

Template for Expedited NEPA Review of Certain Energy Efficiency and Conservation Block Grant (EECBG) Sub-grants

Purpose: This document provides an optional approach that a State may use to help the Department of Energy (DOE) expedite National Environmental Policy Act (NEPA) review of certain Energy Efficiency and Conservation Block Grants (EECBG) sub-grants that States plan to award to eligible units of local governments (Sub-recipients) under Sections 544 and 545(c) of the Energy Information and Security Act of 2007 (EISA 2007). Under this approach, the State will provide information to DOE regarding their sub-grants. If those sub-grants meet the criteria and conditions described below, DOE intends to categorically exclude them from further NEPA review.

Understanding the Template

EISA 2007 requires a State to award at least 60 percent of its EECBG funds in block grants to Sub-recipients, which are political subdivisions within the State that are ineligible for direct formula grants from DOE. Thus, the States would receive funding from DOE through a *grant* and then award 60 percent of those funds through *sub-grants* to *Sub-recipients* for Projects that EISA 2007 establishes are eligible for funding. *See* EISA 2007 §§ 545(c)(1), 544. Each State identifies the type of activities (“Projects”) that it intends to fund through Requests for Proposals (RFPs) from Sub-recipients.

To facilitate NEPA review of sub-grants, DOE is providing the Template, which describes: (a) the categories of Projects that DOE has found often fit within its existing Categorical Exclusions (CXs); and (b) the conditions by which those Projects would qualify for a CX.

To take advantage of the Template, Projects that the State proposes to fund under a particular RFP for sub-grants must fall into at least one of the categories listed in Part I of the Template. For organizational purposes, the Part I categories track some of the eligibility categories in the EECBG statutory provisions (*see* EISA 2007 § 544(1) – (13)); however, the Part I categories are narrower. If the State limits its request for grants to Projects listed in Part I, and certifies that each Project meets the conditions set forth in Part II, DOE intends to apply CX(s) to all Projects identified in the RFP. The State will also not have to submit each of those Projects to DOE for a subsequent, more detailed NEPA review. DOE’s CXs are listed at 10 C.F.R. Part 1021, Subpart D, Appendices A and B.

If DOE determines that some or all of the proposed Projects may require an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), then the State must submit sub-grant proposals for each of those Projects to DOE for detailed NEPA review.

Important Considerations

- Using the Template is optional. In providing the Template, DOE in no way intends to discourage States from opting to award sub-grants to Projects not suitable for CXs. A State can use the Template for an appropriate RFP and then, on a separate page of the Project Activity sheet, submit RFPs for Projects that may have a significant impact on the environment. Sub-grants for the Projects in that category will require NEPA review (and an EA or EIS) based on specific information about a particular Project.
- There may be instances where a State plans to award sub-grants for Projects that do not fall into one of the Part I categories, but nonetheless arguably have no significant impact on the environment such that DOE might issue a CX determination for those Projects based on information in the State's application. In that case, the applicant should describe the Projects and explain why DOE should apply a CX to sub-grants for them, but the State should do so on a separate page or separate section from the Template language. For example, a State may submit an RFP for wind energy systems that produce 40KW per year. Such a Project does not fall into any of the Part I categories because it produces more than 20 KW. *See* Part I(11) below. However, the State may consider the Project physically and functionally the same as a 20 KW Project. In such a case, the State should not amend the Template, for example, by crossing out 20 KW and replacing it with 40 KW. Instead, the State should submit the RFP and explain why such Projects should be categorically excluded.
- The State is responsible for informing DOE of any extraordinary circumstances, cumulative impacts, or connected actions that may lead to significant impacts on the environment or any inconsistency with the "integral elements" from a particular Project. (These "integral elements" are described below in Part II.) *See* 10 C.F.R. 1021 Appendix B. DOE will conduct NEPA review of the sub-grant for each such Project prior to the State awarding it.
- Any CX determination that DOE makes on the basis of the Template and its supporting documentation is a finding that a proposal does not have significant environmental impacts; it is *separate from an eligibility or award determination*.
- Expedited NEPA review based on the Template's language and supporting documents does not preclude DOE from conducting stewardship activities, including post-award audit and oversight of individual Projects, or from exercising any other rights under the EECBG program.

TEMPLATE

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By signing below, [State] provides assurance that it shall *only* award sub-grants under RFP [Y] for Projects that fall within the categories in Part I below and, moreover, are consistent with the limitations prescribed therein. To assist DOE in satisfying its NEPA obligations, [State] provides as attachments to this Project Activity Worksheet: (1) the Request for Proposal for these sub-grants and (2) a completed environmental questionnaire (EF-1).

