

**WEATHERIZATION ASSISTANCE FOR  
LOW-INCOME PERSONS**

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Department  
of Energy

Office of  
Conservation  
and Solar  
Applications



State and  
Local Programs

Office of  
Weatherization  
Assistance

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those persons least able to afford higher energy costs and to conserve needed energy.

**EFFECTIVE DATE:** May 25, 1977.

**FOR FURTHER INFORMATION CONTACT:**

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**A. INTRODUCTION**

On April 1, 1977, the Federal Energy Administration published a proposed rule (42 FR 17470) to establish a program of weatherization assistance for low-income persons.

FEA received 50 written comments on the proposed rulemaking, and 106 individuals testified at the public hearings held by the Regional Offices during the week of April 18, 1977, and by the National Office on April 25, 1977. Virtually all of the commenters supported the goals and concept of the proposal, but many suggestions were made that resulted in significant changes in the final rule.

With the issuance of this final rule, the Federal Energy Administration (FEA) amends Chapter II of Title 10, Code of Federal Regulations, to establish a program of weatherization assistance for low-income persons pursuant to Part A, 42 U.S.C. 6861-6872, of Title IV of the Energy Conservation and Production Act (Act), Pub. L. 94-385, 90 Stat. 1125 et seq.

Although most of the comments FEA received addressed specific sections or items in the proposed rulemaking, some comments were more general. Thirteen commenters expressed the view that grants should be made directly to Community Action Agencies (CAA's) to avoid creating a new bureaucracy. Since the enabling legislation provides, with certain clearly defined exceptions, that funding for weatherization projects must be administered by the States, FEA has not incorporated this suggestion in the final rulemaking.

Twelve commenters recommended that FEA should model its guidelines more closely after those developed by the Community Services Administration (CSA) for its weatherization program. However, since the Act delegates responsibility for implementing the legislation, which is markedly different in many respects from CSA's authorizing legisla-

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Title 10—Energy  
CHAPTER II—FEDERAL ENERGY  
ADMINISTRATION

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**PART 440—WEATHERIZATION  
ASSISTANCE FOR LOW-INCOME PERSONS**  
Establishment of Regulations

**AGENCY:** Federal Energy Administration.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Administration (FEA) hereby establishes regulations for a program of weatherization assistance for low-income persons. These regulations set forth the requirements for the development and implementation of a weatherization program to assist in achieving a healthful dwelling environment and maximum practicable energy conservation in the dwellings of low-income persons, particularly elderly and handicapped low-income persons, in order both to aid

tion, to FEA, FEA's guidelines must articulate the requirements of the Act.

Three commenters suggested that FEA should coordinate with CSA, Department of Labor (DOL) and the Administration on Aging (AOA) in developing regulations. FEA is sensitive to the importance of coordination with other agencies but considers that the extent to which it has coordinated its activities with those of other relevant agencies is sufficient.

#### B. DEFINITIONS—§ 440.3

FEA received six comments on the definitions in the proposed rulemaking, all of which suggested that ventilation and vapor barriers should be specifically included under "weatherization materials." The final guidelines have added vapor barriers to the materials cited in the proposed definition. Furthermore, some of the definitions have been modified, some eliminated and others added, either to clarify language used in the proposed regulation or to reflect changes made by the final rulemaking. Specifically, the following revisions have been made—"annual degree days" has been eliminated and "cooling degree days" and "heating degree days" have been added in order to clarify the allocation formula; "Indian" has been replaced by "Native American"; "sub-grantee" has been defined more precisely; and definitions of "local applicant" and "CETA", as an abbreviation for the Comprehensive Employment and Training Act of 1973, have been added.

#### C. ALLOCATION OF FUNDS—§ 440.10

Proposed § 440.10 sets forth the allocation provisions for funding of the program. Two comments were received stating that allocating a base of \$100,000 to each State is unjustified because of the great difference in need between the States. With one exception, FEA believes that the need factor is adequately treated by the percentage allocation provided by the proposed formula. With the exception of Alaska, each State will be allocated a base of \$100,000.

FEA has received three comments regarding Alaska's allocation under the formula. The commenters have recommended that Alaska be exempted from the allocation formula and that Alaska's allocation be determined separately. Because of these comments as well as the reasons indicated in the proposed rulemaking, FEA believes an adjustment is merited. Accordingly, Alaska will be given a base allocation of \$200,000 which is double the amount awarded to each of the other States. FEA believes that with this adjustment adequate provision has been made to address the unique problems encountered in Alaska.

FEA has retained in this final regulation the proposed formula for establishing the percent of each State's share of the remaining appropriated funds.

Twelve comments were received questioning FEA's assumption that the cost of weatherizing a multi-family unit is half the cost of weatherizing a single family unit. No reasonable alternatives were proposed in these comments, nor

was any hard data (on a nationwide basis) produced. FEA will retain the 0.5 factor assigned to renter-occupied dwelling units because, although an approximation, it represents a reasonable and workable correlation between the cost of weatherizing this type of dwelling unit and the greater cost of weatherizing single-family dwelling units.

Six commenters recommended that degree days not be squared because squaring overemphasizes climate in comparison to the number of dwelling units eligible for assistance. FEA has concluded, however, that squaring the degree day factor places a greater emphasis on the States with extremes of climate where the greatest need for weatherization and potential for energy conservation is found.

Four comments were received recommending that more emphasis be given to cooling degree days in the formula because the proposed formula was biased in favor of the colder States. Four comments were received recommending that even greater weight be given to heating degree days because weighting the funds in favor of the Northern tier will yield the greatest energy savings. FEA has retained the weighting provided by the percentages of total residential energy used for heating or cooling respectively in the proposed formula because it is consistent with the potential for energy savings.

