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Part II

Department of Energy

Technical Assistance and Energy Conservation Measures: Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions

DEPARTMENT OF ENERGY

10 CFR Part 455

Technical Assistance and Energy Conservation Measures: Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is issuing a final regulation for cost sharing grant programs to reduce the energy use and anticipated energy costs for (1) schools and hospitals and (2) buildings owned by units of local government and public care institutions. These objectives are to be achieved by providing financial assistance for identifying energy conservation maintenance and operating procedures; conducting technical assistance programs to identify and evaluate attainable energy conservation objectives; and, for schools and hospitals, acquiring and installing energy conservation measures, including solar and other renewable resource measures. This is the second and final segment of DOE regulations for implementation of programs established pursuant to Title III of the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619, 92 Stat. 3206. The first portion of the programs provides financial assistance for the conduct of preliminary energy audits and energy audits for schools, hospitals, units of local government and public care institutions pursuant to regulations published in the **Federal Register** on April 2, 1979 (44 FR 19340). Participation in both phases of the programs is voluntary. The Secretary may make grants to schools, hospitals, units of local government and public care institutions for technical assistance programs; to schools and hospitals for energy conservation measures, including solar and other renewable resource measures; and to States for defraying administrative costs.

DATES: This regulation is effective April 17, 1979. States must submit State Plans to the Secretary on or before August 15, 1979. The first grant program cycle for technical assistance and energy conservation measures, including solar and other renewable resource measures, will begin on April 17, 1979 and will end on February 1, 1980.

FOR FURTHER INFORMATION CONTACT:

Michael Willingham, or Ronald Milner, Institutional Buildings Grants Programs Division, Office of Conservation and Solar Applications, Room 4117, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545 (202) 376–4149.

Lewis W. Shollenberger, Jr., or Dennis M. Moore, Office of the General Counsel, Department of Energy, Room 3224, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545 (202) 376–4011.

Mark Friedrichs, Office of Policy and Evaluation, Department of Energy, Room 5316, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20461 (202) 633–8595.

SUPPLEMENTARY INFORMATION:

I. Introduction

With the issuance of this final regulation, the Department of Energy (DOE) amends Chapter II of Title 10, Code of Federal Regulations, by adding Subparts C through I to Part 455. This regulation fulfills the remaining requirements of Title III of the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619, 92 Stat. 3206, which amended Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, 89 Stat. 871, by adding Parts G and H, to establish cost sharing energy conservation grant programs to fund technical assistance programs for schools, hospitals, buildings owned by units of local government and public care institutions, and to fund the acquisition and installation of energy conservation measures, including solar and other renewable resource measures, for schools and hospitals.

On January 5, 1979, DOE published a proposed regulation which described this grant progam and solicited comments from interested persons (44 FR 1580). DOE received and considered 324 written comments and the testimony of 54 persons presented at hearings held in Washington, D.C.; Chicago, Illinois; and Seattle, Washington, on January 22–24, 1979. Summaries of the major comments received, a number of which resulted in changes to the final rule, are discussed below.

On April 2, 1979, DOE published a final regulation implementing the first portion of the energy conservation grant programs established under Title III of NECPA (44 FR 19340). The first portion of these programs will provide financial assistance for the conduct of preliminary energy audits and energy audits to identify buildings suitable for further energy conservation analysis, to identify maintenance and operating changes which could save energy, and to estimate the State-wide need and potential for conserving energy in eligible institutions.

This second portion of the energy conservation grant programs authorized by Title III of NECPA provides financial assistance for schools, hospitals, units of local government and public care institutions and coordinating agencies for conducting technical assistance programs to identify energy and cost savings likely to be realized as a result of modifying maintenance and operating procedures in a building and as a result of implementing energy conservation measures, including solar and other renewable resource measures, in a building. This regulation also provides financial assistance for schools and hospitals and coordinating agencies to acquire and install energy conservation measures to reduce energy consumption or to allow the use of alternative energy sources.

II. Elements of the Program

Initially, a State must formulate a State Plan for the operation of these grant programs and have the State Plan approved by DOE. Upon approval of the State Plan, a State energy agency will receive, review and rank applications for financial assistance for eligible schools, hospitals, units of local government and public care institutions. Applicants must prepare and forward their applications to the State in accordance with this regulation and the approved State Plan. If applications are determined by the State to be eligible for assistance under this regulation and the State Plan, the State will rank all buildings covered by those applications in order of priority for funding. The State will then forward to DOE once each grant program cycle all eligible applications together with its rankings of the buildings covered by those applications. Among other things, the State will also identify those buildings proposed by the State for grant funding, based on the priority ranking, and set forth the funding, by building, recommended for each applicant.

Upon approval of State recommendations, DOE will make grant awards to applicants for up to 50 percent of the cost of a technical assistance program or energy conservation measure. In addition, DOE may make grant awards in excess of 50 percent of total costs to schools or

hospitals in a class of severe hardship in amounts recommended by the State in accordance with its State Plan for up to 90 percent of the cost of a technical assistance program or energy conservation measure. The total amount of all such hardship funding in a State may not exceed 10 percent of funds allocated to that State in a grant program cycle.

A State may also receive grants in amounts not exceeding 5 percent of all grants made in a State during a given grant program cycle for the purposes of defraying the costs of administering technical assistance programs and energy conservation measures grants.

III. Notice of Grant Program Cycle

DOE has elected to use "grant program cycles" for all NECPA Title III grant programs. For purposes of making grants for technical assistance programs and energy conservation measures, including solar and other renewable resource measures, the first grant program cycle begins on the date of publication of this regulation. State Plans under this regulation are due 120 days from the beginning of the cycle. For fiscal year 1978, NECPA authorizes appropriations in the amount of $180 million for schools and hospitals and $17.5 million for units of local government and public care institutions. Subject to the availability of these monies, Table 5 presents the amounts allocated to States for the first grant program cycle. Except as may otherwise be specified by the Secretary, this first grant program cycle for technical assistance and energy conservation measures shall end February 1, 1980.

IV. Discussion of Major Comments and Revisions

State Plan Submissions

Sections 394(a) and 400D(a) of EPCA direct the Secretary to invite State energy agencies of each State to submit State plans to DOE within 90 days after the effective date of this regulation. However, the law also permits the establishment of a longer period of time for this purpose if there is "good cause" for such action. Because the final regulation for preliminary energy audits and energy audits has been so recently issued, and since the development of State Plans in great measure depends on the results of the preliminary energy audits conducted in accordance with those final regulations, there is good cause for extending the time in which State Plans may be submitted to DOE. Accordingly, § 455.91 has been revised to permit 120 days, rather than the 90 days proposed, for their submission. This extension should permit States to conduct a sufficient number of preliminary energy audits to insure complete and comprehensive State energy planning.

Eligible Institutions and Buildings

Several comments addressed the range of institutions that may be eligible to receive grant funding. The definitions that determine which institutions are eligible for Federal grant funds are set forth in 10 CFR 455.2. States, as a result of their licensing and oversight authorities with respect to such institutions, are in the best position to apply those definitions to institutions within their jurisdictions when they review and evaluate grant applications.

Comments also addressed the range of buildings that may be eligible for Federal financial assistance. Buildings covered by applications from eligible institutions that house resources for the arts, humanities and for historic preservation (such as libraries, arts centers, etc.) in connection with schools, hospitals, units of local government and public care institutions may be eligible for financial assistance if such buildings conform to the requirements of Part 455. Although buildings owned by local educational agencies and used primarily as administrative buildings are eligible for preliminary energy audit and energy audit funding, such administrative buildings are not eligible for grants for technical assistance programs or energy conservation measures.

Energy Conservation Maintenance and Operating Procedures

An important element of these grants programs is the identification of energy conservation maintenance and operating procedures which require no significant expenditure of funds. The implementation of such procedures, once identified by an energy audit or technical assistance program, should result in substantial energy savings. Therefore, as a prerequisite to further participation in this program, the proposed regulation required applicants to implement all identified energy conservation maintenance and operating procedures prior to submitting a grant application for a technical assistance program or energy conservation measure.

This requirement has been modified in the final regulation to permit applicants to be eligible for technical assistance program or energy conservation measure grants without having implemented all energy conservation maintenance and operating procedures if satisfactory written justification for not implementing any such procedure is provided. Such justification will be considered satisfactory if it demonstrates that implementation of a maintenance and operating procedure recommended by an energy audit report or technical assistance report would violate an applicable health or safety code, would require special training for maintenance or operating personnel which cannot be completed prior to submitting a grant application, or would create other such overriding circumstances that make implementation impractical.

Technical Assistance Analyst Qualifications

NECPA directs that DOE establish factors which may be used by a State in prescribing criteria for identifying persons qualified to conduct technical assistance programs. It is essential that only those individuals possessing the relevant background, training and experience be considered as qualified technical assistance analysts. Therefore the proposed regulation required as a minimum that technical assistance analysts have experience in energy conservation and be registered professional engineers or architect-engineer teams. Numerous comments were received regarding these qualification factors. Among other things, it was suggested that the qualifications were overly restrictive and that they excluded certain groups from participating in the technical assistance phase of the program. Others suggested that States should be responsible for establishing programs for qualifying technical assistance analysts. A number of comments stated that many architects and architectural firms have the necessary experience to perform technical assistance programs, and suggested that architects be permitted to conduct a technical assistance program independently.

It is the intent of this regulation to establish minimum qualifications for technical assistance analysts to insure that participating institutions select individuals or firms able to perform the very complex and detailed technical assistance program. Accordingly, the final regulation specifies that the technical assistance analyst should be a registered professional engineer or, ideally, an architect and an engineer working as a team. However, the final regulation has been modified to permit a State to specify such alternative qualifications as it may deem appropriate and as are included in its approved State Plan. Such alternative

qualifications must insure that the technical assistance analyst has sufficient experience and training to perform all of the minimum requirements of a technical assistance program.

An architect-engineer team provides an especially suitable combination of professional skills to perform the comprehensive analysis of the building or buildings required for a technical assistance program. Several comments raised questions concerning the effect of the minimum requirements for technical assistance analysts and the contractual relationship between architectural firms and engineering firms which desire to perform jointly technical assistance programs. No prior relationship is required nor was it DOE's intent to preclude either member of the team, individually, from functioning as the prime contractor for a technical assistance program.

Several comments pointed out that the provision which requires that technical assistance analysts be free from conflicting financial interests may prevent technical assistance analysts from performing the detailed design functions which may be necessary under the energy conservation measures phase of these programs. This provision is intended to exclude those individuals having a financial interest in the products or equipment acquired and installed under an energy conservation measures grant. A State must establish procedures, as a part of its State Plan, to implement these requirements. These procedures must also exclude any other individuals having financial interests which conflict with the proper performance of their duties. This requirement should not be construed to preclude technical assistance analysts from performing detailed design or inspection services under the energy conservation measures phase of these programs.

Technical Assistance Procedures

It is essential that a technical assistance program consist of a thorough survey and analysis of both the building envelope and the building's energy-using systems. A few comments suggested that thermographic inspections of the building be required as part of a technical assistance program. While such methods are a valuable tool in analyzing a building, the final regulation does not specify any methods to be utilized as part of a technical assistance program. It is left to the discretion of the technical assistance analyst to select the methods which, in the analyst's judgment, are the most appropriate for the building which is being analyzed.

