DEPARTMENT OF ENERGY

Energy Efficiency and Conservation Block Grant Program—State, Local and Tribal Allocation Formulas

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE or Department) is today publishing three formulas used to distribute funds allocated to (1) local government, (2) States, and (3) Indian tribes for the Energy Efficiency and Conservation Block Grant Program, as required by the Program's authorizing legislation, Title V, Subtitle E of the Energy Independence and Security Act of 2007 (Pub. L. 110–140). The purpose of Energy Efficiency and Conservation Block Grant Program is to assist eligible local governments, States, and Indian tribes in implementing strategies to reduce fossil fuel emissions, to reduce total energy use, and improve energy efficiency. This notice provides the allocation formulas that are used to distribute funds to eligible entities. The formulas in today's notice were previously provided as part of the funding opportunity announcement issued for the Energy Efficiency and Conservation Block Grant Program.

FOR FURTHER INFORMATION CONTACT: EERE's Information Center, at *http://www1.eere.energy.gov/informationcenter/*, or call toll-free at 1–877–EERE–INFO (1–877–337–3463), between 9 a.m. and 7 p.m. EST, Monday–Friday.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department of Energy (DOE or Department) is publishing the formulas for allocation to States, units of local government, and Indian tribes established for the Energy Efficiency and Conservation Block Grant Program (EECBG Program or Program), as required by section 543(e) of the Program's authorizing legislation, Title V, Subtitle E of the Energy Independence and Security Act of 2007, Public Law 110–140 (EISA), as amended. In fiscal year 2009, the Program is funded with appropriations from the American Recovery and Reinvestment Act of 2009, Public Law 111–5 (ARRA).

ARRA appropriated $3.2 billion for the EECBG Program. The EECBG Program provides Federal grants to States, units of local government, Indian tribes, and consortia of these entities to reduce energy use and fossil fuel

emissions, and for energy efficiency programs and projects. Grants to local governments are made in two allocations—(1) cities with populations of at least 35,000 or are one of the top ten highest populated cities and counties with a population of over 200,000 or counties of any size population that are one of the ten highest-populated cities or counties of the State in which they are located ("local government-alternative 1"); (2) or cities with populations of at least 50,000 and counties of at least 200,000 ("local government-alternative 2"). The Program is administered by the Office of Energy Efficiency and Renewable Energy (EERE) of the U.S. Department of Energy.

Of amounts appropriated by ARRA, DOE will allocate $2.741 billion as described in section 543 of EISA, using the most recent and accurate population data available:

• 34 percent to eligible units of local government-alternative 1 through formula grants;

• 34 percent to eligible units of local government-alternative 2 through formula grants;

• 28 percent to States through formula grants;

• 2 percent to Indian through formula grants; and

• 2 percent for competitive grants to ineligible cities, counties, and Indian tribes.

Of the remaining amounts provided by ARRA, DOE will allocate $398 million in competitive grants to all entities eligible for Program funds as described above, and $61 million will be set aside by the Department for technical assistance to grantees and administrative costs.

The funding allocations will be as follows:

• $3,200,000,000 Appropriation in ARRA;

○ $61,000,000 Available to DOE for technical assistance to grantees and administrative costs;

○ $398,000,000 Competitive funds for all entities eligible for Program funds;

○ $2,741,180,000 EISA funds;

• $1,863,880,000 Available for local governments;

• $931,940,000 Available for 34% to Alternative 1;

• $931,940,000 Available for 34% to Alternative 2;

• $767,480,000 Available for 28% for States;

• $54,820,000 Available for 2% to Indian tribes; and

• $54,820,000 Available for 2% to competitive grants to ineligible cities, counties, and Indian tribes.

EISA directs that the formula for grants to eligible units of local

government are to be established by the Department according to the population served by the eligible unit of local government, the daytime population of the eligible unit of local government and other similar factors determined by Department (section 543(b)). EISA directs that of the amount allocated for States, the Department is to provide not less than 1.25 percent to each State, with the remainder distributed among the States based on a formula established by the Department. EISA directs the State formula to take into account the population of each State and any other criteria that the Department determines to be appropriate (section 543(c)). EISA directs that the amounts made available for Indian tribes is to be distributed based on a formula, which is to be established by the Department, taking into account any factors that the Department determines to be appropriate (section 543(d)).

The first part of today's notice describes the State and local government funding allocation formulas and data sources. The second part of today's notice describes the Indian tribe funding allocation formula and data sources.

Part One: EECBG State and Local Allocation Formulas

I. Definitions

While EISA directs the Department to provide grants to cities and counties that qualify as eligible units of local government, EISA does not define "city," "county," or related terms. For the purposes of the EECBG Program, DOE is defining "city" to include certain city-equivalent units of local government. Specifically, a city-equivalent unit of local government such as a town, village or other municipality will be considered eligible if it is listed in the most recent Census of Governments as a currently incorporated entity, has a governance structure consisting of an elected official and governing body, is capable of carrying out the activities set forth in EISA, and meets the required population thresholds described above. Additionally, consolidated city-county governments will be considered as cities.

