

Template for Expedited NEPA Review of Certain State Energy Program Projects

Purpose: This document provides an optional approach/Template that a State may use to help the Department of Energy (DOE) expedite National Environmental Policy Act (NEPA) review of certain activities (Projects) contained in the State's energy and conservation plan for which the State requests State Energy Program (SEP) funding.

This optional approach/Template builds on the August 21, 2009, draft guidance entitled "Guidance on NEPA Issues for DOE's State Energy Program Grants and Energy Efficiency and Conservation Block Grants" (Guidance). The Template serves as a tool to help States submit clear, revised Narrative Worksheets and Environmental Questionnaires that will likely allow DOE to apply CXs expeditiously to appropriate Projects.

Background and Understanding the Template

Congress authorized the development, implementation and funding of State energy conservation programs in order to "promote the conservation of energy and reduce the rate of growth of energy demand." 42 U.S.C. § 6321(b). Under this program, States submit State energy conservation plans (State Plans) that must, per the statute and its implementing regulations, include certain mandatory features and may include additional, optional features. *See* 42 U.S.C. § 6322(c)-(d); 10 C.F.R. §§ 420.15, 420.17. Under this program, DOE provides Federal funding to States to implement State Plans. DOE's program to provide this financial assistance is known as the SEP.

In light of the unprecedented levels of funding, namely \$3.1 billion, that the American Recovery and Reinvestment Act of 2009 (Recovery Act) has made available to States under the SEP, many States have elected to establish loan or grant programs (Programs) through which they will distribute funds to others. Some States have established broad Programs that would fund everything from retrofitting homes with energy efficient windows to creating large wind farms. Others created several loan or grant programs for a particular type of Project (e.g., solar hot water heaters for residences). States have also proposed directly funding Projects. The States and DOE are attempting to find ways to expedite the processing and awarding of SEP funds.

DOE is required to review and make NEPA determinations on Projects. Some Projects may be eligible for categorical exclusions (CX), while others may require Environmental Assessments (EAs) or Environmental Impact Statements (EISs). If States intend to fund Projects that will have no significant impact on the environment and for which DOE has promulgated a CX,¹ DOE may be able to apply CXs for these Projects or groups of Projects without further NEPA review. The goal of the Template is to give States a

¹ DOE's CXs are listed at 10 C.F.R. Part 1021, Subpart D, Appendices A and B.

straightforward, consistent method for providing information that will help DOE expedite NEPA review for these types of Projects.

To use the Template, a State should submit a revised Narrative Worksheet(s) and Environmental Questionnaire(s) for all Projects it intends to fund that meet the requirements of Part I and Part II below. **The estimated cost of each project proposed for a CX must be included.** The State should present this information using the Template language, including the signature block provided in Part III, and provide it under the signature of an Authorized Signatory. DOE will review the revised Narrative Worksheet(s) and Environmental Questionnaire(s), and for those Projects that meet the requirements in Parts I and II, DOE intends to apply one or more CXs.

Important Considerations

- Using the Template is optional. In providing the Template, DOE in no way intends to discourage States from opting to fund Projects that are not suitable for CXs. A State can use Template language for appropriate Projects, but continue to work with the SEP Project Officer and NEPA Compliance Officer (NCO) to determine the level of NEPA review required for other Projects.
- The State is responsible for informing DOE of any extraordinary circumstances, cumulative impacts, or connected actions that may lead to significant impacts on the environment, or any inconsistency with the “integral elements” related to a particular Project. (These “integral elements” are listed below in Part II.) *See* 10 C.F.R. Part 1021, Appendix B. Where the State informs DOE of any of the above circumstances, DOE will conduct NEPA review for the particular Project.
- Any CX determination that DOE makes on the basis of the Template and its supporting documentation is a finding that a proposed Project will not have significant environmental impacts and meets the requirements of 10 C.F.R. §1021.410 and Appendices A and B. *This determination is separate from an eligibility or award determination.*
- There may be instances where a proposed Project does not fall into one of the Part I categories, but nonetheless arguably would have no significant impact on the environment such that DOE might issue a CX determination for such Project based on information provided by the State. In that case, the State should describe the Project and explain why DOE should apply a CX, but the State should do so on a separate page or separate section from the Template language. For example, a State may propose a wind energy system Project that produces 40KW. Such a Project does not fall into any of the Part I categories because it produces more than 20 KW. *See* Part I below. However, the State may consider the Project physically and functionally the same as a 20 KW Project. In such a case, the State should not amend the Template, for example, by crossing out 20 KW and replacing it with 40 KW. Instead, the State should submit supporting information and explain why such Projects should be categorically excluded.

- Expedited NEPA review based on the Template's language and supporting documents does not preclude DOE from conducting stewardship activities, including post-award audit and oversight of individual Projects or from exercising any other rights under NEPA, the SEP or the Recovery Act.
- States that have questions about how to use the Template should contact the NEPA Compliance Officer and/or Project Officer assigned to them.

TEMPLATE

[State] is revising Narrative Worksheet [PROVIDE IDENTIFIER] and the Environmental Questionnaire for Market Title [NAME] with respect to the following Projects [LIST PROJECTS HERE]. By signing below, [State] provides assurance that all of the listed Projects fall within the bounded categories in Part I below and, moreover, are consistent with the limitations prescribed therein. To assist DOE in satisfying its NEPA obligations, [State] provides, as an attachment to this revised Narrative Worksheet, a completed Environmental Questionnaire.

