

## DEPARTMENT OF ENERGY

## 10 CFR Part 440

## Weatherization Assistance for Low-Income Persons; Amendment of Regulation and Request for Comments

AGENCY: Department of Energy.

ACTION: Interim rule with request for comments.

**SUMMARY:** The Department of Energy is adopting on an emergency basis, amendments to its program for Weatherization Assistance for Low-Income Persons to ameliorate severe hardships resulting from delays in delivery of weatherization assistance to low-income persons, especially the elderly and handicapped. Specifically, the amendment seeks to stimulate and increase production through changes including the following principal modifications:

—Permit payment to hire labor or engage contractors, if volunteers and labor funded in accordance with Comprehensive Employment and Training Act of 1973 are unavailable;

—Increase the maximum allowable expenditure per dwelling unit from \$800 to \$1,000, which amount may be increased up to \$1,600 by the Regional Representative to redress severe shortages of labor;

—Allow the use of low cost/no cost energy conservation measures as an interim approach to weatherization;

—Instead of retaining the nationwide \$240 ceiling on indirect costs, permit a State, with the approval of the Regional Representative, to establish ceilings for the State for weatherization materials, program support and labor;

—Establish greater flexibility for weatherizing rental dwelling units in a multifamily building; and

—Permit DOE to make tentative allocations among the States and to make adjustments based upon production.

**DATES:** Effective date: February 27, 1980.

**HEARING DATES:** Written comments must be received on or before April 28, 1980. Hearings shall be held on the dates and at the places indicated below, according to procedures set out in supplementary information.

**ADDRESSES:** All comments to Joanne Bakos, Conservation and Solar Energy, Department of Energy, Mail Stop 2221C, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585.

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**SUPPLEMENTARY INFORMATION:**

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**I. Introduction**

The Department of Energy ("DOE") is amending the regulation for the program for weatherization assistance for low-income persons ("program" or "weatherization program"), 10 CFR Part 440, under the Energy Conservation in Existing Buildings Act of 1978, as amended ("Act"), 42 U.S.C. 6851 *et seq.*

In the past twelve months, DOE has seen progressive increases in home heating expenditures due to escalating energy prices. These increases may result in considerable hardship for low-income persons, especially the low-income elderly and handicapped. While the need for weatherization has dramatically increased, DOE's program has been plagued by cumulative shortfalls in production. Assistance simply is not being delivered in response to the ever-increasing needs of the low-income. Progress has been hampered since the inception of the program. Between August 1977 and December 1979, approximately 240,000 dwellings were weatherized—considerably short of the original goal which called for 753,000 units to be completed by the end of FY 1979. As of December 1979, \$96,000,000 of the \$490.5 million appropriated had been expended for weatherization assistance.

DOE has concluded that it is imperative to take necessary steps immediately to improve the current level of program performance. Low-income persons cannot afford the further delays incident to the normal rulemaking procedure. Immediate action is necessary to ameliorate potential human hardship which may result from further delays in the delivery of weatherization

assistance. Strict compliance with informal rulemaking procedures is likely to cause serious harm because it would delay carrying out the changes made by this issuance. Accordingly, DOE has promulgated today's issuance as an interim final rule, effective immediately.

**II. Background of the Program**

The Act authorized the Federal Energy Administration ("FEA"), which subsequently became part of DOE, to establish a weatherization program to aid low-income people, particularly the elderly and handicapped. Funds are provided to install insulation, storm windows, caulking and weatherstripping, and other improvements to reduce heat loss and conserve energy.

DOE currently makes grants to States, the District of Columbia and Indian tribal organizations. The Governor or his designee applies for, receives and administers the grant funds. The funds are distributed by the States and the District to local governments and non-profit organizations, with a statutory preference being accorded to Community Action Agencies ("CAA's"), to weatherize homes. Indian tribes administer funds and also perform weatherization activities. Funds are allocated by DOE on a formula based on the relative need for weatherization assistance throughout the States. The formula takes into account the number of low-income households in each State and the annual heating and cooling degree days in each State, factored by the percentage of total residential energy used for space heating and cooling.

The Act permits grant funds to be spent for weatherization materials, program, support, administration, some labor and training and technical assistance. Program support includes salaries of on-site supervisors, purchase or lease of equipment and other operating costs such as transportation, rental of warehouse space and insurance of vehicles.

Administrative costs are limited to 5 percent of a grant for grantees and 5 percent of a sub-grant for program operators. The legislation also mandates the use, to the maximum extent practicable, of volunteers and labor funded in accordance with the Comprehensive Employment and Training Act of 1973 ("CETA"), 42 U.S.C. 278 *et seq.* To date, approximately 80 to 85 percent of weatherization workers in the program have been paid by CETA.

The program became operational in 1977. Currently, 49 States (except Hawaii) and the District of Columbia have DOE grants which are being

implemented through sub-grants to more than 1,000 local program operators. Appropriations for the program for fiscal years 1977 through 1980 are \$490.5 million. Reauthorization of the program for FY 1981 has been requested by the President.

Since August 1979, DOE has issued waivers to permit program operators to hire working supervisors or contractors, if labor funded under CETA is unavailable, and to increase the maximum amount which could be spent per dwelling unit. Despite these efforts, problems persisted. Therefore on January 1, 1980 the Secretary of Energy established a temporary Special Project Office which is charged with correcting the situation.

The Special Project Office has been directed to:

Rapidly expand production;

Assure that labor necessary to install weatherization materials will be available;

Improve program management; and

Decrease the time required to transmit funds to the States and local levels.

Today's issuance is a first step in accomplishing the mission of the Special Project Office.

### III. Changes to the Regulation

Today's issuance seeks to improve program performance through certain changes to the regulations which include the following principal modifications:

Permit payment to hire labor or engage contractors, if volunteers and labor funded in accordance with CETA are unavailable;

Increase the maximum allowable expenditure per dwelling unit from \$800 to \$1,000, which amount may be increased up to \$1,600 by the Regional Representative to redress severe shortages of labor;

Allow the use of low cost/no cost energy conservation measures as an interim approach to weatherization;

Instead of retaining the nationwide \$240 ceiling on indirect costs, permit a State, with the approval of the Regional Representative, to establish ceilings for the State for weatherization materials, program support and labor;

Establish greater flexibility for weatherizing rental dwelling units in a multifamily building; and

Permit DOE to make tentative allocations among the States and to make adjustments based upon production.

All of the changes are specifically discussed below.

