

# Rules and Regulations

Federal Register

Vol. 75, No. 15

Monday, January 25, 2010

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

#### 9 CFR Part 392

[Docket No. FSIS-2009-0029]

#### Petitions for Rulemaking; Approval of Information Collection

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule; information collection approval.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is announcing that the Office of Management and Budget (OMB) has approved the information collection associated with its final rule "Petitions for Rulemaking," published April 9, 2009.

**DATES:** On July 16, 2009, the Office of Management and Budget approved the information collection requirements for the rule published April 9, 2009, at 74 FR 16104 and effective June 8, 2009.

**FOR FURTHER INFORMATION CONTACT:** Rachel Edelstein, Director, Policy Issuances Division, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, Washington, DC 20250, (202) 720-5627.

**SUPPLEMENTARY INFORMATION:** FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). FSIS protects the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and correctly labeled and packaged.

FSIS is notifying the public that OMB has approved the information collection associated with the final rule "Petitions for Rulemaking," which published on April 9, 2009 (74 FR 16104). The final rule amended the FSIS administrative

regulations by adding a new part 392 that established regulations governing the submission of petitions for rulemaking to FSIS.

OMB had not approved the information collection requirements associated with the Petitions for Rulemaking final rule when the final rule published. Therefore, in the preamble to the rule, FSIS explained that it would collect no information associated with rule until the information collection request received OMB approval (74 FR 16104, 16106-16107). OMB approved the information collection on July 16, 2009; the OMB number is 0583-0136.

Therefore, FSIS will now begin to collect information associated with the final rule. In addition, now that FSIS is authorized to collect such information, effective January 25, 2010 the Agency will begin to post all petitions for rulemaking that it receives, along with any supporting documentation, on the FSIS Web site at [http://www.fsis.usda.gov/regulations\\_&\\_policies/Petitions/index.asp](http://www.fsis.usda.gov/regulations_&_policies/Petitions/index.asp) (see 9 CFR 392.6(a)).

#### Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this document, FSIS will announce it on-line through the FSIS Web page located at [http://www.fsis.usda.gov/regulations/2009\\_Notices\\_Index/index.asp](http://www.fsis.usda.gov/regulations/2009_Notices_Index/index.asp).

FSIS also will make copies of this **Federal Register** publication available through the *FSIS Constituent Update*, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Update* is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The *Update* also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at [http://www.fsis.usda.gov/news\\_and\\_events/email\\_subscription/](http://www.fsis.usda.gov/news_and_events/email_subscription/). Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on January 19, 2010.

**Alfred V. Almanza,**  
Administrator.

[FR Doc. 2010-1263 Filed 1-22-10; 8:45 am]

**BILLING CODE 3410-DM-P**

## DEPARTMENT OF ENERGY

### 10 CFR Part 440

[Docket No. EEWAP0515]

RIN 1904-AB97

#### Weatherization Assistance Program for Low-Income Persons

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

**ACTION:** Final rule.

**SUMMARY:** The U.S. Department of Energy (DOE) is amending the eligibility provisions applicable to multi-unit buildings under the Weatherization Assistance Program for Low-Income Persons. As a result of today's final rule, if a multi-unit building is under an assisted or public housing program and is identified by the U.S. Department of Housing and Urban Development (HUD), and included on a list published by DOE, that building will meet certain income eligibility requirements, and will also satisfy one or both of the procedural requirements to protect against rent increases and undue or excessive enhancement of the weatherized building, as indicated by the list, under the Weatherization Assistance Program without the need for further evaluation or verification. The preamble of today's final rule also provides guidance to States with respect to addressing the requirement that the benefits of weatherization assistance in connection with such rental units,

including units where the tenants pay for their energy through their rent, will accrue primarily to the low-income tenants residing in such units. If a multi-unit building includes units that participate in the Low Income Housing Tax Credit (LIHTC) Program, identified by HUD, or includes units that participate in the U.S. Department of Agriculture (USDA) Rural Housing Service's Multifamily Housing Programs, and is included on a list published by DOE, that building will meet the income eligibility requirements of the Weatherization Assistance Program without the need for further evaluation or verification. Today's final rule will reduce the procedural burdens on evaluating applications from buildings that are part of HUD assisted and public housing programs, the Federal LIHTC programs, and the USDA Rural Development program.

**DATES:** This final rule is effective February 24, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Claire Broido Johnson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Weatherization and Intergovernmental Program, EE-2K, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-1510, e-mail:

*Claire.Johnson@ee.doe.gov*, or Chris Calamita, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC-72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507, e-mail: *Christopher.Calamita@hq.doe.gov*.

**SUPPLEMENTARY INFORMATION:**

I. Introduction

II. Proposed Regulation

III. Final Rule

A. Eligibility Requirements Met by Identified Housing

1. Income Requirement

a. Qualified Assisted Housing and LIHTC Programs

b. USDA Rural Development Program

2. Protection From Rent Increases

3. No Undue or Excessive Enhancement to the Value of the Dwelling Units

B. Other Eligibility Requirements

1. Accrual of Benefits

2. Permission of Owner or Owner's Agent

3. Owner Financial Participation

C. Other Comments Received

1. Allowable Expenditures

2. Prioritization/Promotion of Multi-Family Projects

IV. Regulatory Analysis

V. Approval of the Office of the Secretary

**I. Introduction**

Sections 411-418 of the Energy Conservation and Production Act (Act) established the Weatherization Assistance Program for Low-Income Persons (Weatherization Assistance

Program). (42 U.S.C. 6861 *et seq.*) The Weatherization Assistance Program reduces energy costs for low-income persons, families, and households by increasing the energy efficiency of their homes, while promoting their health and safety. DOE works in partnership with State- and local-level agencies to implement the Weatherization Assistance Program. DOE's Project Management Center awards grants to State-level agencies, which then contract with subgrantees (e.g., local agencies). The subgrantees then provide weatherization services to eligible low-income families.

