

STATE ENERGY PROGRAM NOTICE 08-01
EFFECTIVE DATE: March 5, 2008

**SUBJECT: PROGRAM YEAR 2008 STATE ENERGY PROGRAM FORMULA
GRANT GUIDANCE**

PURPOSE

To establish grant guidance and management information for the State Energy Program formula grants for program year (PY) 2008 and provide the final PY 2008 allocations.

SCOPE

The provisions of this guidance apply to States, Territories and the District of Columbia (hereinafter "States") applying for formula grant financial assistance under the Department of Energy's (DOE's) State Energy Program (SEP). Much of the information in this guidance is summarized from the volumes of the Code of Federal Regulations (CFR) applicable to SEP, namely 10 CFR part 420 (covering the State Energy Program) and 10 CFR part 600 (the DOE Financial Assistance Rules). The CFR can be accessed at:

<http://www.gpoaccess.gov/cfr/index.html>

These regulations are the official sources for program requirements.

FUNDING OPPORTUNITY ANNOUNCEMENT (FOA) COVERAGE

The FOA (**Number DE-PS26-08NT00284**) for the 2008 SEP will include the following specific information for applicants and States:

- Application submission dates
- Required forms and documentation

PROGRAM PRIORITIES IN PY 2008

The Department of Energy is encouraging States to develop strategies that align their goals and objectives to the State Energy Program Strategic Plan; the Energy Policy Act of 2005 (EPAct) goal of increasing energy efficiency by 25 percent by 2012; the Advanced Energy Initiative (AEI) and the Energy Independence and Security Act of 2007 (EISA), which the President signed into law in December 2007. Additional information on EISA is available at:

<http://www.whitehouse.gov/news/releases/2007/12/20071219-1.html>

The Strategic Plan for SEP, developed in collaboration with States, was published in February 2007. The plan is available at:

http://www.eere.energy.gov/state_energy_program/sep_publications.cfm

Aligning with these national goals -- reduction of US oil dependency, enhanced resiliency of our energy system and the promotion of economic vitality -- will help to establish SEP as a program that will be addressing national needs at the State and local level.

We request that States continue directing their PY 2008 planning efforts towards market transformation efforts and actions that align with national goals. Market transformation is defined as:

“Strategic interventions that cause lasting changes in the structure or function of a market or the behavior of market participants, resulting in an increase in adoption of energy efficiency and renewable energy products, services, and practices.”

DOE has established the following objectives that complement program goals articulated in the 2007 State Energy Program Strategic Plan:

- Transform energy markets in partnership with States to accelerate near-term deployment of energy efficiency and renewable technologies.
- Promote an integrated portfolio of energy efficiency and renewable energy solutions to meet U.S. energy security, economic vitality, and environmental quality objectives.
- Strengthen core State energy programs to develop and adopt leading market transformation initiatives.

This strategic direction will build on SEP successes and promote a stronger SEP national effort. DOE will enhance the effectiveness of State programs to promote and support market transformation, while maintaining support for formula grants. The restructuring will be guided by the following principles:

- Target strategic market intervention that can cause permanent structural change.
- Identify opportunities for better integration of SEP and State energy initiatives to other EERE technology deployment and market transformation activities.
- Replicate State innovation and best practices.
- Promote collaboration across public and private agencies.
- Foster regional cooperation among State and Federal agencies.
- Improve the way we measure program performance and communicate success.

EXPENDITURES WITHIN A GRANT PERIOD

States are encouraged to expend all obligated funds within the annual grant cycle. If a State has estimated unobligated funds to be carried forward from one year to the next within the five year grant period, they must amend the subsequent state plan and budget to include activities associated with those unobligated funds. When a State's five-year grant is closed out, any remaining unobligated funds are subject to reauthorization approval by the Office of Management and Budget.

LEGISLATION

SEP is authorized under PL 94-385, PL 94-163, PL 95-619, PL 94-580, PL 101-440, PL 102-486, and PL 109-58. All grant awards made under this program must comply with applicable legislation.

The Energy Policy Act of 2005 (EPAcT), PL 109-58, Title I, Subtitle B, Section 123, makes two revisions to the legislation governing SEP. The first amends the provisions regarding State Plans by adding a subsection, as follows:

“(g) The Secretary shall, at least once every 3 years, invite the Governor of each State to review and, if necessary, revise the energy conservation plan of such State submitted under subsection (b) or (e) [*the annual State Plan*]. Such reviews should consider the energy conservation plans of other States within the region, and identify opportunities and actions carried out in pursuit of common energy conservation goals.”