For the purposes of the EECBG Program, a county will be considered eligible for direct formula grants from DOE if it is listed in the most recent Census of Governments as a currently incorporated county, has a governance structure with an elected official and governing body, is capable of carrying out the activities set forth in EISA, and

meets the required population thresholds. To meet the population requirement, the county population must be at least 200,000 or the county must be within the 10 most populated counties of the State in which it is located.

In evaluating county populations for eligibility for direct formula grants, DOE will not include the populations of cities located within county boundaries that are eligible for direct formula grants from DOE. For the purposes of this program, this population is referred to as the ''county balance population.'' In determining the formulas for funding distribution, DOE has determined that the EECBG Program achieves the most equitable funding allocations if done on a per capita basis. By removing the population of an eligible city from a county population, DOE has reduced the instances of double-counting persons who live in both an eligible city, which is located in an eligible county. DOE's implementation approach is consistent with the approach developed by the Community Development Block Grant Program (CDBG) administered by the Department of Housing and Urban Development (HUD). This program allocation process is modeled after the CDBG program because EECBG addresses similar issues as a formula grant program using population and additional energy-specific data to determine allocations to local governments.

For the purposes of this program, ''balance population'' is the population that resides outside the jurisdictions of eligible local governments. City and county governments that do not meet the eligibility requirements described above for direct formula grants from DOE are eligible for program funds through the State in which they are located.

For the purposes of the EECBG Program, ''States'' are the 50 United States, the District of Columbia and the following Territories of the United States: Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

DOE is not including the territories of Palmyra Atoll and Wake Atoll in its definition of ''States.'' The territories of Palmyra Atoll and Wake Atoll do not have significant permanent populations to warrant inclusion in the Program. Palmyra Atoll is a national Wildlife Refuge and access to Wake Atoll is restricted. (See, *http://www.doi.gov/oia/ Firstpginfo/islandfactsheet.htm*, last visited March 26, 2009.) The absence of permanent populations on Palmyra

Atoll and Wake Atoll would make the inclusion of these Atolls superfluous.

II. Population Data

DOE relied on the most recent and accurate population data from the U.S. Census to determine eligibility and allocate funds under the formula. DOE used and modified, for program purposes, a database of publicly available Census data created for HUD's CDBG Program that, pursuant to statutory requirement, was updated by the U.S. Census with annual population estimates for 2007. DOE modified HUD's database to accommodate program requirements specific to EECBG Program as explained below.

Determining the Population of Eligible Cities. In order to determine the identity of all eligible cities, DOE constructed a database using Census designated places (CDPs). CDPs are delineated for each decennial census as the statistical counterparts of incorporated places. DOE used the Census 2007 file of CDPs with updates to reflect challenges to the 2007 population estimates submitted to and accepted by the Census Bureau. The list of successful challenges can be found at *http://www.census.gov/popest/ archives/2000s/vintage_2007/ 07s_challenges.html*.

For the purposes of this program, DOE includes the following clarifications to the records used to calculate the universe of cities that are eligible for this program:

• In the Commonwealth of Puerto Rico, Municipios are treated as cities. Though designated as counties by the Census, governments of Municipios have the functionality of city governments.

• Towns, townships, and boroughs that are incorporated places are treated as cities. The governments of these places have the functionality of city governments.

• For those populations residing in one incorporated place that is within another incorporated place, DOE credits that population to the first incorporated place. For example, in a State in which a *town* government has incorporated *villages* with the same authorities afforded city-equivalent governments within their geographic boundaries, the *villages* in *towns* are treated as cities. Since villages are recognized as potentially eligible units of local government, DOE subtracts their population from the total population of the town in which they lie. This is to avoid double-counting of populations.

• A consolidated or unified city-county government in which a city and a county overlap geographically and govern as one consolidated government,

is considered by DOE as an eligible city. City-county governments have the functionality of city governments.

Determining the Population of Eligible Counties. To determine the counties eligible for this program, DOE used the county balance population. Successful challenges to U.S. Census 2007 county population data were incorporated. DOE reconciled the 2007 Census of Governments Directory listing of County Governments with the list of counties used for the CDBG Program. Doing this captured only those counties with functional governments and without double-counting the population of consolidated city-county governments.

In determining county balance populations, DOE identified a number of cities with geographic boundaries that cross the borders of multiple counties. In calculating county balance populations for those counties which contain only a part of an eligible city, DOE subtracted the portion of the eligible city's population living within that county.

For the purposes of this program, DOE includes the following clarifications to the records used to calculate the universe of counties that are eligible for this program:

• The updated 2007 County file contains population estimates for counties and equivalents, including Alaska's Boroughs and Louisiana's Parishes. Counties that are not a part of the Census of Governments and are without governmental authority are not a part of the database, and are thus not eligible for direct formula grants. This pertains to some counties in Massachusetts, and Alaska, as well as all counties in Connecticut and Rhode Island. As defined by the Census of Governments, county governments in Maine, Massachusetts, New Hampshire, and Vermont perform only limited functions, and thus all counties in these States were determined to be ineligible for Program funds. There are also no counties in the District of Columbia.

• Two counties—Arlington, VA and Menominee, WI—that have city-county consolidated governments were exceptions that were included in the county data files and were relocated to the city list, because, as explained above, city-county governments have the functionality of city governments.