In establishing the Weatherization Assistance Program, Congress found that "a fast, cost-effective, and environmentally sound way to prevent future energy shortages in the United States while reducing the Nation's dependence on imported energy supplies is to encourage and facilitate, through major programs, the implementation of energy conservation and renewable-resource energy measures with respect to dwelling units." (42 U.S.C. 6861(a)(1)) Congress also recognized that many dwellings owned or occupied by low-income persons are energy inefficient and that low-income persons can least afford to make the modifications necessary to improve the energy efficiency of such dwellings. (42 U.S.C. 6861(a)(2)) Additionally, Congress directed that States, through Community Action Agencies and units of general purpose local government, should be encouraged, with Federal financial and technical assistance, to develop and support coordinated weatherization programs designed to alleviate the adverse effects of energy costs on low-income persons, to supplement other Federal programs serving such low-income persons, and to increase energy efficiency. (42 U.S.C. 6861(a)(4))

Congress, therefore, stated that the purpose of the Weatherization Assistance Program is to develop and implement an assistance program to increase the energy efficiency of dwellings owned or occupied by low-income persons, reduce their total residential energy expenditures, and improve their health and safety,<sup>1</sup> especially low-income persons who are particularly vulnerable such as the elderly, the handicapped, and children. (42 U.S.C. 6861(b))

The Weatherization Assistance Program statute recognizes that single-

family dwelling units are potentially high-energy-consuming dwelling units, and grantees should consider appropriate prioritization for such units or other high-energy-consuming dwelling units. (42 U.S.C. 6864(b)(2)) The statute also recognizes that in some instances, weatherization efforts under the program may be appropriate for buildings in which there are multiple rental units. (42 U.S.C. 6863(b)(5))

Congress recognized that additional considerations are necessary when evaluating the eligibility of multi-unit buildings, as opposed to single-family dwellings. In any case in which a person requesting weatherization assistance from a subgrantee for a dwelling that consists of a rental unit or rental units, the State, in implementing its weatherization program, must ensure that—

- The benefits of weatherization assistance in connection with such rental units, including units where the tenants pay for their energy through their rent, will accrue primarily to the low-income tenants residing in such units;

- For a reasonable period of time after weatherization work has been completed on a dwelling containing a unit occupied by an eligible household, the tenants in that unit (including households paying for their energy through their rent) will not be subjected to rent increases unless those increases are demonstrably related to matters other than the weatherization work performed;

- The enforcement of the rent increase provision is provided through procedures established by the State by which tenants may file complaints and owners, in response to such complaints, shall demonstrate that the rent increase concerned is related to matters other than the weatherization work performed; and

- No undue or excessive enhancement will occur to the value of such dwelling units. (42 U.S.C. 6863(b)(5))

DOE provided additional direction regarding the eligibility of multi-unit buildings in the Weatherization Assistance Program regulations. Under the DOE regulations a subgrantee may weatherize a building containing rental dwelling units using financial assistance for dwelling units eligible for weatherization assistance, where:

- The subgrantee has obtained the written permission of the owner or his agent;

- Not less than 66 percent (50 percent for duplexes and four-unit buildings, and certain eligible types of large multi-

<sup>1</sup> Weatherization work may include the abatement of hazards such as lead, which may be required prior to the installation of weatherization materials. See, 10 CFR 440.16(h).

family buildings) of the dwelling units in the building:

- Are eligible dwelling units, or
- Will become eligible dwelling units within 180 days under a Federal, State, or local government program for rehabilitating the building or making similar improvements to the building; and

- The grantee has established procedures for dwellings which consist of a rental unit or rental units to ensure that:

- The benefits of weatherization assistance in connection with such rental units, including units where the tenants pay for their energy through their rent, will accrue primarily to the low-income tenants residing in such units;

- For a reasonable period of time after weatherization work has been completed on a dwelling containing a unit occupied by an eligible household, the tenants in that unit (including households paying for their energy through their rent) will not be subjected to rent increases unless those increases are demonstrably related to matters other than the weatherization work performed;

- The enforcement of the rent increase provision is provided through procedures established by the State by which tenants may file complaints, and owners, in response to such complaints, shall demonstrate that the rent increase concerned is related to matters other than the weatherization work performed; and

- No undue or excessive enhancement shall occur to the value of the dwelling units.

10 CFR 440.22(b). An eligible dwelling unit is one that is occupied by a family unit (1) whose income is at or below 200 percent of the poverty level, (2) which contains a member who has received cash assistance payments under certain Social Security programs, or applicable State or local laws at any time during the 12-month period preceding the determination of eligibility under the Weatherization Assistance Program, or (3) if the State elects, is eligible for assistance under the Low-Income Home Energy Assistance Act, provided that such basis is at least 200 percent of the poverty level. 10 CFR 440.22(a); See also, 42 U.S.C. 6862(7).

The American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) significantly increased the focus of weatherization activities by providing \$5 billion in funding for the WAP program. This unprecedented level of funding supports the Administration's stated goal of weatherizing 30,000

homes a month. The increased weatherization effort will reduce the total residential energy expenditures, and improve their health and safety, of low-income persons on a much broader scale than previously seen, as well as additional benefits such as contributing to a reduction in greenhouse gas emissions due to the increased efficiency of the nation's building stock.

## II. Proposed Regulation

DOE recognizes that determining the eligibility of multi-unit buildings may present difficulties to subgrantees in evaluating the income eligibility of tenants meeting the 200 percent of poverty requirement, and that this difficulty can be overcome where other Federal agencies already have procedures in place for determining such income eligibility. On May 21, 2009, DOE published a notice of proposed rulemaking (NPR) to address verification of the eligibility requirements under the weatherization program for multi-family buildings participating in other Federal programs.<sup>2</sup> 74 FR 23804. Following the publication of the NPR, DOE issued a notice announcing a public meeting that was held on June 18, 2009, and that extended the comment period to July 6, 2009. 74 FR 27945.