Eligible Energy Conservation Measures

Several comments suggested that DOE expand the grant programs for schools and hospitals to fund experimental energy conservation measures. A list of previously demonstrated energy conservation measures, including solar and other renewable resource measures, is set forth in § 455.52. Solar measures eligible for funding include both active and passive solar energy systems, as well as other renewable resource measures. This list is not all inclusive. Other measures identified in a technical assistance program or an energy audit performed pursuant to Subpart C of 10 CFR Part 450, which have an average simple payback of more than 1 year and less than 15 years, may be included in any grant application. A complete description of such measures must accompany the application. The description must include calculations and other technical data which indicate the projected cost and energy savings of such measures. An experimental energy conservation measure for which an applicant cannot adequately project costs and energy savings will not be considered for funding.

Consideration of Solar and Other Renewable Resource Measures

In view of comments received, and due to the desirability of increased utilization of solar energy to reduce consumption of non-renewable energy resources, the final regulation reflects greater emphasis on conversions to solar and other renewable resource systems, where appropriate. Specifically, certain basic data regarding a building's potential for solar applications will be collected during the preliminary energy audit and energy audit phase of the program. Upon analysis of preliminary energy audit data, the State should be able to specify in its State Plan the extent to which, and by which methods, utilization of solar systems will be encouraged within that State. Each technical assistance program must include an evaluation of the building's potential for solar conversion and an identification of any known zoning ordinances and building codes which may place restrictions on or barriers to the installation of solar energy systems It is intended that, initially, the technical assistance analyst will evaluate the data collected during the preliminary energy audit and energy audit phase of the program. If, upon completion of this initial evaluation, it is determined that the building has potential for conversion to solar or other renewable resource measures, the technical assistance analyst will undertake a more detailed analysis of the costs and energy cost savings associated with the acquisition and installation of such measures.

Leased Equipment

Several comments suggested that the installation and use of equipment which is normally leased, such as computer control systems, qualify as an eligible energy conservation measure. The final regulation has been changed to permit grants for the costs of installing and connecting leased equipment, such as a computer-operated energy monitoring or control system. However, the recurring lease costs associated with leased equipment, which typically include maintenance and service costs, are not eligible for funding. To calculate the simple payback period for leased equipment, the procedure set forth in § 455.52(w) shall be used. This procedure is required to insure that recurring lease costs are considered in the overall evaluation of such a proposed measure.

Starting Date for Eligible Programs and Measures

Several comments requested a change in a provision of the proposed regulation to permit the funding of technical assistance programs and energy conservation measures, including solar and other renewable resource measures, begun prior to November 9, 1978. The conference committee report accompanying NECPA indicates that project costs incurred prior to November 9, 1978 are not to be considered eligible for grant funding. Accordingly, this suggestion has not been adopted. However, expenditures for a technical assistance program commenced on or after November 9, 1978, may be wholly or partially classified by the Secretary as non-Federal funds for the purposes of matching a grant for the acquisition and installation of energy conservation measures identified by such technical assistance program.

Applicant's Submissions to States

A number of comments raised questions concerning the manner in which institutions are to file applications for technical assistance program grants and energy conservation measures grants. The requirements governing applications for grant funds are contained in Subpart E of Part 455 and have been modified only slightly from their proposed form. Since applicants must forward grant

applications to a State for review, evaluation and ranking, applicants may also be required to submit their grant applications in conformity with any additional procedures or requirements prescribed by the State in the State Plan. This regulation, however, does not prohibit two or more institutions from submitting a single application to the State. Indeed, DOE encourages States to permit institutions to apply for grant funds through a coordinating agency (such as the State, a State hospital or school facilities agency, or a regional or district organization representing schools or hospitals) which could act as an agent for institutions whose buildings are covered by the coordinating agency's application. The use of coordinating agencies may: (1) Reduce the administrative workload for institutions, (2) introduce economies of scale for applicants, (3) allow institutions, which might otherwise lack the expertise or resources, to participate, and (4) expedite the processing of applications and the administration of the program.

State Evaluation and Ranking of Grant Applications

The State evaluation and ranking requirements set forth in §§ 455.70 and 455.71 elicited a number of comments and requests for clarification. These provisions have been revised primarily to incorporate several suggested changes to the ranking criteria and to clarify the procedure to be used for ranking applications for technical assistance programs and energy conservation measures.

The evaluation and ranking process prescribed by Subpart F requires the State to make two determinations. First, a State will review and evaluate an application to determine whether the applicant is eligible for financial assistance and thus a candidate for inclusion in the State's ranking process. Eligible applicants must conform to all of the requirements of Subparts C, D and E of Part 455, the requirements of the approved State Plan, any State environmental laws, and any other applicable laws or regulations. Applications of schools and hospitals must receive certifications from the State school or hospital facilities agency, as the case may be, in order to be eligible for Federal assistance. This certification process will take place concurrently with the State's evaluation and ranking in a manner such that no unnecessary delay results. An applicant that does not conform to these requirements or that fails to receive certification is not eligible for Federal assistance and its application should be returned immediately to it, together with an explanation of the application's deficiencies.

Second, a State will rank buildings for which an eligible applicant has requested financial assistance to determine, in accordance with the criteria established in its State Plan, which buildings should be recommended for up to 50 percent funding. Although a few comments recommended that States rank metered facilities rather than buildings, DOE has retained the more refined requirement of a building-by-building ranking, since estimated energy consumption for individual buildings can be calculated using standard engineering procedures.

Section 455.71(a) establishes detailed criteria for ranking buildings for technical assistance programs. Buildings will be ranked on the basis of energy conservation potential as indicated by energy audits of those buildings and in accordance with the methods prescribed by the State Plan. Preference will be given to buildings for which an energy audit was completed without the use of Federal funds in the case of buildings having equivalent energy conservation potential

The ranking criteria applicable to energy conservation measures set forth in § 455.71(b) have been modified only slightly to reflect, among other things, a preference for savings of oil over savings of natural gas. Weights for each prescribed criterion will be assigned by the State.

The product of the State ranking process for technical assistance programs and energy conservation measures will be three lists of buildings ranked in order of descending priority based upon the criteria prescribed by § 455.71. There will be a separate list of buildings for technical assistance programs for units of local government and public care institutions, for technical assistance programs for schools and hospitals, and for energy conservation measures for schools and hospitals.

At the request of an applicant for an energy conservation measure grant, a group of buildings may be ranked as a single building if the application requests funding for the acquisition and installation of a single energy conservation measure which directly involves all of the buildings. This permits applicants the option to seek funding for measures that affect more than one building. In such cases, an applicant will submit the average simple payback of the single measure proposed for all of the buildings affected by that measure as well as averaged data for all the buildings for the other ranking criteria. States will rank the buildings covered by such an application based upon those averages.

Within each list, a State will indicate the ranking and the amount of financial assistance requested for each eligible building. The State will also indicate the amount of funding recommended by the State for each building. Where the amount recommended for any building by the State is less than the amount requested by the applicant, the State shall also indicate the reason for such recommendation. Those buildings ranking highest on the list will receive financial assistance within the amount of funds allocated for each State for grants up to 50 percent of eligible costs.

The State will perform two additional reviews of each list of school and hospital buildings. First, the State must assure that neither schools nor hospitals are recommended for more than 70 percent of the total funds allocated for technical assistance programs and energy conservation measures.

Second, the State must evaluate school and hospital buildings for which "severe hardship" claims have been made. With respect to those school and hospital applications requesting such funding, only those applications which would otherwise qualify for grants up to 50 percent may be considered by the State. For such qualified applications, the State must perform a separate evaluation of the relative need of each applicant. The evaluation must be performed in accordance with the procedures established by the State in its State Plan in accordance with the criteria set forth in § 455.72(d)(2). The results of this evaluation will determine the amount of additional Federal funding, in excess of 50 percent, for which each applicant is qualified. After this evaluation has been completed, buildings in a class of severe hardship shall be recommended for funding in descending order of their energy saving potential, determined pursuant to §§ 455.71 (a) and (b). These results will be recorded within each list for schools and hospitals by indicating: (1) The amount of additional hardship funding requested for each building by each application qualified for hardship funding; and (2) the amount of hardship funding recommended by the State based upon relative need, as determined in accordance with its State Plan, to the limit of the hardship funds available.

Requests for hardship funding, as determined by the State and indicated in the State ranking, will be approved by DOE to the extent that the total of all

such requests for hardship funding does not exceed 10 percent of the total allocation of funds to the State for schools and hospitals in the applicable grant programs cycle.

Prior to forwarding applications to the Secretary, each State must certify that each institution recommended for funding in any amount has given its assurance that it is willing and able to participate in the program based on the amounts recommended by the State and set forth in the State's ranking of all applications pursuant to § 455.71.

It is anticipated that in some cases the amounts requested by eligible applicants will be less than the total amount allocated to the State in a particular grant program cycle. In such cases, the State is exempt from the ranking requirements of § 455.71. With respect to eligible applications for schools and hospitals, the State is exempt from the ranking requirements only if the total amount requested for grants up to 50 percent is less than or equal to the funds available for such grants and the total amount recommended for hardship funding is less than or equal to the amount reserved by the State for that purpose. Unobligated funds remaining at the close of a grant program cycle will be reallocated, if available, to all States in the succeeding grant program cycle.

Economic Analysis Ranking Factor

NECPA requires that DOE establish criteria for ranking applications for energy conservation measures, including solar and other renewable resource measures. The primary ranking factor selected for this phase of the program is the measure's cost-effectiveness. The proposed regulation specified a simple payback methodology for this ranking factor. A number of comments were received regarding the use of this methodology. Most of the comments indicated that simple payback is not as accurate in determining the cost-effectiveness of a measure as is life-cycle costing. A life-cycle costing methodology considers the time value of money, fuel price escalations and future operating, maintenance and other costs over the life of the building or measure. The use of discounted payback was also suggested. Because simple payback provides only an approximate indication of actual cost-effectiveness, DOE has undertaken the development of a life-cycle costing methodology which it currently plans to adopt for evaluating energy conservation measures under this program. However, this methodology will not be available for use during the first grant program cycle. Therefore, the regulation specifies the use of the simple payback methodology, but encourages institutions to obtain a life-cycle cost analysis for use in their decision-making process for the first grant program cycle.

Several comments were also received regarding the 15-year simple payback period limitation on energy conservation measures, including solar and other renewable resource measures. Comments were approximately balanced between those favoring a shorter payback period limitation and those favoring a longer payback period limitation. Other comments suggested that States be responsible for determining the limitation. No change has been made to the final regulation. The 15-year simple payback limitation on eligible measures approximates the limit that would result if measures were determined to be cost-effective by a life-cycle cost analysis (assuming a 10-percent real discount rate, current fuel price forecasts and a 25-year useful life of the measure or building). Since DOE intends to amend this regulation to substitute life-cycle cost analysis for simple payback, this provision may be deleted at that time.

State Forwarding of Grant Applications

A number of comments suggested changes to the requirement of § 455.72 that States forward grant applications to DOE only once each grant program cycle. Some comments proposed to permit States to forward applications for financial assistance continuously or at several times during the grant program cycle to reduce administrative burdens which might delay the attainment of energy savings. Since NECPA specifically limits the frequency of application submittals, this provision has not been altered. Further, this single submittal is likely to result in a more equitable allocation of the available funds by requiring the simultaneous evaluation of all applications received during a single grant program cycle.