• DOE used the County Governments file from the 2007 Governments Integrated Directory (GID) from the U.S. Census Bureau to identify the county-equivalents with governments (available at *http://harvester.census.gov/gid/ gid_07/options.html*).

Determining State Population. In order that State allocations are based on

the most accurate data, DOE incorporated and aggregated successful challenges to 2007 County Population to determine State population as was done for county population. DOE used the Census 2007 file of Census designated places (CDPs) with updates to reflect challenges to the 2007 population estimates submitted to and accepted by the Census Bureau.

Incorporating Daytime Population. EISA directs DOE to include considerations of ''daytime population'' in the allocation formula for city and county calculations. The concept of the daytime population refers to the number of people who are present in an area during normal business hours, including workers. This is in contrast to the ''resident'' population present during the evening and nighttime hours. The Census Bureau creates estimates of daytime population by adding the total number of workers working in the place minus workers who live and work in the same place with the total resident population. The Census Bureau estimate of daytime population adjusts only for work-related travel, *i.e.*, incommuters to an area and outcommuters from an area. Data necessary to adjust for shopping, school, recreation, tourism, etc. are not available.

For EECBG Program purposes, the weighted population is comprised of 29.75% daytime population and 70.25% resident population. DOE determined this weighting scheme based on an estimated 50 working hours out of a total 168 hours in a week (50/168 is equal to approximately 29.75%). Working hours are used because daytime population estimates are based on working commutes.

In places where Census Daytime Population Estimates are not consistently available the following three guidelines were observed to make the data consistent over time:

1. Where possible, the 2005–2007 American Community Survey (ACS) was used to compute daytime population figures.

2. In places where 2005–2007 ACS data are not available, DOE used daytime population data from the 2000 decennial census.

3. In places where no Census Daytime Population Estimates were available, 2007 Census Population estimates were used. This applies to 24 locations, in three States: MI, NY, and VT.

Since Census data for different resident population sources vary slightly from the 2007 population estimates and even more significantly from the 2000 census, DOE used a ratio process to make the differences consistent. This process applied the

ratio of the resident population for the 2007 Census estimate to the resident population that formed the basis for the particular daytime estimate. This calculation corrects data inconsistencies caused by using data from different years between the 2007 estimates used for allocation and the source of the data.

• Using the 2007 population estimate as a base, this process calculates an estimated daytime population for 2007.

• The ratio of the best available daytime population estimate to the resident population used in forming that daytime estimate is multiplied by the 2007 population estimate.

• The ratio of resident population to daytime population is therefore consistent between the 2007 estimates used for allocation and the source of the data.

This process for cities is applied to counties and the city parts which lie in different counties to determine their balance daytime population. The American Community Survey does not have data available for these smaller areas, so the resident population ratio is again used to superimpose the daytime estimates on the smaller areas, which can then be subtracted from the respective counties.

III. Local Governments and State Formulas

Determining City Eligibility According to Section 543 of Title V, Subtitle E of EISA. In addition to the factors considered in the previous sections, EISA provides population thresholds to determine city eligibility. DOE determined whether a city meets the population criteria for eligibility by ranking each city based on its population, as determined in the previous section, relative to all other cities in its State. Cities were added to the allocation table according to the following:

• A city with a population above 50,000 is eligible for both Alternative 2 and Alternative 1 funding.

• If a city's population is above 35,000 but below 50,000, it is eligible for Alternative 1 funding only.

• A city with a population that ranks within the ten highest populated cities in the State is eligible for Alternative 1 funding, even if the city population is below 35,000.

Determining County Eligibility According to Section 543 of Title V, Subtitle E of EISA. EISA provides population thresholds to determine eligibility in addition to the population data considerations in the previous section. DOE ranked each eligible county relative to all other counties in its State. Counties were added to the

allocation table according to the following:

• A County with a population of 200,000 or more is eligible for both Alternative 1 and Alternative 2 funding.

• A County with a population that ranks within the ten highest populated counties in the State is eligible for Alternative 1 funding only, even if the population is below 200,000.

Determining State Eligibility and Weighted Population. The 2007 State file by HUD includes 2007 Population Estimates for the 50 United States, Washington, DC and Puerto Rico. According to Sec. 541(6) the term 'State' is defined as:

• A State;

• The District of Columbia;

• The Commonwealth of Puerto Rico; and

• Any other territory or possession of the United States (as discussed previously, DOE is only including American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands).

As stated in Sec. 543(c)(2), the formula for determining allocations to States is required to consider:

• The population of each State;

• Any other criteria that the Secretary determines to be appropriate.

Three factors that are considered with equal weight in the formula are:

• The total population for the State;

• The population of the State after subtracting the populations of all eligible entities;

• Total Energy Consumption, less consumption in the industrial sector.

Total population is based on the 2007 U.S. Census Population Estimate. For the U.S. Territories other than Puerto Rico, 2000 Census population data was used because the U.S. Census Bureau does not provide interim population estimates for U.S. Territories, with the exception of Puerto Rico. The remaining population of the State is calculated by subtracting the populations for all eligible cities and all eligible counties in each State. Total Energy Consumption is compiled from 2006 per capita energy use by sector data, the most recent available, from the EIA. For the U.S. Territories, consumption by sector data was unavailable. For each State and for each factor, the percent of total compared to all the States is calculated. The three percentages are then averaged and multiplied by the total population in the United States based on the 2007 U.S. Census estimates data. This calculation results in a new population distribution that gives equal weight to the three factors mentioned above. The calculation is formally described in Appendix B.