In the NPR, DOE proposed that if a multi-unit building is under an assisted or public housing program and is identified by HUD, and included on a list published by DOE, that building would meet certain income eligibility requirements, and the procedural requirements to protect against rent increases and undue enhancement of the weatherized building would be satisfied, under the Weatherization Assistance Program without the need for further evaluation or verification. Additionally, DOE proposed that if a multi-unit building includes units that participate in the LIHTC Program, identified by HUD, and included on a list published by DOE, that building would meet the income eligibility requirements of the Weatherization Assistance Program without the need for further evaluation or verification. DOE requested comment on how States and subgrantees may ensure compliance with the requirement that benefits of weatherization accrue primarily to low-income tenants that reside in such buildings. 74 FR at 23807.

<sup>2</sup> The proposal did not address the requirements applicable to permissible expenditures under WAP or the required weatherization materials. Those requirements, along with the requirements in 10 CFR Part 440 not addressed in today's final rule remain are not amended.

DOE stated that it believed that the proposed rule would reduce the procedural burdens on evaluating applications from buildings that are part of HUD-assisted and public housing programs, and the Federal LIHTC programs. 74 FR at 23807. The Act requires that DOE promulgate regulations that, in part, provide guidance to assist the States in their efforts to ensure that appropriate procedures are established to satisfy the procedural burdens. (42 U.S.C. 6863(b)(2))

## III. Final Rule

In today's final rule, DOE is adopting the revisions to the Weatherization Assistance Program as proposed, with two differences. First, DOE is including buildings that participate in the USDA Rural Development program and are identified by USDA, on the list of buildings that meet the income requirements of the Weatherization Assistance Program without the need for additional verification.

Second, an additional list will be provided in order to address the current State practice for complying with the requirement to protect against rent increases. Buildings that have three or more years remaining under the applicable arrangement with HUD will be included, as appropriate, on a list that demonstrates compliance with the income requirements and compliance with the procedural requirements under the Weatherization Assistance Program to protect against rent increases and undue enhancement of the weatherized building. Buildings that have less than three years remaining under the applicable arrangement with HUD will be included on a separate list, as appropriate, to demonstrate compliance with the income requirements and compliance with the procedural requirement to protect against undue enhancement.

Today's final rule will reduce the review and verification that a subgrantee must undertake when evaluating the eligibility of the identified buildings. The purpose of today's final rule is to reduce the burden on States and subgrantees when evaluating applicability requirements for which HUD or USDA has already collected and verified the necessary data.

### *A. Eligibility Requirements Met by Identified Housing*

#### 1. Income Requirement

##### a. Qualified Assisted Housing and LIHTC Programs

As stated previously under the DOE regulations, a subgrantee can only weatherize a building containing rental dwelling units using financial assistance for dwelling units eligible for weatherization assistance, where not less than 66 percent (50 percent for duplexes and four-unit buildings, and certain eligible types of large multi-family buildings) of the dwelling units in the building meet the income eligibility levels. 10 CFR 440.22(b)(2).

HUD's Qualified Assisted Housing<sup>3</sup> programs generally serve the population for which the Weatherization Assistance Program was established to serve. This assisted and public housing portfolio includes properties that are privately owned, but receive some form of HUD assistance subject to affordability and income requirements. Income targets for HUD programs are set in relationship to a percentage of area median income—generally, 30 to 80 percent of area median income. A review of data from HUD programs indicates that a large majority of residents in HUD assisted and public housing would meet the income eligibility requirements of the Weatherization Assistance Program. HUD data show that nationally close to 100 percent of residents in these properties meet the 200 percent income requirement, far exceeding the 66 percent threshold required under DOE's regulation. 10 CFR 440.22(b)(2).

Moreover, the income verification process applicable to the HUD programs is rigorous. Under these HUD programs, HUD assisted housing owners or public

housing authorities must determine each participating family's income before the family is permitted to move into the assisted housing, and at least annually thereafter. To ease the existing burden of manual verification and reduce the potential for human error, HUD has developed a sophisticated system of third-party income verifications, originally designated as the Upfront Income Verification (UIV) system, now known as the Enterprise Income Verification (EIV) system. The EIV system is now used voluntarily by HUD housing providers, but will convert to a mandatory system in January 2010. The EIV system, a central repository and source for income and benefit data, is accessible in a secure manner over the internet, for use by public housing authorities and owners or their agents to improve the accuracy of rent and income determinations. HUD monitors compliance with tenant eligibility requirements on an annual basis through management and occupancy reviews in addition to the submission of tenant data to HUD payment systems. Tenant eligibility certifications are required in order for subsidy payments to be authorized. A building owner must verify each family's income, assets, expenses, and deductions three times: (1) Prior to move-in, (2) as part of the annual recertification process, and (3) as a result of changes in income allowances, or family characteristics reported between annual re-certifications.

Property owners participating in the LIHTC Program are directed to utilize the income verification process set forth Internal Revenue Code Section 42, and Internal Revenue Service (IRS) Handbook 8823 (Chapter 5), and incorrect eligibility determinations may adversely affect the utilization of the tax credits.

After the initial determination of eligibility, owners, or their agents, are required to recertify each low-income household at least annually, within 120 days of the anniversary date of the occupancy. The allocating agency, typically a state housing finance agency, is responsible for monitoring compliance with the provisions during the affordability period and must report the results of monitoring to the IRS. The allocating agency is required to perform an on-site inspection and a review of 20 percent of tenant files at least every three years.

The income of the families occupying units in buildings under the Qualified Assisted Housing and LITHC Programs is subject to HUD's rigorous verification processes. Given the nature of the data collected by HUD and the income

verification procedures employed under these housing programs, DOE has determined that buildings identified by HUD as having not less than 66 percent (50 percent for duplexes and four-unit buildings) of dwelling units occupied by family units whose income is at or below 200 percent of the poverty level would meet the minimum income eligibility requirements for multi-unit buildings under the Weatherization Assistance Program.

