DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 440

(RIN 1904–AB05)

Weatherization Assistance Program for Low-Income Persons

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

ACTION: Interim final rule.

SUMMARY: The Department of Energy is issuing an interim final rule to amend the regulations for the Weatherization Assistance Program for Low-Income Persons to incorporate the regulatory changes proposed in the notice of proposed rulemaking published in the **Federal Register** on January 26, 2000. The preamble of this interim final rule also discusses the new legislative amendments that Congress recently enacted which were not a part of the proposed rulemaking. These statutory amendments, as well as other clarifying language from previous rulemakings will be incorporated into the program regulations in a final rule to be issued by the Department early next year. This interim final rule adds clarifying language, deletes obsolete language, and improves the overall operation of the Program to assist State and local agencies in administering the Program.

DATES: Effective January 8, 2001. Written comments are due January 8, 2001.

ADDRESSES: Send written comments (three copies) to Greg Reamy, Weatherization Assistance Program Division, U.S. Department of Energy, Mail Stop EE–42, 5E–066, 1000 Independence Avenue, SW., Washington, DC 20585. Copies of any comments received will be available for inspection between the hours of 9:00 am and 4:00 pm, Monday through Friday, except Federal holidays at the following address: DOE Freedom of Information Reading Room, Department of Energy, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–3142.

FOR FURTHER INFORMATION CONTACT: Greg Reamy, Weatherization Assistance Program Division, U.S. Department of Energy, Mail Stop EE–44, 5E–066, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4074.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department of Energy (DOE or Department) amends the program regulations for the Weatherization Assistance Program for Low-Income Persons (WAP or Program). This Program is authorized by Title III of the Energy Conservation and Production Act, as amended (Act), 42 U.S.C. 6561 *et seq*. The changes are necessitated by the evolution of the Program since the last publication of the rule on June 5, 1995 (60 FR 29470). These changes help States by clarifying sections of the rule, thereby enhancing the interpretation and application of the program requirements. Some of the definitions in § 440.3 are clarified and, where needed, new definitions are added to provide a clearer and more concise meaning to States and local agencies who must interpret these regulations. Other sections applying to energy audits and allowable expenditures are clarified to enhance their meanings; and certain obsolete items are deleted. Other regulatory changes in today's rulemaking: add new and eliminate obsolete terms in the Program definitions; add ''household with a high energy burden'' and ''high residential energy user'' as new categories for those receiving priority service; create a separate cost category for health and safety expenditures; provide flexibility on the purchase of vehicles by local agencies; reduce the eligibility criteria for certain large multi-family buildings to 50 percent; establish new minimum energy audit criteria for the Program; and revise the date for reweatherization from 1985 to 1993.

Prior to developing and issuing this interim final rule, a proposed rulemaking was issued by DOE on January 26, 2000 (65 FR 4331) after consulting with its primary stakeholders, representatives of both State and local agencies, to listen to their concerns about what issues they wanted DOE to consider. The Program has evolved from a relatively simple approach of providing service to low-income homes with unskilled labor, installing low-cost/no cost retrofits, to a program that conducts advanced diagnostics and installs cost-effective energy conservation materials. The increased demand to maintain highly-trained crews has placed added strain on State and local agencies efforts to sustain a quality level of service to its low-income clients. Many of the changes lessen the administrative burden and provide flexibility for State and local agencies to incorporate the ever-changing technical enhancements as they become available. These changes also make State and local agencies better-suited to attract non-Federal leveraged resources into their programs. This interim final rule attempts to address as many of those concerns as possible. Many of the concerns that the stakeholders raised to DOE were not of a regulatory nature and were addressed administratively through program guidance documents.

Other concerns were statutory in nature and formed the basis of the legislative initiative proposed to the Congress. The Department proposed on September 20, 1999 several statutory changes developed during discussions with State and local stakeholders. These proposed statutory changes were enacted on November 9, 2000, as part of the Energy Policy and Conservation Act Amendments of 2000. These statutory changes: (1) Eliminate the requirement in § 440.18 that 40 percent of the funds used to weatherize a home be spent for materials; (2) restructure the method in § 440.18 by which States compute their average cost per home by increasing the average cost per home to $2,500 beginning in 2000; and (3) eliminate the separate per dwelling unit average in § 440.18 for capital intensive improvements and include capital intensive costs as a part of the average costs. The Department will issue a final rule that will incorporate these changes into the program regulations early next year.

DOE plans to include in the preamble of the final rule clarifying language on several areas of the program regulations where no actual changes were made. This action will provide States and local agencies the benefit of explanatory language used in the preambles of previous rulemakings which are still applicable today. This is necessary since many State and local staffs have changed several times over the years and much institutional knowledge has been lost. A comprehensive final rule will provide Federal, State, and local agency staff a central document for program regulatory information. This will also help in providing uniform interpretation of the regulations at all levels of the Program.

II. Amendments to the Weatherization Assistance Program

Section 440.1 Purpose and Scope

DOE deletes the first sentence in the Scope and Purpose since this information is duplicative of what is

stated elsewhere in the rule. DOE amends the Purpose and Scope to add to the priority categories the terms ''high residential energy user'' and ''household with a high energy burden.'' By adding these two categories, States are better able to prioritize their low-income clients by targeting those experiencing high energy costs and burden, thereby addressing those units with the greatest potential for energy savings. Additionally, by including these two categories, State and local agencies are better able to coordinate services with other Federal programs and leveraging opportunities. The current priority categories of the elderly, persons with disabilities, and families with children remain unchanged. Definitions for these two terms are discussed in § 440.3.