Funding Allocation Design. The EECBG Funding Allocation Calculator (hereafter referred to as "the calculator") is a computer program which computes the pro-rata allocation levels for each eligible State and unit of local government. The total funds available for units of local government will be $931,940,000 under Alternative 1 and $931,940,000 under Alternative 2. The total funds available for States will be $767,480,000.

Alternative 1 Funding—34%. First, the calculator uses an iterative algorithm to determine Alternative 1 of EISA. Then, thirty-four percent of the funds are allocated to local governments eligible under definition Alternative 1. The funds are apportioned to each local government according to their share of population relative to the entire set of eligible entities. A minimum level of funding is set at $50,000. The calculator then checks if any city or county was allocated less than $50,000. Governments which are (1) funded below the minimum amount and (2) are not eligible under the definition of Alternative 2, are allocated the minimum amount. The remaining funds are apportioned in the same manner to

all other governments. Cities that fall below the $50,000 minimum on reapportionment are increased to the minimum level. This process repeats itself until no local government is funded at a level below the minimum. For more detail on this calculation see Appendix A.

Alternative 2 Funding—34%. Another thirty-four percent of funds is allocated to those governments that are eligible under the definition of Alternative 2. The process is the same as the apportionment for those eligible under the definition of Alternative 1. In Alternative 2, funding allocations from Alternative 1 are included in the total used to check the minimum amount. The calculator adds Alternative 2 funding to the amount received under Alternative 1 for any eligible entity receiving funding under Alternative 2. For more detail on this calculation see Appendix A.

State Funding—28%. The process for allocating funds to States is nearly identical to the allocation algorithm for Alternative 1. EISA provides a statutory minimum funding allocation for States of 1.25% of the State allocation. At the level of funding established in ARRA,

this minimum is $9,593,500. Using the iterative process, DOE calculates which States should be receiving the minimum amount of funding. DOE makes the minimum allocations. The remaining funds are then distributed pro rata based on the weighted population of States that are not designated to receive the minimum amount. For more detail on the math of this calculation see Appendix B.

Final Output. Once calculations have been completed for the two alternative definitions, the amounts allocated to each eligible entity are summed, and two spreadsheets are written to an allocation file. The first contains all eligible units of local government and the second contains all States. The spreadsheets contain all relevant data used in the calculation including each final allocation rounded to the nearest one hundred dollars. A summary text file is also written containing the total of all grants to be received by each State.

Appendix A: Local Government Allocation Formulas

ALTERNATIVE 1:

$$A_{i1} = \begin{cases} \text{if receiving minimum amount of funding} & m \\ \\ \text{else} & \dfrac{|WP|_i \times \left[(l_1 \times F) - (M \times m) \right]}{|WP|_T} \end{cases}$$

$$|WP|_i = \begin{cases} \text{if daytime population estimates available} & dE_i + (1-d)\,D_i \\ \\ \text{else} & E_i \end{cases}$$

$$D_i = \frac{E_i \times (P_i + w_i - W_i)}{P_i}$$

$$|WP|_T = \sum_{Ak\ 1 \neq m}^{n} |WP|_k$$

ALTERNATIVE 2:

$$A_{i2} = A_{i1} + \frac{|WP|_i \times (l_2 \times F)}{|WP|_{T2}}$$

$$m = \$50,000$$

$$F = \$2,741,000,000]$$

$$l_1 = l_2 = 0.34$$

$$d = 118/168$$

A_{i1} = Total amount of funding allocated to Government *i* under Definition Alternative 1

F = Total amount of EECBGP program formula funding allocation

l_1 = Percentage of total allocations available

to Local Governments eligible under definition Alternative 1

l_2 = Percentage of total allocations available

to Local Governments eligible under definition Alternative

$\backslash WP\backslash_i$ = Weighted populations average used to allocate funding

$\backslash WP\backslash_T$ = Sum of all weighted populations for which the minimum funding level is not designated

D_i = Daytime Population estimate normalized to 2007 Population estimate

d = daytime coefficient

E_i = 2007 Population Estimate for Government i

M = number of governments receiving minimum funding level m

m = minimum amount of funding each entity must receive

n = number of eligible local governments

n_2 = number of local governments eligible under Alternative 2 only

P_i = Total residential population based on ACS 2005–2007 or Census 2000

W_i = Workers working in the jurisdiction of government i based on ACS 2005–2007 or Census 2000

W_i = Workers living in the jurisdiction of government i based on ACS 2005–2007 or Census 2000

Note: For Counties, all population figures are adjusted to reflect only the balance of their population excluding the populations of any eligible entities therein. For a local government that is eligible under only Alternative 1 and with a weighted population (|WP|) above 12,000, this works out to:

$$A_{i1} = \frac{\left\{\left(\frac{118 \times E_i}{168}\right) + \left[\left(\frac{50 \times E_i \times (P_i + w_i - W_i)}{168 \times P_i}\right)\right]\right\} \times \left[(0.34 \times F) - (M \times m)\right]}{\displaystyle\sum_{Ak\,1 \neq m}^{n} \left\{\left(\frac{118 \times E_k}{168}\right) + \left(\frac{50 \times E_k \times (P_k + w_k - W_k)}{168 \times P_k}\right)\right\}}$$