Grant Awards

Several comments requested that the regulations clarify whether additional funding will be available to an applicant in the same or a subsequent grant program cycle to complete a technical assistance program or energy conservation measure that has already been funded by a grant. Section 455.80 has been amended to specify that no additional assistance will be available to fund cost overruns. In order to promote accurate cost calculation and thereby assure that only cost-effective technical assistance programs and energy conservation measures, including solar or other renewable resource measures, receive Federal assistance, DOE shall award only one grant for any technical assistance program or energy conservation measure for any building.

State Administrative Costs

The subject of grant awards to defray State expenses incurred in administration of this program elicited numerous comments from States and institutions. Several comments favored the proposed provision allowing 50 percent matching grants to States in amounts not exceeding 5 percent of all grants awarded to institutions within a State. Some comments, however, suggested awarding such grants as early as possible in the grant program cycle to help cover the significant expenditures required for a State to develop a State Plan and to establish its system for accepting and reviewing grant applications before they are submitted to DOE. It was also suggested that DOE raise the allowable percentage of funding for the States.

DOE still anticipates that 5 percent of the grants awarded within a State will provide the State with adequate funding, when coupled with State matching funds, to administer effectively this phase of the program. However, §§ 455.62 and 455.83 have been revised to permit earlier grant awards for this purpose. As revised, a State may apply for an administrative expense grant concurrently with submission of its State Plan. For subsequent grant program cycles, a State may apply for an administrative expense grant immediately upon publication by DOE of the amounts allocated for among the States for that grant program cycle. Up to 2 percent of the amounts allocated to the State for grants for technical assistance programs and energy conservation measures will be available for administrative expense grants. For the first grant program cycle, DOE plans to award these 2 percent grants for State administrative costs at the time the State Plan is approved.

Subsequent to this initial application for administrative costs, States may forward a second application to DOE during each grant program cycle at the time the State forwards all the grant applications eligible for technical assistance programs and energy conservation measures. At that time, States may apply for an administrative expense grant up to an amount equal to the difference between the initial amount awarded for an administrative expense grant for that grant program cycle and 5 percent of the total of all

grants recommended for institutions in that State in the same grant program cycle. All grants for State administrative expenses are subject to the 50 percent matching requirements. The total of all amounts requested to defray State administrative expenses plus the total of all amounts recommended to fund technical assistance programs and energy conservation measures must be less than or equal to the total amount allocated for the State.

The limitations on State administrative expenses set forth in § 455.83 were also revised pursuant to comments received. States' expenses may now include the acquisition of services, such as computer, printing or other services, directly supporting the State's administration of the grant program. In addition, the cost limit on any single item of equipment acquired was raised from $200 to $300. Items costing in excess of $300 may only be purchased with the express consent of the Secretary.

Allocation Formula

The formula established for allocating funds among the States for schools and hospitals and for units of local government and public care institutions is designed to reflect the relative need for financial assistance of each State. The population and climate of each State is considered to be the best indicator of need, because these two factors tend to reflect the number of buildings eligible for assistance and the level of energy use within such buildings, respectively. Total energy use of the eligible institutions within any State is expected to be approximately in direct proportion to the product of these factors. Bureau of Census estimates were used as the basis for all population data. Population-weighted State averages for heating and cooling degree days, as determined by the National Oceanic and Atmospheric Administration, were used to indicate climate. Although heating and cooling degree days do not precisely reflect the different energy requirements of buildings, they are the only indicators of climate currently available on a population-weighted basis for all States. DOE is examining possible alternatives to the use of heating and cooling degree days in response to comments concerning the formula. These alternatives will not be available for use in computing State allocations during the first grant program cycle. If an alternative measure of climate is developed which more precisely reflects actual energy use and the potential for energy conservation, the allocation formula established by these rules will be appropriately amended at that time.

Fuel cost is used in the allocation formula to reflect the special needs of those regions where the price of energy is somewhat higher than the national average. And, finally, a portion of the available funds is allocated equally among all States in order to reflect the minimum requirements necessary to participate in the program and to assure that no State (except the District of Columbia and the eligible territories) receive less than 0.5 percent of the total amounts appropriated, as required by section 398 of EPCA.

A number of comments stated that the formula for allocating funds among States was incorrect and that the allocation factors given in Table 4 of the proposed regulation could not be derived with the data and formula given. The regulations have been changed to clarify the factors in the allocation formula. The denominator of the fuel cost factor is the summation of the fuel cost numerators of all States. The denominator of the population-climate factor is the summation of the population-climate numerators of all States. In addition, there were several errors in the climate data given in Table 3 of the proposed regulation. The correct data for fuel cost, population and climate are set forth below in Tables 1, 2 and 3, respectively. New allocation factors appear in Table 4, and the allocation of funds among States for local government and public care buildings and for schools and hospitals for the first grant program cycle are given in Table 5.

Table 1.—*Oil Import Price: 15.32*

[Demand Region Average Retail Price Summary in 1978 $/Million Btu's]

Sector (fuel)	Demand regions										
	Nw.-Eng.	N.Y./N.J.	Mid-Atl.	S.-Atl.	Midwest	S.-West	Central	N.-Cntrl.	West	N.-West	Total
Residential	5.11	5.66	6.14	7.67	4.56	5.20	4.41	4.10	5.59	4.82	5.39
(Elect.)	13.31	15.91	13.89	11.05	12.00	11.67	12.70	9.85	12.68	5.83	11.71
(Dist.)	3.89	3.97	4.18	4.23	3.79	3.90	3.69	3.87	3.85	3.85	3.93
(LG)	3.90	4.01	4.32	4.32	3.99	3.92	3.91	4.07	3.94	3.94	4.04
(Coal)	2.07	1.95	1.84	1.97	1.75	1.63	1.68	1.37	1.75	1.76	1.82
(NG)	4.53	4.13	3.56	3.15	3.11	2.39	2.11	2.26	3.35	3.65	3.09
Commercial	4.78	6.45	8.45	6.85	5.15	6.02	6.05	5.26	6.65	4.22	5.85
(Elect.)	13.22	17.69	13.31	11.18	11.98	11.26	12.43	8.80	11.71	5.81	12.01
(Dist.)	3.64	3.71	3.78	3.76	3.80	3.64	3.51	3.64	3.56	3.56	3.68
(Resid.)	2.87	2.96	3.27	2.90	3.12	2.97	3.10	3.01	2.92	2.85	2.99
(LG)	3.27	3.27	3.27	3.27	3.49	3.27	3.46	3.47	3.27	3.27	3.38
((Coal)	2.07	1.95	1.84	1.97	1.75	1.63	1.68	1.37	1.75	1.76	1.82
(Asphalt)	3.16	3.16	3.16	3.17	3.20	3.13	3.15	3.19	3.07	3.07	3.15
(NG)	3.68	3.53	3.11	2.83	2.78	2.46	3.46	3.13	2.83	3.05	2.94
Raw material [1]	3.43	3.35	3.18	2.92	3.25	3.27	3.28	3.20	3.08	2.92	3.22
(LG)	3.61	3.61	3.61	3.56	3.59	3.54	3.52	3.56	3.44	3.44	3.54
(Oil)	3.16	3.16	3.16	3.17	3.20	3.13	3.15	3.19	3.07	3.07	3.15
(NG)	3.29	2.83	2.89	2.19	2.44	2.16	3.10	2.85	2.44	2.37	2.33
Industrial [3]	4.86	4.54	3.92	4.98	3.88	2.96	4.79	3.16	3.85	3.28	3.79
(Elect.)	10.97	9.47	10.97	9.40	9.37	9.57	10.55	7.30	9.96	3.86	9.29
(Dist.)	3.84	3.89	3.86	3.85	3.60	3.63	3.50	3.68	3.58	3.56	3.87
(Resid.)	2.92	3.06	3.19	2.87	3.10	2.96	3.07	2.96	2.92	2.97	2.99
(LG)	3.66	3.74	3.95	3.96	3.82	3.70	3.78	3.65	3.69	3.89	3.79
(Coal)	2.07	1.95	1.84	1.97	1.75	1.63	1.68	1.37	1.75	1.78	1.76
(Met Coal [2])	2.16	2.08	1.97	2.10	2.02	2.12	1.95	2.21	2.59	2.70	2.03
(Naphtha)	3.81	3.81	3.61	3.56	3.59	3.54	3.52	3.56	3.44	3.44	3.56
(NG)	3.29	2.83	2.69	2.24	2.44	2.16	3.10	2.65	2.44	2.37	2.31
Transportation	5.74	5.79	5.67	5.83	5.87	5.22	5.52	5.49	5.38	5.42	5.55
(Elect.)	12.44	14.25	12.35	10.33	10.61	10.84	11.74	6.59	11.37	4.96	13.22
(Dist.)	4.79	4.84	5.00	4.99	4.75	4.77	4.85	4.62	4.71	4.71	4.82
(Resid.)	2.92	3.06	3.19	2.87	3.10	2.96	3.07	2.96	2.92	2.97	2.99
(LG)	3.27	3.27	3.27	3.27	3.49	3.27	3.46	3.47	3.27	3.27	3.31
(Gasoline)	6.05	6.27	6.03	5.94	5.96	5.73	5.83	5.87	6.01	6.02	5.96
(Jet Fuel)	4.12	4.23	4.49	4.54	4.05	4.16	3.93	4.16	4.10	4.10	4.22
Average price	5.16	5.62	5.08	5.76	4.87	3.83	5.01	4.40	5.11	4.42	4.82

[1] Liquid gas in the raw material sector includes liquid gas feedstock.
[2] Met Coal includes 70% premium coal and 30% bituminous low sulfur coal.
[3] Industrial sector here does not include refineries.

Source: Energy Information Administration. Prepared for the Administrator's Annual Report, 1977 (1985 Series C projections).

Table 2

State	Population (in thousands)
Alabama	3,665
Alaska	382
Arizona	2,270
Arkansas	2,109
California	21,520
Colorado	2,583
Connecticut	3,117
Delaware	582
Dist. of Columbia	702
Florida	8,421
Georgia	4,970
Hawaii	887
Idaho	831
Illinois	11,229
Indiana	5,302
Iowa	2,870
Kansas	2,310
Kentucky	3,428
Louisiana	3,841
Maine	1,070
Maryland	4,144
Massachusetts	5,809
Michigan	9,104
Minnesota	3,965
Mississippi	2,354
Missouri	4,778
Montana	753
Nebraska	1,553
Nevada	810
New Hampshire	822
New Jersey	7,336
New Mexico	1,168
New York	18,084
North Carolina	5,469
North Dakota	643
Ohio	10,690
Oklahoma	2,766
Oregon	2,329
Pennsylvania	11,862
Rhode Island	927
South Carolina	2,848
South Dakota	686
Tennessee	4,214
Texas	12,487
Utah	1,228
Vermont	476
Virginia	5,032
Washington	3,612
West Virginia	1,821
Wisconsin	4,609
Wyoming	390
American Samoa	28
Guam	100
Puerto Rico	2,951
Virgin Islands	83
U.S. total	217,820