In the NOPR, DOE requested comments on its proposal that income data collected by HUD under the Qualified Assisted Housing and LIHTC programs would be sufficient for the purpose of demonstrating the income requirements of multi-unit buildings under the Weatherization Assistance Program. The responses DOE received supported the proposal and indicated that it would reduce burdens on property owners, tenants, grantees, and subgrantees thereby allowing more of the weatherization funds to be used for energy improvements. (*See LISC, p. 2*)

Some of the commenters indicated that a simpler and more effective approach would be to raise the income eligibility ceiling for the program, specifically by making eligible for the Weatherization Assistance Program any household that meets the National Housing Act definition of "low-income." DOE did not propose to amend the definition of "low-income" in the NOPR and such an amendment as suggested by commenters would be outside the scope of notice for this rulemaking.

DOE also received comments regarding the exclusion of Section 221(d)(3) and (d)(5) Below Market Interest Rate (BMIR), and Section 236 programs from eligibility. The comments expressed that these programs carry income restrictions and also typically use project-based Section 8 subsidies. The comments additionally indicated that residents using the Section 8 subsidies have the same income reporting requirements as other Section 8 subsidy holders. Commenters remarked that while not all Section 221(d)(3) BMIR and Section 236 properties have Section 8 housing, to the extent that they do, these properties should meet the definition of "qualified assisted housing." Some of the commenters suggested that the definition of "qualified assisted housing" be revised to clarify that Section 221(d)(3) BMIR and Section 236 buildings are only excluded from consideration as qualified assisted housing if fewer than 66 percent of the units have project-based Section 8 assistance. This issue was also raised at the public meeting held on June 18,

<sup>3</sup> For the purposes of this rule, "Qualified Assisted Housing" includes public housing projects, and assisted housing projects that receive project-based Section 8 assistance, under the U.S. Housing Act of 1937, as amended (42 U.S.C. 1437 *et seq.*), Supportive Housing for the Elderly projects receiving HUD assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 17012), or Supportive Housing for Persons with Disabilities under section 811 of the Cranston-Gonzales National Affordable Housing Act, as amended (42 U.S.C. 8013). For the purpose of this rulemaking "Qualified Assisted Housing" does not include projects also benefiting from assistance under Section 221(d)(3) and (d)(5), and 236 of the National Housing Act (12 U.S.C. 17151(d)(3) and (d)(5), and 12 U.S.C. 1715z-1, respectively), except such Sections 221(d)(3) and 236 projects with Section 8 assistance on not less than 66 percent of the multi-family units are included. DOE notes that while these excluded projects will not be included in the published list of properties under today's final rule, these projects may qualify under the Weatherization Assistance Program so long as the projects meet all of the necessary requirements, including the verified tenant income levels.

2009. At that meeting, HUD stated that every family that receives housing assistance must certify their income before they move in and must recertify every year thereafter. Further, owners are required to monitor, certify, and maintain records of compliance with tenant eligibility. HUD also stated that nearly all of the residents within its programs being considered eligible meet the 200 percent above poverty line requirement stated in the public law, including the Section 221(d)(3) and Section 236 properties having Section 8 housing assistance under discussion.

DOE notes that Section 221(d)(3) and Section 236 may qualify under the Weatherization Assistance Program so long as the projects meet all of the necessary requirements, including the verified tenant income levels. To the extent that these properties have project-based assistance under the Section 8 program on not less than 66 percent of the multi-family units (50 percent for duplexes and four-unit buildings), and HUD includes such buildings in the list of properties meeting the income requirements of the Weatherization Assistance Program, Section 8 properties will be included in today's final rule.

After consideration of the comments, DOE concludes in today's final rule that the income data collected by HUD would be sufficient for the purpose of demonstrating the income requirements of multi-unit buildings under the Weatherization Assistance Program.

#### b. USDA Rural Development Program

DOE also received a number of comments indicating that buildings that participate in the USDA Rural Housing Service's Multifamily Housing Programs undergo equally rigorous income verifications. The income verification process for the Rural Housing Service's Multifamily Housing Programs is very similar to that of HUD. The USDA Rural Housing Service's Multifamily Housing Programs utilize HUD's income, asset and deduction requirements for eligibility to reside in Rural Housing Service multifamily properties and to receive the benefits of Rural Development's Rental Assistance subsidy programs. Property owners and their management agents are responsible for determining a family's income when they apply for housing. USDA performs an annual audit of a statistical sample of tenant files to ensure that the rent and subsidy are calculated properly, with adequate supporting documentation. In addition, USDA field staff performs periodic supervisory visit inspections where tenant files are selected at random and audited for confirmation of

documentation. In the 26 states that permit wage matching, USDA has initiated memoranda of understanding with these individual departments of labor to receive confirmation information on wages reported. USDA field staff provides such confirmation to property managers, who check the data against that reported by tenants. USDA multifamily regulations require that tenants recertify their income annually, and whenever they have a monthly income change of \$100 or more.

Unlike HUD, USDA maintains data on participation in the Rural Housing Service's Multifamily Housing Programs at a project level, as opposed to a building level. A single project may be comprised of more than one building. As a result of maintaining income data on a project level without knowing the breakdown of the income of tenants on a per building basis, a project identified by USDA as having 66 percent of the dwelling units occupied by low-income tenants does not ensure that each building in that project meets the 66 percent threshold. For example, if a project consisted of three buildings with ten units each, and two of the three buildings were occupied solely by low-income tenants, the project would have 66 percent of the dwelling units occupied by low-income tenants. However, the third building could have no low-income tenants.