Part I – Bounded Categories

1. Funding energy efficiency retrofits, provided that:
 - Projects Are Limited To: installation of insulation; installation of energy efficient lighting; HVAC upgrades; weather sealing; purchase and installation of ENERGY STAR appliances; replacement of windows and doors; high efficiency shower/faucet upgrades; and installation of solar powered appliances with improved efficiency.
2. Development, implementation, and installation of onsite renewable energy technology that generates electricity from renewable resources, provided that:
 - Projects Are Limited To:
 - Solar Electricity/Photovoltaic - appropriately sized system or unit on existing rooftops and parking shade structures; or a 60 KW system or smaller unit installed on the ground within the boundaries of an existing facility.
 - Wind Turbine - 20 KW or smaller.
 - Solar Thermal - system must be 20 KW or smaller.
 - Solar Thermal Hot Water - appropriately sized for residences or small commercial buildings.
 - Ground Source Heat Pump - 5.5 tons of capacity or smaller, horizontal/vertical, ground, closed-loop system.
 - Combined Heat and Power System - boilers sized appropriately for the buildings in which they are located.
 - Biomass Thermal - 3 MMBTUs per hour or smaller system with appropriate Best Available Control Technologies (BACT) installed and operated.
3. Development, implementation and installation of energy efficient or renewable energy-powered emergency systems (lighting, cooling, heat, shelter) installed in existing buildings and facilities.

4. Installation of alternative fueling pumps and systems (but not storage tanks) installed on existing facilities (other than a large biorefinery); purchase of alternative fuel vehicles.
5. Development and implementation of training programs.
6. Development and implementation of building codes and inspection services, and associated training and enforcement of such codes in order to support code compliance and promote building energy efficiency.
7. Implementing financial incentive programs such as rebates and energy savings performance contracts for existing facilities or for energy efficient equipment, provided that the incentives are not so large that they would be deemed to be grants that create projects that would not otherwise exist. (For example, giving a wind farm that cost \$100 million a sum of \$50 million and calling it a rebate would not fall within this Bounded Category).

Part II - Integral Element Requirements and Other Conditions

[State] shall fund only Projects that would not:

- (1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, including requirements of DOE and/or Executive Orders;
- (2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators);
- (3) Disturb hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases; or
- (4) Adversely affect environmentally sensitive resources. Environmentally sensitive resources include, but are not limited to:
 - (i) Property (e.g., sites, buildings, structures, objects) of historic, archeological, or architectural significance designated by Federal, state, or local governments or property eligible for listing on the National Register of Historic Places;
 - (ii) Federally-listed threatened or endangered species or their habitat (including critical habitat), Federally- proposed or candidate species or their habitat, or state-listed endangered or threatened species or their habitat;
 - (iii) Wetlands regulated under the Clean Water Act (33 U.S.C. § 1344) and floodplains;

(iv) Areas having a special designation such as Federally- and state-designated wilderness areas, national parks, national natural landmarks, wild and scenic rivers, state and Federal wildlife refuges, and marine sanctuaries;

(v) Prime agricultural lands;

(vi) Special sources of water (such as sole-source aquifers, wellhead protection areas, and other water sources that are vital in a region); and

(vii) Tundra, coral reefs, or rain forests.

Waste Stream Conditions

[State] shall obtain a waste management plan addressing waste generated by each proposed Project prior to funding the Project. This waste management plan will describe the plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead ballasts, lead paint, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed Project. [State] shall make the waste management plan and related documentation available to DOE on DOE's request (for example, during a post-award audit). [State] shall ensure that the Project complies with all Federal, state and local regulations for waste disposal.

NHPA Conditions

[State] and/or other Project proponent shall comply with Section 106 of the National Historic Preservation Act (NHPA). If applicable, the [State] or Project proponent shall contact the State Historic Preservation Officer (SHPO) and the Tribal Historic Preservation Officer (THPO). [State] shall retain sufficient documentation, from the Project proponent or other sources, to demonstrate that the State and/or Project proponent have received required approval(s) from the SHPO or THPO. The State shall deem compliance with Section 106 of the NHPA complete only after it has this documentation. [State] shall make this documentation available to DOE on DOE's request (for example, during a post-award audit).

Cumulative Impacts, Connected Actions and Extraordinary Circumstances

DOE's CXs are not absolute. CXs do not apply to Projects that involve "extraordinary circumstances," connected actions, or cumulative impacts that may have significant environmental impacts. *See* 10 C.F.R. § 1021.410(b). If DOE grants a CX based on descriptions in the Narrative Worksheet and Environmental Questionnaire and the State's assurances, DOE will base its decision on the lack of such "extraordinary circumstances" and significant impacts. [State] shall review section 1021.410 and shall immediately contact DOE if, at any time, it determines that a Project may involve "extraordinary circumstances," cumulative impacts, or connected actions that could have significant environmental impacts. In these instances, the State will withhold funding for the Project until DOE completes NEPA review for the Project.

Part III

On the basis of [State's] assurances in this Narrative Worksheet and Environmental Questionnaire, DOE intends to apply one or more CXs to [State's] funding for the Projects listed above. However, because DOE has only recently started employing this approach, there may be unforeseen circumstances that make it inappropriate to apply a CX to funding for a Project that otherwise meets all the Part I and Part II requirements. DOE does not waive its discretion to decline to apply a CX for Projects under these circumstances.

By signing below, [State] acknowledges the preceding paragraph, agrees to all conditions in Parts I, II and III, and provides its assurance that all statements in the Narrative Worksheet, Environmental Questionnaire, and supporting information are accurate to the best of its knowledge.

Authorized Signatory