Table 3

State	Heating degree days	Cooling degree days
Alabama	2,695	1,999
Alaska	12,012	8
Arizona	2,298	2,624
Arkansas	3,214	1,892
California	2,728	669
Colorado	7,004	336
Connecticut	6,130	507
Delaware	4,780	1,021
Dist. of Columbia	4,750	1,415
Florida	704	3,368
Georgia	2,684	1,859
Hawaii	0	3,528
Idaho	6,917	415
Illinois	6,058	950
Indiana	5,713	952
Iowa	6,834	876
Kansas	4,900	1,543
Kentucky	4,414	1,254
Louisiana	1,701	2,636
Maine	8,002	222
Maryland	4,782	1,015
Massachusetts	6,232	467
Michigan	6,739	593
Minnesota	8,729	473
Mississippi	2,411	2,223
Missouri	5,024	1,332
Montana	8,292	239
Nebraska	6,347	1,099
Nevada	4,370	1,500
New Hampshire	7,535	297
New Jersey	5,470	877
New Mexico	4,766	972
New York	5,899	677
North Carolina	3,392	1,454
North Dakota	9,484	421
Ohio	5,779	797
Oklahoma	3,508	2,003
Oregon	5,254	193
Pennsylvania	5,755	723
Rhode Island	5,924	445
South Carolina	2,697	1,885
South Dakota	7,681	801
Tennessee	3,801	1,458
Texas	2,015	2,669
Utah	8,580	630
Vermont	7,873	293
Virginia	4,286	1,113
Washington	5,752	171
West Virginia	5,108	849
Wisconsin	7,531	541
Wyoming	7,895	328
American Samoa	0	5,325
Guam	0	5,011
Puerto Rico	0	4,907
Virgin Islands	0	5,427
U.S. Total	270,449	77,280

Table 4

State	0.07/n + 0.1(Sfc)/Nfc + 0.83(SP)(SC)/(NPC) = Allocation Factor			
Alabama	.0013	.0021	.0112	.0146
Alaska	.0013	.0018	.0030	.0059
Arizona	.0013	.0019	.0073	.0104
Arkansas	.0013	.0014	.0070	.0097
California	.0013	.0019	.0478	.0507
Colorado	.0013	.0016	.0123	.0152
Connecticut	.0013	.0019	.0135	.0166
Delaware	.0013	.0019	.0022	.0053
Dist. of Columbia	.0013	.0019	.0028	.0060
Florida	.0013	.0021	.0223	.0257
Georgia	.0013	.0021	.0147	.0181
Hawaii	.0013	.0019	.0020	.0052
Idaho	.0013	.0016	.0040	.0069
Illinois	.0013	.0017	.0512	.0542
Indiana	.0013	.0017	.0230	.0260
Iowa	.0013	.0018	.0144	.0175
Kansas	.0013	.0018	.0097	.0128
Kentucky	.0013	.0021	.0126	.0160
Louisiana	.0013	.0014	.0108	.0135
Maine	.0013	.0019	.0057	.0089
Maryland	.0013	.0019	.0156	.0188
Massachusetts	.0013	.0019	.0253	.0285
Michigan	.0013	.0017	.0434	.0464
Minnesota	.0013	.0017	.0237	.0267
Mississippi	.0013	.0021	.0071	.0105
Missouri	.0013	.0018	.0198	.0229
Montana	.0013	.0018	.0042	.0071
Nebraska	.0013	.0018	.0075	.0106
Nevada	.0013	.0019	.0023	.0055
New Hampshire	.0013	.0019	.0042	.0074
New Jersey	.0013	.0021	.0303	.0336
New Mexico	.0013	.0014	.0044	.0070
New York	.0013	.0021	.0774	.0807
North Carolina	.0013	.0021	.0172	.0206
North Dakota	.0013	.0016	.0041	.0070
Ohio	.0013	.0017	.0457	.0487
Oklahoma	.0013	.0014	.0099	.0126
Oregon	.0013	.0018	.0083	.0112
Pennsylvania	.0013	.0019	.0500	.0531
Rhode Island	.0013	.0019	.0038	.0070
South Carolina	.0013	.0021	.0085	.0119
South Dakota	.0013	.0018	.0038	.0067
Tennessee	.0013	.0021	.0144	.0178
Texas	.0013	.0014	.0381	.0407
Utah	.0013	.0016	.0058	.0087
Vermont	.0013	.0019	.0025	.0057
Virginia	.0013	.0019	.0177	.0208
Washington	.0013	.0016	.0139	.0168
West Virginia	.0013	.0019	.0071	.0102
Wisconsin	.0013	.0017	.0242	.0272
Wyoming	.0013	.0016	.0021	.0050
American Samoa	.0013	.0019	.0001	.0032
Guam	.0013	.0019	.0003	.0035
Puerto Rico	.0013	.0021	.0094	.0128
Virgin Islands	.0013	.0021	.0003	.0036
U.S. Total	.0700	.1000	.8300	1.0000

Table 5

State	Allocation Factor	Schools & [1] Hospitals	Units of Local [1] Government & Public Care Institutions
Alabama	.0146	$2,825,825	$255,269
Alaska	.0059	1,059,528	103,010
Arizona	.0104	1,878,158	182,404
Arkansas	.0097	1,744,065	169,562
California	.0507	9,130,947	887,731
Colorado	.0152	2,741,280	266,513
Connecticut	.0166	2,994,044	291,088
Delaware	.0053	960,830	93,414
Dist. of Columbia	.0060	1,072,309	104,252
Florida	.0257	4,627,242	449,871
Georgia	.0181	3,255,298	316,487
Hawaii	.0052	933,896	90,796
Idaho	.0069	1,235,391	120,107
Illinois	.0542	9,756,588	948,557
Indiana	.0260	4,677,807	454,787
Iowa	.0175	3,152,824	306,525
Kansas	.0128	2,304,189	224,018
Kentucky	.0160	2,886,435	280,626
Louisiana	.0135	2,434,027	236,642
Maine	.0089	1,601,455	155,697
Maryland	.0166	3,379,453	328,558
Massachusetts	.0285	5,129,224	498,875
Michigan	.0464	8,357,819	812,548
Minnesota	.0267	4,812,300	467,863
Mississippi	.0105	1,888,195	183,575
Missouri	.0229	4,118,238	400,384
Montana	.0071	1,272,836	123,748
Nebraska	.0106	1,915,307	186,210
Nevada	.0055	966,773	95,936
New Hampshire	.0074	1,324,786	128,799
New Jersey	.0336	8,055,483	588,728
New Mexico	.0070	1,267,891	123,248
New York	.0807	14,531,860	1,412,820
North Carolina	.0206	3,714,978	361,178
North Dakota	.0070	1,266,401	123,122
Ohio	.0487	8,773,118	852,942
Oklahoma	.0126	2,268,269	220,526
Oregon	.0112	2,007,741	195,197
Pennsylvania	.0531	9,566,916	930,117
Rhode Island	.0070	1,262,250	122,719
South Carolina	.0119	2,139,013	207,960
South Dakota	.0067	1,201,941	116,855
Tennessee	.0178	3,206,418	311,735
Texas	.0407	7,334,243	713,051
Utah	.0087	1,557,500	151,424
Vermont	.0057	1,025,966	99,747
Virginia	.0208	3,747,870	364,378
Washington	.0168	3,027,809	294,370
West Virginia	.0102	1,836,072	178,507
Wisconsin	.0272	4,896,400	476,039
Wyoming	.0050	895,907	87,102
American Samoa	.0032	584,782	56,854
Guam	.0035	626,017	60,863
Puerto Rico	.0128	2,297,382	223,357
Virgin Islands	.0036	653,839	63,568
U.S. Total	1.0000	180,000,100	17,499,950

[1] Allocations are subject to availability of funds.

Several comments expressed doubt as to whether the formula set forth in § 455.101, allocating appropriations among the States, conformed to the requirements of sections 398 and 400H of EPCA. The formula fully complies with the requirements of the law. Pursuant to section 400H of EPCA, the Secretary must allocate grants for units of local government and public care institutions among the States based upon the population and climate of each State and such other factors as the Secretary deems appropriate. The Secretary must also assure that the funds appropriated for grants to schools and hospitals are allocated among the States on the basis of a formula to be prescribed by rule in accordance with the provisions of section 398 of EPCA. Since population and climate factors are to be the principal basis for allocating funds for schools and hospitals, as well as for units of local government and public care institutions, DOE has determined that it is equitable and appropriate to use the same formula for allocating among the States all funds appropriated under Title III for technical assistance programs and energy conservation measures. In conformity with the requirements of section 398 of EPCA, 10 percent of the amounts available will be allocated taking into account energy costs. Another 80 percent of the amounts available will be allocated taking into account the population and climate of each State. DOE has decided to allocate the remaining 10 percent of the available funds so that 7 percent will be divided equally among all States and the remaining 3 percent will be allocated on the basis of population and climate, bringing the total percentage allocated on the basis of population and climate to the 83 percent figure set forth in § 455.101. This formula is used to assure that no eligible State receives less than 0.5 percent of the funds allocated among the States.

The additional requirement to allocate 10 percent of the total available for schools and hospitals determined to be in a class of severe hardship (for additional financial assistance in excess of the 50 percent Federal share, up to 90 percent of the costs of technical assistance programs and energy conservation measures) is satisfied by the requirement that each State reserve 10 percent of its allocation for schools and hospitals each year to provide this additional financial assistance.

State and Grantee Reporting Requirements

Sections 455.63 and 455.73 have been revised in the final regulation to include the requirement that States and grantees which have received financial assistance for energy conservation measures submit regular reports on energy use. These reports are intended to indicate the energy use reductions

that have been realized as a result of energy conservation maintenance and operating procedures and energy conservation measures. This requirement was added to insure that the States and DOE have available accurate information on the actual energy savings resulting from these programs. Further, these reports will encourage participating institutions to establish sound, ongoing energy management practices. An essential ingredient of any effective energy management program is the monitoring of actual energy use levels. These practices are expected to provide significant long-term benefits to institutions in maintaining efficient operations. Grantees will submit reports annually to the States. The States will summarize the reports submitted by the grantees and report the results to DOE in an annual report. Data and information contained in the reports prepared by the grantees will be collected and maintained on a monthly basis or for a period consistent with the billing cycle associated with the relevant fuel type. This reporting requirement will apply for three years or for the life of these programs, whichever is shorter.

Comments DOE Could Not Incorporate

DOE received many comments in response to the notice of proposed rulemaking which suggested revisions to the regulation which the Department was unable to incorporate in the final regulation. These comments included suggestions to: eliminate the matching funds requirement; fund energy conservation measures for units of local government and public care institutions; permit the funding of administrative buildings owned by local education agencies; alter or eliminate the requirement for conformity with the provisions of the Davis-Bacon Act; fund technical assistance programs and energy conservation measures commenced prior to November 9, 1978; eliminate the requirement that funds not obligated be reallocated in the next grant program cycle; and permit units of local government and public care institutions to qualify for hardship funding. Each of these comments proposes a revision to a specific requirement of NECPA. Thus, DOE could not and did not incorporate these comments in this regulation.

V. Additional Information

Environmental Assessment

DOE prepared an environmental assessment of the entire Title III NECPA programs. Notice of the public availability of that environmental assessment, together with the negative determination of environmental impact reached pursuant to an evaluation of the environmental assessment, was published in the **Federal Register** on March 12, 1979 (44 FR 13554). The negative determination concluded that the programs established by Title III of NECPA did not constitute major Federal actions significantly affecting the quality of the human environment pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*). No material comments were received during the public comment period. Consequently, DOE has finalized, and will act in accordance with, that negative determination.

Regulatory Analysis and Effective Date

The proposed regulation was reviewed in accordance with Executive Order 12044, 43 FR 12661, and was determined to be a "significant regulation" likely to have a "major impact." The proposed regulation was also reviewed in accordance with OMB Circular A-116 and was determined to be a major policy and program initiative.

