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**STATE OF ALASKA**  
**OFFICE OF THE GOVERNOR**  
**JUNEAU**

May 14, 2009

The Honorable Steven Chu  
Secretary  
United States Department of Energy  
1000 Independence Avenue, SW  
Washington, DC 20585

Dear Mr. Secretary:

On behalf of Governor Sarah Palin, I am requesting confirmation that the U.S. Department of Energy (USDOE) has changed its previous guidance to states regarding the assurances required for acceptance of state energy program funds (SEP). The USDOE guidance issued on March 12, 2009, stated that in order for a state to receive SEP funds each governor must certify in writing that either the State or all "the applicable units of local government that have authority to adopt building codes" would "implement" the 2009 International Energy Conservation Code for new residential construction or renovations, the ANSI Standard 90.1-2007 commercial building energy code, and would adopt and pay for a plan to achieve a 90 percent compliance with the above energy codes within eight years, including an "active" enforcement program. Enclosed with this letter you will find, Attachment 3 to DOE Official Guidance for State Energy Program Formula Grants, issued March 12, 2009.

It appears that the USDOE's March 12 guidance tracked with the language of Section 410 of the economic stimulus bill exactly. Please see, Section 410(a)(2), enclosed with this letter. Alaska was recently informed, through email communication, that the USDOE approved the State of Missouri's application for funds based on a much broader interpretation of the statute. Missouri's letter states "The State is committed to working with communities to create model energy efficiency standards that, if local units of government choose to implement, should reduce energy costs for Missourians."

While Governor Palin supports the concept of conserving energy and renewable energy, the Governor was not prepared to sign the USDOE's required certification because of the federal mandate for statewide building energy codes for residential and commercial buildings. The Legislature did not pass a statewide energy code and Governor Palin has not asked for, nor received, assurances from every jurisdiction with

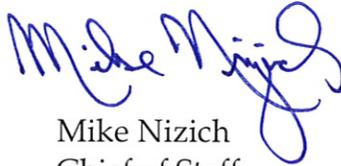
The Honorable Steven Chu  
May 14, 2009  
Page 2

authority over the subject of building codes that they would adopt and enforce the 2009 International Energy Code and ASHRAE 90.1-2007. The Governor is concerned by the loss of local control to tailor energy codes to the very different climate regions of the state, and the cost of meeting the requirements.

Please confirm in writing that the USDOE has reversed its previous narrow interpretation of the language of Section 410 in the economic stimulus bill and will now accept a broader certification statement that Governor Palin has encouraged communities to discuss and decide whether to adopt an energy code and enforcement program.

Thank you for considering this request for clarification.

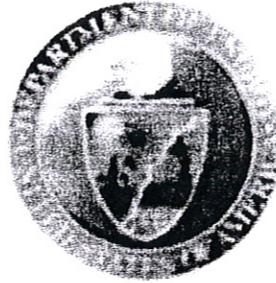
Sincerely,



Mike Nizich  
Chief of Staff

Enclosures

**FINANCIAL ASSISTANCE  
FUNDING OPPORTUNITY ANNOUNCEMENT**



**U. S. Department of Energy**

**National Energy Technology Laboratory**

**State Energy Program Formula Grants  
American Recovery and Reinvestment Act (ARRA)**

**Funding Opportunity Number: DE-FOA-0000052**

**Announcement Type: Initial**

**CFDA Number: 81.041, State Energy Program**

<b>Issue Date:</b>	<b>03/12/2009</b>
<b>Initial Application Due Date:</b>	<b>03/23/2009 at 8:00:00 PM Eastern Time</b>
<b>Comprehensive Application Due Date:</b>	<b>05/12/2009 at 8:00:00 PM Eastern Time</b>

### ATTACHMENT 3 -- GOVERNOR'S ASSURANCE CERTIFICATION

By signing below, the State Governor is providing their written certification that they will comply with and obtain the following assurances in accordance with Section 410 of the Recovery Act.

(1) The applicable State regulatory authority will seek to implement, in appropriate proceedings for each electric and gas utility, under its rate-making authority a general policy that ensures that utility financial incentives are aligned with helping their customers use energy more efficiently and that provide timely cost recovery and a timely earnings opportunity for utilities associated with cost-effective measurable and verifiable efficiency savings, in a way that sustains or enhances utility customers' incentives to use energy more efficiently.

(2) The State, or the applicable units of local government that have authority to adopt building codes, will implement the following:

(A) 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.

(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.

(C) A plan to achieve 90 percent compliance with the above energy codes within eight years. This plan will include active training and enforcement programs and annual measurement of the rate of compliance.

(3) The State will to the extent practicable prioritize the grants toward funding energy efficiency and renewable energy programs, including—

(A) the expansion of existing energy efficiency programs approved by the State or the appropriate regulatory authority, including energy efficiency retrofits of buildings and industrial facilities, that are funded by the State or through rates under the oversight of the applicable regulatory authority, to the extent applicable;

(B) the expansion of existing programs, approved by the State or the appropriate regulatory authority, to support renewable energy projects and deployment activities, including programs operated by entities which have the authority and capability to manage and distribute grants, loans, performance incentives, and other forms of financial assistance; and

(C) cooperation and joint activities between States to advance more efficient and effective use of this funding to support the priorities described in this section.

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State Governor Signature

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Date

## Section 410 [Economic Stimulus Bill]

[T]he Secretary shall make grants ... only if the governor of the recipient State notifies the Secretary of Energy in writing that the governor has obtained necessary assurances that each of the following will occur: ...

(2) The State, or the applicable units of local government that have authority to adopt building codes, will implement the following:

(A) A building energy code for residential buildings that meets or exceeds the most recently published International Energy Conservation code, or achieves equivalent or greater energy savings.

(B) A building energy code for commercial buildings throughout the State that meets or exceeds the ANSI/ASHRAE/IESNA Standard 90.1-2007, or achieves equivalent or greater energy savings.

(C) A plan for the jurisdiction achieving compliance with the building energy code or codes described in subparagraphs (A) and (B) within 8 years of the date of enactment of this Act in at least 90 percent of new and renovated residential and commercial building space. Such plan shall include active training and enforcement programs and measurement of the rate of compliance each year.

\* The most recently published International Energy Conservation Code is the 2009 International Energy Conservation Code.



## 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