Section 440.3 Definitions

DOE proposed in the notice of proposed rulemaking (NOPR) to include rule language in § 440.21(h)(1) to encourage States to set the temperature(s) used to calculate heating and cooling degree data to more reasonably reflect their housing stock and climate, thereby reducing the overestimation of energy savings for most measures. By using, and defining in § 440.3, the term ''balance point temperature,'' which is also used to describe the outside temperatures which require operation of heating or cooling equipment to maintain comfort, the proposed change was interpreted by some comments to be more substantial than DOE intended. To clarify the change described in § 440.21(e)(1) of the interim final rule, DOE is substituting a new term and definition for ''base temperature'' that replaces the definition of ''balance point temperature'' given in the NOPR.

DOE adds a definition for ''electric base-load measures'' to describe energy use outside of the traditional weatherization approach to heating and cooling and building envelope measures. As the Program evolves over the next several years into a whole house approach, DOE believes that electric base-load measures, which account for more than half the energy used in a typical household, are important when considering total residential energy use. Limited lighting measures are currently permitted in the Program and in the near future DOE may consider including other electric base-load measures such as the replacement of certain appliances. Most of the comments supported this change.

DOE adds the term ''high residential energy user'' which means a low-income household whose residential energy expenditures exceed the median level of residential expenditures for all low-income households in the State. The definition for this category permits State and local agencies to better coordinate their activities and resources with many utility programs. Most of the comments supported this change.

DOE also adds the term ''household with a high energy burden'' which means a low-income household whose residential energy burden (residential expenditures divided by the annual income of that household) exceeds the median level of energy burden for all low-income households in the State. The definition for this category gives States and local agencies greater flexibility in determining priority service for those households that may not have traditional priority individuals such as the elderly, persons with disabilities, or families with children, but are experiencing a particular hardship due to their high energy costs.Most of the comments supported this change.

DOE substitutes the term ''persons with disabilities'' for the term ''handicapped'' to reflect the current accepted reference. The definition remains unchanged.

DOE considered both State and local agency concerns over the definition of ''low-income'' and the difficulties in effectively administering, coordinating, and leveraging between various Federal low-income programs using different definitions. However, in a review of the Act and the legislative history of the Program, DOE chose not to amend the existing definition. The comments were generally supportive, but stated that DOE should consider raising the eligibility criteria to be more compatible with other Federal programs. The DOE Weatherization Assistance Program was established to serve the neediest Americans. To expand the eligibility requirements to facilitate coordination with other Federal programs either through increasing eligibility to 80 percent of the poverty level, permitting census tracking of neighborhoods, or allowing area average median income levels would change the scope and purpose of the Program. More importantly, expanding the eligibility criteria would substantially increase the number of households eligible for assistance which already stands at over 29 million. DOE has addressed this issue in detail in the annual program grant guidance.

Section 440.14 State Plans

DOE reorganizes and revises § 440.14 to eliminate unnecessary and duplicative information. The comments stated that some of these requirements are no longer needed and should be eliminated to reduce paperwork and time in the production of the annual State plan. In reorganizing this section, DOE grouped items together relating to the public hearing. Items specific to the development of the State plan are also placed together. The information for the production schedule is now projected annually instead of quarterly and includes the number of previously weatherized homes expected to be weatherized.

DOE eliminates § 440.14(b)(2), (6), (7), and (b)(8)(iii). The comments agreed with DOE that this information requirement resulted in the States providing little more than meaningless estimates to DOE. States will continue to report to DOE the number of persons served in each of these groups.

DOE retains the requirement for information on the number of dwelling units expected to be weatherized for each area, but eliminates the expected number of previously weatherized units for each area. States have no idea how many previously weatherized homes can be expected to be weatherized for each area of the State.

Section 440.14(c)(6)(xi) retains from proposed § 440.14(b)(6)(xi) the requirement that States identify and describe the type of audit that meets the criteria outlined in § 440.21 and that DOE has approved. However, the reference to Project Retro-Tech or another DOE-approved audit is eliminated in this section as well as in § 440.21.

Section 440.15 Subgrantees

DOE amends § 440.15(a)(3)(iv) to eliminate the reference to ''JTPA'' and replace it with ''other Federal or State training programs.'' The JTPA Federal program was repealed effective July 1, 2000 pursuant to Pub. L. 105–220. The comments supported this change.

Section 440.16 Minimum Program Requirements

DOE adds clarifying language to § 440.16(b) to allow States to include ''high residential energy user'' and ''household with a high energy burden'' as priority groups among those receiving weatherization services. The use of the two new priority categories is not mandatory. Comments received were generally favorable to this change. Most comments stated that by adding these two categories, DOE has provided State and local agencies with expanded flexibility to choose the categories for priority which best serve their respective programs.

DOE amends § 440.16(d) to eliminate the reference to ''JTPA'' and replace it

with ''other Federal or State training programs.'' The JTPA Federal program was repealed effective July 1, 2000 pursuant to Pub. L. 105–220. States should describe any ''other Federal or State training program'' they will be using in their annual State plans as sources of labor. The comments supported this change.

Section 440.17 Policy Advisory Council

DOE received numerous comments expressing concern that DOE was proposing to eliminate the Policy Advisory Council (PAC). Many argued that the PAC performs very well in the States and provides a unique insight on many poverty issues, including weatherization. They stated that a State-body would not offer the same independent oversight and that the low-income would lose an important voice for the local agency in managing poverty programs. In proposing this flexibility to the State, DOE did not mean to imply that the State had the authority to replace without due cause any PAC. Rather, the State must show cause to DOE that the existing PAC is either non-existent or is not functioning as outlined in § 440.17. DOE is aware that in most instances, the PAC does work as it was intended. DOE also would give preference to any legitimate PAC that is replaced for cause by a State council or commission and then later reconstituted. DOE agrees with the comments that the traditional role played by the PAC should be protected by the regulations. However, DOE and the States are also concerned that in some States, the PAC does not function as intended and is, in some instances, simply non-existent.