#### A. Labor

(1) *Summary of Changes.* Until today, use of program funds for installation

labor was possible only upon waiver. Under § 440.17 of the rules as amended payments for necessary installation labor not available from other sources will be treated as part of program support and labor costs under § 440.16(a)(1)(ii)(F). Section 440.17(a)(1) permits payments, to the extent permitted by the Department of Labor ("DOL"), to supplement wages paid to training participants and public service employment workers pursuant to CETA. Payments may also be made for labor under § 440.17(a)(2) if the grantee has determined that CETA funded labor and volunteers are unavailable in an area to weatherize dwelling units under the supervision of qualified supervisors. These payments may be made to employ labor, with preference being given to low-income persons eligible to receive training under CETA. Payments may also be made to contractors to install weatherization materials. Preference is to be accorded a non-profit corporation or a business owned by disadvantaged individuals performing weatherization services. Section 440.17(b) authorizes an increase in the per dwelling unit limitation from \$1,000 up to \$1,600 to cover labor costs where the Regional Representative determines, based upon satisfactory documentation, that volunteers or CETA funded laborers are unavailable.

Section 440.16(b) has been revised to permit payment of labor costs other than those authorized under § 440.17 or for on-site supervisors out of administrative funds. Accordingly, a local program operator may expend administrative funds to hire administrative personnel, including an inventory clerk, a weatherization coordinator or secretary, to support weatherization activities.

(2) *The Program's Problem with Labor Costs.* DOE's position on payment of labor costs has evolved over 3½ years of experience with the program and represents DOE's continuing efforts to provide program resources to respond to demonstrated needs at the State and local levels.

In its original final rule for the program, FEA declined to permit payment for labor costs, other than a limited amount for supervisors and foremen, for the following reasons—

"First, the Act requires that funds be applied to the purchase of materials to the maximum extent practicable; second, the Act requires that labor be provided by volunteers and CETA workers to the maximum extent practicable; third, the Act states that financial assistance under the program should supplement, and not supplant, State or local funds in order to maximize the total amount of funding available for weatherization activities; fourth, allowing

labor costs could divert funding from weatherization assistance to a public employment resource and manpower training program. While this latter objective may be independently desirable, the Act does not give FEA a mandate to incorporate it in its weatherization assistance program.

"The determination to prohibit labor as an allowable program expenditure was made only after considerable debate and review. This determination was based in part upon the fact that neither FEA nor the commenters were able to obtain hard data on the number of paid workers needed to supplement volunteers, training participants, and public service employment workers, or firm assurances that adequate CETA positions would be made available to support FEA's weatherization program. Still, the projected availability of large amounts of CETA funds during the period of FEA's weatherization program lends compelling support to the proposition that States will have fully adequate funds to support the installation of the weatherization materials purchased under this regulation. FEA intends to monitor this situation closely during the program year. If FEA determines, after review of ongoing programs and analysis of data regarding the adequacy of manpower, that sufficient volunteers, training participants, and public service employment workers are not available to support this effort, FEA will reconsider this issue, but such reconsideration will necessarily have to include a review of how States used their available CETA funds." 42 FR 27899, 27901 (June 1, 1977).

More than one year later, FEA noted in a proposed rule issued on August 1, 1978, that the lack of sufficient labor to perform weatherization work is one problem which occurred with some frequency in the first year of the program. DOE found these problems could be redressed by "taking actions in areas largely other than modification of the regulations in order to minimize the labor problem." 43 FR 34493 (August 4, 1978). Better coordination between program operators and CETA prime sponsors was the approach recommended by the Comptroller General of the General Accounting Office ("GAO") in a Report to the Congress entitled "Complications in Implementing Home Weatherization Programs for the Poor," HRD-78-146, August 2, 1978, stating:

"We recommend that the Secretaries of Energy and Labor and the Director of CSA jointly establish procedures whereby CETA sponsor program plans are made available to CSA and DOE regional offices for comment before Labor approves them. Such comments will afford Labor direct insight into how well coordinated CETA program sponsors' plans are with national home weatherization program efforts. We also recommend that the Secretaries of Labor and Energy and the Director of CSA establish procedures under the interagency agreement to resolve difficulties that may arise with CETA

program sponsors fulfilling approved planning commitments to support weatherization program efforts." p. 8.

DOE again restated the commitment, in the final rule issued on December 27, 1978, "... to monitor the labor situation to determine if changing circumstances and conditions warrant a change in the regulations." 44 FR 31, 32 (January 2, 1979).

Congressional concern for matching CETA funded labor with program requirements was reflected in section 233 of the National Energy Conservation Policy Act ("NECPA"), Pub. L. 95-619, 92 Stat. 324 *et seq.* which tasks DOE, DOL, CSA and others to coordinate labor requirements for the program with support, to the maximum extent practicable, by CETA funded labor. In carrying out the changes mandated by NECPA, DOE noted in a final rule that it planned to continue to use the on-going interagency working agreement to resolve labor problems. 44 FR 31570 (May 31, 1979).

In a report on the program DOE's Office of Inspector General ("OIG") noted the continuation of what had become chronic problems in obtaining labor. Report on Conditions Adversely Affecting the Weatherization Program for Low-Income Persons, IGA 79-3 (June 12, 1979). The Report notes specific problems with the use of CETA funded labor compounded by changes to CETA made effective April 1, 1979, which may make less labor available for weatherization in some areas. p.2. Accordingly, OIG concluded:

"Since this program is so largely dependent on CETA labor, it is important that labor availability be reasonably assured before allocating funds to grantees and subgrantees. Where labor problems exist, there appear to be two management options— (1) target the program to areas of CETA/volunteer labor availability or (2) obtain relief from restrictions on employing commercial workers." p. 17 (emphasis supplied).

By the summer of 1979, the program had entered a critical period. DOE found that changing circumstances warranted a change regarding payment for labor costs. Sizeable recent increases in the cost of home heating fuels, with the adverse impact on the low-income, made immediate changes necessary. DOE established two waiver procedures to permit payment of labor costs. Under DOE Weatherization Assistance Guide ("WAG") #79-25, August 20, 1979, a State, upon approval of the Regional Representative, would be given authority to increase program support expenditures of a sub-grantee by \$200 per dwelling unit. Program support expenditures could be used to hire working supervisors or contractors to

install insulation. A second waiver procedure was established by WAG #79-27, dated September 23, 1979, whereby the Regional Representative could approve additional expenditures in an area within a State to hire working supervisors or engage contractors, if labor could not be provided through volunteers or CETA.

To date, 44 States have obtained relief under Waiver 1. In 21 of these States, a survey undertaken by DOE indicates that increased expenditures were authorized by the State for approximately 95 percent of the sub-grantees. Waiver 2 has been granted in 85 instances as of January 31, 1980.