With the issuance of this program guidance, States are invited to review their SEP State Plans with a view toward regional/multi-State collaboration. Building on these regional reviews, we encourage the States to develop collaborative projects and to include them in their SEP State Plans for PY 2008 or 2009. DOE will work with the National Association of State Energy Officials (NASEO) during FY 2008 to carry out activities designed to foster and support regional/multi-State cooperation and collaboration.

The second EPAcT revision amends the provisions regarding the energy efficiency goals established by the States. The legislation reads as follows:

“Each State energy conservation plan with respect to which assistance is made available under this part on or after the date of enactment of the Energy Policy Act of 2005 shall contain a goal, consisting of an improvement of 25 percent or more in the efficiency of use of energy

in the State concerned in calendar year 2012 as compared to calendar year 1990, and may contain interim goals.”

As in 2007, each State must describe in their 2008 State Plan how it intends to achieve 25 percent (or more) along with any initial/preliminary progress toward achieving the improvement goal cited above. (The information shall be included in Item 5 of the Master File section in WinSAGA; see Section 3.0 below).

DOE is cognizant of the fact that many States have developed State Energy Strategic Plans that include energy efficiency and renewable energy goals. Goals that are less than EPCA’s 25 percent requirement may be considered interim goals for meeting that requirement. States that are in the process of developing such plans may submit information on when the plans will be completed. States that have not received State government or legislative direction to develop such plans should provide information in the WinSAGA Master File on their strategies to involve State leadership in developing such plans to address this goal.

REGULATIONS

SEP is governed by program regulations (10 CFR part 420) published in the Federal Register on July 8, 1996, and amended in the Federal Registers dated May 14, 1997, August 24, 1999, and May 1, 2000, and the DOE Financial Assistance Rules (10 CFR part 600). DOE published a Final Rule on October 2, 2006, which amends 10 CFR 420 to incorporate the provisions of the Energy Policy Act of 2005, as described above.

1.0 FUNDING

1.1 General Funding

PY 2008 funding for SEP, requiring DOE approval for expenditure, can come from three sources: (1) Federally appropriated funds; (2) Warner, EXXON, and similar petroleum violation escrow funds; and (3) Stripper Well and other oil overcharge funds (including Texaco) which are subject to Stripper settlement rules.

1.2 Formula Allocations

PY 2008 allocations for SEP consist of \$33,000,000 in Federal funds appropriated in FY 2008. State formula allocations are provided in the table attached to this guidance.

(See 10 CFR Part 420.11 for the allocation process.)

1.3 Match

States must contribute (in cash, in kind, or both) an amount no less than 20 percent of their total Federal formula award.

(See 10 CFR Part 420.12 regarding match.)

1.4 New and Modified Activities Funded Under SEP

Any new and modified SEP initiatives, including those funded through the use of Petroleum Violation Escrow (PVE) funds, must be approved in writing prior to implementation by the appropriate Contracting Officer via amendment to the current grant award. Recipients must ensure that all proposed use of Stripper Well funds have prior review and approval by DOE Headquarters.

2.0 APPLICATIONS FOR SEP GRANTS

Application Package

The application package for SEP grants consists of the State Plan and a number of required forms. The State Plan is the heart of the application package. It is divided into two sections - the Master File and the Annual File (see section 3.0 below).

Applications must be submitted in accordance with the 2008 SEP Funding Opportunity Announcement. Detailed information on the application package and application due dates can be found in Part IV of the Funding Opportunity Announcement, Application and Submission Information.

3.0 STATE PLAN

The State Plan consists of a Master File, covering items that generally do not change from year to year, which would need to be updated only when a change occurs, and an Annual File, covering the activities the State intends to undertake during the year of the grant, which must be updated each year to reflect the current year's activities.

3.1 Master File

The Master File should include, wherever practicable, an explanation of how implementing the plan will conserve energy, how the State will measure progress toward attaining the goal, how the program activities represent a strategy to achieve these goals; an explanation of how the plan satisfies the minimum criteria for the required (mandatory) activities; and a plan for State monitoring that describes how the State conducts the administrative and programmatic oversight for programs implemented by other agencies within the State, contractors employed

by the State, or subrecipients of financial assistance from the State. If a State has completed certain mandatory activities, this may also be indicated in the Master File. A description of how the State will achieve the new energy efficiency goal of 25 percent by 2012 shall be included here. Key elements of the States Strategic Plan, if available, should be included.