Therefore, DOE amends § 440.17(a) to include the language ''or a State commission or council'' which meets the criteria in § 440.17 and is approved by DOE. Many State agencies which operate the DOE Weatherization Assistance Program have existing commissions or councils which review and approve policies and plans for many other Federal programs. States which opt to utilize an existing commission or council have to certify to DOE, as a part of the annual application, that the council or commission is an independent reviewer of activities for the Program, and that the State will address this issue as a part of the public hearing held on the State Plan. Therefore, any person(s) employed in any State Weatherization Program can also be a member of an existing commission or council but will have to abstain in reviewing and approving the activities associated with the DOE Weatherization Assistance Program.

Section 440.18 Allowable Expenditures

DOE deletes from § 440.18(b) and (b)(2)(i) references to (c)(15), the cost of eliminating health and safety hazards from the amount of funds used to determine the average cost per home. State and local agencies indicated to DOE that including the cost of health and safety into the amount of funds that can be spent on a home severely restricts their flexibility to operate effectively their programs. In providing for this flexibility, DOE agrees that excluding these costs from the average cost per home would afford States and local agencies the opportunity to fund advanced technology practices into their weatherization programs while reducing their administrative burden.

In the notice of proposed rulemaking, DOE proposed to create a separate line item for the cost of purchasing vehicles. DOE solicited comments on this proposal as well as an alternative approach which effectively deferred this large cost over both the life of the vehicle and the number of homes served during that period. DOE has decided to not create a separate line item because this distorts the actual cost of weatherization work done on a home. In accepting the alternative proposal in this interim final rule, DOE retains the cost of purchasing vehicles as a part of the amount of funds used to determine the average cost per home currently in § 440.18(c)(6).

For some local agencies, purchasing vehicles under the existing rule often forced them to seek low cost weatherization candidate homes in order to maintain their normal operation while ignoring potentially higher energy savings homes. To address the concerns expressed by State and local agencies that the cost of these vehicles and certain types of equipment included in the average cost per home calculation placed an undue burden on them, DOE amends § 440.18(b) by adding paragraph (3). This paragraph allows State and local agencies to determine the average cost per unit by excluding from the average per unit cost calculations that portion of the purchase cost of vehicles and certain types of equipment made during that particular funding year. Thus, States may amortize these costs in their average cost calculations so that only that fraction of the cost of a new vehicle or equipment purchase which was actually ''used'' during the current year is included.

For example, if a local agency purchases a new vehicle for $24,000 with an expected life of the vehicle of 8 years (96 months), then the cost of that vehicle could be amortized at the rate of $3,000 per year or $250 per month. This approach also affects certain types of equipment purchases having a useful life of more than one year and a cost of $5,000 or more as defined by 10 CFR part 600. It also permits local agencies to spread these costs out over the useful life of the vehicle or equipment purchase, even though the full purchase price is reported in the year in which it occurs. DOE will address the specific reporting requirements for amortized costs for vehicle and equipment purchases in program guidance.

The comments generally supported the proposed extension of the date by which a dwelling unit can be reweatherized. Therefore, DOE amends § 440.18(e)(2)(iii) by extending the date by which homes can be reweatherized from 1985 to 1993. Previously, DOE extended this date from 1975 to 1985 based on the evolution of the Program. Between 1975 and 1979, the Program addressed primarily building envelope measures. In 1985, the Program expanded to place more emphasis on mechanical measures, including furnace efficiency modifications. Since the last rulemaking which introduced new criteria for advanced energy audits, virtually all States have improved their energy auditing techniques. DOE acknowledges this overall program improvement by the States and is confident that by extending the date to 1993, those homes weatherized between 1985 and 1993 will provide an even greater opportunity to achieve increased energy efficiency. DOE also reminds States that homes which become candidates for reweatherization must have a new energy audit performed and that audit will take into consideration any previous weatherization improvements done on the home.

Section 440.19 Labor

DOE revises § 440.19 by deleting references to JTPA and replacing it with ''other Federal or State training programs.'' The JTPA Federal program was repealed effective July 1, 2000 pursuant to Pub. L. 105–220.

Section 440.21 Standards and Techniques for Weatherization

DOE proposed in the NOPR to rename, reorganize, and revise this entire section. The significant changes in response to public comments incorporated into this interim final rule further revise, reorganize, and renumber the paragraphs constituting § 440.21.

The proposed name change more accurately reflects the subject matter of

§ 440.21. The other major changes eliminate the base audit criteria and make the waiver audit criteria the minimum criteria for an energy audit used in the Program. In its final rule published on March 4, 1993 (58 FR 12525), DOE provided for a waiver of the 40-percent material cost requirement described in § 440.18(a) for those States that adopted advanced energy audit procedures. Today, virtually all of the States have incorporated an approved waiver audit and received a waiver of this requirement from DOE. Within the next year, all States will be using an approved waiver audit.

In the NOPR published on January 26, 2000 (65 FR 4338), DOE proposed to make the existing waiver energy audit requirements the new minimum standard for all energy audit procedures. The 40-percent material cost requirement and the waiver provisions have become unnecessary and their suggested elimination from the statute is discussed later in this rule. States and local agencies have made great strides in improving the energy auditing techniques used in their programs during this decade. Investments in time and resources have paid dividends in the form of greater energy efficiency and savings on the types of materials and the installation techniques used in the Program.

To implement this change, DOE proposed to delete all references to Project Retro-Tech audit procedures and the simplified cost-effectiveness tests used with Project Retro-Tech. DOE proposed that all energy audits require calculation of a savings-to-investment ratio for weatherization measures, and assignment of priorities based on the resulting figures consistent with the life-cycle cost methodology developed by DOE's Federal Energy Management Program and the National Institute of Standards and Technology (NIST). While the cost-effectiveness requirements for the selection of weatherization measures under the waiver audit criteria were generally not made more stringent, they were described in more detail since they were to become the minimum criteria.

Of the 71 total comments that DOE received on the NOPR, 60 contained comments regarding the proposed changes to § 440.21. A large number of comments (46) expressed the belief that § 440.21 was overly complicated, detailed, and prescriptive in contrast to the simplification afforded by the rest of the proposed rule changes. These comments suggested that much of the text in § 440.21 should be moved to policy guidance. Further, the comments suggested that the proposed language locked the program into terminology and technology that time and research may supersede.