For a local government receiving funding under alternative 2, this works out to:

$$A_{i2} = \left| \frac{\left\{\left(\frac{118 \times E_i}{168}\right) + \left[\left(\frac{50 \times E_i \times (P_i + w_i - W_i)}{168 \times P_i}\right)\right]\right\} \times \left[(0.34 \times F) - (M \times m)\right]}{\displaystyle\sum_{Ak\,1 \neq m}^{n} \left\{\left(\frac{118 \times E_k}{168}\right) + \left(\frac{50 \times E_k \times (P_k + w_k - W_k)}{168 \times P_k}\right)\right\}} \right|$$

$$+ \left| \frac{\left\{\left(\frac{118 \times E_i}{168}\right) + \left[\left(\frac{50 \times E_i \times (P_i + w_i - W_i)}{168 \times P_i}\right)\right]\right\} \times (0.34 \times F)}{\displaystyle\sum^{n2} \left\{\left(\frac{118 \times E_k}{168}\right) + \left(\frac{50 \times E_k \times (P_k + w_k - W_k)}{168 \times P_k}\right)\right\}} \right|$$

Appendix B: State Allocation Formulas

State Formula:

$$A_{i1} = \begin{cases} \text{if receiving minimum amount of funding} & m \\ \\ \text{else} & \dfrac{|WP|_i \times \left[(l_1 \times F) - (M \times m)\right]}{|WP|_T} \end{cases}$$

$$|WP|_i = \left(\frac{1}{3}\right) \times \left(\frac{C_i}{C_T} + \frac{B_i}{B_T} + \frac{E_i}{E_T}\right) \times E_T$$

$$|WP|_T = \sum_{Ak \neq m}^{n} |WP|_k$$

$$C_T = \sum C_i$$

$$B_T = \sum B_i$$

$$E_T = \sum E_i$$

$$m = 0.0125 \times s \times F$$

$$F = \$2,741,000,000$$

$$s = 0.28$$

s = Percentage of total allocations available to State Governments

M = number of governments receiving minimum funding level m

m = minimum amount of funding each entity must receive

n = number of State Governments

$/WP/_T$ = Sum of all weighted populations for which the minimum funding level is not designated

$/WP/_i$ = Weighted population which accounts for one third total population, one third

balance population (those living in ineligible entities), and one third non-industrial energy consumption

C_i = Energy consumption less the industrial sector's consumption for State i

E_i = 2007 Population Estimate for State i

B_i = Balance Population for State i after subtracting the populations of eligible cities and counties in State i

E_T = Sum of all Population 2007 Estimates for States, or in the case of territories 2000 Census population

C_T = Sum of energy Consumption minus industrial use for all States, except in U.S. territories where total energy Consumption is included due to lack of data

B_T = Sum of all Balance Populations for the States

For a State not receiving the minimum amount of funding, the equation looks like:

$$A_i = \frac{\left(\dfrac{E_T}{3}\right) \times \left(\dfrac{C_i}{C_T} + \dfrac{B_i}{B_T} + \dfrac{E_i}{E_T}\right) \times \left[(s \times F) - (M \times m)\right]}{\displaystyle\sum_{Ak\,1\neq m}^{n} |WP|_k}$$

Part Two: EECBG Indian Tribe Allocation Formula

I. EECBG Tribal Allocation

Section 543(d) of Title V, Subtitle E of EISA provides that, "of amounts available for distribution to Indian tribes under subsection (a)(3), the Secretary shall establish a formula for allocation of the amounts to Indian tribes, taking into account any factors that the Secretary determines to be appropriate."

Part Two of this notice applies specifically to the Tribal Allocation, as described in section 543(a)(3), for which the total funds available will be $54,820,000.

II. Energy Efficiency and Conservation Block Grant Tribal Formula

Defining Eligible Indian Tribes

As defined by section 541(4) of Title V, Subtitle E of EISA, " 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act." The Indian Self-Determination and Education Assistance Act states that, " 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians" (25 U.S.C. 450b).

The Tribal Allocation for the EECBG Program will be distributed among the 562 Federally recognized Indian tribes, listed in *Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs* published by Department of Interior's Bureau of Indian Affairs in the **Federal Register** on April 4, 2008, 73 FR 18553;

and the 12 Alaska Native regional corporations established pursuant to the Alaska Native Claims Settlement Act (33 U.S.C. 1601 *et seq.*).

Formula Methodology. Given the relatively broad nature of the statutory language (*e.g.,* "taking into account any factors that the Secretary determines to be appropriate"), the Department has taken the opportunity with the Tribal Allocation to improve upon a formula based solely on population and tailor the distribution of funds to have the greatest impact in meeting the needs of Indian tribes most affected. However, the formula will draw heavily on relevant existing formulas and data sources, which were developed and are used by the Department of Housing and Urban Development's (HUD) Office of Native American Programs' (ONAP) Indian Housing Block Grant Program (IHBG), and EERE's Office of Weatherization and Intergovernmental Program's (WIP) Weatherization Assistance Program (WAP).