One commenter recommended inclusion in the formula of a factor for regional cost of living differences, and another recommended a factor for the number of senior citizens in a State. FEA has concluded, however, that the factors included in the formula are sufficient to distribute the funds equitably. A factor for senior citizens is unnecessary because the Act requires that priority be given to assisting elderly low-income persons. Moreover, most weatherization projects in operation at this time report expending 80-90 percent of their resources for weatherizing the dwellings of the low-income elderly. A factor for regional cost of living differences is unnecessary because, in general, those areas with a higher cost of living are the Northern Tier States which are already receiving a greater share of the available funds than the "sunbelt" States. With respect to Alaska, the Office of Management and Budget (OMB) Poverty Guidelines take into account regional cost of living differences by increasing the poverty level to 25 percent above that established for the other States.

#### D. STATE APPLICATIONS—§ 440.12

Proposed § 440.12 sets forth the application procedures for a State.

One commenter recommended that FEA require the participation of State agencies on aging and State agencies assisting handicapped individuals in need of weatherization. This commenter also recommended that these agencies be permitted to participate in the development of priorities for the provision of weatherization assistance to elderly and handicapped individuals. It should be noted

that the regulation does not restrict the participation of interested persons in the development of the State plan and that these persons may present their views at the public hearing for the proposed plan. FEA wishes to give the States maximum flexibility in the planning phase of the program and declines to mandate the participation of any particular organization.

FEA will require the budget to include a justification and explanation of any amounts which an applicant seeks to expend for tools and equipment or transportation costs or vehicle repair or insurance. This provision is necessary to make certain that the limited funding available will be used to the maximum extent practicable to purchase weatherization materials.

FEA has also made minor technical revisions to proposed § 440.12 but the final version contains no additional substantive changes or additional submission requirements.

#### E. LOCAL APPLICATIONS—§ 440.13

FEA has revised proposed § 440.13 to provide greater clarity. Only one substantive change was made: to require the Regional Administrator to give written notice to all local applicants in a State if a State does not participate in the program. The 30 day application period for a local applicant only commences to run upon receipt of written notice. FEA believes this creates a fairer opportunity for local applicants by putting them on notice of their potential eligibility for direct funding.

Three commenters recommended that the definition of "local applicant" include non-profit corporations, consortia of local agencies, and other community based organizations. There may be many organizations other than CAA's, units of general purpose local government, and Indian tribal councils which are capable of establishing and operating a weatherization project. However, FEA is restricted to its definition of local applicant by the Act.

#### F. ADMINISTRATIVE REQUIREMENTS—§ 440.14

Three commenters recommended that the final rulemaking should provide a right of appeal for a CAA which applied for, and was denied, allocation or priority funding. FEA is concerned that permitting a CAA to appeal the denial of funding to a Regional Administrator could unduly delay approval of a State plan, thereby preventing timely distribution of funds to other sub-grantees. Although the final rulemaking does not permit a CAA to appeal a denial of funding, final § 440.14(e) requires that a Governor or Regional Administrator, in determining whether or not a CAA's emergency energy conservation program has been effective in meeting the purpose of the Act or has the capacity to support a weatherization project of the scope for which the grant application was made, shall consider specific factors. These factors were not included in the proposed regulation. The regulation now requires

that the Governor or Regional Administrator consider the extent to which an existing program meets its goals, the quality of work performed, and the number, qualifications and experience of staff members. This will provide a clearer basis for the determination without delaying implementation of the program.

HEW suggested that various State agencies dealing with the problems of the elderly and handicapped should be afforded the opportunity to review and comment on proposed State plans. FEA considers this suggestion to be unworkable in light of applicable time constraints. Furthermore, the Policy Advisory Council's (PAC's) already perform a similar function to that identified by the commenter.

Section 440.14 has been changed in several other respects. First, the notice provision in paragraph (a) specifically requires a State to give not less than 10 days notice reasonably calculated to inform prospective sub-grantees that a hearing will be held. Second, subparagraphs (G) and (H) have been added to subparagraph (b) (1) and require a final State plan to include, for any area to be served by a weatherization project, estimates of the number of eligible dwelling units in which the elderly and handicapped reside. Third, subparagraph (B) has been added to subparagraph (b) (2) and requires a final State plan to include an explanation of the method used to select each area to be served by a weatherization project. Fourth, subparagraph (F) has been redesignated subparagraph (H) and new subparagraphs (F) and (G) have been added as additional submission requirements for the plan. Subparagraph (F) requires a statement of the amount of weatherization grant funds allocated to a State. Subparagraph (G) requires an estimate of the expected average cost per dwelling unit to be weatherized. These changes facilitate FEA's review of the plan.

**G. MINIMUM PROGRAM REQUIREMENTS—  
§ 440.15**

The final rulemaking expands proposed § 440.15(a) by adding subparagraph (7) which states that the procedures required by this paragraph shall also ensure that low-income Native Americans receive benefits equivalent to the assistance provided to other low-income persons within a State unless the applicant has made a recommendation in accordance with § 440.12(b) (10).

Subparagraph (2) has been added to § 440.15(c) to require that a PAC shall be responsive to the needs of, and include a person who represents, Native Americans.

**H. ALLOWABLE EXPENDITURES—§ 440.16**

1. *Labor costs.* FEA received 56 comments, including one from CSA, three from State Governors, 10 from representatives of State agencies, 25 from Community Action Agencies, and 18 from other interested parties, to the effect that labor should be an allowable expenditure under this section. Thirteen commenters suggested that if a grantee

could certify and document bona fide but unsuccessful attempts to secure labor from volunteers, training participants and public service employment workers, the appropriate State PAC should be authorized to waive the restriction on using grant funds for labor. After giving lengthy and thorough consideration to the many comments, FEA has determined not to adopt this suggestion at this time 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 position 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.