In consideration of the rapid depletion of the Nation's nonrenewable energy resources and the short-term statutory deadline for issuance of regulations implementing NECPA Title III programs, the Under Secretary of DOE has determined that it is contrary to the public interest to delay issuance of this regulation for preparation of a regulatory analysis and an urban and community impact analysis. However, DOE is in the process of preparing such analyses which will be made available for public review and comment within 90 days of the publication of this regulation. Based on the findings of these analyses and any comments received following public review, DOE may propose appropriate amendments to this regulation.

Also, for the reasons just noted, good cause exists to make this regulation effective upon publication, rather than 30 days thereafter as would otherwise be required under the Administrative Procedure Act. In consideration of the foregoing, Part 455 of Chapter II, Title 10 of the Code of Federal Regulations is amended by adding new Subparts C through I, as set forth below. This amendment shall be effective April 17, 1979.

Issued in Washington, D.C., April 6, 1979.

Omi G. Walden,

Assistant Secretary, Conservation and Solar Applications, Department of Energy.

10 CFR Part 455 is amended by establishing new Subparts C, D, E, F, G, H and I as follows:

Subpart C—Technical Assistance Programs for Schools, Hospitals, Units of Local Government, and Public Care Institutions

Sec.
455.40 Purpose and scope.
455.41 Eligibility.
455.42 Contents of program.

Subpart D—Energy Conservation Measures for Schools and Hospitals

455.50 Purpose and scope.
455.51 Eligibility.
455.52 Contents of program.

Subpart E—Applicant Responsibilities

455.60 Grant application submittals.
455.61 Applicant certifications.
455.62 Grant applications for State administrative expenses.
455.63 Grantee records and reports.

Subpart F—State Responsibilities

455.70 State evaluation of grant applications.
455.71 State ranking of grant applications.
455.72 Forwarding of applications.
455.73 State duties.

Subpart G—Grant Awards

455.80 Approval of grant applications.
455.81 Grant awards for units of local government and public care institutions.
455.82 Grant awards for schools and hospitals.
455.83 Grant awards for State administrative expenses.

Subpart H—State Plan Development and Approval

455.90 Contents of State plan.
455.91 Submission and approval of State plans.
455.92 State plans developed by the Secretary.

Subpart I—Allocation of Appropriations Among the States

455.100 Allocation of funds.
455.101 Allocation formulas.
455.102 Reallocation of funds.

Authority: Title III of the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3206 et seq., which establishes Parts G and H of Title III of the Energy Policy and Conservation Act, Pub. L. 94-163, 42 U.S.C. 6321 et seq.; Section 365(e)(2), 42 U.S.C. 6325(e)(2), of the Energy Conservation and Production Act, Pub. L. 94-385, 42 U.S.C. 3801 et seq.; Department of Energy Organization Act, Pub. L. 95-91, 42 U.S.C. 7101 et seq.

Subpart C—Technical Assistance Programs for Schools, Hospitals, Units of Local Government, and Public Care Institutions

§ 455.40 Purpose and scope.

This subpart specifies what constitutes a technical assistance program eligible for financial assistance under this part, and sets forth the eligibility criteria for schools, hospitals, units of local government and public care institutions to receive grants for technical assistance to be performed in buildings owned by such institutions.

§ 455.41 Eligibility.

To be eligible to receive financial assistance for a technical assistance program, an applicant must—

(a) Be a school, hospital, unit of local government or public care institution, all as defined in § 455.2, or a coordinating agency representing a group of eligible institutions and which has been granted authority by the institutions to act in their behalf;

(b) Be located in a State which has an approved State Plan as described in Subpart H of this part;

(c) Have conducted an energy audit or its equivalent, as determined by the State in accordance with the State Plan, for the building for which financial assistance is to be requested, subsequent to the most recent construction, reconfiguration or utilization change which significantly modified energy use within the building;

(d) Give assurance that it has implemented all energy conservation maintenance and operating procedures identified as a result of the energy audit, or provide a satisfactory written justification for not implementing any specific maintenance and operating procedures so identified; and,

(e) Submit an application in accordance with the provisions of this part and the approved State Plan.

§ 455.42 Contents of program.

(a) A technical assistance program shall be conducted by a qualified technical assistance analyst, who shall consider all possible energy conservation measures for a building, including solar or other renewable resource measures. A technical assistance program shall include a detailed engineering analysis to identify the estimated costs of, and the energy and cost savings likely to be realized from, implementing each identified energy conservation maintenance and operating procedure. A technical assistance program shall also identify the estimated cost of, and the energy and cost savings likely to be realized from, acquiring and installing each energy conservation measure, including solar and other renewable resource measures, that indicate a significant potential for saving energy based upon the technical assistance analyst's initial consideration.

(b) At the conclusion of a technical assistance program, the technical assistance analyst shall prepare a final report which shall include—

(1) A description of building characteristics and energy data including—

(i) The results of the preliminary energy audit and energy audit (or its equivalent) of the building;

(ii) The operating characteristics of energy using systems; and

(iii) The estimated remaining useful life of the building;

(2) An analysis of the estimated energy consumption of the building, by fuel type (in total Btu's and Btu/sq. ft./yr), at optimum efficiency (assuming implementation of all energy conservation maintenance and operating procedures);

(3) An evaluation of the building's potential for solar conversion, particularly for water heating systems;

(4) A listing of any known local zoning ordinances and building codes which may restrict the installation of solar systems;

(5) A description and analysis of all recommendations, if any, for acquisition and installation of energy conservation measures, including solar and other renewable resource measures, setting forth—

(i) A description of each recommended energy conservation measure;

(ii) An estimate of the cost of design, acquisition and installation of each energy conservation measure;

(iii) An estimate of the useful life of each energy conservation measure;

(iv) An estimate of increases or decreases in maintenance and operating costs that would result from each energy conservation measure, if any;

(v) An estimate of the salvage value or disposal cost of each energy conservation measure at the end of its useful life, if any;

(vi) An estimate of the annual energy and energy cost savings (using current energy prices) expected from the acquisition and installation of each energy conservation measure. In calculating the potential energy cost savings of each recommended energy conservation measure, including solar or other renewable resource measure, technical assistance analysts shall—

(A) Assume that all energy savings obtained from energy conservation maintenance and operating procedures have been realized;

(B) Calculate the total energy and energy cost savings, by fuel type, expected to result from the acquisition and installation of all recommended energy conservation measures, taking into account the interaction among the various measures; and,

(C) Calculate that portion of the total energy and energy cost savings, as determined in (B) above, attributable to each individual energy conservation measure.

(vii) The simple payback period of each recommended energy conservation measure, taking into account the interactions among the various measures. The simple payback period is calculated by dividing the estimated total cost of the measure, as determined pursuant to § 455.42(b)(5)(ii), by the estimated annual cost saving accruing from the measure, as determined pursuant to § 455.42(b)(5)(vi). For the purposes of ranking applications, the simple payback period shall be calculated using the cost savings resulting from energy savings only, determined on the basis of current energy prices. The estimated cost of the measure shall be the total cost for design and other professional services (excluding costs of a technical assistance program), if any, and acquisition and installation costs. Other economic analyses, such as life-cycle costing, which consider all costs and cost savings, such as maintenance costs and/or savings, resulting from an energy conservation measure, are recommended, but not required, for use by the institution in its decision-making process;

(6) A listing of energy use and cost data for each fuel type used for the prior 12-month period.

(7) A signed and dated certification that the technical assistance program has been conducted in accordance with the requirements of this section and the grant application and that the data presented is accurate to the best of the technical assistance analyst's knowledge.

Subpart D—Energy Conservation Measures for Schools and Hospitals

§ 455.50 Purpose and scope.

This subpart specifies what constitutes an energy conservation measure that may receive financial assistance under this part and sets forth the eligibility criteria for schools and hospitals to receive grants for energy

conservation measures, including solar and other renewable resource measures.

§ 455.51 Eligibility.

(a) To be eligible to receive financial assistance for an energy conservation measure, including solar or other renewable resource measure, an applicant must—

(1) Be a school or hospital, or both as defined in § 455.2, or a coordinating agency which represents groups of eligible institutions and which has been granted authority by the institutions to act in their behalf;

(2) Be located in a State which has an approved State Plan as described in Subpart H of this part;

(3) Have completed a technical assistance program or its equivalent, as determined by the State in accordance with the State Plan, for the building for which financial assistance is to be requested, subsequent to the most recent construction, reconfiguration or utilization change to the building which significantly modified energy use within the building;

(4) Have implemented all energy conservation maintenance and operating procedures which are identified as the result of an energy audit and a technical assistance program, or have provided a satisfactory written justification for not implementing any specific maintenance and operating procedures so identified;

(5) Have no plan or intention at the time of application to close or otherwise dispose of the building for which financial assistance is to be requested within the simple payback period of any energy conservation measure recommended for that building; and

(6) Submit an application in accordance with the provisions of this part and the approved State Plan.

(b) To be eligible for financial assistance, the simple payback period of each energy conservation measure for which financial assistance is requested shall not be less than 1 year nor greater than 15 years, and the estimated useful life of the measure shall be greater than its simple payback period.

§ 455.52 Contents of program.

The programs to be funded under this part will be for the design, acquisition and installation of energy conservation measures to reduce energy consumption or measures to allow the use of solar or other alternative energy resources for schools and hospitals. Such measures include, but are not necessarily limited to—

(a) Insulation, which resists heat transfer from the mechanical systems to the surrounding space, for bare pipes, water heaters, hot water storage tanks, chilled water piping, ductwork and other uninsulated mechanical equipment carrying an above or below ambient temperature fluid;

(b) Roof insulation, which resists heat transfer through the roof;

(c) Ceiling insulation, installed either above or below the ceiling, which resists heat transfer through the ceiling;

(d) Wall insulation, which resists heat transfer through the wall;

(e) Floor insulation, which resists heat transfer through the floor;

(f) Storm windows, which are an additional window, normally installed to the exterior, but which may be installed to the interior of the primary or ordinary window, to increase resistance to heat transfer, and to decrease air infiltration through the window assembly;

(g) Storm doors, which are an extra door installed to the exterior of an exterior door, but also may be installed as part of the entrance vestibule, to decrease heat transfer and air infiltration through the building entrance ways;

(h) Multiglazed window or door systems, which are a single glass unit consisting of multiple layers of glass separated by a hermetically sealed air space, which provide greater resistance to heat transfer;

(i) Reduction in glass area (in other than south-facing glazing systems) through use of methods such as bricking and insulated paneling which decreases heat transfer and air infiltration;

(j) Heat absorbing or heat reflective glazed and coated window and door systems, which are specially treated, coated or laminated glazing systems to absorb or reflect solar heat;

(k) Caulking, which is placed in joints of buildings or window or door systems to prevent the passage of air and moisture through the building envelope;

(l) Weatherstripping, which consists of strips of flexible material placed over, under, or in movable joints of windows and doors to reduce the passage of air and moisture;

(m) Automatic energy control systems, such as mixed air temperature reset devices; cooling coil discharge temperature reset devices; hot deck temperature reset devices; economizer controls; enthalpy controls; night setback thermostats; time clocks to start/stop selected heating, ventilating and air conditioning systems, refrigeration equipment, hot water generators, and associated pumps and fans; thermostatic radiator valves, and central computer control systems, which adjust the supply of heating, cooling, and ventilation to meet space conditioning requirements;

(n) Equipment required to operate or convert to variable energy supply, including—

(1) Automatic ventilating systems to turnoff or vary the consumption of energy systems to deliver no more energy than required at any operating point;