Summary of Formula. An explanation of the allocation formula is set forth below. The formula is calculated based on population data from the 2000 U.S. Decennial Census, as adjusted for birth and death rates provided by the National Center of Health Statistics used by the Indian Health Service, and heating and cooling degree day data from the National Oceanic and Atmospheric Administration (NOAA).

Formula Factors: The formula is composed of two weighted factors. The first factor (F1) is the Tribal Population Factor. The next factor, The Tribal Climate Factor (F2), represents the climatic conditions in each Indian tribe's State, derived from heating and cooling degree days.

F1 Tribal Population Factor. The first factor in the formula is the Tribal Population Factor. This allocates more

funds to Tribes with larger populations. In the formula, the Tribal Population Factor is represented as the ratio of each Indian tribe's American Indian and Alaska Native (AIAN) population to the National Total Tribal AIAN population. This factor is weighted at 0.75. For an explanation of the weighting scheme, please see *Weighting of the Formula Factors* below.

The Tribal Population Factor is expressed,

F1 = WF1 × (Indian Tribe's AIAN Persons/Sum of all Tribes' AIAN Persons)

Where,

WF1 = Population Weighting Factor (0.75)

Accumulating population data for Indian tribes presents many obstacles, including but not limited to questions regarding coordinating an Indian tribe's geographic area with available data sources and inaccuracies in available data. Fortunately, HUD maintains a database for the need-based portion of the IHBG formula, which includes AIAN population data by Formula Area and as adjusted for birth and death rates provided by the National Center of Health Statistics used by the Indian Health Service, as defined in the IHBG regulations (see 24 CFR 1000, Subpart D for a definition of Formula Area and the methodology used under HUD's IHBG Program). The EECBG Program uses this HUD database in its calculation of the Tribal Allocation formula. The data that is used is that which HUD used in its allocation of IHBG fiscal year 2008 funds. This is the most recent version of this data and includes population estimates for 2007, with updates based on successful challenges from that year. Using this database allows DOE to comply with the legislative change in ARRA, which requires that the most

recent accurate population updates be used.

Following HUD IHBG precedent, Indian tribes with populations of ''zero'' are considered eligible for Tribal Allocation funds. This is due to the fact that Census data often does not accurately reflect true AIAN populations in a Formula Area.

The U.S. Census Bureau tracks two sets of population numbers for all Indian tribes—single-race and multi-race. An Indian tribe's single-race population number includes people who identify themselves only as an American Indian and Alaska Native (AIAN) person. The multi-race population number includes people who identify themselves only as an AIAN person and those who identify as AIAN in combination with one or more additional races. Since the definition of multi-race includes all single race American Indian and Alaska Native persons, the multi-race population of any given tribe is always larger than or equal to the single race population. But, the allocation formula compares a tribe's population to the National Total AIAN population.

The single race population of each tribe is compared to the total single race nationally. The multi-race of each tribe is compared to the total multi-race population nationally. In some cases the single race to national total single race for a given tribe will produce a larger ratio than the comparison of multi-race population and vice versa. To ensure that each Indian tribe receives the greatest allocation possible the tribal allocation formula is calculated twice, first using single-race population data and second using multi-race population data. The greater of the two allocations is then selected for each Indian tribe.

The Department uses a methodology whereby the population value that leads to the greatest funding level for each Indian tribe is included in the calculation. HUD's IHBG Program has incorporated such a modification into its formula, to ensure that each Indian tribe receives the greatest allocation possible. The EECBG Program will also use this methodology in making its tribal formula allocations. A full explanation of this method is provided below at *Single- Versus Multi-Racial Population Modification.*

F2 Tribal Climate Factor. The second factor, the Tribal Climate Factor, addresses the need for energy generated by weather conditions and the disparity of climatic conditions in different regions. Building retrofits and other energy efficiency and conservation measures can have a greater impact in regions experiencing severe climatic

conditions relative to regions experiencing mild seasonal variations. Given that more than half of all eligible Indian tribes are located within the State of Alaska and the extreme climatic conditions experienced in that State, addressing climate disparity is of particular importance. Energy consumption data, which was selected by the Department as a criterion for the State allocation formula, was considered for use in the Tribal formula. However, tribal-specific energy use data is unavailable, and State energy consumption on a per capita basis is not comparable to tribal energy consumption on a per capita basis. Thus, climate data is the best indicator available to account for disparities in energy demand.

The Tribal Climate Factor is obtained by adding the heating degree days (HDD) and cooling degree days (CDD) for each Indian tribe's State, treating the energy needed for heating and cooling proportionately. State data are used due to the lack of verifiable site-specific data. The calculation of this factor is based largely on the climate factor developed for EERE's WAP formula allocation. The Tribal Climate Factor is weighted at 0.25. For an explanation of the weighting scheme, please see Weighting of the Formula Factors below.