Twenty-one commenters proposed that if labor costs are disallowed FEA should, by formal agreement with DOL, attempt to ensure the availability of an adequate supply of CETA manpower for local weatherization projects. FEA is in the process of developing a cooperative agreement to secure coordination with DOL.

Ten commenters advocated including costs of supervision as allowable expenditures. Proposed § 440.16(b) provided that expenses incurred for supervisors or foremen are allowable as administra-

tive expenses, and this provision is retained in the final rulemaking.

2. *Installation Costs.* FEA received nine comments recommending that the purchase price of weatherization materials installed by the supplier constitute an allowable expenditure. FEA has decided against adopting this recommendation because the purchase price represents an expenditure for labor to the extent the price of materials includes installation costs.

3. *Cost of Weatherization Materials.* Proposed § 440.16(a) limited allowable costs for weatherization materials to their purchase price F.O.B., but not including mechanical equipment valued in excess of fifty dollars; the cost of transporting weatherization materials, including the costs of maintaining, operating and insuring vehicles used to transport materials, but excluding the costs of purchasing or leasing any vehicles; and taxes. Nineteen commenters expressed the view that transportation costs should include expenditures to purchase and lease vehicles. FEA has determined that the authorized level of funding for this program would be overburdened by an allowance for vehicle purchase and leasing costs.

Six commenters suggested that FEA include the costs of transporting work crews as allowable expenditures. FEA has adopted this suggestion and has made the cost of transporting work crews and tools and equipment an allowable expenditure. In order to ensure the maximum utilization of program funds for the purchase of weatherization materials, FEA has determined that there must be a limit placed on these expenditures. Since the Act provides that the Weatherization Assistance Program is to be coordinated with other Federal programs, and since FEA is aware that the majority of the weatherization projects receiving grant funds under this part will be ongoing programs, FEA has determined that funds should be made available for transportation principally to new projects which require start-up money. After considering the limit to be placed on the total transportation costs within a State in this light, FEA has set a maximum of \$7,500 of a State's allocation on such expenditures. This limitation is contained in § 440.16(a) (2).

Seven commenters recommended that essential storage and insurance costs constitute allowable expenditures. FEA will not allow these costs in order to maximize the funding available to purchase weatherization materials. However, FEA has amended § 440.16(b) to provide that allowable administrative expenditures may include the costs of liability insurance for personal injury and property damage for a weatherization project.

FEA received 45 comments urging that reasonable costs of tools and equipment necessary to the installation of weatherization materials constitute allowable expenditures. FEA agrees that for many weatherization projects, primarily new projects, these expenses will be essential. In order to maximize the expenditure of grant funds for the purchase of weather-

ization materials, while at the same time allowing start-up costs for new projects, FEA has determined that a limit must be placed on expenditures for tools and equipment. Accordingly, § 440.16(a) (3) of the final rulemaking provides that total allowable expenditures include tools and equipment not in excess of \$50 per item and a total of \$5000 or 1 percent of a State's allocation, whichever is less.

To implement the restriction on these expenditures, FEA now requires the budget submitted with the application to state the amount of expenditures accompanied by an explanation and justification. Accordingly, an applicant must anticipate and project its requirements with respect to transportation costs, vehicle repairs and insurance, and tools and equipment in its application.

Ten commenters recommended allowing the costs of purchasing high efficiency or alternate fuel heating units. FEA will not allow this expenditure because of the statutory prohibition on mechanical equipment in excess of \$50.

Ten commenters suggested that the costs of cleaning or repairing heating and cooling sources should constitute allowable expenditures. FEA will not allow these expenses in order to maximize the amount of funds used to purchase weatherization materials. Moreover, the cleaning of heating and cooling sources, such as replacing an air filter, is only a short term energy conservation measure. Finally, the repair of heating and cooling sources entails a greater level of skill than can reasonably be expected from volunteers or public service employment workers.

HEW commented that damage to a dwelling unit caused by fire or other events beyond a resident's control should justify providing weatherization assistance to a family unit a second time. FEA agrees with this recommendation and has modified § 440.16(c) to provide an exception to the proposed rulemaking's restriction on the use of grant funds to weatherize a dwelling unit that had previously been weatherized with funds authorized under the Act. Under the final regulation, the restriction will not apply if the dwelling unit has been damaged as a result of fire, flood or other act of God and the cost of repairing the damage to weatherization materials is not paid for by insurance coverage.

4. **Administrative Costs.** Forty-one commenters considered that the 10 percent allowance for administrative costs was insufficient because, among other reasons, grantees are required to audit annually, and monitor periodically, local projects; grantees are accountable for their sub-grantees' noncompliance; and both grantees and sub-grantees have recordkeeping and reporting requirements. Because the Act directs FEA to confine the allowance for administrative costs to 10 percent of a grant, FEA is unable to incorporate these suggestions.

Six commenters recommended that local projects be entitled to the full 10 percent allowance and that an additional 10 percent should be allowed for the

State's administrative budget. Two other commenters stressed the importance of ensuring that sub-grantees would receive at least some portion of the 10 percent administrative budget. FEA wishes to preserve each grantee's flexibility to establish an optimal administrative budget in light of local needs and opportunities and therefore has not adopted these recommendations.

#### I. STANDARDS FOR WEATHERIZATION— § 440.17

The standards for weatherization materials and energy conservation techniques are prescribed in § 440.17. With respect to standards for weatherization materials, one commenter stated that plastic sheeting should not be used as a storm window. FEA finds no justification at this time for prohibiting its use if it meets or exceeds the standards in Appendix A and if a grantee finds it cost-effective.