Part I – Bounded Categories

3. Provision of grants to nonprofit organizations and governmental agencies for the purpose of performing energy efficiency retrofits, provided that:
 - Projects Are Limited To: installation of insulation; installation of efficient lighting; heating, venting, and air conditioning (HVAC) and high-efficiency shower/faucet upgrades; weather sealing; the purchase and installation of ENERGY STAR appliances; installation of solar powered appliances with improved efficiency; and replacement of windows and doors.

8. Replacement of traffic signals and street lighting with energy efficient technologies.

9. Development, implementation, and installation on or in any government building of onsite renewable energy technology, provided that:
 - Projects Are Limited To:
 - Solar Electricity/Photovoltaic - appropriately-sized system or unit on existing rooftops and parking shade structures; or a 60 KW system or smaller unit installed on the ground within the boundaries of an existing facility.
 - Wind Turbine - 20 KW or smaller.
 - Solar Thermal - system must be 20 KW or smaller.
 - Solar Thermal Hot Water - such as appropriately sized for small buildings.
 - Ground Source Heat Pump - 5.5-ton capacity or smaller, horizontal/vertical, ground, closed-loop system.
 - Combined Heat and Power System - boilers sized appropriately for the buildings in which they are located.
 - Biomass Thermal - 3 MMBTUs per hour or smaller system with appropriate Best Available Control Technologies (BACT) installed and operated.

Part II - Integral Element Requirements and Other Conditions

State [X] shall award sub-grants only for Projects that would not:

- (1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, including requirements of DOE and/or Executive Orders;
- (2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators);
- (3) Disturb hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases; or
- (4) Adversely affect environmentally sensitive resources. Environmentally sensitive resources include, but are not limited to:
 - (i) Property (e.g., sites, buildings, structures, objects) of historic, archeological, or architectural significance designated by Federal, state, or local governments or property eligible for listing on the National Register of Historic Places;
 - (ii) Federally-listed threatened or endangered species or their habitat (including critical habitat), Federally- proposed or candidate species or their habitat, or state-listed endangered or threatened species or their habitat;
 - (iii) Wetlands regulated under the Clean Water Act (33 U.S.C. 1344) and floodplains;
 - (iv) Areas having a special designation such as Federally- and state-designated wilderness areas, national parks, national natural landmarks, wild and scenic rivers, state and Federal wildlife refuges, and marine sanctuaries;
 - (v) Prime agricultural lands;
 - (vi) Special sources of water (such as sole-source aquifers, wellhead protection areas, and other water sources that are vital in a region); and
 - (vii) Tundra, coral reefs, or rain forests.

Waste Stream Conditions

State (X) shall obtain a waste management plan addressing waste generated by a proposed Project prior to the subgrantee generating and disposing of sanitary or hazardous waste. This waste management plan will describe the Sub-recipient's plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead paint, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed Project. [State] shall make the waste management plan and related documentation available to DOE on DOE's request (for example, during a post-award audit). [State] shall ensure through

specific contract terms that the Sub-recipient complies with all Federal, state and local regulations for waste disposal.

NHPA Conditions

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

Cumulative Impacts, Connected Actions and Extraordinary Circumstances

DOE's CXs are not absolute. CXs do not apply to Projects that involve "extraordinary circumstances," connected actions, or cumulative impacts that may have significant environmental impacts. See 10 C.F.R. § 1021.410(b). If DOE grants a CX based on descriptions in the State's RFP for EECBG grants, DOE will base its decision on the lack of such "extraordinary circumstances" and significant impacts. [State] shall review section 1021.410 and must immediately contact DOE if it identifies a Project that may involve "extraordinary circumstances," cumulative impacts or connected actions that could have significant environmental impacts. Typically, DOE will either subject the sub-grant for the Project to NEPA review or the State will elect not to proceed with awarding the sub-grant.

Part III

On the basis of [State's] assurances in this Project Activity Worksheet, DOE intends to apply one or more CXs to the State's sub-grants for all Projects described in the State's RFP. However, because DOE has only recently started employing this approach to categorically excluding sub-grants, there may be unforeseen circumstances that make it inappropriate to apply a CX to a Project(s) that meets all the Part I and Part II requirements. DOE does not waive its discretion to decline to apply a CX for EECBG sub-grants.

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

Authorized Signatory [State]