(3) *Current Status and Continuing Concerns.* DOE and DOL will continue to monitor use of CETA labor, and DOE is particularly concerned that grantees properly ascertain and document the unavailability of labor under CETA before permitting a program operator to make labor payments under § 440.17(a)(2). If DOE finds that labor sources available under CETA are not being employed by program operators or that program funds are not being used to purchase weatherization materials to the maximum extent practicable, DOE will undertake necessary corrective action. In this connection, the Regional Representative will require adequate documentation and justification before authorizing an expenditure in excess of \$1,000 per dwelling unit to pay labor costs under § 440.17(a)(2). DOE expects to provide further guidance concerning the type of information required to obtain this authority.

DOE notes that the "payments to employ labor" referred to in § 440.17 are restricted to on-site personnel who will "install weatherization materials" and therefore do not cover ancillary administrative personnel such as an inventory control person or weatherization coordinator. DOE, however, has decided to provide some additional latitude to pay for certain administrative personnel. Section 440.16(b) has been modified to permit payment of labor costs other than those authorized under § 440.17 or supervisors authorized under § 440.16(a)(ii)(E). Accordingly, payment may now be made for off-site personnel including a weatherization coordinator, inventory clerk or warehouse employee.

DOE also finds that expanded authority to use contractors will require the grantee to provide appropriate control to assure competition for procurements and adequate quality control and to avoid conflicts of interest and self-dealing. DOE expects to provide guidance to grantees on how to establish appropriate procurement

controls. DOE is considering establishing a requirement in the future that no procurements may be made with program funds until the State has established appropriate procurement controls approved by the Regional Representative.

#### *B. Allowable Expenditures and Program Support*

Section 440.16(a) has been revised to raise the maximum expenditure per dwelling unit from \$800 to \$1,000, certain labor costs have been added to the list covered by the maximum expenditure limit, and the umbrella for program support costs of \$240 per dwelling unit is being deleted. Instead, § 440.16(a)(1)(ii) will now require a grantee to establish, with the approval of the Regional Representative, an amount per dwelling unit for program support and labor costs. Labor costs, in accordance with § 440.17, are now treated as a program support cost under § 440.16(a)(1)(ii)(F). To simplify accounting procedures, storage will no longer be treated as a part of the cost of weatherization materials but will be included as a separate item in program support costs under § 440.16(a)(1)(ii)(G).

Prior to this change program support costs were limited to \$240 per dwelling unit. However, DOE has received many letters from members of Congress, State officials and local project directors stating that the \$240 ceiling has been too restrictive. DOE's experience indicates that additional funding in the program support category would allow local weatherization projects to expedite the program in their areas by satisfying the need for additional funds for labor and transportation. In many areas, the prevailing hourly wage rate for untrained weatherization laborers is significantly higher than the wage rate for CETA employees. In at least one area, the wage rate for unskilled laborers is 80 percent higher than the wage rate for CETA employees. Likewise the salaries offered to supervisory weatherization workers are not competitive in this area. Many local projects state that they have been unable to attract and retain an adequate labor force to carry out the program. Program support funds must also cover expenditures for transportation, tools and equipment. Rural areas and sparsely populated regions, in particular, have expressed grave concern over rising transportation costs as a component of the program support category. Imbalance between the labor and transportation costs in relation to material expenditures has resulted in serious management problems in the local agencies.

As a result, DOE has decided to raise the per dwelling ceiling by \$200 and provided that the Regional Representative should be given the authority to determine, in conjunction with the grantee, the appropriate percentage of the grant funds to be used for program support costs and labor. DOE believes that this method will provide the best means of allocating necessary funds for program support while at the same time maximizing the proportion of grant funds that will be used for the purchase of weatherization materials. In each case, the grantee and the Regional Representative will have to agree that program funds are being used to the maximum extent practicable to purchase weatherization materials.

DOE is also taking this opportunity to include storage as a program support cost rather than a cost associated with the purchase of materials. It was also recommended that liability insurance be included as a program support cost. However, DOE is concerned that such an action may unnecessarily limit the funds available to grantees and sub-grantees for liability insurance. DOE feels that it is of the utmost importance that program participants be fully insured and therefore has chosen to retain the treatment of liability insurance as a separate item, free of any dollar limitations.

DOE has found considerable confusion concerning the \$100 limitation on repairs. Repairs refer only to payments made for repair materials or services not otherwise authorized under the regulation. Apparently this point is frequently overlooked. For example, purchase of glass to glaze a window or wood to close a hole in the floor is not subject to the \$100 limitation. These items may be treated as weatherization materials because they are materials used as a patch to reduce infiltration through the building envelope. Moreover, in accordance with § 440.17, a contractor could be employed to install these materials. "Incidental repairs" refer to the purchase of goods which are not weatherization materials or services not requiring the installation of a weatherization material. Examples of incidental repairs are replacement of a leaking pipe or loose wiring, either of which prevents proper installation of insulation.

Section 415(c)(2) of the Act sets a per dwelling unit limit of \$600 on the total of many of the costs to which the \$1,000 limit now applies, unless the State policy advisory council requests a greater amount. The DOE believes that present-day circumstances would justify an increase to at least \$1,000 in almost

every event, rendering wholesale requests by State policy advisory councils for waivers up to the \$1,000 amount not worth the effort and extra complexity. Accordingly, § 440.18(d) has been modified to provide that the State policy advisory councils will be deemed to have requested such a waiver, unless they notify the Regional Representative in writing to the contrary by a date certain.

#### C. Allocation of Funds

DOE has revised § 440.10 to provide for a tentative allocation to each State. The final allocation may be readjusted by DOE. The final allocation may be reduced by an amount which DOE has determined a State cannot be expected to spend during the current budget period to meet production goals in the light of currently unexpended financial assistance already obligated to the State. At the same time, DOE may increase the funds provided to a State where DOE has determined the State can use the funds to weatherize additional dwelling units during the current budget period. An additional technical change has been made to enable the Regional Representative, instead of the Secretary, to notify a State of its tentative allocation.

The program has been plagued by the inability of certain States to expend obligated funds. One option would be to deobligate these funds and seek less support for this program in the future. However, this solution would seriously injure the low-income persons which Congress intended to benefit. A second option would be to provide additional financial assistance from current year funds to a State which can provide additional weatherization services to low-income persons by reallocating, as much as possible, surplus assistance from a State which is not using it. This approach would get more money put to productive use. However, broader coverage in one State would be achieved as a result of decreased potential coverage in another State.

The third option is more effective program management by all participants in the program. DOE believes that the third option provides the most appropriate approach. Accordingly, DOE wishes to emphasize its continuing commitment to work with the States to improve program operation. However, DOE notes if improved performance cannot be achieved in this manner, some adjustment of funds may be necessary.