The Tribal Climate Factor is expressed,

F2 = WF2 × (Indian Tribe's State Climate Factor/Sum of All Tribes' State Climate Factors)

Where,
WF2 = Climate Weighting Factor (0.25) and State Climate Factor is given by,
State Climate Factor = (HDD State Ratio + CDD State Ratio)
The State HDD and CDD Ratios are expressed,
State HDD Ratio = State HDD/National Median HDD
State CDD Ratio = (State CDD/National Median) × 0.1
Where,
Cooling Consumption (0.49 Quadrillion Btu)/ Heating Consumption (4.79 Quadrillion Btu) = 0.1

The ratio of cooling to heating energy consumption reflects the fact that nationally households use, on average, one tenth as much energy for cooling as for heating. National heating consumption equals 4.79 quadrillion British Thermal Units (Btu) and air conditioning (cooling) consumption equals 0.49 quadrillion Btu. Cooling consumption divided by heating consumption rounds to 0.1. National data are used because of the absence of complete State-specific data.

In order to account for the variation in weather in a simple but equitable manner, DOE compares each Indian tribe's State's (or States') climate to the National Median. Each State's HDD and CDD are divided by the series' median values. Using the median as the denominator ensures that half of the States would fall above 1 and half would fall below 1. A State HDD Ratio (HDD divided by the median) greater than 1 indicates a State with relatively cold winters, while a value greater than 1 for a State CDD Ratio indicates a State with a relatively warmer summer. To find the median of any odd series of numbers, the series is arranged in ascending order and the value that occurs in the middle of series is chosen as the median. The series relevant to the Tribal Climate Factor is odd because it consists of the 50 States and the District of Columbia. The median value occurs at the 26th observation (State). The median was chosen, rather than the mean, because of its characteristic of being ''insensitive'' to extreme heating and cooling values, such as those found in States like Alaska and Florida which tend to skew or pull the mean or average towards one extreme or another. Each State CDD Ratio is multiplied by 0.1. The final State Climate Factor for each State is then the sum of the State HDD and CDD Ratios. The final Tribal Climate Factor for each Indian tribe is the result of dividing each Indian tribe's corresponding State Climate Factor by the sum of all Indian tribes' State Climate Factors. This step normalizes the climate factor, so that the sum of all Tribal Climate Factors will now equal 1. For those Indian tribes whose Formula Areas are found in more than one State, an average of the State Climate Factors is used.

The formula uses the thirty year averages (1971–2000) of heating and cooling degree days as reported by NOAA to account for climatic conditions. Heating and cooling consumption data were obtained from Table 28 of the Energy Information Administration's (EIA) Household Energy Consumption and Expenditures 1990.

Weighting of the Formula Factors. In the allocation formula, the Tribal Population Factor is weighted at 0.75 and the Tribal Climate Factor is weighted at 0.25. This weighting scheme was designed to ensure that the tribal formula is consistent with other EECBG formulas (local governments and State), in that population will play the predominant role in determining an entity's allocation. As with the State formula, the factor related to energy (in the case of Indian tribes climatic

conditions, and in the case of States energy use) is given a lesser, though still significant, weight. This allows the formula to adjust allocations based on the variations in energy demand nationwide, without skewing them dramatically away from a per capita basis.

Formula Share. The above factors are combined into a single formula by summing the Tribal Population Factor (F1) and the Tribal Climate Factor (F2) to find each Indian tribe's formula share.

The Tribal Formula Share is expressed, Tribal Formula Share = Tribe's F1 + Tribe's F2

Where,
The Sum of All Tribal Formula Shares = 1

Each Indian tribe's share of the Tribal Allocation is then calculated by multiplying the total Tribal Allocation by each Indian tribe's formula share.

The Tribal Formula Allocation is given by,
Tribal Formula Allocation = Tribal Allocation × Indian Tribe's Tribal Formula Share

Minimum Level of Funding. The minimum level of funding for Tribal Formula Allocations is $25,000. This is based on the total amount of available funding and HUD IHBG precedent. Though currently the need-based portion of the IHBG allocation formula is a set percentage of funds, for many years a minimum amount of $25,000 was employed and deemed adequate by HUD as well as the Indian tribes.

A direct computation of the allocation formula will produce an allocated amount for each Indian tribe, in which some tribes may receive an allocation value less than $25,000. To resolve this, an algorithm is used to make multiple passes through the list of Indian tribes,

to check if any were allocated less than $25,000. If a Tribal Formula Allocation is calculated to be below $25,000, this algorithm assigns the tribe the minimum value, subtracts this value from the total Tribal Allocation, and then locks-out the Indian tribe from further passes. Because some Indian tribes may fall close to the minimum funding mark in the first pass, when reallocating funds, they may fall below the $25,000 minimum. The algorithm makes another pass of the remaining Indian tribes, calculating the new Tribal Formula Allocation and checking again for levels below $25,000. This process repeats itself until no Indian tribe is funded at a level below the minimum.

Single- Versus Multi-Racial Population Modification. As discussed above at *F1 Tribal Population Factor,* since differences in single-race and multi-race populations may lead to significantly different funding levels, it is important to incorporate into the overall calculation a selection process whereby the population value that leads to the greatest funding level for each tribe is chosen. Therefore, the EECBG Program will use the following method, modeled after that of HUD's IHBG Program, in calculating the final Tribal Formula Allocations:

1. The Tribal Formula Allocations are calculated using both the Single-Race AIAN Persons data and the Multi-Race AIAN Persons numbers for each Indian tribe.