3.2 Annual File

The Annual File section of the State Plan describes each market area and program activity for which the State requests financial assistance for a given year, including budget information and milestones for each activity, and the intended scope and goals to be attained either qualitatively or quantitatively. For States using WinSAGA, the SEP Narrative Information Worksheets capture this information.

(See 10 CFR Part 420.13 for more specific requirements on State Plans.)

3.3 State Plan Activity Codes

States should identify program activities under the market areas and topic categories developed in preparation for Grants.gov. Use of the markets and topic categories assists DOE in tracking grant-funded activities and gathering information on SEP regionally and nationwide. DOE is often required to provide analyses, justifications and recommendations based on the information provided by the States. The use of these categories, which are included in the Narrative Information Worksheet, also assists in developing performance metrics for each activity. Definitions of the markets and topic areas can be found on the SEP website at: http://www.eere.energy.gov/state_energy_program/topic_definitions.cfm

3.4 Mandatory Requirements

The following activities and details on compliance are required in each State Plan:

- establish mandatory lighting efficiency standards for public buildings;
- promote carpools, vanpools, and public transportation;
- incorporate energy efficiency criteria into procurement procedures;
- implement mandatory thermal efficiency standards for new and renovated buildings, or in States that have delegated such matters to political subdivisions, adopt model codes for local governments to mandate such measures;
- permit right turns at red traffic lights and left turns from a one-way street onto a one-way street at a red light after stopping; and
- ensure effective coordination among various local, State, and Federal energy efficiency, renewable energy and alternative transportation fuel programs within the State.

(See 10 CFR Part 420.15 for more specific requirements on mandatory activities.)

3.5 Optional Program Activities

States may wish to consider the following program areas for inclusion in their State Plans:

- Programs of public education to promote energy conservation.
- Programs to increase transportation energy efficiency, including programs to accelerate the use of alternative transportation fuels and hybrid vehicles for State government fleets, taxis, mass transit, and privately owned vehicles.
- Programs that encourage the introduction of energy saving technologies in the industry, buildings, transportation and utility sectors and encourage State and industry partnerships that develop and demonstrate advances in energy efficiency and clean technologies.
- Programs for financing energy efficiency and renewable energy capital investments, and programs, which may include loan programs and performance contracting programs for leveraging additional public and private sector funds, and programs which allow rebates, grants, or other incentives for the purchase and installation of eligible energy efficiency and renewable energy measures in 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.
- Programs for encouraging and for carrying out energy audits with respect to buildings and industrial facilities (including industrial processes) within the State.
- Programs to promote the adoption of integrated energy plans which provide for periodic evaluation of a State's energy needs, available energy resources (including greater energy efficiency) and energy costs; and utilization of adequate and reliable energy supplies, including greater energy efficiency, that meet applicable safety, environmental, and policy requirements at the lowest cost.
- Programs to promote energy efficiency in residential housing, such as programs 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 programs for the adoption of incentives for builders, utilities, and mortgage lenders to build, service, or finance energy efficient housing.
- Programs to identify unfair or deceptive acts or practices which relate to the implementation of energy efficient and renewable resource energy measures and to educate consumers concerning such acts or practices.
- Programs 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.
- Programs to promote energy efficiency as an integral part of economic development and environmental planning conducted by State, local, or other governmental entities or by energy utilities.

- Programs to provide training and education to building designers and contractors to promote building energy efficiency.
- Programs for the development of building retrofit standards and regulations.
- Programs to provide support for feasibility studies for the utilization of renewable energy and energy efficiency resource technologies.
- Programs to encourage the use of renewable energy technologies.
- Programs that partner with other State agencies to leverage additional funds, such as public benefits funds and State and local investments in Clear Air Act compliance.
- Collaborative programs for energy efficiency and renewable energy technologies that link a State's energy and environmental objectives. In order to meet the State air quality priorities, these programs could leverage air quality funding to invest in air quality measures such as energy efficiency and renewable energy technologies.

(See 10 CFR Part 420.17 for more specific requirements on optional activities.)