(2) Constant volume air distribution systems altered to variable air flow systems by the addition of variable air flow boxes, fan volume control dampers and related climatic controls; or

(3) Water spray coils for adiabatic cooling during appropriate weather conditions;

(o) Passive solar systems, such as direct gain glazing systems, mass (trombe) wall systems, thermal pond systems, and thermosyphon systems, which utilize elements of the building to collect, store and distribute solar energy for heating and/or cooling, and in which heat flow is by natural means (conduction, convection, radiation or evaporation);

(p) Solar space heating or cooling systems, which consist of solar collectors, and associated thermal storage, heat exchangers, pumps, fans, controls, piping and ducting;

(q) solar electric generating systems, which consist of photovoltaic solar collectors and associated electric storage and controls, or concentrating solar collectors and generating equipment, or wind energy conversion systems;

(r) Solar domestic hot water heating systems, which consist of solar collectors, and associated thermal storage, heat exchangers, pumps, controls and piping, for systems such as domestic hot water, laundry, kitchen, and boiler water makeup;

(s) Furnace or utility plant modifications, which consist of the installation of equipment to achieve reduction in fuel consumption, or to convert to renewable energy sources or coal, including—

(1) Replacement burners, furnaces, boilers, or any combination thereof, which are designed to substantially reduce the amount of fuel consumed as a result of increased combustion efficiency;

(2) Electrical or mechanical furnace ignition systems which eliminate continuous energy use;

(3) Devices for modifying flue openings, such as dampers and heat exchangers, which increase the efficiency of the total heating systems;

(4) Automatic combustion control systems, which improve burner operating performance to reduce consumption of fuel during full- and part-load operation;

(5) Devices, such as turbulators and flow restrictors, for modifying the capacity of boilers or hot water units to reduce oversized equipment to a proper size (after the other building modifications) and to increase the full and part-load efficiency of the primary equipment; and

(6) Equipment required to convert oil-fired and gas-fired units to alternative energy sources, including coal;

(t) Lighting fixture modifications and associated rewiring, which reduce the watts per square foot required for illumination through use of such measures as lamp sources of higher efficiency, or use of non-uniform task lighting design. Lighting fixture modifications that increase the general illumination level of a facility shall not be eligible for funding unless the increase is necessary to conform to any applicable State or local building code;

(u) Energy recovery systems which reduce energy used in heating and cooling systems by—

(1) Direct recycling of uncontaminated air, which has been conditioned, to an adjacent area for heating, cooling or ventilation makeup air;

(2) Exhaust air heat recovery to preheat outside air supply with heat recovery devices such as rotary air wheels, plate heat exchangers, non-regenerative heat-pipe devices, and run-around loop systems; or

(3) Purifying with charcoal or other mediums and recycling exhaust air from toilet areas, dining rooms, and lounges, and other building areas;

(v) Cogeneration systems which produce steam, heat, or other forms of energy as well as electricity for use primarily within a building or complex of buildings and which meet such fuel efficiency requirements as may be prescribed or approved by DOE and which may be new heat recovery equipment added to existing electrical generation systems;

(w) Any otherwise eligible energy conservation measure that involves leased equipment, which will save a substantial amount of energy. Only the costs of installation and connection of such leased equipment are eligible for financial assistance under this program. For purposes of ranking, pursuant to § 455.71(b)(1), a building for which a leased measure has been proposed, the simple payback period shall be determined by dividing the total installation and connection costs by the result of subtracting the average annual recurring lease costs from the projected average annual energy cost saving;

(x) Any other measures an energy audit or a technical assistance report shows, to the satisfaction of the Secretary, will save a substantial amount of energy. Such measures must be specifically identified in the grant application, and a complete description of the measure, together with calculations and other technical data supporting the projected cost and energy savings must be included in the application.

Subpart E—Applicant Responsibilities

§ 455.60 Grant application submittals.

(a) Each eligible applicant desiring to receive financed assistance shall file an applicant in accordance with the provisions of this subpart and the approved State Plan of the State in which such building is located. The application, which may be amended in accordance with applicable State procedures at any time prior to the State's final determination thereon, shall be filed with the State energy agency designated in the State Plan.

(b) Applications from schools, hospitals, units of local government, public care institutions and coordinating agencies for financial assistance for technical assistance programs shall include—

(1) The applicant's name and mailing address;

(2) A written statement certifying that the applicant is eligible under § 455.41;

(3) The results of the preliminary energy audit and energy audit (or its equivalent) for each building for which financial assistance is requested;

(4) A project budget, by building, which stipulates the intended use of all Federal and non-Federal funds, and identifies the sources and amounts of non-Federal funds, including in-kind contributions (limited to the goods and services described in OMB Circular A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments", which are directly related to the project and do not include funds derived from revenue sharing or other Federal sources), to be used to meet the cost-sharing requirements described in Subpart G of this part;

(5) A brief description, by building, of the proposed technical assistance program, including a schedule, with appropriate milestone dates, for completing the technical assistance program; and

(6) Additional information required by the applicable State Plan, and any other information which the applicant desires to have considered, such as information to support an application from a school or hospital for financial assistance in excess of the 50 percent Federal share on the basis of severe hardship.

(c) Applications from schools or hospitals and coordinating agencies for financial assistance for energy conservation measures, including solar and other renewable resource measures, shall include—

(1) The applicant's name and mailing address;

(2) A written statement certifying that the applicant is eligible under § 455.51;

(3) Identification of each building pursuant to 10 CFR 450.42(a) (1) through (5) for which financial assistance is requested, including—

(i) Name or other identification of each building and its address;

(ii) Building category;

(iii) Description of functional use;

(iv) Ownership; and

(v) Size of building expressed in gross square feet.

(4) A project budget, by building, which stipulates the intended use of all Federal and non-Federal funds, and identifies the sources and amounts of non-Federal funds, including in-kind contributions (limited to the goods and services described in OMB Circular A-102, "Uniform Requirements for Grants-in-Aid to State and Local Governments", which are directly related to the project and do not include funds derived from revenue sharing or other Federal sources), to be used to meet the cost-sharing requirements described in Subpart G of this part;

(5) A schedule, including appropriate milestone dates, for the completion of the design, acquisition and installation of the proposed energy conservation measures for each building;

(6) A list, by building, of the specific energy conservation measures proposed for funding, indicating the cost of each measure, the estimated energy and energy cost savings of each measure, the projected simple payback period for each measure, computed in accordance with the methodology described in § 455.42(b)(5)(vii) or § 455.52(w), as the case may be, and the average simple payback period for all measures proposed for the building. The average simple payback period of all measures proposed shall be determined by dividing the total estimated cost by the total projected annual cost saving (from energy savings only);

(7) A technical assistance report, completed since the most recent

construction, reconfiguration or utilization change to the building which significantly modified energy use, for each building;

(8) If the applicant is aware of any adverse environmental impact which may arise from adoption of any energy conservation measure, an analysis of that impact and the applicant's plan to minimize or avoid such impact; and

(9) Additional information required by the applicable State Plan, and any additional information which the applicant desires to have considered, such as information to support an application for financial assistance in excess of the 50 percent Federal share on the basis of severe hardship.

(d) Financial assistance for units of local government and public care institutions will be provided only for buildings which are owned and primarily occupied by offices or agencies of a unit of local government or public care institution and which are not intended for seasonal use and not utilized primarily as a school or hospital eligible for assistance under this program.

(e) Financial assistance provided to a school which is a local education agency as defined in § 455.2 must not be used for a technical assistance program or acquisition or installation of any energy conservation measure in any building of such agency which is used principally for administration.

§ 455.61 Applicant Certifications.

Applications for financial assistance for technical assistance programs and energy conservation measures, including solar and other renewable resource measures, shall include a signed statement that the applicant—

(a) Has satisfied the requirements set forth in § 455.60;

(b) Will expend granted funds for the purpose stated in the application and in compliance with the requirements of this part and the applicable approved State Plan;

(c) Has implemented all energy conservation maintenance and operating procedures recommended as a result of the energy audit and, for applications for energy conservation measures, those recommended in the report obtained under a technical assistance program. If any such procedure has not been implemented, the application shall contain a satisfactory written justification for not implementing that procedure;

(d) Will obtain from the technical assistance analyst, before the analyst performs any work in connection with a technical assistance program or energy conservation measure, a signed statement certifying that the technical assistance analyst has no conflicting financial interests and is otherwise qualifed to perform the duties of a technical assistance analyst in accordance with the standards and criteria established in the approved State Plan;

(e) Will not enter into any contract relating to an energy conservation measure, which requires or may require expenditure of more than $5,000 (excluding technical assistance costs), that does not conform to the provisions of the Davis-Bacon Act (40 U.S.C. section 276a to 276a–5) pertaining to minimum wages for construction in the applicant's locality; and

(f) Will comply with all reporting requirements contained in § 455.63.

§ 455.62 Grant Applications For State Administrative Expenses.

(a) Each State desiring to receive grants to help defray State administrative expenses shall file applications therefor in accordance with the provisions of this section. Each State may apply for an amount not exceeding 2 percent of its total allocation for technical assistance and energy conservation measures during the initial grant program cycle to the Secretary at any time after the State forwards its State Plan to the Secretary for approval; or, for subsequent grant program cycles, any time after notice by DOE of the amounts allocated to each State for that grant program cycle. In addition, each State after it makes the submittal to DOE required under § 455.72 may apply for a further grant not exceeding 5 percent of the total of all grant awards for technical assistance and energy conservation measures within that State in that grant program cycle, less any amounts previously awarded the State for administrative expenses in the same grant program cycle.

(b) Applications for financial assistance to defray State administrative expenses shall include—

(1) The name and address of the person designated by the State to be responsible for the State's functions under this part; and

(2) An itemized budget, which stipulates the intended use of all Federal and non-Federal funds, for only those State administrative expenses listed in § 455.83(b), and which identifies the sources and amounts of the required matching non-Federal funds, including in-kind contributions (limited to the goods and services described in OMB Circular A–102, "Uniform Requirements for Grants-in-aid to State and Local Governments", which are directly related to the project and do not include funds derived from revenue sharing or other Federal sources), to be used to meet the cost-sharing requirements described in Subpart G of this part.

§ 455.63 Grantee Records and Reports.

(a) Each State, school, hospital, unit of local government, public care institution and coordinating agency which receives a grant for a technical assistance program, energy conservation measure, including solar and other renewable resource measure, or State administrative expenses shall keep all the records required by § 455.4.

(b) By the end of January and July of each year each grantee shall, until the grantee's program has been concluded, submit a report to the State which shall detail and discuss—

(1) Milestones accomplished, those not accomplished, status of in-progress activities, problems encountered, and remedial actions, if any, planned; and

(2) Financial status reports completed in accordance with the documents listed in § 455.3. Financial status reports must be submitted simultaneously to both the State and the Secretary.

(c) Within 90 days of concluding a technical assistance program or installation of funded energy conservation measures, including solar and other renewable resource measures, the grantee shall submit a final report to the State and a summary thereof to the Secretary which shall detail and discuss, as applicable—

(1) A summary of all work accomplished;

(2) Problems encountered;

(3) Final financial reports completed in accordance with the documents listed in § 455.3;

(4) For a completed technical assistance program—

(i) The technical assistance report; and

(ii) A recommended plan to implement energy conservation maintenance and operating procedures, and plans to acquire and install energy conservation measures, including solar and other renewable resource measures;

(5) For completed energy conservation measures including solar and other renewable resource measures—

(i) A listing and description of energy conservation measures acquired and installed;

(ii) A final projected simple payback period, computed in accordance with § 455.42, for each building specifying and utilizing the actual costs for each measure and all the measures, taken as a whole; and

(iii) A statement that the completed modifications (material, equipment and installation) conform to the report on the technical assistance program and the approved grant application.

(d) Grantees shall keep all records required by this section for a minimum of three years after completion of the technical assistance program or energy conservation measure for which the grant was awarded.

(e) Grantees shall submit annual reports to the State covering each year of the three-year period following installation of an energy conservation measure or measures, or for the life of the program, whichever is shorter. Such annual reports shall identify each building and shall provide data on the actual energy use of that building for the preceeding 12-month period. Energy use shall be presented on a monthly or quarterly, as well as an annual basis, consistent with the energy billing cycle for the building. Annual reports shall be submitted within 60 days of the close of each 12-month period.

Subpart F—State Responsibilities

§ 455.70 State Evaluation of Grant Applications.

(a) If an application received by a State is reviewed and evaluated by that State and determined to be in compliance with Subparts C, D and E of this part, § 455.70(b), any additional requirements of the approved State Plan, State environmental laws, and other applicable laws and regulations, then such application will be eligible for financial assistance.

(b) Concurrently with its evaluation and ranking of grant applications pursuant to § 455.71, the State will forward each application for a school or hospital to the State school facilities agency or the State hospital facilities agency, as the case may be, for review and certification that each school application is consistent with related State programs for educational facilities, and each hospital application is consistent with State health plans under sections 1524(c)(2) and 1603 of the Public Health Service Act (42 U.S.C. 300m–3 and 300o–2, respectively), and that each has been coordinated through the review mechanisms under section 1523 of the Public Health Service Act (42 U.S.C. 300m–2) and section 1122 of the Social Security Act. No application from a school or hospital shall be eligible for funding until such certification has been issued.

§ 455.71 State Ranking of Grant Applications.

All eligible applications received by the State will be ranked by the State on an individual building-by-building basis.

(a) For technical assistance programs, buildings shall be ranked in descending priority based upon the energy conservation potential of the building as determined from an energy audit (or its equivalent) in accordance with the procedures established in the State Plan and one or more of the methods indicated in 10 CFR 450.43(c). In the case of buildings having equivalent energy conservation potential, preference shall be given to those buildings which have completed an energy audit without the use of Federal funds.

(1) Each State shall develop separate rankings for all buildings covered by eligible applications for—

(i) Technical assistance programs for units of local governments and public care institutions, and

(ii) Technical assistance programs for schools and hospitals.

(2) Within each ranking for technical assistance, a State shall indicate the amount of financial assistance requested by the applicant for each eligible building and, for those buildings with the highest ranking within the limits of the State's allocation, the amount recommended for funding. If the amount recommended is less than the amount requested by the applicant, the list shall also indicate the reason for that recommendation.

(b) For energy conservation measures, including solar or other renewable energy resource, buildings shall be ranked in descending priority. Several buildings may be ranked as a single building if the application proposes a single energy conservation measure which directly involves all of the buildings. States shall indicate the amount of financial assistance requested by the applicant for each eligible building and, for those buildings with the highest ranking within the limits of the State's allocation, the amount recommended for funding. If the amount recommended is less than the amount requested by the applicant, the list shall also indicate the reason for that recommendation. Buildings shall be ranked in accordance with the procedures established by the State Plan, on the basis of the information developed during a technical assistance program (or its equivalent) for the building and the criteria for ranking applications, which are listed below in the descending order in which weights for each criterion are to be applied by the State—

(1) The average simple payback period of all energy conservation measures proposed for the building, determined by dividing the total estimated cost by the total projected annual energy cost savings;

(2) The type(s) of energy source(s) to which conversion is proposed (with weighting adjustments directly proportional to the ratio of the annual energy cost savings of the conversion measure to the total annual energy cost savings of all measures proposed for a given building), including in descending priority—

(i) Renewable; and

(ii) Coal;

(3) The type(s) and quantity(s) of energy to be saved (with weighting adjustments directly proportional to the ratio of the annual energy savings of each measure to the total annual energy savings of all measures proposed for a given building), including, in descending priority—

(i) Oil;

(ii) Natural gas; and

(iii) Electricity;

(4) Climate within the State; and

(5) Other factors as determined by the State.

(c) Within the rankings of school and hospital buildings for technical assistance and energy conservation measures, including solar or other renewable resource measures, a State shall assure that—

(1) Schools receive not more than 70 percent of the total funds allocated for schools and hospitals to the State in any grant program cycle; and

(2) Hospitals receive not more than 70 percent of the total funds allocated for schools and hospitals to the State in any grant program cycle.

(d) To the extent provided in § 455.82(c), additional financial assistance will be available for schools and hospitals experiencing severe hardship based upon an applicant's long-term need or inability to provide the 50 percent non-Federal share. This additional financial assistance will be available only to the extent necessary to enable such institutions to participate in the program.

(1) Funding for this additional financial assistance will be taken from the funds reserved for grants in excess of 50 percent of the total costs of the technical assistance programs and energy conservation measures,

(2) Applications for Federal funding in excess of 50 percent based on claims of severe hardship shall be given an additional evaluation by the State to assess on a quantifiable basis, to the maximum extent practicable, the

relative need among eligible institutions. The minimum amount of additional Federal funding necessary for the applicant to participate in the program will be determined by the State in accordance with the procedures established in the State Plan and will be based upon one or more of the following—

(i) The ratio of the cost of the proposed technical assistance programs or energy conservation measures to the institution's total annual budget;

(ii) The borrowing capacity of the institution;

(iii) The average unemployment rate for the institution's locality at the time the application is submitted;

(iv) The ratio of the amount expended annually by the institution for energy to the institution's total annual operating budget;

(v) The median annual family income of the institution's locality; and

(vi) Other special conditions of the institution or its locality as determined by the State.

(3) A State shall indicate, for those schools and hospitals with the highest rankings, determined pursuant to paragraphs (a) and (b) of this section—

(i) The amount of additional hardship funding requested by each eligible applicant for each building determined to be in a class of severe hardship, and

(ii) The amount of hardship funding recommended by the State based upon relative need as determined in accordance with the State Plan, to the limit of the hardship funds available.

(e) A State is exempt from the ranking requirements of this section when—

(1) The total amount requested by all applications for schools and hospitals for technical assistance and energy conservation measures in a given grant program cycle for grants up to 50 percent is less than or equal to the funds available to the State for such grants and the total amount recommended for hardship funding is less than or equal to the amounts available to the State for such grants.

(2) The total amount requested by all applications for buildings owned by units of local government and public care institutions in a given grant program cycle is less than or equal to the total amount allocated to the State for technical assistance program grants in the State.

§ 455.72 Forwarding of Applications.

Each State shall forward to the Secretary once each grant program cycle each listing of buildings covered by eligible applications for schools and hospitals or for units of local government and public care institutions, and ranked by the State pursuant to the provisions of § 455.71.

§ 455.73 State Duties.

(a) Each State shall be responsible for—

(1) Consulting with eligible institutions and coordinating agencies representing such institutions in the development of its State Plan;

(2) Notifying eligible institutions and coordinating agencies of the content of the approved State Plan;

(3) Notifying each applicant, prior to submittal of applications to the Secretary, how the applicant's building ranked among other similar buildings, and whether and to what extent its application will be recommended for funding or, if not to be recommended for funding, the reason therefore;

(4) Certifying that each institution that has submitted an application to be recommended for funding has given its assurance that it is willing and able to participate on the basis of the amounts recommended for that institution in the State ranking pursuant to § 455.71; and

(5) Direct program oversight, monitoring and financial auditing of the activities for which grants are awarded to its institutions to insure compliance with all legal requirements. States shall immediately notify the Secretary of any non-compliance or indication thereof.

(b) Each State shall submit a report to the Secretary, by the close of each February and August following State Plan approval for the duration of the grant program, providing—

(1) A narrative of the program, including objectives accomplished, problems encountered and recommended solutions;

(2) A detailed report on program related financial expenditures by all grantees and by the State;

(3) A summary of the most recent reports received by the State pursuant to § 455.63; and

(4) Such other information as the Secretary may, from time to time, request.

(c) Each State shall include in the August report required by paragraph (b) of this section, an estimate of annual energy use reductions in the State, by energy source, attributable to implementation of energy conservation maintenance and operating procedures and installation of energy conservation measures under this program. Such estimates shall be based upon a sampling of institutions participating in the technical assistance phase of this program and upon the reports submitted to the State pursuant to § 455.63(e).

Subpart G—Grant Awards

§ 455.80 Approval of Grant Applications.

(a) The Secretary shall review and approve applications submitted by a State in accordance with § 455.72 if the Secretary determines that the applications meet the objectives of the Act, and comply with the applicable State Plan and the requirements of this part. The Secretary may disapprove all or any portion of an application to the extent that funds are not available to carry out a program or measure (or portion thereof) contained in the application, or for such other reason as the Secretary may deem appropriate.

(b) The Secretary shall notify a State and the applicant of the final approval or disapproval of an application at the earliest practicable date after the Secretary's receipt of the application, and, in the event of disapproval, shall include a statement of the reasons therefor. An application which has been disapproved may be amended and resubmitted in the same manner as the original application at any time within a grant program cycle.

(c) The Secretary shall award only one grant to an applicant for any single technical assistance program or energy conservation measure for any one building. Financial assistance under this part for any single technical assistance program or energy conservation measure shall not exceed the amount of the initial grant award.

§ 455.81 Grant Awards For Units of Local Government and Public Care Institutions.

(a) The Secretary may make grants to units of local governments, public care institutions and coordinating agencies for up to 50 percent of the costs of performing technical assistance programs for buildings covered by an application approved in accordance with § 455.80.

(b) Total grant awards within any State to units of local government and public care institutions are limited to the funds allocated to each State in accordance with Subpart I of this part.

(c) No grant awarded under this section for a technical assistance program shall include funding for the purchase of any single item of equipment or personal property having an acquisition cost in excess of $500.

§ 455.82 Grant Awards For Schools and Hospitals.

(a) The Secretary may make grants to schools, hospitals and coordinating agencies for up to 50 percent of the cost of performing technical assistance programs for buildings covered by an

application approved in accordance with § 455.80. Grant awards for technical assistance programs in any State within any grant program cycle shall not exceed—

(1) 30 percent of the amount allocated to a given State from the 1978 fiscal year appropriation for technical assistance programs and energy conservation measures for schools and hospitals;

(2) 15 percent of the amount allocated to a given State from the 1979 fiscal year appropriation for technical assistance programs and energy conservation measures for schools and hospitals;

(3) 5 percent of the 1980 fiscal year appropriation for technical assistance programs and energy conservation measures for schools and hospitals.

(b) The Secretary may make grants to schools, hospitals and coordinating agencies for up to 50 percent of the costs of acquiring and installing energy conservation measures, including solar and other renewable resource measures, for buildings covered by an application approved in accordance with § 455.80.

(c) The Secretary may award 10 percent of the total amount allocated to a State for schools and hospitals for technical assistance programs and energy conservation measures in a given grant program cycle to cover more than 50 percent, but not to exceed 90 percent, of the cost of a technical assistance program or an energy conservation measure. These additional amounts may be awarded to applicants in a class of severe hardship, ascertained by the State in accordance with the State Plan, for buildings recommended by the State pursuant to § 455.71(d)(3), and in amounts determined pursuant to § 455.71(d)(2).

(d) The Secretary shall not award more than 70 percent of the total amount allocated to a State for technical assistance programs and energy conservation measures in a given grant program cycle to either schools or hospitals in that State.

(e) No grant awarded under this section for a technical assistance program shall include funding for the purchase of any single item of equipment or other personal property having an acquisition cost in excess of $500.

(f) Applicant expenditures for a technical assistance program commenced after November 8, 1978 for a building may be wholly or partially classified in the discretion of the Secretary as matching non-Federal funds for the purposes of matching grants awarded for energy conservation measures.

§ 455.83 Grant Awards For State Administrative Expenses.

(a) For the purpose of defraying State expenses in the administration of technical assistance programs and energy conservation measures, the Secretary may make grant awards to a State—

(1) Immediately following approval of the State Plan, or for subsequent grant program cycles, immediately following public notice of the amounts allocated to a State for the grant program cycle, and upon approval of the grant application for administrative costs, in an amount not exceeding 2 percent of that State's total allocation for a given grant program cycle for technical assistance and energy conservation measures. Grants for such purposes may be made for up to 50 percent of a State's projected administrative expenses, as approved by the Secretary; and

(2) Concurrently with grant awards for approved applications for technical assistance or energy conservation measures for institutions in that State, and upon approval of an application for administrative costs, in an amount not exceeding the difference between the amount granted pursuant to subparagraph (1) of this paragraph and 5 percent of the total amount of grants awarded within the State for technical assistance programs and energy conservation measures in the applicable grant program cycle. Grants for such purposes may be made for up to 50 percent of a State's projected administrative expenses, as approved by the Secretary. The total of all grants for State administrative costs, technical assistance programs and energy conservation measures in that State shall not exceed the total amount allocated for that State for any grant program cycle.

(b) A State's administrative expenses shall be limited to those directly related to administration of technical assistance programs and energy conservation measures including costs associated with—

(1) Personnel, whose time is expended directly in support of such administration;

(2) Supplies, and services, expended directly in support of such administration;

(3) Equipment purchased or acquired solely for, and utilized directly in support of such administration: *Provided,* That no single item of equipment or other personal property costing more than $300 shall be acquired without the express consent of DOE;

(4) Printing, directly in support of such administration; and

(5) Travel, directly related to such administration.

Subpart H—State Plan Development and Approval

§ 455.90 Contents of State Plan.

Each State shall develop a State Plan for technical assistance programs and energy conservation measures, including solar and other renewable resource measures. The State Plan shall be reviewed and approved by State energy agency. The State Plan shall include—

(a) A statement setting forth the procedures by which the views of eligible institutions or coordinating agencies representing such institutions, or both, were solicited and considered during development of the State Plan;

(b) The procedures the State will follow to notify eligible institutions and coordinating agencies of the content of the approved State Plan;

(c) The procedures for submittal of grant applications to the State;

(d) A description and evaluation of the results of preliminary energy audits (described in Subpart B of this part) which have been conducted in the State including, but not limited to—

(1) In the case of a State which has completed preliminary energy audits of all potentially eligible buildings, a summary of the data gathered pursuant to § 450.42 for all such buildings;

(2) In the case of a State which has completed preliminary energy audits of a sample of all potentially eligible buildings within the State—

(i) Reasonably accurate estimates of the preliminary energy audit data required by 10 CFR 450.42 for all potentially eligible buildings within the State; and

(ii) A plan which describes further actions to be taken to complete preliminary energy audits of all potentially eligible buildings;

(e) The procedures to be used by the State for evaluating and ranking technical assistance and energy conservation measure grant applications pursuant to § 455.71, including the weights assigned to each criterion set forth in § 455.71(b);

(f) The procedures that the State will follow to insure that funds will be allocated equitably among eligible applicants within the State, including procedures to insure that funds will not be allocated on the basis of size or type of institution but rather on the basis of relative need taking into account such factors as cost, energy consumption and energy savings, in accordance with § 445.71;

(g) The procedures that the States will follow for identifying schools and hospitals experiencing severe hardship and for apportioning the funds that are available for schools and hospitals in a class of severe hardship. Such policies and procedures shall be in accordance with § 455.71(d);

(h) A statement setting forth the extent to which, and by which methods, the State will encourage utilization of solar space heating, cooling and electric systems and solar water heating systems;

(i) The procedures to assure that all financial assistance under this part will be expended in compliance with the requirements of the State Plan, in compliance with the requirements of this part, and in coordination with other State and Federal energy conservation programs;

(j) The procedures to insure implementation and continued use of energy conservation maintenance and operating procedures in those buildings for which financial assistance is awarded under this part;

(k) The procedures designed to insure that financial assistance under this part will be used to supplement, and not to supplant, State, local or other funds;

(l) The procedures for determining that energy audits performed without the use of Federal funds have been performed in substantial compliance with the requirements of 10 CFR Part 450 for the purposes of satisfying the eligibility requirements contained in § 455.41(c);

(m) The procedures for establishment of, and adherence to, milestones for accomplishment of technical assistance programs and energy conservation measures receiving financial assistance under this part;

(n) The procedures for determining that technical assistance programs performed without the use of Federal funds have been performed in compliance with the requirements of § 455.42, for the purposes of satisfying the eligibility requirements contained in § 455.51(a)(3).

(o) The procedures for State management, financial audit, monitoring and evaluation of technical assistance programs and energy conservation measures receiving financial assistance under this part;

(p) A description of the State's program for establishing and insuring compliance with qualifications for technical assistance analysts. Such policies shall require that technical assistance analysts—

(1) Have experience in energy conservation and be a registered professional engineer licensed under the regulatory authority of the State;

(2) Be an architect-engineer team, the principal members of which are licensed under the regulatory authority of the State; or

(3) Be otherwise qualified in accordance with such criteria as the State may prescribe in its State Plan to insure that individuals conducting technical assistance programs possess the appropriate training and experience in building energy systems. Such policies shall also require that technical assistance analysts be free from financial interests which may conflict with the proper performance of their duties; and

(q) The procedures for apportionment of funds among eligible institutions within the State. As a minimum, such policies and procedures shall assure a separate priority ranking pursuant to the provisions of § 455.71 for each building covered by an application approved pursuant to the provisions of § 455.70 for—

(1) Technical assistance programs for units of local government and public care institutions;

(2) Technical assistance programs for schools and hospitals; and

(3) Energy conservation measures, including solar and other renewable resource measures, for schools and hospitals.

§ 455.91 Submission and Approval of State Plans.

(a) Proposed State Plans shall be submitted to the Secretary within 120 days of the effective date of this subpart unless the Secretary, upon request and for good cause shown, grants an extension of time.

(b) The Secretary shall, within 60 days of receipt of a proposed State Plan, review each Plan and, if it is found to conform to the requirements of this part, approve the State Plan. If the Secretary does not disapprove a State Plan within the 60-day period, the Secretary will be deemed to have approved the State Plan.

(c) If the Secretary determines that a proposed State Plan fails to comply with the requirements of this part, the Secretary shall return the Plan to the State with a statement setting forth the reasons for disapproval. With the written consent of the Secretary, the State may submit a new or amended Plan at any time.

§ 455.92 State Plans Developed by the Secretary.

(a) If a State Plan has not been approved by February 7, 1981, or within 90 days after completion of the preliminary energy audits, whichever is later, the Secretary may develop and implement a State Plan on behalf of the schools and hospitals in the State.

(b) Subsequent to the development of a State Plan by the Secretary, the State may submit its own State Plan and the Secretary shall approve or disapprove such plan within 60 days after receipt by the Secretary. If the proposed plan meets the requirements of this part, and is not inconsistent with any plan developed and implemented by the Secretary, the Secretary shall approve the State Plan which shall automatically replace the Plan developed by the Secretary.

Subpart I—Allocation of Appropriations Among the States.

§ 455.100 Allocation of Funds.

(a) The Secretary will allocate available funds among the States for the purpose of awarding grants to schools, hospitals, units of local government, and public care institutions and coordinating agencies to implement technical assistance and energy conservation measures grant programs in accordance with this part.

(b) By notice published in the Federal Register, the Secretary shall notify each State of the total amount allocated for grants within the State for any grant program cycle.

(c) By notice published in the Federal Register, the Secretary shall notify each State of the period for which funds allocated for a grant program cycle will be reserved for grants within the State.

(d) Each State shall apportion ten percent of its allocation for schools and hospitals in each grant program cycle to provide additional financial assistance, in excess of the 50 percent Federal share but not to exceed 90 percent, for technical assistance programs and energy conservation measures for schools and hospitals determined to be in a class of severe hardship. Such determinations shall be made in accordance with § 455.71(d).

§ 455.101 Allocation Formulas.

(a) Financial assistance for conducting technical assistance programs for units of local government and public care institutions shall be allocated among the States by multiplying the sum available by the allocation factor set forth in paragraph (c) of this section.

(b) Financial assistance for conducting technical assistance programs and acquiring and installing energy conservation measures, including solar and other renewable resource

measures, for schools and hospitals shall be allocated among the States by multiplying the sum available by the allocation factor set forth in paragraph (c) of this section.

(c) The allocation factor (K) shall be determined by the formula—

$$K = \frac{0.07}{n} + 0.1\ \frac{(Sfc)}{(Nfc)} + 0.83\ \frac{(SP)(SC)}{(NPC)}$$

where, as determined by DOE—

(1) Sfc is the average retail cost per million Btu's of energy consumed within the region in which the State is located, as reflected in the 1985, Series C projections prepared for DOE's Energy Information Administration Administrator's Annual Report, 1977;

(2) Nfc is $271.95, the summation of the Sfc numerators for all States;

(3) n is the total number of eligible States;

(4) SP is the population of the State, as determined from 1976 census estimates, "Current Population Reports", Series P–25, number 603;

(5) SC is the sum of the State's heating and cooling degree days, as determined from National Oceanic and Atmospheric Administration data for the thirty year period, 1941 through 1970;

(6) NPC is 1,277,259,000, the summation of the (SP) (SC) numerators for all States.

(d) Except for the District of Columbia, Puerto Rico, Guam, American Samoa and the Virgin Islands, no allocation available to any State may be less than 0.5 percent of all amounts allocated in any grant program cycle. No State will be allocated more than 10 percent of the funds allocated in any grant program cycle.

§ 455.102 Reallocation of Funds

(a) If a State Plan has not been approved and implemented by a State by the close of the period for which allocated funds are available as set forth in the notice issued by the Secretary pursuant to § 455.100(d), funds allocated to that State for technical assistance and energy conservation measures will be reallocated among all States for the next grant program cycle, if available.

(b) If a State Plan has not been approved by February 7, 1981, or within ninety days after completion of the preliminary energy audits, whichever is later, the Secretary may develop and implement a State Plan on behalf of the schools and hospitals within the State. If the Secretary does not develop a State Plan for a State, the funds reserved for that grant program cycle for schools and hospitals in that State will be reallocated for the next grant program cycle among all States for schools and hospitals.

(c) If a State does not forward a sufficient number of grant applications to award all the funds allocated for the State in any grant program cycle, the Secretary shall reallocate the funds which remain available among all States for the next grant program cycle.

(d) If a State does not forward a sufficient number of grant applications under the severe hardship provisions set forth in § 455.71(d) to award 10 percent of all of the funds allocated to the State for schools and hospitals in that grant program cycle, the Secretary shall reallocate the remaining hardship funds among all States for the next grant program cycle.

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