Based on these comments, DOE agrees to simplify § 440.21 by moving many of the details describing the cost-effectiveness requirements for measure selection from the regulations to policy guidance. Only a brief, general description of the cost-effectiveness requirement remains in the rule text.

In § 440.21(f)(1) of the NOPR, DOE proposed to address the interaction of measures by including the phrase ''using generally accepted engineering methods'' to remind States to use reasonable energy-estimating methods and assumptions to account for the interaction among weatherization measures. Since no comments were received, § 440.21(d)(1) of the interim final rule includes this change.

In § 440.21(d) of the NOPR, DOE proposed to include the sentence, ''The lifetime of materials must not exceed the remaining useful life of the dwelling,'' to acknowledge that the low-income housing stock served by some programs is in poor condition. A weatherization measure may appear to be cost-effective assuming the energy cost savings accrue over the entire 20-year economic life of the material, but may not be cost-effective if the energy savings accrue over a shorter period of time in light of the remaining useful dwelling life, for example, ten years.

Three comments pointed out the difficulty in determining accurately the remaining useful life of a dwelling and the possible adverse impacts related to this proposed requirement. In response to these comments as well as to other comments, DOE has agreed to remove from the rule the language containing this proposed requirement. The guidance that is eventually issued to detail the cost-effectiveness requirements will not mandate that the remaining useful life of a dwelling be used in the life-cycle cost calculations. However, States will be encouraged in the guidance to consider remaining use dwelling life when selecting the most appropriate measures in light of the legislative requirement to measure the rate of return of the total conservation investment. Determining when the remaining useful life of a dwelling may impact the cost-effectiveness calculations of weatherization measures and estimating the remaining useful life of such dwellings should be left to the discretion of the local agency.

Ten comments questioned the impact of specifying the use of FEMP life-cycle costing analysis methods to determine measure cost-effectiveness. The comments expressed concern about what would happen if FEMP did not establish standards for every material or measure that may be cost-effective in low-income households. DOE specified the FEMP annual supplement as a convenient source for the discount rate and, if used, the fuel cost escalation rates used to calculate savings-to-investment ratios since the existing rule language did not give States an easy-to-use information source. The FEMP Handbook and annual supplement discuss life-cycle costing of any and all energy conservation investments and do not address material standards. However, in simplifying § 440.21 and moving many of the cost-effectiveness details to policy guidance, references to FEMP have been removed from the rule. Annually, DOE will either distribute the FEMP annual supplement to each State, or inform the States when the supplement is published and how it may be obtained.

In § 440.21(h) of the NOPR, DOE proposed changes to the energy audit requirements that do not pertain to life-cycle costing methods. DOE proposed in paragraph (h)(1) of the NOPR to substitute the phrase ''climatic data'' for the existing ''number of heating or cooling degree days'' to acknowledge that other types of weather data besides heating and cooling degree days can be used in the estimation of fuel cost savings. Since no comments were received, this change is included in § 440.21(e)(1) of the interim final rule.

DOE proposed in § 440.21(h)(1) of the NOPR to include rule language to encourage States to set the balance point temperature(s) used in conjunction with heating and cooling degree data to more reasonably reflect the outside temperatures which require operation of heating or cooling equipment to maintain comfort. Three comments questioned how balance point temperatures would realistically be incorporated into the program, and noted that many currently approved audits did not estimate balance points as NEAT does. The use of the term ''balance point temperature'' instead of the more appropriate ''base temperature'' made the proposed change appear more substantial than DOE intended.

Heating degree days are computed by subtracting the average daily temperature from a base temperature, which has traditionally been 65°F. The traditional heating degree day base temperature assumes that the furnace needs to run at outside temperatures less than 65°F. In reality, the furnace is typically not needed until the outside temperature drops below around 60°F due to the heat generated by lights,

appliances, and people. Because of the thermal mass of a dwelling and other reasons, air conditioning is not usually required until outside temperatures exceed the traditional cooling degree day base temperature (65°F) by about 5 to 10°F.

Encouraging States to use degree day data calculated at base temperature(s) that more reasonably reflect their housing stock and climate would not only reduce the overestimation of energy savings for most measures, but would also more accurately model their true cost-effectiveness. While ideally the base temperature(s) used would be the building's balance point, DOE recognizes the prohibitive analytical burden this would impose. Instead, States are encouraged to select appropriate heating and cooling degree day base temperatures based on the validation of their energy estimating software or other reasonable basis. DOE has substituted the term ''base temperature'' (and definition in § 440.3) for proposed ''balance point temperature'' in § 440.21(e)(1) of the interim final rule and reworded this paragraph to more accurately reflect the intended change.

The State Energy Efficiency Programs Improvement Act of 1990, which amended 42 U.S.C. 6861 *et seq.*, stated that energy audit procedures should ''establish priorities for selection of weatherization measures based on their cost and contribution to energy efficiency.'' DOE interprets this language, in part, to mean that advanced energy audit procedures should consider energy efficiency as well as total energy savings. For example, replacing an existing space heater being used to heat a single room, with a more energy efficient central furnace, capable of heating the whole house, would probably increase energy use even as it improved energy efficiency. The occupants would also be better able to use the entire dwelling unit. Unless undertaken for health and safety reasons, this measure must be cost justified by the audit. Addressing energy efficiency in this case would require a cost justification that compares the energy usage of the central unit to the energy usage of heating the entire home with space heaters.

The existing rule language addressing this issue states that energy audit procedures must ''consider the rate of energy use,'' which does not clearly describe the need to look at both energy efficiency and total energy savings. To more directly address situations similar to the space heater example, DOE proposed instead to include the phrase ''and energy requirements.'' This proposed change combined the requirement to determine the existing energy use with the need to determine existing energy requirements from actual energy bills or by generally accepted engineering calculations. As in the space heater example, the energy requirements of a dwelling unit may exceed its existing energy use.