Two other commenters identified a more serious problem. One stated that urea-formaldehyde foam should be excluded because it may generate toxic fumes. Another recommended the use of a low-tec solar panel. In proposed § 440.17, FEA permitted the use of weatherization materials for which it had prescribed no standard. FEA believes that this does not meet its statutory obligation to prescribe standards under the Act. Moreover, FEA seeks to preclude the use of weatherization materials which may be hazardous. Finally, a weatherization project should be required to use weatherization materials which have been demonstrated to be cost-effective and of reliable quality.

Accordingly, § 440.17(a) now provides that a weatherization project may only use weatherization materials for which standards have been prescribed by FEA. However, FEA may approve the use of a weatherization material not listed in Appendix A of the regulation at the request of a grantee or sub-grantee. In considering such a request, FEA will evaluate the extent to which the use of the material will achieve a balance of a healthful dwelling environment and maximum practicable energy conservation. Furthermore, where appropriate FEA will coordinate its evaluation with the Departments of Housing and Urban Development and Health, Education, and Welfare and the National Bureau of Standards.

With respect to approaches to weatherization, including energy conservation techniques, 22 comments were received.

Five commenters recommended that each PAC be responsible for recommending a system for inspection of completed work that will ensure:

- (1) That the principles of a balanced combination of energy conserving improvements as set forth in the CSA Community Planning Guide have been adhered to;
- (2) That infiltration problems have been dealt with;
- (3) That insulation materials meet minimum Federal standards of effectiveness; and
- (4) That quality of workmanship has been maintained in accordance with stand-

ards described on pages 27-29 of the Community Planning Guide.

Another commenter stated that the "balanced combination" approach causes problems in planning and that one should proceed "normally" with stopping cold air infiltration and with the use of attic insulation. Two additional commenters suggested that the regulation should encourage the greatest overall energy savings per dollar spent rather than the optimal weatherization of homes.

Six commenters stated that the Project Retro-Tech manual is too limited in its coverage of the techniques of weatherizing single-family homes, is applicable only to standard construction and does not cover all types of work necessary to properly weatherize a dwelling.

After full consideration of these comments, FEA continues to believe that Project Retro-Tech, at this time, is the clearest procedure available to carry out effective weatherization work. However, since FEA wishes to encourage local initiative, while at the same time discharging its statutory obligation to prescribe standards for weatherization techniques, FEA will follow the approach of proposed § 440.17(b) and will permit a grantee to use alternate techniques approved by the Regional Administrator if the alternate approach meets or exceeds Project Retro-Tech. In considering such a request, the Regional Administrator will use the evaluation criteria stated above for unlisted weatherization materials.

These exceptions for weatherization materials and energy conservation techniques will be made on a case-by-case basis. FEA will consider altering its standards, by rule, as appropriate, based upon experience with the program.

#### J. ELIGIBLE DWELLING UNITS—§ 440.18

Forty comments were received criticizing FEA's restrictive income eligibility criteria. The overwhelming concerns were:

1. The "near poor" and "working poor" are in great need of weatherization assistance and the program ignores this segment of the population; and
2. Different income eligibility criteria cause confusion at the local level.

The definition of "low-income" is provided by the Act and cannot be changed without legislative amendment. Accordingly, FEA has retained the criteria prescribed in the proposal.

#### K. ADMINISTRATIVE REVIEW—§ 440.30

This appeal procedure applies only to a State or eligible local applicant but not to a sub-grantee, such as a CAA. For example, the regulations do not provide an appeal right for a CAA which has applied as a sub-grantee and which has been denied an allocation or priority in accordance with the requirements of this part. One commenter recommended a preliminary hearing but FEA believes this would only complicate and delay the funding process.

FEA has revised proposed § 440.30 to provide greater clarity. The changes

were necessary, in part, to apply the review process to a situation where the Regional Administrator intends to deny funding to a local applicant whose application meets the requirements of this part. For example, two local applicants may submit applications that comply with the regulation to conduct weatherization projects in the same area. In this situation, neither party needs to correct its application but the Regional Administrator must choose one or the other. In this event, the Regional Administrator's intent to deny one of the two applications will be subject to the review process. A similar situation arises where the level of funding precludes a grant award to all local applicants.

**L. TECHNICAL ASSISTANCE**

Section 416 of the Act authorizes FEA to use up to 10 percent of the sums appropriated for FEA's weatherization program in any fiscal year to provide technical assistance to a weatherization project. Two commenters recommended that FEA provide such technical assistance. However, FEA has decided not to exercise this authority in order to maximize use of funds for actual weatherization work. FEA intends, however, to provide as much necessary technical assistance as it can, utilizing whatever existing staff and resources may appropriately be devoted to this task.

The proposed regulation was reviewed in accordance with Executive Order 11821 and OMB Circular A-107 issued November 7, 1974, by Executive Order 11949 and has been determined not to be a major proposal requiring an evaluation of its inflationary impact.

(Part A of Title IV of the Energy Conservation and Production Act, Pub. L. 94-385, 90 Stat. 1126 (42 U.S.C. 6326); Federal Energy Administration Act of 1974, as amended, Pub. L. 93-275, 15 U.S.C. 761; Executive Order 11790, 39 FR 23185.)

In consideration of the foregoing, Part 420 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below, effective immediately.

Issued in Washington, D.C., May 25, 1977.

ERIC J. FYER,  
*Acting General Counsel,  
Federal Energy Administration.*

Subchapter D, Chapter II of Title 10, Code of Federal Regulations, is amended by establishing Part 440 as follows:

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	Standards for weatherization.
440.18	Eligible dwelling units.
440.20	Oversight responsibility.
440.21	Recordkeeping.
440.22	Quarterly reports.
440.30	Administrative review.

**AUTHORITY:** Part A of Title IV of the Energy Conservation and Production Act, Pub. L. 94-385, 90 Stat. 1126 (42 U.S.C. 6326); Federal Energy Administration Act of 1974, as amended, Pub. L. 93-275, 15 U.S.C. 761; E.O. 11790, 39 FR 23185.

**§ 440.1 Purpose and scope.**

This part contains the regulations adopted by the Federal Energy Administration to carry out a program of weatherization assistance for low-income persons established by Part A. 42 U.S.C. 6861-6872, of Title IV of the Energy Conservation and Production Act, Pub. L. 94-385, 90 Stat. 1125 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 255, entitled "Cost Principles Applicable to Grants and Contracts with State and Local Governments;"

(3) Federal Management Circular 74-7, 34 CFR 256, 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;" and

(8) Such procedures applicable to this part as FEA 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 paragraph (a) (3) of this section.

**§ 440.3 Definitions.**

As used in this part—

"Act" means the Energy Conservation and Production Act, Pub. L. 94-385, 90 Stat. 1125 et seq.

"Administrator" means the Administrator of the Federal Energy Administration.

"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 antipovertry 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 FEA.

"Cosmetic items" means items which, when installed, will not reduce energy costs in a cost-effective manner, including, but not limited to finishes, decorative fenestration materials, and elevation materials such as aluminum siding, board and bat, clapboard, brick, shakes, or asphalt siding.

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

"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.

"FEA" means the Federal Energy Administration.

"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 (a) who is a handicapped individual as defined in section 7(6) of the Rehabilitation Act of 1973, (b) 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 (c) 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 FEA.

"Heating or cooling source" means a device the operation of which can raise or lower temperatures within a dwelling unit as part of the permanent heating, ventilating and air conditioning system installed in the dwelling unit, including but not limited to furnaces, heat pumps, stoves, boilers, heaters, fireplaces, air conditioners, fans, and solar devices.

"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 (a) 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 (b) 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 in relation to family size which (a) is at or below the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, or (b) 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.

"Mechanical equipment" means a control device or apparatus which is primarily designed to improve the heating or cooling efficiency of a dwelling unit, and which will be permanently affixed to an existing heating or cooling source, including but not limited to a flue damper, clock thermostat, filter, or replacement limit switches.

"Multi-family dwelling unit" means a dwelling unit which is located in a structure containing more than one dwelling unit.

"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 FEA.

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

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

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

"Regional Administrator" means a Regional Administrator of the Federal Energy Administration.

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

"Separate living quarters" are those in which the occupants do not live and eat with any other persons in the structure and which have either (a) direct access from the outside of the building or through a common hall, or (b) 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.

"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 project" means a project conducted in a single geographical area which undertakes to weatherize dwelling units that are thermally inefficient.

"Weatherization materials" means items intended primarily to improve the heating or cooling efficiency of a dwelling unit including, but not limited to, ceiling, wall, floor and duct insulation, vapor barriers, storm windows and doors, and caulking and weatherstripping, but not including mechanical equipment valued in excess of \$50 per dwelling unit.

#### § 440.10 Allocation of funds.

(a) FEA shall provide financial assistance, from sums appropriated for any fiscal year, only upon annual application.

(b) FEA shall determine the allocation for each State 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) The Administrator shall notify each eligible State of the amount of grant funds for which that State is eligible to apply.

#### § 440.11 Native Americans.

(a) Notwithstanding any other provision of this part, the Regional Administrator 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 Administrator shall have made the determination referred to in paragraph (a) of this section, the Regional Administrator 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 Administrator 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 § 440.14(a)(2),

(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 FEA 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 FEA determines, in accordance with the procedures in § 440.30, that the State has failed to implement the procedures required by § 440.15(a)(7).

(d) Any sums reserved by the Regional Administrator 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 Administrator determines is able to provide adequate weatherization assistance pursuant to this part. Where the Regional Administrator 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 Administrator has reserved funds pursuant to paragraph (b) of this section, the Regional Administrator 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 FEA in conformity with the requirements of § 440.15 not later than 90 days after the date of publication of this part. The Regional Administrator 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(a) (2) or (3).

(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;

(6) A schedule for implementation which shall indicate the number of dwelling units which are expected to be weatherized by calendar quarter;

(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 § 440.12(b);

(11) An estimate by percentage of the Federal manpower programs, volunteer labor programs or other labor sources to be used in implementing each proposed weatherization project;

(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 Administrator finds necessary to determine whether an application meets the requirements of this part.

**§ 440.13 Local applications.**

(a) The Regional Administrator 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 of the publication of this part; or

(2) The Regional Administrator 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 Administrator 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 Administrator 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 Administrator, the hearing and information submitted by a local applicant and other interested persons, the Regional Administrator shall determine whether or not to award a grant to a local applicant and the amount thereof. The Regional Administrator 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 written submissions of views and data shall be accepted for the record.

(b) Subsequent to the hearing, the State shall prepare a final plan which shall identify and describe—

(1) Each area to be served by a weatherization project within the State and shall include for each area—

(i) The number of dwelling units to be weatherized;

(ii) The climatic conditions;

(iii) The type of weatherization work to be done;

(iv) The need for weatherization assistance among low-income persons;

(v) The amount of energy to be conserved;

(vi) Mechanisms for providing sources of labor;

(vii) An estimate of the number of eligible dwelling units in which the elderly reside; and

(viii) An estimate of the number of eligible dwelling units in which the handicapped reside.

(2) The manner in which the plan is to be implemented and shall include—

(i) An analysis of the existence and effectiveness of any weatherization project being carried out by a CAA;

(ii) An explanation of the method used to select each area to be served by a weatherization project;

(iii) The extent to which priority will be given to weatherization of single-family dwelling units for the elderly and handicapped;

(iv) The amount of non-Federal resources to be applied to the program;

(v) The amount of Federal resources, other than FEA weatherization grant funds, to be applied to the program;

(vi) The amount of weatherization grant funds allocated to the State under this part;

(vii) the expected average cost per dwelling to be weatherized, taking into

account the total number of dwellings to be weatherized and the total amount of funds, Federal and non-Federal, expected to be applied to the program; and

(viii) the number of rental dwelling units to be weatherized by project, if any.

(c) The plan shall insure that funds received under the Act will be allocated to a CAA carrying out a program under Title II of the Economic Opportunity Act of 1964, 42 U.S.C. 2809, or to other appropriate and qualified entities in the State or geographical area so that—

(1) funds will be allocated to areas on the basis of the relative need for a weatherization project by low-income persons, taking into account the factors referred to in paragraph (b) (1) of this section; and

(2) (i) funds allocated to a geographical area served by an emergency energy conservation program carried out by a CAA under section 222(a)(12) of the Economic Opportunity Act of 1964, shall be allocated to the CAA, and (ii) priority in the allocation of funds will be given to the CAA in so much of the geographical area served by it as is not served by the emergency energy conservation program.

(d) Paragraph (c) (2) of this section shall not apply if the Governor, or the Regional Administrator acting on behalf of the Governor pursuant to § 440.13(c), determines on the basis of the public hearing provided under paragraph (a) of this section that an emergency energy conservation program carried out by a CAA—

(1) Has been ineffective in meeting the purpose of the Act; or

(2) Is clearly not of sufficient size and cannot in timely fashion develop the capacity to support the scope of the project to be carried out in the area with funds to be granted under this part.

(e) In making a determination pursuant to paragraph (d) of this section, the Governor, or the Regional Administrator acting on behalf of the Governor pursuant to § 440.13(c), shall evaluate the performance of the CAA and shall consider—

(1) The extent to which the emergency energy conservation program being carried out achieves the goals of the program in a timely fashion;

(2) The quality of work performed;

(3) The number, qualifications and experience of staff members; and

(4) The ability to secure volunteers, training participants and public service employment workers, pursuant to CETA.

(f) Any eligible local applicant may request in its application that the Regional Administrator determine that the allocation requirement and priority set forth in paragraph (c) (2) of this section shall not be applied. In this event, the Regional Administrator shall decide whether to make the determination as part of the notice and public hearing procedure required by § 440.30, which hearing may be consolidated by the Regional Administrator with the public hearing required by paragraph (a) of this section.

#### § 440.15 Minimum program requirements.

(a) Prior to the expenditure of any grant funds each grantee shall develop, publish and implement procedures to insure that—

(1) No dwelling unit may be weatherized without documentation that the dwelling unit is an eligible dwelling unit as provided in § 440.18;

(2) Priority is given to identifying, and providing weatherization assistance to elderly and handicapped low-income persons, and such priority as the applicant determines is appropriate is given to single-family or other, high-energy-consuming dwelling units;

(3) Financial assistance provided under this part will be used to supplement, and not supplant, State or local funds, and, to the maximum extent practicable as determined by FEA, to increase the amounts of these funds that would be made available in the absence of Federal funds provided under this part;

(4) To the maximum extent practicable, the grantee will secure the services of volunteers, training participants and public service employment workers, pursuant to CETA, to work under the supervision of qualified supervisors and foremen;

(5) The limitations set forth in § 440-14(c) shall be complied with;

(6) To the maximum extent practicable, the use of weatherization assistance shall be coordinated with other Federal, State, local or privately funded programs in order to improve thermal efficiency and to conserve energy; and

(7) The low-income members of an Indian tribe shall receive benefits equivalent to the assistance provided to other low-income persons within a State unless the grantee has made the recommendation provided in § 440.12(b)(10).

(b) If a grantee decides to weatherize rental dwelling units—

(1) No rental dwelling unit shall be weatherized without first obtaining the written permission of the owner of the dwelling unit or his agent; and

(2) The grantee shall establish procedures to be approved by the Regional Administrator to insure that—

(i) The benefits of weatherization assistance shall accrue primarily to low-income tenants;

(ii) Rents shall not be raised because of the increased value of dwelling units due solely to weatherization assistance provided under this part; and

(iii) No undue or excessive enhancement shall occur to the value of the dwelling units.

(c) Prior to the expenditure of any grant funds, a State policy advisory council shall be established by a State, or by the Regional Administrator if a State does not participate in the program, which—

(1) Has special qualifications and sensitivity with respect to solving the problems of low-income persons, including the weatherization and energy conservation problems of these persons;

(2) Is broadly representative of organizations and agencies, including con-

sumer groups, that represent low-income persons, particularly elderly and handicapped low-income persons and low-income Native Americans, in the State or geographical area in question; and

(3) Has responsibility for advising the appropriate official or agency administering the allocation of financial assistance in the State or area with respect to the development and implementation of a weatherization assistance program.

(d) No person in the United States shall, on the ground of race, color, national origin, or sex, or on the ground of any other factor specified in any Federal law prohibiting discrimination, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program, project, or activity supported in whole or in part with financial assistance under this part. Whenever the Administrator determines that a recipient of financial assistance under this part has failed to comply with this paragraph or an applicable regulation, he shall notify the recipient to secure compliance. If within a reasonable period of time the recipient fails to comply, the Administrator shall (1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) exercise the power and functions provided by Title VI of the Civil Rights Act of 1964 and any other applicable Federal nondiscrimination law; or (3) take such other action as may be provided by law.

#### § 440.16 Allowable expenditures.

(a) At least 90 percent of the grant funds provided to a grantee under this part shall be used to purchase weatherization materials. Allowable expenditures for weatherization materials include only the following costs—

(1) Purchase of weatherization materials, FOB, but not including mechanical equipment valued in excess of fifty dollars per dwelling unit;

(2) An amount authorized by the Regional Administrator during any one year which shall not exceed a total expenditure, within a State, of \$7,500 for—

(i) Transportation of weatherization materials, tools, equipment, and work crews, to any storage site and to the site of weatherization work, except no purchase or lease of vehicles shall be allowed; and

(ii) Maintenance, operation, and insurance of vehicles used to transport weatherization materials;

(3) An amount for tools and equipment authorized by the Regional Administrator during any one year which shall not exceed a total expenditure within a State of—

(i) \$50 for any one item; and

(ii) \$5,000 or 1 percent of a State's allocation under this part, whichever is less; and

(4) Taxes related to other allowable expenditures for weatherization materials.

(b) No more than 10 percent of each grant awarded under this part shall be used for administrative expenses. Allowable administrative expenses shall not

include any costs of labor to carry out a weatherization project, except for supervisors and foremen. Allowable administrative expenses may include liability insurance for personal injury and property damage for a weatherization project.

(c) No grant funds awarded under this part shall be used for any of the following purposes—

(1) To weatherize a dwelling unit which has been weatherized previously with grant funds authorized under this part unless such dwelling unit has been damaged by fire, flood, or act of God and repair of the damage to weatherization materials is not paid for by insurance;

(2) To weatherize a dwelling unit which is vacant or designated for acquisition or clearance by a Federal, State, or local program within twelve months from the date weatherization of the dwelling unit would be scheduled to be completed; or

(3) To purchase cosmetic items or a heating or cooling source.

(d) The cost of weatherization materials provided with financial assistance under this part shall not exceed \$400 in the case of any dwelling unit unless the State policy advisory council, established pursuant to § 440.15(c), provides for a greater amount with respect to specific categories of units or materials.

#### § 440.17 Standards and techniques for weatherization.

(a) Except as provided in paragraph (b) of this section, only weatherization materials which meet or exceed standards prescribed in Appendix A to this part shall be purchased with funds provided under this part.

(b) Weatherization materials for which standards do not exist in Appendix A may be approved by FEA for use in a weatherization project if requested by a grantee or sub-grantee.

(c) A weatherization project shall apply the approaches to weatherization contained in Project Retro-Tech, FEA Conservation Paper Number 28, including the energy conservation techniques therein.

(d) Approaches to weatherization not contained in Project Retro-Tech may be approved by the Regional Administrator for use in a weatherization project if—

(1) The use thereof is requested by a grantee or sub-grantee; and

(2) Such approaches are equal to or exceed the approaches provided in Project Retro-Tech.

(e) In considering a request made pursuant to paragraphs (b) or (d) of this section, FEA or the Regional Administrator shall—

(1) Evaluate the extent to which the request is designed to achieve a balance of healthful dwelling environment and maximum practicable energy conservation; and

(2) When appropriate, coordinate evaluation through FEA with the Secretary of Housing and Urban Development, the Secretary of Health, Education, and Welfare, and the Director of the National Bureau of Standards in the Department of Commerce.

**§ 440.18 Eligible dwelling units.**

No dwelling unit shall be eligible for weatherization assistance under this part unless it is the dwelling unit of a family unit—

(a) Whose income is at or below the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget; or

(b) Which contains a member who has received cash assistance payments under Title IV or XVI of the Social Security Act or applicable State or local law paid during the 12-month period preceding the Federal fiscal year in which funds were obligated for financial assistance to such dwelling unit.

**§ 440.20 Oversight responsibility.**

(a) The Administrator and the appropriate Regional Administrator, in coordination with the Director, shall monitor and evaluate the operation of projects carried out by CAA's receiving financial assistance under this part through on-site inspections, or through other means, in order to insure the effective provision of weatherization assistance for the dwelling units of low-income persons.

(b) FEA shall also carry out periodic evaluations of a program and weatherization projects that are not carried out by a CAA, and that are receiving financial assistance under this part.

(c) The Administrator and the appropriate Regional Administrator, the Comptroller General of the United States, and, for a weatherization project carried out by a CAA, the Director or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, information, and records of any weatherization project receiving financial assistance under the Act.

(d) Each grantee shall conduct, on an annual basis, an audit of the pertinent records of any subgrantee receiving financial assistance under this part.

**§ 440.21 Recordkeeping.**

Each grantee or sub-grantee receiving Federal financial assistance under this part shall keep such records as FEA shall require, including records which fully disclose the amount and disposition by each grantee and sub-grantee of the funds received, the total cost of a weatherization project or the total expenditure to implement the State plan for which such assistance was given or used, the source and amount of funds for such

project or program not supplied by FEA, and such other records as FEA deems necessary for an effective audit and performance evaluation. Such recordkeeping shall be in accordance with Federal Management Circular 74-7 and any further requirements of this regulation or which FEA may otherwise establish under the terms and conditions of a grant.

**§ 440.22 Quarterly reports.**

Each grantee receiving financial assistance under this part shall submit a quarterly program performance report and a quarterly financial report to the appropriate Regional Administrator. The program performance report shall contain such information as the Administrator may prescribe in order effectively to monitor the progress of a grantee.

**§ 440.30 Administrative review.**

(a) If a timely application submitted by a State fails to meet the requirements of this part and the Regional Administrator intends to deny the application, the Regional Administrator shall return the application to the State together with a written statement of reasons therefor.

(b) The State will have a reasonable period, as determined by the Regional Administrator, to amend its application and to resubmit it by a specified date for reconsideration.