The purpose of the proposed rule was to minimize duplicative verification requirements among Federal agencies. While the proposed rule considered coordinating WAP requirements with only HUD data, income data collected and verified by USDA provide a similar opportunity to minimize duplicative income verification requirements. DOE has determined that buildings identified by USDA as having 100 percent of dwelling units occupied by family units whose income is at or below 200 percent of the poverty level would meet the minimum income eligibility requirements for multi-unit buildings under the Weatherization Assistance Program. In order to ensure that the buildings identified by USDA meet the 66 percent requirement at the building level, the list of buildings identified by USDA will include only those projects for which 100 percent of the units are occupied by families that meet the Weatherization Assistance Program income requirement.

#### 2. Protection From Rent Increases

Under the Weatherization Assistance Program, a grantee must establish procedures that ensure that for a reasonable period of time after weatherization work has been

completed on a dwelling containing a unit occupied by a low-income tenant, the tenant in that unit will not be subjected to rent increases unless those increases are demonstrated to be related to matters other than the weatherization work performed. 10 CFR 440.22(b)(3)(ii). The enforcement of this provision is provided through procedures established by the State by which tenants may file complaints, and owners in response to such complaints must demonstrate that the rent increase concerned is related to matters other than weatherization. 10 CFR 440.22(b)(3)(iii). Under the Qualified Assisted Housing programs, tenant rents are capped at 30 percent of their income, so tenants would not be subject to rent increases as a result of the weatherization.

DOE has proposed that the restrictions on rent for units in buildings participating in the Qualified Assisted Housing Programs would provide the assurance required under the Weatherization Assistance Program that for a reasonable period of time after weatherization work is completed on a dwelling occupied by a low-income family unit, rent will not increase. In the proposed rule, DOE requested comments on this issue. DOE also requested comments on its understanding that the LIHTC Program does not offer sufficiently uniform protections regarding rent increases so as to permit DOE to determine that buildings under the LIHTC Program would meet the rent control requirement of the Weatherization Assistance Program.

In response, DOE received comments supportive of a DOE determination that the Qualified Assisted Housing Program and LIHTC Program sufficiently protect low-income tenants from rent increases to satisfy the rent control requirement. One of the comments noted that currently some States require rent control provisions to remain in place for three years as a condition of weatherizing multi-family housing. If a HUD building were to have its rent structure expire within three years, the proposed categorical assurance would result in a less rigorous rent restriction on the HUD building than States apply to other multi-family buildings.

In today's final rule, DOE has determined, based on the nature of the conditions for property owners under the Qualified Assisted Housing Programs, that generally, the Qualified Assisted Housing Program sufficiently protects low-income tenants from rent increases so as to satisfy the requirement that grantees under the Weatherization Assistance Program

establish procedures to protect low-income tenants against rent increases resulting from weatherization. However, DOE recognizes that some States may currently require a three-year commitment from property owners to protect against rent increases resulting from the weatherization work.

To address the issue of current practice in some States, DOE will publish segregated information on the list of eligible multi-unit buildings identified by HUD in order to indicate which buildings have a minimum of three years remaining on their commitment with HUD. The properties included on the list of buildings that have less than three years remaining on their commitment with HUD will satisfy the income requirements and the requirement that limits undue enhancement. The properties included on the list that includes buildings with three or more years remaining on their commitment with HUD will satisfy the income eligibility requirements. They will also satisfy both of the procedural requirements to protect against rent increases and undue or excessive enhancement of the weatherized building, without the need for further evaluation or verification.

It is important to note that today's rule does not require a minimum of three years remaining on a building's commitment with HUD in order to comply with the rent control requirement under the Weatherization Assistance Program. A State may determine that a different timeframe is acceptable. However, in recognizing that some States currently require a three-year commitment from property owners to demonstrate compliance with the rent control provisions, the list of properties to be published by DOE will distinguish those for which there is at least three years remaining on the commitment to the Qualified Assisted Housing programs. For those properties that have less than three years remaining, the list will indicate the amount of time remaining under the commitment with HUD to allow States to determine whether that period is sufficient to satisfy the rent control requirement established by the State.

With regard to the LIHTC program, a comment indicated that although the LIHTC program provides for rent control, it does not have the same uniform restrictions as those associated with the Qualified Assisted Housing programs. The commenter stated that the fact that the LIHTC program does not have the same restrictions on rent control could be resolved with an agreement between the owner and the weatherization subgrantee that limits

rent increases according to a standard acceptable to DOE or the subgrantee. With respect to the issue of rent control in the LIHTC Program, DOE received comments indicating that for LIHTC properties, there is no direct cost-based rent setting under the LIHTC program and that the total tenant housing cost is capped by a formula based on the area median income. Commenters noted that while in practice LIHTC property rents are limited by the lower of the cap or market rents and therefore unlikely to increase as a result of weatherization costs, a rent controlling covenant running with the unit receiving weatherization funds could be an option. Another comment on the issue of rent control in the LIHTC program urged DOE to allow state agencies administering the Weatherization Assistance Program the flexibility to determine the appropriate rent control procedures.

DOE recognizes that properties under the LIHTC program may have various rent control conditions, however, the extent and nature of those conditions may not be uniform throughout the program. Under today's final rule, properties participating in the LIHTC program will not be included in the list of properties that meet the rent control provisions of the Weatherization Assistance Program without a need for additional conditions on the property owner. For the properties under the LIHTC program, the State, or weatherization grantee, maintains flexibility in establishing the necessary rent control conditions. After considering the comments, DOE maintains its preliminary understanding that the LIHTC Program does not provide sufficiently uniform protections against rent increases so that DOE could determine that buildings under the LIHTC Program would meet the rent control requirement of the Weatherization Assistance Program.

### 3. No Undue or Excessive Enhancement to the Value of the Dwelling Units

Weatherization of a building containing rental units requires that the applicable grantee ensure that no undue or excessive enhancement occur to the value of the dwelling units. 10 CFR 440.22(b)(3)(iv). The expenditures allowed under the Weatherization Assistance Program help focus enhancements on those that provide weatherization benefits. For example, repairs to a dwelling unit must be necessary to make the installation of weatherization materials effective. 10 CFR 440.18(d)(9). Moreover, for buildings that are in the Qualified Assisted Housing Programs, HUD

controls the capital improvements that may be made. In the NOPR, DOE requested comments on whether HUD control of improvements to buildings under the Qualified Assisted Housing programs would ensure that no undue or excessive enhancement would occur as a result of weatherization. DOE also requested comment on whether similar and sufficient controls were present under the LIHTC Program to allow DOE to make a similar finding for the LIHTC Program.