The one comment addressing this proposed change agreed with the need to consider both energy efficiency and total energy savings. However, the comment expressed concern about encouraging the conversion of zone, or room, heating systems to whole-house systems. DOE realizes that these types of situations must be considered on a case-by-case basis, but believes that the proposed change clarifies the original intent of the legislation. Therefore, DOE has included this change in § 440.21(e)(2) of the interim final rule.

Proposed § 440.21(h)(7) included language to remind States that DOE would have to approve an energy audit for each major dwelling type covered by the State's weatherization program in light of the different energy audit requirements of single-family dwellings, multi-family buildings, and mobile homes. One comment expressed concern about this requirement for programs that only weatherize a few mobile homes or multifamily buildings each year. The comment stated that the requirement should only apply if mobile homes or multifamily buildings represented over five percent of the units weatherized by the State each year. Based on this comment, DOE has included in § 440.21(e)(7) of the interim final rule revised language which states, ''that represents a significant portion of the State's weatherization program.'' Future guidance will define ''significant'' at an appropriate level to be determined.

Proposed § 440.21(i) included language that clarified the type of information DOE currently requires to approve State priority lists for similar dwelling units. When States submit to DOE their request for priority list approval, they often do not provide sufficient detail. For example, an adequate description of the types of dwelling units (*e.g.,* 1-story ranch, 1½-story Cape Cod) covered by the priority list(s) often is missing. The methodology used to select the representative sample of dwellings used to develop the priority list often is not explained, nor are the circumstances that will require a site-specific audit in lieu of the priority list adequately described. The increased energy savings resulting from advanced energy audit procedures could be compromised by priority lists that are not based on truly typical housing stock or used without comprehensive guidelines that tell an auditor when atypical circumstances require a site-specific audit.

Three comments disapproved of the perceived increased DOE scrutiny of priority lists. While DOE encourages the site-specific energy audit of every dwelling weatherized, it realizes that this is often not possible considering the constraints on field staff imposed by funding limitations and production pressures. The comments suggested that time spent conducting an energy audit might be better spent on increasingly sophisticated diagnostic testing to ensure that the dwelling is adequately ventilated, combustion appliances are operating safely and efficiently, and that the combustion appliances vent properly. DOE agrees that priority lists are valuable tools in reducing energy costs in the greatest possible number of low-income households. Yet, DOE is responsible for ensuring the technical soundness of priority lists in light of the substantial Federal investment. For this reason, DOE has retained in § 440.21(h) of the interim final rule the existing documentation requirements for the approval of priority lists.

One comment pointed out that proposed § 440.21(j), which requires every State to document the performance of the same presumptively cost-effective general heat waste (GHW) reduction materials, needlessly duplicates effort. The comment further noted that this documentation often comes from publications authored by DOE. The comment suggested that DOE issue an initial list of approved GHW materials as policy guidance. DOE agrees with this comment and has revised that paragraph, which is now § 440.21(g), and will issue guidance specifying approved GHW materials. States may request approval for GHW materials not listed in DOE policy guidance by providing the required documentation.

Existing regulations require priority lists to be revalidated every five years. To make the revalidation of priority lists more straightforward, DOE proposed in § 440.21(k) and (l) to require States to submit to DOE for approval every five years their complete energy audit procedures including priority lists and lists of general heat waste reduction materials. To revalidate their priority lists, States would have to re-run their energy audit on a subset of the similar dwellings that the priority list covers. Prior to the issuance of the NOPR, States have logically argued that their housing stock and typical housing types do not change significantly over a five-year

period. However, technologies, material and energy costs, and auditing tools do change. DOE encourages the continual improvement of audit tools as evidenced by new versions of NEAT over the years. The best and most current audit software should be used in developing priority lists. Additionally, since the latest version of a State's audit software may not have specific DOE approval, it makes sense for the DOE approval process to update the energy audit and priority lists every five years.

One comment supported the proposed change to include energy audit procedures in the priority list revalidation requirement. Five comments disagreed with the proposed change as well as the existing requirement to revalidate priority lists every five years. The comments against the proposed change argue that revalidation of priority lists should be based on factors that measure cost-effectiveness, such as fuel and material costs. While DOE does not wish to impose unnecessary documentation requirements on States, the Department is responsible for ensuring that only cost-effective weatherization measures be installed with DOE funds.

One comment argued that DOE-approved energy audits should stay approved until they no longer comply with the requirements. Since States constantly change and improve their energy audit practices and protocols, DOE believes it is prudent to conduct periodic technical assessments of States' entire energy auditing procedures. DOE looks at not just the energy audit software but how the State uses the software. DOE energy audit approval process reviews all of the procedures States use to select and install weatherization measures, as well as health and safety practices affecting clients and field crews.

Thirty-nine (39) comments stated that the process by which DOE reviews energy audits, including garnering State and expert input, should be described in the rule, as well as the process by which the Department will update the guidance. The comments also wanted DOE to include in the rule its plan for assuring uniform consideration by its regional offices and processes for appeals should a proposed audit be turned down. While existing guidance and review practices effectively address many of these concerns, DOE will revisit its energy audit approval process and will seek State and expert input. However, DOE believes that policy guidance is the most appropriate place to describe processes for reviewing energy audits and updating guidance since such processes are likely to change over time.

Although § 440.21(h) of the interim final rule retains the general five-year revalidation requirement, DOE has revised the proposed rule language to indicate that the policy guidance (issued after seeking State and expert input) will specify the information that States must submit and the circumstances that reduce or increase documentation requirements. The documentation required to revalidate priority lists will likely be substantially reduced in cases where the factors affecting the cost-effectiveness of weatherization measures on the priority lists (*e.g.,* housing stock, costs, energy estimating algorithms) have not changed significantly since original DOE approval.

Twenty-one (21) comments addressed the proposed § 440.21(k) requirement for States to submit to DOE for approval each new version of non-NEAT/MHEA energy audit software released subsequent to State-specific DOE approval. The comments were concerned that the requirement might stifle the adoption of evolutionary software improvements and would increase the reporting burden on States. As indicated in § 440.21(h) of the interim final rule, DOE agrees with these comments and will include in policy guidance (to be issued after seeking State and expert input) the reduced reporting requirements regarding new releases of energy audit software.

Thirty-nine comments suggested that the policy guidance should also address the manner in which new technologies will be addressed and incorporated into the program. These comments also asked how additional benefits other than energy efficiency, such as climate change benefits, will be added to the program. The Millennium Implementation Planning Committee has assembled a panel of stakeholders that is currently developing a new system to identify, assess, and incorporate advanced technology into the program in a more open and expedient manner. The non-energy benefits of the Weatherization Assistance Program are often included in overall program evaluations and program justification discussions. Perhaps the program can use these non-energy benefits to its advantage in future emissions trading systems. However, DOE believes more information on this issue needs to be explored before making a final decision.

One comment requested that the cleaning and tuning of air conditioners be added to Appendix A. The comment explained that an air conditioner clean and tune typically involves cleaning the cooling coil and straightening the fins. Under the heading ''Heating and Cooling System Repairs and Tune-Ups/Efficiency Improvements,'' cleaning heat exchangers of heating systems is listed. DOE considers the lack of a specific listing for cleaning cooling coils an oversight that will be resolved when Appendix A is updated in the near future.

In the preamble of the proposed rule, DOE indicated the possibility of proposing in the future a requirement for States to include overhead charges (such as costs for off-site supervisory personnel, tools, vehicles, etc.) in the savings-to-investment ratio calculations for individual weatherization measures. In that discussion, DOE stated that such costs are a significant fraction of the total costs of weatherizing individual homes and should, therefore, be considered in the assessment of the relative costs and benefits of measures. DOE received five comments on this suggestion. Four of the comments were interested in accounting for overhead costs but believed that these costs should perhaps be a part of an overall State evaluation of the Program instead of impacting measure selection on a home-by-home basis. DOE will continue to urge States to consider such overhead costs in the measure cost-effectiveness calculations. However, in developing any future proposal to require the inclusion of overhead costs, DOE intends to study this issue further with the stakeholders.

Section 440.22 Eligible Dwelling Units

DOE amends § 440.22(b)(2) to add certain eligible types of large multi-family buildings to the list of dwellings that are exempt from the requirement that at least 66 percent of the units are to be occupied by income-eligible households. In these large multi-family buildings, as few as 50 percent of the units would have to be certified as eligible before weatherization. This exception applys only to those large multi-family buildings where an investment of DOE funds would result in significant energy-efficiency improvement because of the upgrades to equipment, energy systems, common space, or the building shell. By providing this flexibility, local agencies are better-suited to select the most cost-effective investments and enhance their partnership efforts in attracting leveraged funds and/or landlord contributions. While most comments were supportive, several comments did suggest that this flexibility should be extended to cover all multi-family

buildings. In the proposed rule, DOE made it clear that this flexibility will be targeted to only these certain types of buildings because of the large investment involved and the potential for greater energy savings.

III. Opportunities for Public Comment

A. Participation in Rulemaking

The Department encourages public participation in this rulemaking. The Department has established a period of 30 days following publication of this interim final rule for persons to comment. You may review all public comments and other docket material in the DOE Freedom of Information Reading Room at the address shown at the beginning of this notice of the interim final rule.

B. Written Comment Procedures

Interested persons and organizations are invited to participate in this rulemaking by submitting data, views, or comments with respect to the interim final rule. Please provide three copies of your comments to the address indicated in the **ADDRESSES** section of this interim final rule. DOE will consider all timely-submitted comments and other relevant information before this rule becomes effective.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Today's interim final rule has been determined not to be ''a significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires 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. DOE published a notice of proposed rulemaking to amend 10 CFR part 440 to give State and local agencies additional flexibility in addressing the weatherization needs of low-income citizens and to make other changes designed to streamline and update DOE's Weatherization Assistance Program. The proposed rule was developed following extensive consultation with State and local stakeholders and after reviewing comments received. DOE said that the proposed rule would have not any adverse economic impact on any small governments, organizations or businesses. Accordingly, DOE certified that the proposed rule, as promulgated, will not have a significant economic impact on a substantial number of small entities. DOE did not receive any comments of this certification, and the addition of mandated cost sharing requirements does not warrant reconsideration of the certification.

C. Review Under the Paperwork Reduction Act

No new collection of information is imposed by this interim final rule. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this interim final rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE regulations implementing the National Environmental Policy Act of 1969, (42 U.S.C. 4321 *et seq.*) Specifically, this interim final rule is covered under the Categorical Exclusion in paragraph A5 to subpart D, 10 CFR part 1021, which covers rulemakings that interpret or amend an existing regulation without changing the environmental effect of the regulation. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 10, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt 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 interim final rule and has determined that it does not preempt State law and does 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.

F. 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 Federal 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. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive 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 section 3(a) and section 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, this interim final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect small governments. The interim final rule published today does

not contain any Federal mandate, so these requirements do not apply.

H. Review under the Treasury and General Government Appropriations Act

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule or policy that may affect family well-being. Today's interim 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.

I. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(3).

V. Other Federal Agencies

DOE provided draft copies of the interim final rule to the Department of Health and Human Services' Low-Income Home Energy Assistance Program and the Department of Agriculture's Farmers Home Administration. We have received no comments. DOE also provided a draft copy to the Administrator of the Environmental Protection Agency, pursuant to § 7 of the Federal Energy Administration Act, as amended, 15 U.S.C. 766. The Administrator has made no comments.

VI. The Catalog of Federal Domestic Assistance

The *Catalog of Federal Domestic Assistance* number for the Weatherization Assistance Program for Low-Income Persons is 81.042.

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 November 29, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE amends part 440 of title 10, Code of Federal Regulations, as set forth below.

PART 440—WEATHERIZATION ASSISTANCE PROGRAM FOR LOW-INCOME PERSONS

1. The authority citation for part 440 is revised to read as follows:

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

2. Section 440.1 is revised to read as follows:

§ 440.1 Purpose and scope.

This part implements a weatherization assistance program to increase the energy efficiency of dwellings owned or occupied by low-income persons, reduce their total residential expenditures, and improve their health and safety, especially low-income persons who are particularly vulnerable such as the elderly, persons with disabilities, families with children, high residential energy users, and households with high energy burden.

3. In § 440.3:

a. Remove the definition for ''JTPA'';

b. Revise the words in the definitions for ''Handicapped Person'' to read ''Persons with disabilities'' and place it in alphabetical order; and

c. Add the following definitions in alphabetical order to read as follows:

§ 440.3 Definitions.

* * * * *

Base temperature means the temperature used to compute heating and cooling degree days. The average daily outdoor temperature is subtracted from the base temperature to compute heating degree days, and the base temperature is subtracted from the average daily outdoor temperature to compute cooling degree days.

* * * * *

Electric base-load measures means measures which address the energy efficiency and energy usage of lighting and appliances.

* * * * *

High residential energy user means a low-income household whose residential energy expenditures exceed the median level of residential expenditures for all low-income households in the State.

Household with a high energy burden means a low-income household whose residential energy burden (residential expenditures divided by the annual income of that household) exceeds the median level of energy burden for all low-income households in the State.

* * * * *

Non-Federal leveraged resources means those benefits identified by State or local agencies to supplement the Federal grant activities and that are made available to or used in conjunction with the DOE Weatherization Assistance Program for the purposes of the Act for use in eligible low-income dwelling units.

* * * * *

4. Section 440.14 is revised to read as follows:

§ 440.14 State plans.

(a) Before submitting to DOE an application, a State must provide at least 10 days notice of a hearing to inform prospective subgrantees, and must conduct one or more public hearings to receive comments on a proposed State plan. The notice for the hearing must specify that copies of the plan are available and state how the public may obtain them. The State must prepare a transcript of the hearings and accept written submission of views and data for the record.

(b) The proposed State plan must:

(1) Identify and describe proposed weatherization projects, including a statement of proposed subgrantees and the amount of funding each will receive;

(2) Address the other items contained in paragraph (c) of this section; and

(3) Be made available throughout the State prior to the hearing.

(c) After the hearing, the State must prepare a final State plan that identifies and describes:

(1) The production schedule for the State indicating projected expenditures and the number of dwelling units, including previously weatherized units which are expected to be weatherized annually during the program year;

(2) The climatic conditions within the State;

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

(4) An estimate of the amount of energy to be conserved;

(5) Each area to be served by a weatherization project within the State, and must include for each area:

(i) The tentative allocation;

(ii) The number of dwelling units expected to be weatherized during the program year; and

(iii) Sources of labor.

(6) How the State plan is to be implemented, including:

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

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

(iii) The extent to which priority will be given to the weatherization of single-

family or other high energy-consuming dwelling units;

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

(v) The amount of Federal resources, other than DOE 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;

(viii) The average amount of the DOE funds specified in § 440.18(c)(1) through (9) to be applied to any dwelling unit;

(ix) The average amount of DOE funds applied to any dwelling unit for weatherization materials as specified in § 440.18(c)(1);

(x) The procedures used by the State for providing additional administrative funds to qualified subgrantees as specified in § 440.18(d);

(xi) Procedures for determining the most cost-effective measures in a dwelling unit;

(xii) The definition of ''low-income'' which the State has chosen for determining eligibility for use statewide in accordance with § 440.22(a);

(xiii) The definition of ''children'' which the State has chosen consistent with § 440.3; and

(xiv) The amount of Federal funds and how they will be used to increase the amount of weatherization assistance that the State obtains from non-Federal sources, including private sources, and the expected leveraging effect to be accomplished.

5. Section 440.15 is amended by revising paragraph (a)(3)(iv) to read as follows:

§ 440.15 Subgrantees.

(a) * * *

(3) * * *

(iv) The ability of the subgrantee to secure volunteers, training participants, public service employment workers, and other Federal or State training programs.

* * * * *

6. Section 440.16 is amended by revising paragraphs (b) and (d) to read as follows:

§ 440.16 Minimum program requirements.

* * * * *

(b) Priority is given to identifying and providing weatherization assistance to:

(1) Elderly persons;

(2) Persons with disabilities;

(3) Families with children;

(4) High residential energy users; and

(5) Households with a high energy burden.

* * * * *

(d) To the maximum extent practicable, the grantee will secure the services of volunteers when such personnel are generally available, training participants and public service employment workers, other Federal or State training program workers, to work under the supervision of qualified supervisors and foremen;

* * * * *

7. In § 440.17 paragraph (a) introductory text is revised and paragraphs (b) and (c) are added to read as follows:

§ 440.17 Policy advisory council.

(a) Prior to the expenditure of any grant funds, a State policy advisory council, or a State commission or council which serves the same functions as a State policy advisory council, must be established by a State or by the Regional Office Director if a State does not participate in the Program which:

* * * * *

(b) Any person employed in any State Weatherization Program may also be a member of an existing commission or council, but must abstain from reviewing and approving activities associated with the DOE Weatherization Assistance Program.

(c) States which opt to utilize an existing commission or council must certify to DOE, as a part of the annual application, of the council's or commission's independence in reviewing and approving activities associated with the DOE Weatherization Assistance Program.

8. Section 440.18 is amended by:

a. Revising paragraph (a);

b. Removing the phrase ''and (c)(15)'' in the introductory text to paragraph (b) and in paragraph (b)(2)(i);

c. Adding paragraph (b)(3);

d. Revising paragraph (c)(6); and

e. Revising ''September 30, 1985'' to read ''September 30, 1993'' in paragraph (e)(2)(iii).

The revisions and addition read as follows:

§ 440.18 Allowable expenditures.

(a) States must spend an average of at least 40 percent of the funds provided them for weatherization materials, labor and related matters listed in paragraphs (c)(1) through (9) of this section. DOE may approve a State's application to waive the 40 percent requirement under § 440.21.

* * * * *

(b) * * *

(3) For the purposes of determining the average cost per dwelling limitation, costs for the purchase of vehicles or other certain types of equipment as defined in 10 CFR part 600 may be amortized over the useful life of the vehicle or equipment.

* * * * *

(c) * * *

(6) The cost of purchasing vehicles, except that any purchase of vehicles must be referred to DOE for prior approval in every instance.

* * * * *

9. Section 440.19 is revised to read as follows:

§ 440.19 Labor.

Payments for labor costs under § 440.18(c)(2) must consist of:

(a) Payments permitted by the Department of Labor to supplement wages paid to training participants, public service employment workers, or other Federal or State training programs; and

(b) Payments to employ labor or to engage a contractor (particularly a nonprofit organization or a business owned by disadvantaged individuals which performs weatherization services), provided a grantee has determined an adequate number of volunteers, training participants, public service employment workers, or other Federal or State training programs are not available to weatherize dwelling units for a subgrantee under the supervision of qualified supervisors.

10. Section 440.21 is revised to read as follows:

§ 440.21 Weatherization materials standards and energy audit procedures.

(a) Paragraph (b) of this section describes the required standards for weatherization materials. Paragraphs (c) and (d) of this section describe the cost-effectiveness tests that weatherization materials must pass before they may be installed in an eligible dwelling unit. Paragraph (e) of this section lists the other energy audit requirements that do not pertain to cost-effectiveness tests of weatherization materials. Paragraphs (f) and (g) of this section describe the use of priority lists and presumptively cost-effective general heat waste reduction materials as part of a State's energy audit procedures. Paragraph (h) of this section explains that a State's energy audit procedures and priority lists must be re-approved by DOE every 5 years.

(b) Only weatherization materials which are listed in Appendix A to this part and which meet or exceed standards prescribed in Appendix A to this part may be purchased with funds

provided under this part. However, DOE may approve an unlisted material upon application from any State.

(c) Except for materials to eliminate health and safety hazards allowable under § 440.18(c)(15), each individual weatherization material and package of weatherization materials installed in an eligible dwelling unit must be cost-effective. These materials must result in energy cost savings over the lifetime of the measure(s), discounted to present value, that equal or exceed the cost of materials, installation, and on-site supervisory personnel as defined by the Department. States have the option of requiring additional related costs to be included in the determination of cost-effectiveness. The cost of incidental repairs must be included in the cost of the package of measures installed in a dwelling.

(d) The energy audit procedures must assign priorities among individual weatherization materials in descending order of their cost-effectiveness according to paragraph (c) of this section after:

(1) Adjusting for interaction between architectural and mechanical weatherization materials by using generally accepted engineering methods to decrease the estimated fuel cost savings for a lower priority weatherization material in light of fuel cost savings for a related higher priority weatherization material; and

(2) Eliminating any weatherization materials that are no longer cost-effective, as adjusted under paragraph (d)(1) of this section.

(e) The energy audit procedures also must—

(1) Compute the cost of fuel saved per year by taking into account the climatic data of the area where the dwelling unit is located, where the base temperature that determines the number of heating or cooling degree days (if used) reasonably approximates conditions when operation of heating and cooling equipment is required to maintain comfort, and must otherwise use reasonable energy estimating methods and assumptions;

(2) Determine existing energy use and energy requirements of the dwelling unit from actual energy bills or by generally accepted engineering calculations;

(3) Address significant heating and cooling needs;

(4) Make provision for the use of advanced diagnostic and assessment techniques which DOE has determined are consistent with sound engineering practices;

(5) Identify health and safety hazards to be abated with DOE funds in compliance with the State's DOE-approved health and safety procedures under § 440.16(h);

(6) Treat the dwelling unit as a whole system by examining its heating and cooling system, its air exchange system, and its occupants' living habits and needs, and making necessary adjustments to the priority of weatherization materials with adequate documentation of the reasons for such an adjustment; and

(7) Be specifically approved by DOE for use on each major dwelling type that represents a significant portion of the State's weatherization program in light of the varying energy audit requirements of different dwelling types including single-family dwellings, multi-family buildings, and mobile homes.

(f) For similar dwelling units without unusual energy-consuming characteristics, energy audits may be accomplished by using a priority list developed by conducting, in compliance with paragraphs (b) through (e) of this section, site-specific energy audits of a representative subset of these dwelling units. For DOE approval, States must describe how the priority list was developed, how the subset of similar homes was determined, and circumstances that will require site-specific audits rather than the use of the priority lists. States also must provide the input data and list of weatherization measures recommended by the energy audit software or manual methods for several dwelling units from the subset of similar units.

(g) States may use, as a part of an energy audit, general heat waste reduction weatherization materials that DOE has determined to be generally cost-effective. States may request approval to use general heat waste materials not listed in DOE policy guidance by providing documentation of their cost-effectiveness and a description of the circumstances under which such materials will be used.

(h) States must resubmit their energy audit procedures (and priority lists, if applicable, under certain conditions) to DOE for approval every five years. States must also resubmit to DOE, for approval every five years, their list of general heat waste materials in addition to those approved by DOE in policy guidance, if applicable. Policy guidance will describe the information States must submit to DOE and the circumstances that reduce or increase documentation requirements.

11. Section 440.22 is amended by revising paragraph (b)(2) introductory text to read as follows:

§ 440.22 Eligible dwelling units.

* * * * *

(b) * * *

(2) 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:

* * * * *

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