DOE wants to clarify the authority of a State to reallocate financial assistance within the State to meet production goals. A State is required to comply with

a State plan adopted in accordance with § 440.14(a). Nevertheless, a State may reserve reallocation authority in its State plan. States may also fund sub-grantees incrementally, and State plans may designate contingent sub-grantees where appropriate. DOE has revised § 440.14(a) to change the reference to the "amount" each sub-grantee will receive to the "tentative amount." This reflects DOE's policy to encourage the States to make tentative allocations to sub-grantees in their State plan and retain flexibility to reallocate. If a State elects to reallocate financial assistance during a budget period, it will have to provide notice and a public hearing under two circumstances:

(1) Where it is necessary to modify the State plan because funding is to be provided to a sub-grantee which is not in accordance with the approved plan; or

(2) Where the State seeks to reallocate funding from a CAA to another sub-grantee in the same area.

DOE has modified § 440.14(d) to clarify the authority of the Governor to suspend a priority or allocation for a CAA at any time if justified, and not just before the annual submission of a State plan. It should be noted that any reallocation by a State will require appropriate modification of the grant document which will be subject to the approval of the Regional Representative.

#### D. Low Cost/No Cost

DOE has added § 440.18 to permit installation of low cost/no cost weatherization materials as an interim activity. A maximum of 10 percent of the amount to be allocated to a sub-grantee may be used to install low cost/no cost weatherization materials in eligible dwelling units. Installation of these materials will be an interim effort pending more complete weatherization of the dwelling at a later date. The cost per dwelling for low cost/no cost items is limited to \$50, but may be increased by the Regional Representative. These costs are now allowable expenditures under § 440.16(a)(4). Only labor not funded by this program can be used to install low cost/no cost items as an interim measure. When installation of low cost/no cost is an interim measure, the one weatherization per dwelling unit restriction of § 440.16(c)(1) and requirement to use Project Retro-Tech in accordance with § 440.19(b) do not apply.

Low cost/no cost covers the installation of a range of inexpensive weatherization materials including water flow controllers, weatherstripping, caulking, glass patching and insulation for plugging

holes. Installation of these materials is primarily directed toward reducing infiltration with the exception of the water flow controller. The items installed in the low cost/no cost effort would probably be installed in any event. Because only items which are weatherization materials may be used, program funds will be used primarily to install materials which have a long term useful life and do not require frequent replacement. Low cost/no cost will provide a quick and inexpensive means for providing relief for low-income persons and conserving energy while the dwelling unit awaits additional weatherization assistance. Although projections of energy savings using only these interim measures are currently unavailable, significant savings are expected from use of the total range of low cost/no cost measures such as reducing the temperature of the hot water heaters, washing laundry in cold water, lowering thermostat settings and effective use of shades and drapes. DOE is conducting studies on energy savings from full weatherization of a dwelling unit and will incorporate estimates from low cost/no cost in these studies.

In many States, the demand for full weatherization far exceeds the State's production capability to weatherize dwellings, and many low-income persons are on waiting lists. Installation of low cost/no cost materials will provide some immediate relief to these people at a small cost. The Department believes that benefits to the low-income individuals far exceed the cost.

The \$50 cost per dwelling limit was based on hardware store prices of a typical low cost/no cost materials package and experience in DOE sponsored programs. A valid concern was expressed that \$50 would not be sufficient. The concern was addressed by permitting the Regional Representative to increase the limit depending on local conditions. The 10 percent limit on total cost is to insure that the interim low cost/no cost effort will not unduly burden expeditious completion of eligible dwelling units. The restriction upon the use of program funds to pay labor costs to install low cost/no cost materials is intended to limit diversion of resources from more complete weatherization treatment and to maintain the inexpensive feature of low cost/no cost. DOE also notes installation of low cost/no cost is relatively simple and in many cases can be accomplished by inhabitants of the dwelling.

### **E. Rental Housing**

DOE has revised § 440.15(b) to simplify requirements for weatherizing

multifamily housing. Instead of a general requirement that benefits accrue primarily to low-income persons, a specific test will be applied: Not less than 66 percent of the dwelling units must be eligible dwelling units or restricted to occupancy in the future as eligible dwelling units under a Federal program for rehabilitation or similar improvement of the building. Accordingly, DOE has deleted the reference to weatherizing a vacant dwelling unit previously found in § 440.16(c)(2) and conformed the requirements for an eligible dwelling unit in § 440.20. This change does not permit a vacant building to be weatherized unless weatherization is being performed under a Federal program in accordance with § 440.15(b)(2)(ii). However, a multifamily building containing some vacant dwelling units could be weatherized under § 440.15(b)(2)(i) if 66 percent of the occupied units meet the requirements of an eligible dwelling unit under § 440.20.

The provision of weatherization assistance to occupants of rented housing has long been a problem in this program and the CSA administered weatherization program. In the 1978 GAO Report, "Complications in Implementing Home Weatherization Programs for the Poor", cited above, GAO concluded that "over half the nation's poor who rent rather than own their homes are not benefiting from CSA's weatherization program." The report recommended that CSA take a number of actions to increase assistance to renters, and also recommended that DOE periodically assess the extent of rental weatherization being accomplished under its program. The OIG's Report, cited above, pointed out the lack of emphasis on rental units. The report recommended that DOE establish a position on the priority to be given to rental units.

DOE is limited in the ways it can provide increased flexibility to project operators to deal with rented housing and multifamily buildings. Section 413(b)(2)(B) of the Act requires that "(i) the benefits of weatherization assistance in connection with leased dwelling units will accrue primarily to low-income tenants; (ii) the rents on such dwelling units will not be raised because of any increase in the value thereof due solely to weatherization assistance provided under this part; and (iii) no undue or excessive enhancement will occur to the value of such dwelling units." These requirements increase the difficulty of weatherizing rental dwelling units. For example, program operators

have found a significant number of landlords are reluctant to enter into an agreement not to increase rents because of the improvements to a building provided through weatherization assistance.

Furthermore, program operators report difficulties in obtaining a right of entry from the owner or his or her agent before commencing work upon a building. This is a particular problem in large urban areas in the North East where apartment buildings are often owned by absentee landlords, if local law does not provide for an agent who can act in his behalf.

DOE, nevertheless, believes some immediate improvements can be made to increase weatherization of multifamily buildings. DOE initially determined that § 440.15(b)(2) should be amended to allow the weatherization of multifamily buildings when at least 75 percent of the units are occupied by eligible families. This would be consistent with the requirement that the benefits of weatherization would accrue primarily to low-income tenants. However, it was brought to our attention that this would prevent the weatherization of "triple decker" units in New England if one floor is occupied by an ineligible family. To accommodate this situation, DOE has established the minimum occupancy rate at 65 percent. At this level, the benefits of weatherization would still accrue primarily to the low-income tenants. DOE specifically invites comments with regard to further actions it might take to increase the level of assistance to low-income renters.