(c) The Regional Administrator shall give notice to the applicant in the event that the Regional Administrator determines that—

(1) Any application resubmitted by a State in accordance with paragraph (b) of this section fails to comply with this regulation;

(2) Any application returned to a State pursuant to paragraph (a) of this section is not timely resubmitted as provided in paragraph (b); or

(3) The Regional Administrator intends to deny the application of a local applicant;

(d) The Regional Administrator shall give notice to a grantee in the event the Regional Administrator finds there is a failure by the grantee to comply substantially with the provisions of this part.

(e) The Regional Administrator shall issue such notice in the form of written notice mailed by registered mail, return receipt requested, to the State, local applicant or grantee and other interested parties, including—

(1) A statement of reasons for a determination referred to in paragraph (c) of this section which the Regional Administrator intends to make including an explanation whether any amendments or

other actions would result in compliance with the regulation;

(2) The date, place, and time of a public hearing to be held by the Administrator, one subject of which shall be the proposed determination, which hearing shall in no event be later than 15 working days after the receipt of such notice; and (3) The manner in which views may be presented.

(f) A party which has received notice under paragraph (e) of this section—

(1) May make a written submission of its views with supporting data and arguments to the Regional Administrator on or prior to the date of the public hearing; and

(2) Shall be afforded an opportunity to make an oral presentation at the public hearing.

(g) The Regional Administrator shall consider all relevant views and data including arguments and other submissions made at the public hearing. The Regional Administrator shall make, not later than 5 working days after the public hearing, a final determination in writing stating the reasons for the determination.

(h) A State or local applicant may appeal in writing from an adverse final determination made by the Regional Administrator under paragraph (g) of this section to the Administrator not later than 10 working days after receipt of the Regional Administrator's determination. The Administrator shall have 21 working days to consider the appeal and take any action with respect thereto which he deems appropriate. Any action taken by the Administrator shall be the final determination of FEA. If no action has been taken by the Administrator after the expiration of the 21 working day period, the final determination of the Regional Administrator shall be the final determination of FEA.

(i) Anything herein to the contrary notwithstanding, the public hearing referred to in paragraph (e)(2) of this section may be combined, at the discretion of the Regional Administrator, with any other public hearing in the State conducted pursuant to this part.

(j) Upon issuance of the notice provided in paragraph (d), the Regional Administrator may suspend payments to any grantee pending a final determination. If the Regional Administrator makes a final determination of failure to comply, the grantee will be ineligible to participate in the program unless and until the Regional Administrator is satisfied that there is no longer a failure to comply.

## RULES AND REGULATIONS

## APPENDIX A—STANDARDS FOR WEATHERIZATION MATERIALS

<i>Material or product</i>	<i>Standards</i>
<b>Insulation—Mineral fiber</b>	
Blanket/batt .....	Conformance to F.S. HH-I-521E and ASTM 0665-70.
Board .....	Conformance to F.S. HH-I-526C and ASTM 0612-70 or C726-72.
Duct material.....	Conformance to F.S. HH-I-545B.
Loose fill.....	Conformance to F.S. HH-I-1030B and ASTM C764-73.
<b>Insulation—Mineral cellular:</b>	
Aggregate board.....	Conformance to F.S. HH-I-529B.
Cellular class.....	Conformance to F.S. HH-I-551B and ASTM C552-73.
Perlite .....	Conformance to F.S. HH-I-574A and ASTM C549-73.
Vermiculite .....	Conformance to F.S. HH-I-585B and ASTM C516-67.
<b>Insulation—Organic fiber:</b>	
Cellulose—classes 25 and 75.....	Conformance to F.S. HH-I-515C and ASTM C739-73 (loose fill).
Cellulose—class 200.....	Conformance to F.S. HH-I-515C and ASTM C739-73 (loose fill) and fire safety requirements.
Vegetable .....	Conformance to F.S. HH-I-528B and fire safety requirements.
Board and block.....	Conformance to F.S. LLL-I-535A and ASTM C208-72 and fire safety requirements.
<b>Insulation—Organic cellular:</b>	
Polystyrene board.....	Conformance to F.S. HH-I-524B and ASTM C578-69 and fire safety requirements.
Urethane board.....	Conformance to F.S. HH-I-530A and ASTM C591-69 and fire safety requirements.
Flexible unicellular.....	Conformance to F.S. HH-I-537B and ASTM C534-70 and fire safety requirements.
<b>Insulation—Air spaces: Reflective....</b>	
<b>Storm windows:</b>	
Aluminum frame.....	Equivalent to ANSI A134.3-1973.
Wood frame.....	Conformance to Sec. 3 of NWMA Industry Standard I.S.2-73.
Rigid vinyl frame.....	Conformance to NBS Product Standard PS26-70 and performance guarantee.
Frameless plastic glazing.....	Required minimum thickness, 6 mil (0.006 in).
<b>Storm doors:</b>	
Aluminum .....	Equivalent to ANSI A134.4-1973.
Wood:	
Pine .....	Conformance to Sec. 3 of NWMA I.S.5-73.
Fir, hemlock, spruce.....	Conformance to Sec. 3 of FHDA/5-75.
Hardwood veneered.....	Conformance to Sec. E of NWMA I.S.I.-73.
Rigid vinyl.....	Conformance to NBS Product Standard PS26-70 and performance guarantee.
Caulks and sealants.....	Commercial availability.
Weatherstripping .....	Do.
Vapor barriers.....	Conformance to ASTM C755-73.
Clock thermostats.....	Commercial availability.

## NOTES

<sup>1</sup> F.S. means federal specifications as cited, copies of which may be obtained from Specifications Sales, Building 197, Washington Naval Yard, General Services Administration, Washington, D.C. 20407.

<sup>2</sup> For fire safety requirements, see Sec. 2.1.3.1 of NBSIR 75-795 which may be obtained from FEA.

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