

Request for a Class Deviation from the DOE Financial Assistance
Regulations for the State Energy Program (SEP)

In accordance with 10 CFR 600.6(b) and DOE Program Rule 10 CFR Part 420, your approval is requested for a class deviation applicable to the frequency of performance reporting for the Department of Energy's State Energy Program.

The SEP has been assigned a significant role in the American Recovery and Reinvestment Act of 2009 (Recovery Act). The successful execution of this Program is an important part of achieving the goals in the Recovery Act. DOE needs more frequent information to manage risks, monitor activities and to respond to requests on the performance results of Recovery Act and FY 2009 funds in a timely manner.

Identification of Issue:

Under the relevant Subparts of the DOE's Financial Assistance Regulations, which prescribe performance reporting, 10 CFR 600.151, reporting shall not be required more frequently than quarterly or less frequently than annually. Accordingly, under the Federal Assistance Reporting Checklist (DOE F 4600.2) for Financial Assistance awards, DOE does not require Recipients to submit performance reports more frequently than quarterly. These reports are due within thirty (30) days following the end of the calendar quarter. Quarterly reporting is insufficient to adequately monitor projects selected under State Energy Program.

Quarterly reports do not provide current information, and do not allow DOE to identify and address problems in a timely manner. With quarterly reporting, where data can be up to five months old, the SEP Grantee could accrue costs without the benefit of actionable DOE oversight. In addition, quarterly reporting allows for too infrequent reporting for DOE to implement effective oversight, particularly when considering Grantees may break down subgrantee reporting requirements into relatively short duration phases such as monthly for billing purposes.

Proposed Deviation:

The Department of Energy (DOE) proposes to use monthly progress reporting in order to minimize risk and ensure that the technical and financial information necessary to manage the SEP is timely, complete, and not compromised by a less frequent (i.e. quarterly) reporting frequency.

Under the proposed deviation, SEP Grantees will be required to submit monthly Project Progress and Financial Status. This includes Grantee and Subgrantee expenditures, production and milestone status, jobs data, monitoring efforts, training efforts, equipment purchased and planned and actual activities against milestones for each reporting period. DOE will use this information to provide proactive project oversight and stewardship of federal funds. Specifically, production milestone status and expenditure metrics are indicative of SEP progress, if these reports show that these metrics are behind schedule or over budget, the Grantee will be required to identify causes and develop an approach to addressing the deficiency.

Grantees are required to report significant events that will seriously delay the project or affect costs as part of the 10 CFR part 420 and standard reporting requirements, summarized as follows:

Recipients must notify DOE of any "problems, delays, or adverse conditions which materially impair the recipient's ability to meet the objectives of the award or which may require DOE to respond to questions relating to such events from the public ... The recipient must report ...any event which is anticipated to cause a significant schedule slippage or cost increase".

The purpose of obtaining data on a monthly basis is to ensure that SEP projects do not come to a point where a significant delay must be reported. This proactive approach does not rely on the Grantee to identify significant problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. Rather, this approach seeks to anticipate problems in their early stages, at budget and production stages, and provides for approaches to address the deficiencies *before* they materially impair the ability to meet the objectives of the award. By not relying on the Grantee to notify DOE of problems when they arise, DOE can interpret the data and come to a conclusion independent of the Grantee regarding project status.

The overall performance of the Grantee, *i.e.* success in achieving proposed objectives within budget and on schedule, will be evaluated throughout the award period. This data provides a quantitative method to evaluate the Grantee's performance.

A summary of the rationale to support the proposed Class Deviation is detailed below.

1. DOE does not have the authority to pursue an alternate procurement instrument, such as a contract, so that more frequent reporting can be obtained because the statutory authority for this Program states that the secretary shall provide "financial assistance."
2. Frequent reporting provides the necessary information for the DOE and the Grantee to manage the project and ensure that it meets its specified goals on schedule and within budget.
3. Invoices cannot be used as a frequent tracking tool.
4. With quarterly reporting, where data can be up to five months old, the SEP Grantee could accrue costs without the benefit of actionable DOE oversight.
5. Quarterly reporting allows for too infrequent reporting for DOE to implement effective oversight, particularly when considering the projects may be broken down into relatively short duration phases.
6. Monthly reporting will respond to criticisms regarding performance and provide for overall excellence in project management, as expected by oversight agencies.
7. Monthly reporting will be used to identify schedule and cost delays and develop approaches to address deficiencies in a timely manner.

Based on these summary points, it is the judgment of DOE, given the scope, cost, and complexity associated with SEP, that monthly reporting is the appropriate project management technique for ensuring that the financial assistance agreements meet their objectives on schedule and within budget.

Response to Requested Deviation:

The requested class deviation to the requirements of 10 CFR part 420 - allowing DOE to require the submission of a monthly Project Progress and Financial Status Reports on all State Energy Program Funds, is hereby:

Claire Broido Johnson

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Acting Program Manager

Office of Weatherization and Intergovernmental Program
Energy Efficiency and Renewable Energy

10/15/09

Date