### **F. Improvements in Planning**

Concurrently with the increased flexibility created by the changes discussed above, DOE seeks to clarify the responsibilities of the State to use these new opportunities for more effective operation of the program. Section 440.12(b)(5) has been revised to require the State to designate first the number of dwelling units to be weatherized during the budget period with financial assistance previously awarded and then the number of additional dwelling units which can be completed using all or portion of the tentative allocation. DOE has modified § 440.12(b)(6) to require a production schedule indicating estimated completions on a monthly basis, instead of quarterly. A new § 440.12(b)(11) has been added. It calls for a management plan showing how labor, program support and materials will be provided by a State to meet the monthly production schedule referred to in subparagraph (b)(6). These changes are

intended to emphasize the key management role of the States.

#### G. Weatherization Materials

Appendix A has been revised to include "water flow controllers" and "replacement oil burners." The definition of weatherization materials in § 440.3 has been amended to include water flow controllers.

DOE has promulgated the standard for replacement oil burners for the Residential Conservation Service. See 10 CFR Part 458, Subpart G which was issued by DOE as final rule on October 30, 1979, 44 FR 64602 (November 7, 1979). The program is incorporating the DOE standard for replacement oil burners promulgated in this recent DOE rule by reference. DOE has received numerous requests to permit purchase and installation of replacement oil burners as part of weatherization of a dwelling unit. This modification will now permit this to take place. Water flow controllers have been included because of their extensive use as part of a low cost/no cost approach.

#### H. Miscellaneous Changes

DOE has revised § 440.12(a) and § 440.13(a) to require submission of an application by a State within 90 days after notice is received from the Regional Representative. This change is technical since the earlier formulation required a submission within 90 days of publication of the regulation and did not specifically relate to an annual application cycle.

DOE has revised the nondiscrimination provisions of § 440.15(d) to be consistent to DOE Financial Assistance Regulations, 10 CFR 600.39 and DOE policy in this important area of concern.

DOE has also revised the section on reports, and § 440.23 now makes clear its authority to require reports. There appears to have been some confusion that DOE intended to limit its authority to obtain reports under the Act to quarterly reports. To avoid this misunderstanding, DOE has changed this section to parallel the authority conferred by Congress in the Act. Timely submission of required reports is essential to the orderly and successful operation of the program. DOE will look to the States to meet this requirement. DOE is considering making continued funding contingent upon timely compliance with reporting requirements. This may become necessary where a participant continues to systematically disregard reporting requirements.

#### IV. Procedural Requirements.

We are soliciting comments and will hold hearings indicated below on this rule at the time and places indicated below. DOE will review the comments and other relevant parts of the record and will determine whether the rule should be continued and whether modifications are appropriate. The specific statutory requirements applicable to emergency rulemakings have been satisfied as follows:

##### A. Section 553(b) of the Administrative Procedure Act and Section 501 of the DOE Act

Section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) requires that general notice of proposed rulemaking shall be published in the Federal Register unless persons subject to it are named and have actual notice of the proposal. Except when notice or hearing is required by statute, the requirement for a notice of proposed rulemaking does not apply when the agency finds (and incorporates the findings and a brief statement of its reasons) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest.

Under section 501(e) of the Department of Energy Organization Act ("DOE Act"), Pub. L. 95-91 DOE may waive the prior notice and hearing requirements of subsections (b), (c) and (d) of section 501 upon our finding that strict compliance with these requirements is likely to cause serious harm or injury to the public health, safety or welfare.

We believe findings waiving the § 553(b) and § 501 requirements can be made. As noted above, today's changes are necessary to ameliorate hardship among low-income persons. In accordance with § 501, we will receive both oral and written comments on this action within a reasonable period after issuance of this rule as provided in the Comment Procedure.

##### B. Section 553(d) of the Administrative Procedure Act

Section 553(d) of the Administrative Procedure Act requires that a substantive rule will not become effective less than thirty days after its publication. The requirement does not apply to rules which relieve restrictions and also does not apply when the agency promulgating the rule finds good cause to waive this requirement and publishes this finding together with the rule.

The requirement of § 553(d) does not apply. Moreover, the need for immediate

adoption of this rule, for the reasons stated above, provides good cause to waive the § 553(d) requirement.

##### C. Executive Order 12044

The sixty-day advance public comment period and the other procedures required for proposed rulemakings pursuant to Executive Order 12044, entitled "Improving Government Regulations" (43 FR 12661, March 24, 1978) and DOE's implementing procedures, DOE Order 2030.1 (44 FR 1032, January 3, 1979), have been waived by the Under Secretary of Energy for the same reasons that require the rule to be effective immediately.

##### V. Opportunity for Public Comment

###### A. Written Comment Procedures.

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the proposals set forth in this notice to Ms. Joanne Bakos, Office of Conservation and Solar Energy, Room 2221C, Department of Energy, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585.

Comments should be identified on the outside of the envelope and on documents with the designation "Weatherization Assistance for Low-Income Persons Regulations (Docket No. CAS-RM-80-508)." Fifteen copies should be submitted. All comments received by April 28, 1980, before 4:30 p.m., and other relevant information, will be considered by DOE.

Any information or data considered by the person furnishing it to be confidential must be so identified, and one copy submitted in writing. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

###### B. Public Hearings.

DOE has determined that it will hold hearings in five of the ten DOE Regions. Each of the regional hearings will be held beginning at 10:00 AM., local time, on the dates and at the locations specified below.

Any person who has an interest in this proceeding or who is a representative of a group of persons that has an interest in this proceeding may make a written request for an opportunity to make an oral presentation. Such a request should be directed to DOE at the address given below for the appropriate Region, and in accordance with the "Request Procedures" set forth below. Requests must be received before 4:30 PM., local time on March 10, 1980, for the Chicago

hearing, March 11, 1980, for the Denver and Dallas hearings, March 14, 1980, for the Seattle hearing, and March 17, 1980, for the Boston hearing. Requests should be as for written comments, with the additional notation "Request to Speak."

The person making the request should briefly describe the interest concerned, if appropriate, state why she or he is a proper representative of a group of persons that has such an interest, and give a concise summary of the proposed oral presentation and a phone number where she or he may be contacted through March 13, 1980, for the Chicago hearing, March 14, 1980, for the Denver and Dallas hearings, March 17, 1980, for

the Seattle hearing, and March 20, 1980, for the Boston hearing. Each person selected to be heard will be notified by DOE before 4:30 PM, on those dates. Each person selected to be heard must bring fifteen copies of her or his statement to the hearing.

In the event any person wishing to testify cannot provide fifteen copies, alternative arrangements can be made with the appropriate hearing coordinator in advance of the hearing by so indicating in the letter requesting an oral presentation or by calling the appropriate hearing coordinator at the telephone number indicated below.

Protection Agency ("EPA") for his comments concerning the impact of this proposal on the quality of the environment. The Administrator had the following comments:

"EPA supports the proposed amendments to the weatherization program as a means of addressing the severe hardships resulting from delays in delivery of weatherization assistance to low-income persons, especially the elderly and handicapped. We recognize the economic burdens of rapidly escalating home heating costs which these amendments are intended to alleviate. We also support the weatherization program both as a means of reducing our dependence on foreign oil and as a means for reducing outdoor pollutants associated with energy resource development and consumption.

EPA strongly supports those elements of the program designed to improve energy efficiency and reduce heat loss in buildings; however, we have concerns about the build-up of indoor air pollutants and radon concentrations in residences due to those measures specifically designed to reduce air exchange rates. Unless properly ventilated, the indoor residential environment can become a major contributor to an individual's total exposure to air pollution and radon with potential of adverse health effects. This concern has been recognized by the Department of Energy both in DOE's Environmental Assessment for the Weatherization Assistance Program (issued April 1979) and in the Environmental Impact Statement for the Residential Conservation Service Program (issued November 1979).

We therefore, urge the Department of Energy to be sensitive to the health issue of increased indoor air pollution and radon exposure while at the same time addressing the basic economic and human needs of keeping people warm. Our two agencies are jointly developing a public information program on this issue in conjunction with the Residential Conservation Service Program. Furthermore, where feasible, we would encourage DOE to take advantage of opportunities for sound-proofing and pest-proofing residences as part of the weatherization effort."

Pursuant to the National Environmental Policy Act of 1969, as amended, ["NEPA"], 42 U.S.C. 4321 *et seq.*, DOE published a Notice of Availability of an environmental assessment (EA) of the Grants Program for Weatherization Assistance for Low-Income Persons on April 10, 1979 in the Federal Register (44 FR 21323). Based on this EA, DOE determined that the weatherization Assistance Program did not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and that an environmental impact statement (EIS) was not needed to support the action.

DOE has reviewed the environmental impacts of the Weatherization Assistance Program amendments adopted herein. It is DOE's judgment

DOE region	Hearing date	Submit requests to testify to—	Hearing location
I Boston, Mass.	March 27, 1980	Kathy Healy, Department of Energy, 150 Causeway Street, Boston, Mass. 02114, (617) 223-8257.	J. W. McCormack, Post Office and Court House, Room 208, Post Office Square, Boston, Mass.
V Chicago, Ill.	March 19, 1980	Thomas Sanders, Department of Energy, 175 West Jackson Blvd., Chicago, Ill. 60604, (312) 686-5181.	Ambassador West Hotel, 1300 North State Parkway, Chicago, Ill.
VI Dallas, Tex.	March 21, 1980	Grace Morrison, Department of Energy, P.O. Box 35228, Dallas, Tex. 75235, (214) 767-7736.	Federal Building, Room 7A23, 110 Commerce Street, Dallas, Tex.
VIII Denver, Colo.	March 20, 1980	Tom Stroud, Department of Energy, P.O. Box 26247, Balmer Branch, Lakewood, Colo. 80226, (303) 234-2166.	Post Office Building, Room 208, 1823 Stout Street, Denver, Colo.
X Seattle, Wash.	March 24, 1980	Janet Marcan, Department of Energy, 915 Second Avenue, Seattle, Wash. 98174, (206) 442-7285.	Federal Building, South Auditorium, 915 Second Avenue, Seattle, Wash.

### C. Conduct of Hearing

DOE reserves the right to select the persons to be heard at the hearings, to schedule their respective presentations and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearings. These will not be judicial or evidentiary-type hearings. Questions may be asked of speakers only by those conducting the hearings, and there will be no cross-examination of persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearings will be based on all information available to DOE. At the conclusion of all initial oral statements at the hearings, each person who has made an oral statement will be given the opportunity if she or he so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any person wishing to ask a question at the hearings may submit the question,

in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

Transcripts of the hearings will be made and the entire record of the hearings, including the transcripts, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Room GA152, 1000 Independence Avenue, S.W., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the court reporter.

### VI. Environmental and Significance Review

Pursuant to section 7(a)(1) of the Federal Energy Administration Act of 1974, as amended, 15 U.S.C. 786(a)(1), a copy of this was submitted to the Administrator of the Environmental

that the effect of these amendments will be to bring the level of participation in the program up to the levels originally anticipated and originally analyzed in the April 1979 EA. No new or additional environmental impacts are associated with the new amendments, nor do these new amendments require the addition of any new mitigating measures beyond those already contained in the program. It is thus DOE's determination that the environmental impacts of the new Weatherization Assistance Program amendments have been adequately analyzed in the April 1979 EA, and that these impacts are not significant. Hence, no additional EA or EIS is required.

(Energy Conservation in Existing Buildings Act of 1976, as amended, 42 U.S.C. 6851 *et seq.*, Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*)

In consideration of the foregoing, Part 440 of Chapter II of Title 10, Code of Federal Regulations is amended as set forth below effective February 27, 1980.

Issued in Washington, D.C., February 22, 1980.

C. Worthington Bateman,  
Under Secretary (Acting)

10 CFR Part 440 is amended to read as follows:

#### PART 440—WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS

Sec.	
440.1	Purpose and scope.
440.2	Administration of grants.
440.3	Definitions.
440.10	Allocation of funds.
440.11	Native Americans.
440.12	State applications.
440.13	Local applications.
440.14	Administrative requirements.
440.15	Minimum program requirements.
440.16	Allowable expenditures.
440.17	Labor.
440.18	Low cost/no cost weatherization activities.
440.19	Standards and techniques for weatherization.
440.20	Eligible dwelling units.
440.21	Oversight, training, and technical assistance.
440.22	Recordkeeping.
440.23	Reports.
440.30	Administrative review.
	Appendix A—Standards for Weatherization Materials.

Authority: Energy Conservation in Existing Buildings Act of 1976, as amended, 42 U.S.C. 6851 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 1701 *et seq.*

##### § 440.1 Purpose and scope.

This part contains the regulations adopted by the Department of Energy to carry out a program of weatherization assistance for low-income persons established by Part A of the Energy

Conservation in Existing Buildings Act of 1976, 42 U.S.C. 6861 *et seq.*, enacted as Title IV of the Energy Conservation and Production Act, Pub. L. 94-385, 90 Stat. 1125 *et seq.*, and amended by Title II, Part 2, of the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3206 *et seq.*

##### § 440.2 Administration of grants.

(a) Grant awards under this Part shall be administered in accordance with the following—

(1) Federal Management Circular 73-2, 34 CFR 251, entitled "Audit on Federal Operations and Programs by Executive Branch Agencies;"

(2) Federal Management Circular 74-4, 34 CFR 256 entitled "Cost Principles Applicable to Grants and Contracts with State and Local Governments;"

(3) Federal Management Circular 74-7, 34 CFR 258, entitled "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments;"

(4) Office of Management and Budget Circular A-89, entitled "Catalog of Federal Domestic Assistance;"

(5) Office of Management and Budget Circular A-95, entitled "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects;"

(6) Office of Management and Budget Circular A-97, entitled "Rules and Regulations Permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Government under Title III of the Intergovernmental Coordination Act of 1968;"

(7) Treasury Circular 1082, entitled "Notification to States of Grant-in-Aid Information;"

(8) DOE Assistance Regulations (10 CFR 600); and

(9) Such procedures applicable to this part as DOE may from time to time prescribe for the administration of grants.