2. The higher of the two Tribal Formula Allocations is selected for each Indian tribe.

3. The sum of the allocations resulting from the selection process described in Step 2 will be greater than the total funds available for Tribal Allocation. Therefore, an across the board reduction of the Tribal Formula Allocations is

made to ensure that the sum of all allocations is within appropriation levels.

4. A pro-rata reduction factor is calculated by subtracting the total funds available to the Tribal Allocation from the sum described in Step 3, and then dividing the remainder by that same sum. The pro-rata factor is applied to each Tribal Formula Allocation.

5. As a result of the calculation described in Step 4, some Tribal Formula Allocations will drop below the minimum of $25,000. These Indian tribes are assigned the minimum value, a sum of all minimums assigned is subtracted from the total Tribal Allocation, and the tribes receiving the minimum are removed from further calculations. This produces a new total funds available to the Tribal Allocation and a new sum of allocations.

6. For the remaining Indian tribes, a new pro-rata reduction factor is calculated using the new Tribal Allocation and sum of allocations figures described in Step 5, and then applied to each remaining allocation as described in Step 4.

7. Steps 5–6 are repeated, until eventually, no Indian tribes are below the minimum allocation after the pro-rata reduction factor is applied. At this point the process stops, as all Tribal Formula Allocations have been calculated.

Final Output.

Once calculations have been completed for the Single- Versus Multi-Racial Population Modification, the amounts allocated are rounded to the nearest one hundred dollars. These are the final Tribal Formula Allocations. For a complete version of the formula detailed in Part II, see Appendix C.

Appendix C: Tribal Allocation Formula

$$A_i = \left\{ WF_1 \frac{P_i}{\sum_{\text{Indian tribes}} P_i} + WF_2 \left[\frac{\left(\frac{HDD_s}{|HDD|} + 0.1 \frac{CDD_s}{|CDD|} \right)}{\sum_{\text{Indian tribes}} \left(\frac{HDD_s}{|HDD|} + 0.1 \frac{CDD_s}{|CDD|} \right)} \right] \right\} F$$

A_i = Indian tribe i's Tribal Formula Allocation
WF_1 = Population Weighting Factor
P_i = Indian tribe i's AIAN Persons

$\sum_{\text{Indian tribes}} P_i$ = Sum of all Tribes' AIAN Persons
WF_2 = Climate Weighting Factor
HDD_s = Heating Degree Days for States

CDD_s = Cooling Degree Days for States
$|HDD|$ = National Median HDD
$|CDD|$ = National Median CDD

$$\sum_{\text{Indian tribes}} \left(\frac{HDD_s}{|HDD|} + 0.1 \frac{CDD_s}{|CDD|} \right) = \text{Sum of all Tribes' Climate Factors}$$

F = Tribal Allocation

Approval of the Office of the Secretary. The Secretary of Energy has approved publication of this notice.

Issued in Washington, DC, on April 8, 2009.

Steven G. Chalk,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E9–8609 Filed 4–14–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13342–000]

Hydro Energy Technologies, LLC; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

April 8, 2009.

On December 9, 2008, Hydro Energy Technologies, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Berlin Lake Hydroelectric Project, to be located on the Mahoning River, in Portage and Mahoning Counties, Ohio.

The proposed Berlin Lake Project would be located at: (1) The existing U.S. Army Corps of Engineers Berlin Lake Dam, which is 663.5 feet long and 96 feet high; and (2) an existing 5,500-acre reservoir with a water surface elevation of 1,032 feet mean sea level.

The proposed project would consist of: (1) A new powerhouse containing one or more turbine/generators with a total installed capacity of 2.5 megawatts; (2) a new 90-inch-diameter, 250-foot-long penstock; (3) a new 0.5-mile-long, 12.5-kilovolt transmission line; and (4) appurtenant facilities. The Berlin Lake Project would have an estimated average annual generation of 12,155 megawatt-hours, which would be sold to a local utility.

Applicant Contact: Mr. Anthony J. Marra Jr., Managing Partner, 31300 Solon Rd., Suite 12, Solon, Ohio 44139, (440) 498–1000.

FERC Contact: John Ramer, (202) 502–8969.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/ elibrary.asp.* Enter the docket number (P–13342) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8557 Filed 4–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–111–000]

Texas Eastern Transmission, LP; Notice of Application

April 8, 2009.

Take notice that on April 7, 2009, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056, filed in the above referenced docket an application pursuant to section 7(b) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations, for an order granting the authorization to abandon in place approximately 25.43 miles of Line 3, consisting of 19.80 miles of 26-inch pipeline and 5.63 miles of 20-inch pipeline, beginning at the Summerfield Compressor Station at milepost (MP) 31.52 in Noble County, Ohio, and ending at MP 56.95, approximately 160-feet upstream of the Meter and Regulatory Station 70004/74040 in Monroe County, Ohio. In addition, Texas Eastern proposes to remove a launcher barrel and mainline valve at MP 51.31 located at a fenced valve site along the 25.43-mile segment of Line 3, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application may be directed to Garth Johnson, General Manager, Rates and Certificates, Texas Eastern Transmission, LP, PO Box 1642, Houston, Texas 77251–1642, at (713) 627–5415.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings