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## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### 10 CFR Part 420

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

RIN 1904-AB01

#### State Energy Program

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

**ACTION:** Interim final rule and opportunity for public comment.

**SUMMARY:** Today the Department of Energy (DOE or Department) is publishing an interim final rule revising the regulations for its State Energy Program. This rule provides for the possibility of certain activities being funded under the Special Projects part of the program that are not permitted under the formula grant part of the program. The rule also provides for the specification of any Special Projects funding limitations by the sector specific program offices providing the Special Projects funding, and clarifies the applicability of Subpart B to the formula grant part of the program and of Subpart C to the Special Projects part of the program.

**DATES:** This rule becomes effective August 24, 1999. Written comments on the interim final rule must be received by DOE no later than September 23, 1999, to ensure consideration.

**ADDRESSES:** Written comments (six copies and, if possible, a computer disk) 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, SW, 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 a.m. and 4 p.m., Monday through Friday except Federal holidays, at the following address: DOE Freedom of Information Reading Room, Department of Energy, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-3142.

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 5E-080, EE-44, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-2096.

#### SUPPLEMENTARY INFORMATION:

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#### I. Introduction and Description of the Program

On July 8, 1996, the Department published in the **Federal Register** an interim final rule consolidating the State Energy Conservation Program (SECP) and the Institutional Conservation Program (ICP) under the name "State Energy Program" (SEP or program). 61 FR 35890. On May 14, 1997, the Department published in the **Federal Register** a final rule for the program, incorporating revisions to the interim final rule resulting from comments received. 62 FR 26726. The program provides formula grants to States for a wide variety of energy efficiency and renewable energy initiatives, and, in years when funding is available, may

also offer financial assistance for a number of State-oriented competitively awarded Special Projects activities with funding contributed by the Office of Energy Efficiency and Renewable Energy's sector specific program offices. Special Projects have been funded in every fiscal year since SEP was established in 1996. DOE expects the Special Projects part of SEP to continue in future years.

Among the goals of the SEP Special Projects activities are to assist States to: accelerate deployment of energy efficiency and renewable energy technologies; facilitate the acceptance of emerging and under utilized energy efficiency and renewable energy technologies; and increase the responsiveness of Federally funded technology development efforts to private sector needs.

When the SEP rule was revised in 1996 to provide for the incorporation of the Special Projects activities, DOE envisioned that States would receive the funding by means of amendments to their SEP formula grants. While the Special Projects requirements are primarily covered under subpart C of the rule, the expenditure prohibitions and limitations specified under § 420.18 of subpart B continued to be worded so that the section was deemed to apply to both the formula grants and the Special Projects amendments to those grants. For the first two years of Special Projects (fiscal years 1996 and 1997), when Special Projects funding was provided via the State SEP grant, that was necessary.

However, starting in fiscal year 1998, Special Projects funding has been provided to States by means of individual grants for each project, separate from the SEP formula grants. DOE therefore believes that the application of the formula grant expenditure prohibitions and limitations to the Special Projects is no longer necessary, and it reduces their potential flexibility. Interest has been expressed in using Special Projects funding for end-use sector specific infrastructure improvements and research and development projects, both of which are precluded or limited under § 420.18. DOE believes the Special Projects should no longer be limited by § 420.18 so that the Special Projects funding approach will be of maximum

benefit to the end-use sectors providing the funding.

Therefore, Special Projects funding will henceforth be required to meet only the limitations and prohibitions that apply to all Federal financial assistance under 10 CFR part 600 and any that may apply to the particular sources of funding used by the respective end-use sectors, as specified under the annual Special Projects solicitation/guidance. To dissociate the Special Projects from the prohibitions under 420.18, DOE is revising the wording of that section so that it applies only to subpart B of the rule, covering the SEP formula grants. DOE is making similar technical revisions to other sections of the rule to achieve consistency in the applicability of the various subparts of the rule.

In addition, technical revisions are being made to change the designations of Regional Support Offices to Regional Offices, and Regional Support Office Directors to Regional Office Directors to conform to the official changes made in these designations as of April 25, 1999.

## **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 1999 Special Projects process is now underway, and DOE would like to maximize the range of projects being considered for funding by removing the formula grant prohibitions and limitations from the Special Projects at this time. Removing these special prohibitions and limitations will provide immediate flexibility and will reduce burdens on State governments consistent with government-wide uniform administrative requirements applicable to grants to States under 10 CFR part 600. There is no reason to anticipate State objections would be forthcoming if DOE were to propose removal for public comment. Moreover, it is unlikely that any member of the public could persuasively object to this regulatory change. 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**

### *Part 420 (throughout)*

The designations of Regional Support Office and Regional Support Office Director are changed to Regional Office and Regional Office Director, respectively, throughout the rule to conform to the official redesignations made effective on April 25, 1999.

### *Section 420.12 State Matching Contribution*

To clarify that this section applies only to the SEP formula grants, the wording of paragraph (c) is changed so that the reference to "this part" becomes "this subpart." Whereas "this part" refers to the entire 10 CFR part 420, "this subpart," in this context, refers only to subpart B of 10 CFR part 420, covering the SEP formula grants. Cost sharing requirements for Special Projects grants are covered under subpart C.

### *Section 420.13 Annual State Applications and Amendments to State Plans*

To make the wording consistent with changes being made elsewhere in the rule, the wording of paragraphs (a), (b)(3) and (b)(7) is changed so that the references to "subpart B of this part" become "this subpart." To clarify that this section applies only to the SEP formula grants, the wording of paragraph (b)(7) is changed so that the reference to "this part" becomes "this subpart," as further explained under 420.12 above. The applications referred to under 420.13 are for the SEP formula grants. Applications for Special Projects grants are covered under subpart C.

### *Section 420.14 Review and Approval of Annual State Applications and Amendments to State Plans*

To make the wording consistent with changes being made elsewhere in the rule, the wording of paragraph (a) is changed so that the reference to "subpart B of this part" becomes "this subpart." To clarify that this section applies only to the SEP formula grants, the wording of paragraphs (a), (b)(1)(i), (b)(2), and (b)(3) is changed so that the references to "this part" become "subparts A and B of this part." Whereas "this part" refers to the entire 10 CFR part 420, the applications and State plans covered under 420.14 need only meet the requirements of subparts A and B. Subpart C covers applications for Special Projects.

### *Section 420.17 Optional Elements of State Energy Program Plans*

To clarify that the services referenced under paragraph (b)(3) of this section are established under the SEP formula grants, the wording of that paragraph is changed so that the reference to "this part" becomes "this subpart," referring to subpart B covering the formula grants.

### *Section 420.18 Expenditure Prohibitions and Limitations*

To restrict the prohibitions and limitations specified under this section to the formula grants part of SEP, the wording of paragraph (a) is changed so that the reference to "this part" becomes "this subpart" as further explained under the revision to 420.12 above. Expenditure limitations that might apply to Special Projects grants are covered under new § 420.38 under Subpart C. In addition, the references in paragraphs (b), (d) and (e) to "this part" are changed to "this subpart" to clarify that the activities referred to are those undertaken pursuant to the SEP formula grants covered by subpart B. To clarify that the activities referred to under paragraphs (e)(3), (e)(5) and (f) are those introduced under paragraph (e), the wording of those paragraphs is changed so that the references to "this paragraph" become "paragraph (e) of this section."

### *Section 420.19 Administrative Review*

To clarify that the administrative review referred to under this section applies only to the formula grants, wording is added to paragraph (e) specifying that it refers to applications for financial assistance "under this subpart." Paragraph (i) is changed so that reference to "this part" becomes "this subpart" to make clear that the State plans referred to are those for the SEP formula grants covered under subpart B.

### *Section 420.33 Application Requirements*

To clarify that the applications referred to under this section are for SEP Special Projects grants, the wording of paragraph (d) is changed so that the reference to "this part" becomes "this subpart", referring to subpart C which covers Special Projects grants.

### *Section 420.35 Application Evaluation*

To clarify that the information in Special Projects applications must meet the requirements under subpart C of the rule, the wording in paragraph (a) is changed so that the reference to "this part" becomes "this subpart."

*New Section 420.38 Special Projects Expenditure Prohibitions and Limitations*

This section is being added to provide that expenditure prohibitions and limitations for Special Projects will be any general prohibitions and limitations under 10 CFR part 600 together with any specific prohibitions and limitations that may be required by the respective end-use sectors providing Special Projects funding, as specified each year by category in the Special Projects solicitation/guidance.

#### **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," 58 FR 51735 (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. Review Under the Paperwork Reduction Act**

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

#### **IX. 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) 586-3142.

#### **X. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996**

The interim 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. DOE will report to Congress on the promulgation of the interim final regulations prior to the effective date set forth at the beginning of this notice.

#### **XI. Review Under the Unfunded Mandates Reform Act of 1995**

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.