(b) Tools and equipment acquired with grant funds provided under this part shall be the property of the grantee, as more particularly provided for by subparagraph (a)(3) of this section.

##### § 440.3 Definitions

As used in this part—

"Act" means the Energy Conservation in Existing Buildings Act of 1976, as amended, 42 U.S.C. 6851 *et seq.*

"CAA" means a Community Action Agency.

"CETA" means the Comprehensive Employment and Training Act of 1973, 42 U.S.C. 2781 *et seq.*

"Community Action Agency" means a private corporation or public agency established pursuant to the Economic

Opportunity Act of 1964, Pub. L. 88-452, which is authorized to administer funds received from Federal, State, local or private funding entities to assess, design, operate, finance and oversee antipoverty programs.

"Cooling degree days" means a population-weighted annual average of the climatological cooling degree days for each weather station within a State, as determined by DOE.

"Director" means the Director of the Community Services Administration.

"DOE" means the Department of Energy.

"Dwelling unit" means a house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters.

"Elderly person" means a person who is 60 years of age or older.

"Eligible State" means any of the forty-eight contiguous States, Alaska, or the District of Columbia.

"Family unit" means all persons living together in a dwelling unit.

"Governor" means the chief executive officer of a State, including the Mayor of the District of Columbia.

"Grantee" means the State or other entity named in the Notification of Grant Award as the recipient.

"Handicapped person" means any individual (1) who is a handicapped individual as defined in section 7(6) of the Rehabilitation Act of 1973, (2) who is under a disability as defined in section 1614(a)(3)(A) or 223(d)(1) of the Social Security Act or in section 102(7) of the Developmental Disabilities Services and Facilities Construction Act, or (3) who is receiving benefits under chapter 11 or 15 of Title 38, United States Code.

"Heating degree days" means a population-weighted seasonal average of the climatological heating degree days for each weather station within a State, as determined by DOE.

"Indian tribe" means any tribe, band, nation or other organized group or community of Native Americans, including any Alaska native village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, Pub. L. 92-203, 85 Stat. 688, which (1) is recognized as eligible for the special programs and services provided by the United States to Native Americans because of their status as Native Americans; or (2) is located on, or in proximity to a Federal or State reservation or rancheria.

"Local applicant" means a CAA or unit of general purpose local government.

"Low income" means that income relation to family size which—

(1) Is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, except that the Secretary may establish a higher level if the Secretary, after consulting with the Secretary of Agriculture and the Director of the Community Services Administration, determines that such a higher level is necessary to carry out the purposes of this part and is consistent with the eligibility criteria established for the weatherization program under section 222(a)(12) of the Economic Opportunity Act of 1964; or

(2) Is the basis on which cash assistance payments have been paid during the preceding 12-month period under Titles IV and XVI of the Social Security Act or applicable State or local law.

"Native American" means a person who is a member of an Indian tribe.

"Number of low-income, owner-occupied dwelling units in the State" means the number of such dwelling units in a State, as determined by DOE.

"Number of low-income, renter-occupied dwelling units in the State" means the number of such dwelling units in a State, as determined by DOE.

"Percentage of total residential energy used for space cooling" means the national percentage of total energy used for space cooling, as determined by DOE.

"Percentage of total residential energy used for space heating" means the national percentage of total energy used for space heating, as determined by DOE.

"Regional Representative" means a Regional Representative of DOE.

"Rental dwelling unit" means a dwelling unit occupied by a person who pays rent for the use of the dwelling unit.

"Repair materials" means items necessary for the effective performance or preservation of weatherization materials. Repair materials include, but are not limited to lumber used to frame or repair windows and doors which could not otherwise be caulked or weatherstripped, and protective materials, such as paint, used to seal materials installed under this program.

"Secretary" means the Secretary of the Department of Energy.

"Separate living quarters" means living quarters in which the occupants do not live and eat with any other persons in the structure and which have either (1) direct access from the outside of the building or through a common hall, or (2) complete kitchen facilities for the exclusive use of the occupants. The occupants may be a single family, one

person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

"Single-family dwelling unit" means a structure containing no more than one dwelling unit.

"Skirting" means material used to border the bottom of a dwelling unit to prevent infiltration.

"State" means each of the states and the District of Columbia.

"Sub-grantee" means a weatherization project which receives a grant of funds awarded under this part from a grantee.

"Tribal organization" means the recognized governing body of any Indian tribe, or any legally established organization of Native Americans which is controlled, sanctioned, or chartered by such governing body.

"Unit of general purpose local government" means any city, county, town, parish, village, or other general purpose political subdivision of a State.

"Weatherization materials" mean—

(1) Caulking and weatherstripping of doors and windows;

(2) Furnace efficiency modifications limited to—

(i) Replacement burners designed to substantially increase the energy efficiency of the heating system;

(ii) Devices for modifying flue openings which will increase the energy efficiency of the heating system; and

(iii) Electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

(3) Clock thermostats;

(4) Ceiling, attic, wall, floor, and duct insulation;

(5) Water heater insulation;

(6) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective window and door materials; and

(7) The following insulating or energy-conserving devices or technologies—

(i) Skirting;

(ii) Items to improve attic ventilation;

(iii) Vapor barriers;

(iv) Materials used as a patch to reduce infiltration through the building envelope; and

(v) Water flow controllers.

#### § 440.10 Allocation of funds.

(a) DOE shall allocate financial assistance for each State from sums appropriated for any fiscal year, only upon annual application.

(b) DOE shall determine the tentative allocation for each State from available funds as follows—

(1) The first five million dollars appropriated shall be divided equally among the eligible States; an additional

one hundred thousand dollars shall be allocated to Alaska.

(2) The percentage of the remaining available funds allocated to each eligible State shall be determined by the following formula—

(i) The square of the number of heating degree-days in a State multiplied by the percentage of total residential energy used for space heating;

(ii) Plus the square of the number of cooling degree-days in the State multiplied by the percentage of total residential energy used for space cooling;

(iii) Multiplied by the sum of the number of low-income, owner-occupied dwelling units in the State and one-half of the number of low-income, renter-occupied dwelling units in the State;

(iv) Divided by the sum of the result produced for all States by the computation outlined in subparagraphs (i), (ii), and (iii) of this paragraph; and

(v) Multiplied by 100.

(c) DOE may reduce the tentative allocation for a State by the amount DOE determines cannot reasonably be expended by a grantee to weatherize dwelling units during the budget period for which financial assistance is to be awarded. In reaching this determination, DOE will consider the amount of unexpended financial assistance currently available to a grantee under this part and the number of dwelling units which remain to be weatherized with the unexpended financial assistance.

(d) DOE may increase the tentative allocation of a State by the amount DOE determines the grantee can expend to weatherize additional dwelling units during the budget period for which financial assistance is to be awarded.

(e) The Regional Representative shall notify each eligible State of the tentative allocation for which that State is eligible to apply.

#### § 440.11 Native Americans.

(a) Notwithstanding any other provision of this part, the Regional Representative may determine, after taking into account the amount of funds made available to a State to carry out the purposes of this part, that—

(1) The low-income members of an Indian tribe are not receiving benefits under this part equivalent to the assistance provided to other low-income persons in the State under this part, and

(2) The members of such tribe would be better served by means of a grant made directly to provide such assistance.

(b) In any State for which the Regional Representative shall have made the

determination referred to in paragraph (a) of this section, the Regional Representative shall reserve from the sums that would otherwise be allocated to the State under this part not less than 100 percent, nor more than 150 percent, of an amount which bears the same ratio to the State's allocation for the fiscal year involved as the population of all low-income Native Americans for whom a determination under paragraph (a) of this section has been made bears to the population of all low-income persons in the State.

(c) The Regional Representative shall make the determination prescribed in paragraph (a) of this section in the event a State shall—

(1) Not apply within the 90 day time period prescribed in § 440.12(a);

(2) Recommend that direct grants be made for low-income members of an Indian tribe as provided in § 440.12(b)(10);

(3) File an application which DOE determines, in accordance with the procedures in § 440.30, not to make adequate provision for the low-income members of an Indian tribe residing in the State, or

(4) Have received grant funds, and DOE determines, in accordance with the procedures in § 440.30, that the State has failed to implement the procedures required by § 440.13(a)(7).

(d) Any sums reserved by the Regional Representative pursuant to paragraph (b) of this section shall be granted to the tribal organization serving the individuals for whom the determination has been made, or where there is no tribal organization, to such other entity as the Regional Representative determines is able to provide adequate weatherization assistance pursuant to this part. Where the Regional Representative intends to make a grant to an organization to perform services benefiting more than one Indian tribe, the approval of each Indian tribe shall be a prerequisite for the issuance of a notice of grant award.

(e) Within 30 days after the Regional Representative has reserved funds pursuant to paragraph (b) of this section, the Regional Representative shall give written notice to the tribal organization or other qualified entity of the amount of funds reserved and its eligibility to apply therefor.

(f) Such tribal organization or other qualified entity shall thereafter be treated as a unit of general purpose local government eligible to apply for funds hereunder, pursuant to the provisions of § 440.13.

#### § 440.12 State applications.

(a) To be eligible for financial assistance under this part, a State shall submit an application to DOE in conformity with the requirements of § 440.15 not later than 90 days after the date of notice to apply is received from the Regional Representative. The Regional Representative shall review each timely State application and, if the submission otherwise complies with the applicable provisions of this part, approve a final budget and issue a notice of grant award.

(b) Each application shall include—

(1) The name and address of the State agency or office responsible for administering the program;

(2) A copy of the final State plan prepared after notice and a public hearing in accordance with § 440.14(a), except that an application by a local applicant need not include a copy of the final State plan;

(3) A detailed description of the manner in which the minimum program requirements of § 440.15 will be met;

(4) The budget for total funds applied for under the Act which shall include a justification and explanation of any amounts requested for expenditure pursuant to § 440.16;

(5) The total number of dwelling units proposed to be weatherized with grant funds during the budget period for which assistance is to be awarded (i) with financial assistance previously obligated under this part; and (ii) with the tentative allocation to the State;

(6) A production schedule which shall indicate the number of dwelling units which are expected to be weatherized for each month during the budget period;

(7) An estimate of the number of single-family and multi-family dwelling units to be weatherized;

(8) An estimate of the minimum number of dwelling units to be weatherized where elderly persons reside;

(9) An estimate of the minimum number of dwelling units to be weatherized where handicapped persons reside;

(10) An estimate of the minimum number of dwelling units to be weatherized where Native Americans reside, or a recommendation that a tribal organization be treated as a local applicant; eligible to submit an application pursuant to § 440.13(b);

(11) A management plan showing how labor, program support and materials will be provided in a timely manner to achieve the production schedule provided in accordance with subparagraph (b)(6) of this section;

(12) Any determination made in accordance with § 440.14(d) not to

provide funds and the reasons for such determination, except that an application by a local applicant need not include this information; and

(13) Any further information which the Secretary finds necessary to determine whether an application meets the requirements of this part.

#### § 440.13 Local applications.

(a) The Regional Representative shall give written notice to all local applicants throughout a State of their eligibility to apply for financial assistance under this part in the event—

(1) A State, within which a local applicant is situated, fails to submit an application within 90 days after notice in accordance with § 440.12(a); or

(2) The Regional Representative finally disapproves the application of a State pursuant to § 440.30 of this part.

(b) To be eligible for financial assistance, a local applicant shall submit an application pursuant to § 440.12(b) to the Regional Representative within 30 days after receiving the notice referred to in paragraph (a) of this section.

(c) In the event one or more local applicants submit a timely application, the Regional Representative shall combine the hearing on the proposed plan pursuant to § 440.14(a) with a hearing on the intention to deny the timely application of one or more local applicants, as provided in § 440.30, to the maximum extent practicable. Based upon the final plan developed by the Regional Representative, the hearing and information submitted by a local applicant and other interested persons, the Regional Representative shall determine whether or not to award a grant to a local applicant and the amount thereof. The Regional Representative may provide financial assistance to a local applicant to carry out one or more weatherization projects.

#### § 440.14 Administrative requirements.

(a) Before submitting an application, a State shall give not less than 10 days notice of hearing, reasonably calculated to inform prospective sub-grantees, and shall conduct one or more public hearings for the purpose of receiving comments on a proposed State plan. The proposed State plan, which shall identify and describe proposed weatherization projects including a statement of proposed sub-grantees and the amount each will receive, shall be published and made available throughout the State prior to the hearing. The notice for the hearing shall specify that copies of the plan are available and how they may be obtained. A transcript of the hearings shall be prepared and