3.6 State Energy Emergency Plans

In conjunction with the SEP State Plan, States are required to file, for information only, an energy emergency plan detailing implementation strategies for dealing with energy emergencies. DOE encourages States to make sure their plans are up to date, given today's environment, and especially in view of recent natural disasters. For States that desire to update their plan, model guidelines have been developed for incorporating energy efficiency and renewable energy technologies into a State's energy emergency plan. These guidelines can be viewed at: <http://www.oe.netl.doe.gov/docs/prepare/EAGuidelines.pdf>

3.7 Expenditures Prohibitions and Limitations

Prohibitions: States are prohibited from using SEP financial assistance:

- for construction, such as construction of mass transit systems and exclusive bus lanes, or for the construction or repair of buildings or structures;
- to purchase land, a building or structure or any interest therein;
- to subsidize fares for public transportation;
- to subsidize utility rate demonstrations or State tax credits for energy conservation or renewable energy measures; or
- to conduct or purchase equipment to conduct research, development or demonstration of energy efficiency or renewable energy techniques and technologies not commercially available.

Limitations: 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.

Demonstrations of commercially-available energy efficiency or renewable energy techniques and technologies are permitted and are not subject to the construction prohibition or the 20 percent on equipment and direct purchase limitations.

A State may use regular or revolving loan mechanisms to fund SEP services which are consistent with the SEP rule and which are included in the approved State plan. Loan repayments and interest on loan funds may be used only for activities which are consistent with the rule and are included in the State's approved plan.

A State may use funds for the purchase and installation of equipment and materials for energy efficiency measures and renewable energy measures, subject to the following:

- such use must be included in the State's approved plan (and if PVE funds are used, the use must be consistent with any judicial or administrative terms and conditions imposed upon State use of such funds).
- such use is limited to no more than 50 percent of all funds allocated by the State to SEP in any given year, regardless of source, except that this limitation shall not include regular and revolving loan programs funded with PVE funds. States may request a waiver of the 50 percent limit from DOE for good cause. For regular and revolving loan funds, loan documents shall ensure repayment of principal and interest within a reasonable period of time, and shall not include provisions for loan forgiveness.

Funds may be used to supplement and no funds may be used to supplant weatherization activities under the Weatherization Assistance Program for Low-Income Persons.

(See 10 CFR Part 420.18 for more detailed expenditure prohibitions and limitations.)

3.8 Program Income

DOE encourages States to earn income in connection with SEP activities to defray program costs. If the State Plan includes such activities, States should include an estimated amount of earned income in the budget portion of the Grant Application. Program income is defined in Federal regulations as gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award. Program income includes but is not limited to:

- Income from fees for services performed.
- The use or rental of real or personal property acquired under Federally-funded projects.
- The sale of commodities or items fabricated under an award.
- License fees and royalties on patents and copyrights.
- Interest on loans made with award funds.

Except as otherwise provided in this subpart, program regulations, or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them. Interest earned through loan fund programs generated by grant-supported activities is treated as program income.

When a State proposes to use funds for a revolving loan fund, they are treated as obligated or encumbered. Once such a program is in place, returned principal and interest collected may be used to make additional loans or to fund the operations of the revolving loan program. During this time, returned principal is not accounted for as program income.

When DOE approves funds for a revolving loan, the State assumes responsibility for the stewardship and ultimate recapture of the principal and any interest at the end of the approved life of the program. These funds must eventually be closed out and a final accounting submitted to DOE. The report should include the amounts of interest collected and principal repayment. The State must apply the remaining principal and interest to restitution (in the case of PVE funds) or to other uses in the program for which they were originally authorized, including a decision on a reasonable timeframe for expenditure. Re-authorization of funds used in the revolving program will be based on State proposals and program rules and regulations along with court orders in effect at that (later) time. The interest would be considered program income when the program ends, and the final accounting report would reflect the balance of funds remaining over and above the original principal after subtracting any operating expenses.

Program regulations govern all funds assigned to SEP activity use, whatever their source. Appropriated funds, PVE funds, an estimated amount for program income, and the State share must all be listed in the budget portion of the Grant Application. All funds must then be spent on the activities described in the Grant Application and addressed in the financial and performance reports required under the grant.

(See 10 CFR Part 600.225[b] and 10 CFR Part 600.101 for further information.)

3.9 Other Grant Budget-Related Items

- A “Waiver of Prior Approval” is required for re-budgeting in excess of 10 percent of the States annual budget.
- The 20 percent required match must be met each year, not over the 5-year grant period.

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