



## Department of Energy

Washington, DC 20585

May 19, 2009

Mike Nizich, Chief of Staff  
Office of the Governor  
State of Alaska  
P.O. Box 11001  
Juneau, Alaska 99811-0001

Dear Mr. Nizich:

This is in response to your May 14, 2009, letter to Energy Secretary Chu, regarding the assurances required by section 410 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) as a pre-condition to release of certain funds under the State Energy Program (SEP). Thank you for the opportunity to clarify the necessary assurances as they relate to energy efficient building codes.

Under section 410 of the Recovery Act, State governors must provide the Secretary a letter indicating that the governor has obtained assurances that certain identified actions will occur. Receipt of a compliant letter is a precondition to the Department of Energy making a grant under section 410 of the Recovery Act. Attachment 3 of the Funding Opportunity Announcement (FOA 0000052, Amendment 00001 posted March 19, 2009) provided a Governor's Assurances form that governors could use to comply with section 410. However, the Department recognized that the provided certification may not be appropriate for every State, and indicated that governors could submit State-specific letters to comply.

In your letter you asked specifically about section 410(2), which requires assurances be provided that the State, or the applicable units of local government that have authority to adopt building codes, implement updated building codes and a compliance plan, as specified. Your letter stated that there is no statewide energy code in the State of Alaska.

The legislative language in section 410 recognizes that not every State has statewide building codes. Section 410(a)(2) specifically recognizes that building codes may be within the authority of local units of government. Further, the Department recognizes that in many instances implementation of the actions specified in section 410(a) is outside the authority of the State governor. Moreover, occurrence of the specified actions may require legislative or rulemaking action. The nature of the legislative and rulemaking processes make it difficult, if not impossible, for the entity with the appropriate authority to ensure that a specific action will occur.

In instances in which the actions specified in section 410(a) are outside the governor's authority, DOE has determined that the section 410 pre-condition is satisfied if the governor takes action, within the extent of his or her authority, to promote the actions.



In this context the State of Missouri's commitment, referenced in your letter, to "work with communities to create model energy efficiency standards that, if local units of government choose to implement, should reduce energy costs for Missourians," satisfies the requirements of section 410(a). That commitment is part of a broader commitment by Governor Nixon to work proactively with communities and the General Assembly, "to provide incentives and technical assistance that will result in improvements in energy efficiency and renewable energy," and, "within the limits of this authority...move forward in these critical areas."

Additionally, your letter expressed concern that the building codes referenced in section 410(2)(A) and (B), if adopted, would represent "a loss of control to tailor energy codes to the very different climates of the region" and you also expressed concern with the potential associated costs. Please note that the section 410 assurances provide flexibility with regard to the building codes. For the purpose of the assurances related to building codes, section 410(2) cites:

- (A) residential building energy code (or codes) that meets or exceeds the most recent International Energy Conservation Code, or achieves equivalent or greater energy savings, and
- (B) A commercial building energy code (or codes) throughout the State that meets or exceeds the ANSI/ASHRAE/IESNA Standard 90.1-2007, or achieves equivalent or greater energy savings.

(Emphasis added.) The language of section 410 expressly includes standards other than those cited so long as the standards achieve equivalent energy savings.

I know that Governor Palin is committed to using Alaska's energy resources wisely and efficiently and reducing energy costs for Alaskans. The \$28 million in SEP funds that is available to Alaska under the Recovery Act can be used for a wide range of activities to help achieve those goals. Funds provided under section 410 can be used for efforts to adopt and enforce updated building codes, as well as public and private building retrofits, residential energy efficiency improvements, improved street lighting, loans and grants, assistance to municipalities for local energy efficiency and renewable energy efforts, and other energy efficiency and renewable energy activities and initiatives that would be meet the needs of Alaskans.

I hope that this letter has provided sufficient clarification regarding the requirements of section 410 to enable Governor Palin to take the necessary actions to meet those requirements at the earliest possible date. I look forward to the Governor's response.

Sincerely,



Steven G. Chalk  
Principal Deputy Assistant Secretary  
Energy Efficiency and Renewable Energy