Commenters expressed their support for a DOE determination that controls over buildings in the Qualified Assisted Housing and LIHTC would ensure that no undue or excessive enhancement would occur as a result of weatherization. One commenter noted that with regard to the excessive enhancement issue, LIHTC properties should be treated in the same manner as Qualified Assisted Housing properties. The commenter added that the existence of maximum rental rates and long-term use restrictions in the LIHTC program acted as strong disincentives to the undertaking of excessive enhancements and for those reasons, the commenter urged DOE to conclude that LIHTC properties have controls in place to ensure no undue or excessive enhancement. This commenter indicated that DOE could alternatively consider defining "excessive enhancement" by reference to a savings to investment ratio over the lifecycle of the improvement.

DOE recognizes that some of the conditions placed on property owners under the LIHTC program may make it unlikely for weatherization work to result in undue or excessive enhancements to the property. However, in some cases, additional conditions may be required in order to assure compliance with this requirement. Because of the variability of arrangements under the LIHTC program, DOE is not including properties under the LIHTC program on the published list of properties that comply with the "no undue or excessive enhancement requirement" without need for further conditions or verification.

Based on review of the public comments, DOE has determined in today's final rule that the existing limits on permissible work under the Weatherization Assistance Program and the HUD control of improvements under the Qualified Assisted Housing programs provide the necessary assurances that no undue or excessive enhancement will occur as a result of the weatherization of the buildings identified by HUD.

## B. Other Eligibility Requirements

### 1. Accrual of Benefits

Under the Weatherization Assistance Program regulations, a grantee must ensure that for multi-unit buildings the benefits of weatherizing a building that consists of rental units, including rental units where the tenant pays for energy through rent, accrue primarily to the low-income tenants. (42 U.S.C. 6863(b)(5)(A); 10 CFR 440.22(b)(3)(i)). The payment of utilities in Qualified Assisted Housing Programs and LIHTC can be structured in a number of ways. For centrally-metered utilities, utility expenditures are included in monthly rent payments. For individually- or sub-metered utilities, tenants may receive a utility allowance, or the utility allowance can be provided directly to the utility company. Given the variability with how the benefits of weatherization, particularly utility savings, could be realized by tenants in the Qualified Assisted Housing and LIHTC Programs, a request for weatherization of a multi-unit building on the list provided by HUD would need to demonstrate that the benefits of the weatherization work accrue primarily to the low-income tenants.

Compliance with the requirement for the benefits of weatherization to accrue to the low-income tenants can be demonstrated more readily when the weatherization results in reduced utility costs for the tenant. Under the Qualified Assisted Housing programs and the LIHTC Program, tenants may not directly pay for all or part of their utility bills. In instances in which tenants of a building do not directly pay utility costs and have capped rents, the property owner needs to demonstrate that benefits accrue primarily to the tenant of the weatherized units other than by the benefit of reduced utility bills. In the NOPR DOE requested comments on how to ensure compliance with the requirement that benefits of weatherization accrue primarily to the low-income tenants, including information on procedures that may be used by States and subgrantees to determine that the accrual provision is satisfied in the context of buildings in the Qualified Assisted Housing programs and LIHTC Program.

DOE finds that public comments provided helpful guidance on how States could potentially meet the requirement of ensuring that the benefits accrue primarily to low-income tenants. Some commenters submitted that reduced utility bills were not the only indication of a benefit accruing primarily to the low-income tenant and treating them as such would run

contrary to the realities of assisted rental housing and undermine the work many States have done to address housing and resident needs. The commenters urged DOE to determine that this accrual requirement could be met by the safer, healthier living environment low-income tenants experience as a result of weatherization. (*Nat'l Housing Law Project, SAHF, OH Partners for Affordable Energy*) Commenters also asserted that this requirement could be met by the preservation of the property as affordable rental housing. They indicated that weatherization funds help these properties manage rising energy costs and therefore, protect the long term viability and availability of affordable housing, thereby primarily benefiting current and future low-income tenants. (*See SAHF, p. 3–4; OH Partners for Affordable Energy, p. 4*) One commenter stated that in strong markets, properties are affordable only because of control or long-term use restrictions. Some comments urged DOE to determine that the accrual requirement could be met if a non-profit owns or controls the property or the property is subject to a low-income use restriction for a certain period of time. (*See SAHF, p. 3; NCLC, p.14*) DOE agrees that procedures under which weatherization work incorporates use agreements that extend the affordable character of the project for the low-income tenants can be relied on by States, in part, to ensure the accrual of benefits of the weatherization to low-income tenants.

Other commenters expressed that while the reduction of energy costs was not the only benefit low-income tenants could derive from weatherization, it was the most important. (*See NCLC/TLSC, p. 4–5*) They added that in instances where low-income tenants pay for utilities as part of their capped rent, the financial benefits resulting from weatherization accrue primarily to owners rather than low-income tenants. (*See NCLC/TLSC, p. 4–5*) In instances where low-income tenants pay for their own utilities, the commenters asserted that the benefits would accrue primarily to the tenants.

DOE has determined that the Qualified Assisted Housing programs, in and of themselves, may not provide the conditions necessary to ensure that the benefits of weatherization accrue primarily to the low-income tenants. This was recognized by many of the commenters who provided examples of instances in which the benefits could be demonstrated as accruing primarily to the low-income tenants through the imposition of conditions in addition to those present under the Qualified Assisted Housing Programs.

Administering State agencies have the responsibility to ensure that the benefits of weatherization activities at Qualified Assisted Housing properties accrue primarily to the low-income tenants. Thus, States may establish requirements and procedures for subgrantees to demonstrate that this standard is met.

Given the variability with how utility savings could be realized by tenants in the Qualified Assisted Housing and LIHTC programs, a request for weatherization of a multi-unit building that is on the list provided by HUD would still need to demonstrate to the State (or subgrantee administering the program) that the benefits of the weatherization work accrue primarily to the low-income tenants. Demonstration of the benefits of weatherization accruing primarily to the low-income tenants can include reduced utility costs, and also a combination of longer-term preservation of the property as affordable housing, continued monitoring by or on behalf of DOE of the Weatherization Assistance Program's statutorily required protection from rent increases to low income tenants, and the benefits of a healthier living environment (*e.g.*, improved livability from thermal insulation, reductions in drafts, and fewer problems with allergens in living units).

Commenters cited procedures currently employed by States to ensure that the benefits of weatherization accrue primarily to low-income tenants. For example, the State of Washington recognizes "preserved low-income-housing, added comfort, and improved indoor air quality" as direct benefits to tenants, and requires documentation of the direct benefits that satisfy the accrual of benefits requirement. The approach taken by the State of Washington provides one model example of how States can ensure that the benefits of weatherization accrue primarily to low-income tenants. DOE is considering describing this and possibly other existing procedures in guidance as a non-inclusive list of examples of weatherization benefit accrual to low-income tenants. States may also consider other ways in which owner contributions or energy savings could be structured such that the benefits of weatherization can be shown to accrue primarily to the low-income tenants. These may include investments in capital expenditures such as energy efficient appliances, modernization of apartments, health and safety improvements, improved security systems, and other upgrades to the physical plant, as well as services such as such as broadband access, job



training through local community centers, and, access to local community facilities or after-school programs. States may consider these examples, a combination of these examples, or other conditions when considering how to ensure that the benefits of the weatherization accrue primarily to the low-income tenants.

## 2. Permission of Owner or Owner's Agent

Today's final rule will not alleviate the need for a subgrantee to obtain the written permission of the owner or the owner's agent or to confirm that a dwelling unit is not designated for acquisition or clearance by Federal, State, or local program within 12 months from the date of the weatherization.

## 3. Owner Financial Participation

DOE received a comment asserting that requiring additional owner contributions to participate in the weatherization program will create an additional and undue burden on the owner. (*OH Dept. of Development*) This commenter added that the owner contribution should be waived and required at the discretion of the State Home Weatherization Assistance Program recipient, and that it also be based on a financial analysis of the housing finance agency. (*OH Dept. of Development*) Today's final rule does not amend the regulatory provision regarding financial participation from building owners. As stated in the regulation, a State *may require financial participation where feasible* from owners of multi-family buildings. See, 10 CFR 440.22(d), emphasis added.

## C. Other Comments Received

### 1. Allowable Expenditures

Some comments expressed interest in DOE addressing the restriction that prohibits weatherization funds from being used in buildings that have received funding since September 30, 1993. 10 CFR 440.18(f)(2)(iii). The commenters remarked that technological improvements and escalating energy prices since 1993 justify allowing weatherization programs to revisit properties that already received assistance.

DOE notes that the prohibition on the use of weatherization funds from being used in certain buildings that have received funds in previous years is established by statute and not subject to amendment by DOE. (See, 42 U.S.C. 6865(c)(2)).

## 2. Prioritization/Promotion of Multi-Family Projects

Some commenters presented the view that the rule could result in agencies providing services favoring multifamily properties than other types of properties. They urged that the decision on what types of dwellings to weatherize remain a local one because local agencies are most familiar with the needs of their communities. (*See OH Partners for Affordable Energy, others*)

Today's final rule does not require States to establish a particular prioritization with regard to the weatherization of multi-family buildings. Today's final rule minimizes procedural burdens on those States and subgrantees that choose to weatherize multi-family buildings for which the Federal government has data to support the eligibility of those buildings under DOE's Weatherization Assistance Program.

## IV. Regulatory Analysis

### A. Review Under Executive Order 12866

Today's final rule has been determined to be an economically significant regulatory action under section 3(f)(1) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

The American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5; Recovery Act) provided \$5 billion for the Weatherization Assistance Program. Funding for grants under the Weatherization Assistance Program at a level greater than \$100 million makes this rulemaking economically significant under the Executive Order.

The weatherization grants provided under this program constitute transfer payments. In this case, the payments are from the Government to grantees (*e.g.*, States, units of general purpose of local government, and community action agencies), and the payments do not represent a change in the total resources available to society. The grants do generate impacts such as weatherization benefits, however, which are discussed qualitatively in this final rule.<sup>4</sup> See OMB

<sup>4</sup> It is important to note that rules that transfer Federal dollars often have opportunity costs or benefits in addition to the budgetary dollars spent because they can affect incentives, and thus lead to changes in the way people behave (*e.g.*, in their investment decisions). For example, OMB Circular A–94 suggests that transfers that result from increased taxes may be associated with a marginal excess burden (deadweight loss) of 25 cents per dollar of Federal revenue collected (p. 12).

Circular A–4, at 14, 38 and 46. Given that today's rule is finalized prior to complete expenditure of the Recovery Act funds by grantees and subgrantees under the Weatherization Assistance Program, today's final rule could impact the process used by grantees and subgrantees to evaluate applications with respect to multi-unit buildings that are covered by this final rule for the purpose of distributing funds provided under the Recovery Act. Such changes in the process for application evaluation have the potential to cause a change in the distribution of Recovery Act funding, which may constitute a transfer between different non-Federal entities. Such impacts would also be a consideration when categorizing this rulemaking under Executive Order 12866.