#### **XII. 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.

#### **XIII. The Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance number for the State Energy Program is 81.041. The Catalog of Federal Domestic Assistance number for the State Energy Program Special Projects is 81.119.

#### **List of Subjects in 10 CFR Part 420**

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

Issued in Washington, DC, on July 20, 1999.

**Dan W. Reicher,**

*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:

#### **PART 420—[AMENDED]**

1. The authority citation for part 420 continues to read as follows:

**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.*)

#### **PART 420—[AMENDED]**

2. In part 420, revise all references to "Regional Support Office" to read "Regional Office."

3. In part 420, revise all references to "Regional Support Office Director" to read "Regional Office Director."

#### **§§ 420.12, 420.13, 420.17, 420.18, 420.19, 420.33, and 420.35 [Amended]**

4. In subpart B, revise all references to "this part" to read "this subpart" in the following sections:

- a. § 420.12(c).
- b. § 420.13(b)(7) (second occurrence).
- c. § 420.17(b)(3).
- d. § 420.18(a).
- e. § 420.18(b).
- f. § 420.18(d) (two occurrences).
- g. § 420.18(e).
- h. § 420.19(i).

5. In subpart C, revise the references to "this part" to read "this subpart" in the following sections:

- a. § 420.33(d).
- b. § 420.35(a).

#### **§§ 420.13, 420.14 [Amended]**

6. Revise all references to "subpart B of this part" to read "this subpart" in the following sections:

- a. § 420.13(a).
- b. § 420.13(b)(3).
- c. § 420.13(b)(7).
- d. § 420.14(a).

#### **§ 420.14 [Amended]**

7. In section 420.14, revise all references to "this part" to read "subparts A and B of this part" in the following sections:

- a. § 420.14(a).
- b. § 420.14(b)(1)(i).
- c. § 420.14(b)(2).
- d. § 420.14(b)(3).

#### **§ 420.18 [Amended]**

8. In section 420.18, revise the words "this paragraph" to read "paragraph (e) of this section" in the following sections:

- a. § 420.18(e)(3).
- b. § 420.18(e)(5).
- c. § 420.18(f).

#### **§ 420.19 [Amended]**

9. In 420.19, add the words "under this subpart" after the words "financial assistance" in the following paragraph: § 420.19(e).

10. A new section 420.38 is added under subpart C, to read as follows:

#### **§ 420.38 Special projects expenditure prohibitions and limitations.**

(a) Expenditures under the special projects are subject to 10 CFR part 600 and to any prohibitions and limitations required by the DOE programs that are providing the special projects funding.

(b) DOE must state any expenditure prohibitions or limitations specific to a particular category of special projects in the annual SEP special projects solicitation/guidance.

[FR Doc. 99-21896 Filed 8-23-99; 8:45 am]

BILLING CODE 6450-01-P

### **DEPARTMENT OF TRANSPORTATION**

#### **Federal Aviation Administration**

#### **14 CFR Part 71**

[Airspace Docket No. 99-ASO-10]

#### **Establishment of Class D Airspace; Tupelo, MS**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes the Class D airspace at Tupelo, MS. The City of Tupelo, Mississippi Airport Authority has installed a control tower at the Tupelo Municipal—C.D. Lemons Airport. As a result, Class D surface area airspace is required when the control tower is open to accommodate current Standard Instrument Approach Procedures (SIAP) and for Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 2,800 feet MSL within 4.1-mile radius of the Tupelo Municipal—C.D. Lemons Airport. Control tower hours of operation are scheduled for 0600–2200, daily.

**EFFECTIVE DATE:** 0901 UTC, November 4, 1999.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5627.

#### **SUPPLEMENTARY INFORMATION:**

#### **History**

On July 13, 1999, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D airspace at Tupelo, MS, (64 FR 37713). This action provides adequate Class D airspace for IFR operations at Tupelo Municipal—C.D.

Lemons Airport. Designations for Class D airspace extending upward from the surface of the earth are published in FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR part 71.1. The Class D designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal was received.

#### **The Rule**

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Tupelo, MS. The City of Tupelo, Mississippi, has installed a control tower at the Tupelo Municipal—C.D. Lemons Airport. As a result, Class D surface area airspace is required when the control tower is open to accommodate current Standard Instrument Approach Procedures (SIAP) and for Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 2,800 feet MSL within a 4.1-mile radius of the Tupelo Municipal—C.D. Lemons Airport. Control tower hours of operation are scheduled for 0600–2200, daily.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### **List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

#### **Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows: