420.15.

Subpart B—Formula Grant Procedures

§ 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 § 420.15 and § 420.17. Funding for these activities is allocated to the States based on funds available for any fiscal year, as described under § 420.11.

§ 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 1.

TABLE 1.—BASE ALLOCATION BY STATE

State/Territory	
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
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

TABLE 1.—BASE ALLOCATION BY STATE—Continued

State/Territory	
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
Total	25,500,000

(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 § 420.11(b) shall be consistent with 10 CFR part 600.

§ 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 § 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 § 420.18(a), but are not subject to the 20 percent limitation in § 420.18(b).

(c) Nothing in this section shall be read to require a match for petroleum violation escrow funds used under this part.

§ 420.13 Annual State applications and 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. 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 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 § 420.15 shall be satisfied;

(5) 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) For 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.

§ 420.14 Review and approval of annual State applications and State plans.

(a) After receipt of an application for financial assistance under subpart B of this part, or application for approval of an amendment 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 and/or 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 § 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 § 420.13; and

(iii) The provisions of the application regarding program activities satisfy the minimum requirements prescribed by § 420.15 and § 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.

§ 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 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 § 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 carpoolers 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 exempted buildings, 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) 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 § 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.

§ 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.

§ 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 conservation 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 conservation 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 non-profit 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 conservation 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.

§ 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 § 420.18(a)(1), or to the limitation on equipment purchases of § 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 conservation measures and renewable energy measures 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) Subject to the restrictions of this part, State and local government buildings, as defined in § 420.2, are eligible for energy conservation measures and renewable energy measures under this section;

(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 (e)(6) 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.

(6) The following mechanisms are not allowed for funding the purchase and installation of materials and equipment under this paragraph:

(i) 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 insure the most efficient use of rebates); and

(ii) Loan guarantees.

§ 420.19 Administrative review.

(a) A State shall have 20 days from the date of receipt of a decision under § 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 § 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 § 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

§ 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.

§ 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.

§ 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; and
 - (m) A statement that DOE reserves the right to fund in whole or in part, any, all, or none of the applications submitted.

§ 420.33 Application requirements.

(a) Consistent with § 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.

§ 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.

§ 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.

§ 420.36 Evaluation criteria.

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

§ 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.

PART 450—[REMOVED]

2. Under the authority of 42 U.S.C. 7101 *et seq.* Part 450 is removed.

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