### B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," (67 FR 53461; August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>. Today's action revises the eligibility requirements that apply to the administration of the Weatherization Assistance Program grants by grantees and subgrantees. Because the matter of today's action relates to grants, it is not subject to the notice and comment provisions of the Administrative Procedure Act. 5 U.S.C. 553(a)(2). Therefore, the analytical requirements of the Regulatory Flexibility Act do not apply. Although DOE requested comment, today's final rule on the eligibility of multi-unit buildings under the Weatherization Assistance Program is not subject to any legal requirement to publish a general notice of proposed rulemaking.

### C. Review Under the National Environmental Policy Act of 1969

DOE has determined that today's action is covered under the Categorical Exclusion found in DOE's National



Environmental Policy Act regulations at paragraph A.6. of Appendix A to subpart D, 10 CFR part 1021. That Categorical Exclusion applies to rulemakings that are strictly procedural, such as rulemaking establishing the administration of grants. Today's action amends the eligibility provisions for multi-unit buildings under the Weatherization Assistance Program. The regulations will not have direct environmental impacts. Accordingly, DOE has not prepared an environmental assessment or an environmental impact statement.

#### *D. Review Under Executive Order 13132, "Federalism"*

Executive Order 13132, 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that pre-empt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's final rule and has determined it will not pre-empt State law and will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

#### *E. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, Civil Justice Reform, 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. The review required by sections 3(a) and 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the pre-emptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity

and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them.

DOE has completed the required review and determined that, to the extent permitted by law, today's action meets the relevant standards of Executive Order 12988.

#### *F. Review Under the Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Subsection 101(5) of Title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of \$100 million or more. Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments.

Today's final rule will not impose a Federal mandate on State, local or tribal governments, and it will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

#### *G. Review Under the Treasury and General Government Appropriations Act of 1999*

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105-277) requires

Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

#### *H. Review Under the Treasury and General Government Appropriations Act of 2001*

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

#### *I. Review Under Executive Order 13211*

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA) as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use, should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action will not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

#### *J. Review Under Executive Order 13175*

Executive Order 13175, "Consultation and Coordination with Indian Tribal

Governments” (65 FR 67249; November 9, 2000), requires DOE to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” refers to regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” Today’s regulatory action is not a policy that has “tribal implications” under Executive Order 13175. Today’s regulatory action amends the eligibility provisions applicable to multi-unit buildings under the Weatherization Assistance Program. DOE has reviewed today’s action under Executive Order 13175 and has determined that it is consistent with applicable policies of that Executive Order.

#### K. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today’s final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is a “major rule” as defined by 5 U.S.C. 804(2). DOE also will submit the supporting analyses to the Comptroller General in the U.S. Government Accountability Office (GAO) and make them available to each House of Congress.

#### V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today’s final rule.

#### List of Subjects in 10 CFR Part 440

Administrative practice and procedure, Aged, Energy conservation, Grant programs—energy, Grant programs—housing and community development, Housing standards, Indians, Individuals with disabilities, Reporting and recordkeeping requirements, Weatherization.

Issued in Washington, DC, on January 14, 2010.

Catherine R. Zoi,

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

■ For the reasons set forth in the preamble, DOE is amending Part 440 of chapter II of title 10, Code of Federal Regulations to read as follows:

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

■ 1. The authority citation for Part 440 continues to read as follows:

**Authority:** 42 U.S.C. 6861, *et seq.*; 42 U.S.C. 7101 *et seq.*

■ 2. Section 440.22 is amended by adding paragraph (b)(4) to read as follows:

##### § 440.22 Eligible dwelling units.

\* \* \* \* \*

(b) \* \* \*

(4)(i) A building containing rental dwelling units meets the requirements of paragraph (b)(2), and paragraphs (b)(3)(ii) and (b)(3)(iv), of this section if it is included on the most recent list posted by DOE of Assisted Housing and Public Housing buildings identified by the U.S. Department of Housing and Urban Development as meeting those requirements.

(ii) A building containing rental dwelling units meets the requirements of paragraph (b)(2), and paragraph (b)(3)(iv), of this section if it is included on the most recent list posted by DOE of Assisted Housing and Public Housing buildings identified by the U.S. Department of Housing and Urban Development as meeting those requirements.

(iii) A building containing rental dwelling units meets the requirement of paragraph (b)(2) of this section if it is included on the most recent list posted by DOE of Low Income Housing Tax Credit buildings identified by the U.S. Department of Housing and Urban Development as meeting that requirement and of Rural Housing Service Multifamily Housing buildings identified by the U.S. Department of Agriculture as meeting that requirement.

(iv) For buildings identified under paragraphs (b)(4)(i), (ii) and (iii) of this section, States will continue to be responsible for ensuring compliance with the remaining requirements of this section, and States shall establish requirements and procedures to ensure such compliance in accordance with this section.

\* \* \* \* \*

[FR Doc. 2010-1300 Filed 1-22-10; 8:45 am]

**BILLING CODE 6450-01-P**

#### DEPARTMENT OF HOMELAND SECURITY

##### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2009-0453]

RIN 1625-AA09

#### Drawbridge Operation Regulations; Great Egg Harbor Bay, Between Beesleys Point and Somers Point, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the regulations that govern the operation of the US Route 9/Beesleys Point Bridge over Great Egg Harbor Bay, at mile 3.5, between Beesleys Point and Somers Point, NJ. This rule will allow the drawbridge to operate on an advance notice basis during specific dates and times of the year. The rule change will result in more efficient use of the bridge during dates and times of infrequent transit.

**DATES:** This rule is effective February 24, 2010.

**ADDRESSES:** Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2009-0453 and are available online by going to <http://www.regulations.gov>, inserting USCG-2009-0453 in the “Keyword” box, and then clicking “Search.” This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Sandra S. Elliott, Bridge Administration Branch, Fifth Coast Guard District, telephone 757-398-6557, e-mail [Sandra.S.Elliott@uscg.mil](mailto:Sandra.S.Elliott@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On June 24, 2009, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Great Egg Harbor Bay, between Beesleys Point and Somers Point, NJ, in the **Federal Register** (74 FR 30031). We received two comments on