

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 440

[Docket No. EEWAP1201]

RIN 1904-AB84

Weatherization Assistance Program for Low-Income Persons

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) is proposing to expand the definition of "State" under the Weatherization Assistance Program for Low-Income Persons (Weatherization Assistance Program) and to amend the financial assistance allocation procedure to reflect the expanded definition. The Energy Independence and Security Act of 2007 amended the Weatherization Assistance Program definition of "State" to include the Commonwealth of Puerto Rico and the other territories and possessions of the United States. Consistent with the statutory amendment, DOE is proposing to amend the regulatory definition of "State," and to amend the allocation procedure relied on to calculate the amount of financial assistance received by each State so as to include American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, and the Virgin Islands.

DATES: Public comments on this proposed rule and the proposed information collection request will be accepted until February 27, 2009. DOE will hold a public meeting on Tuesday, January 27, 2009, from 9 a.m. to 12 p.m., in Conference Room 5E-081, at 1000 Independence Avenue, SW., Washington, DC. DOE must receive requests to speak at the public meeting before 4 p.m., Monday, January 26, 2009. DOE must receive a signed original and an electronic copy of statements to be given at the public

meeting before 4 p.m., Thursday, January 22, 2009.

ADDRESSES: You may submit comments identified by the RIN number specified in the heading of this notice of proposed rulemaking (NOPR), by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* jean.diggs@ee.doe.gov.

Include the RIN number in the subject line of the message.

- *Postal Mail:* Jean Diggs, U.S. Department of Energy, Weatherization Assistance Program, Mailstop EE-2K, 1000 Independence Avenue, SW., Washington, DC 20585-0121, Telephone: (202) 586-8506.

- *Hand Delivery/Courier:* Jean Diggs, U.S. Department of Energy, Weatherization Assistance Program, Room 6070, 1000 Independence Avenue, SW., Washington, DC 20585-0121.

Instructions: All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Jean Diggs, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Weatherization Assistance Program, EE-2K, Room 6070, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-8506, e-mail: jean.diggs@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. Definition of "State"
- III. Allocation of Funds
- IV. Effective Date
- V. Regulatory Analysis
- VI. Congressional Notification
- VII. Approval of the Office of the Secretary

I. Introduction

Sections 411-418 of the Energy Conservation and Production Act established the Weatherization Assistance Program for Low-Income Persons (Weatherization Program). (42 U.S.C. 6861 *et seq.*) The Weatherization Program reduces energy costs for low-income households by increasing the

energy efficiency of their homes, while promoting their health and safety. The Weatherization Program provides energy-efficiency services to more than 100,000 homes every year. These services reduce average annual energy costs by \$413 per household.

Under the Weatherization Program, services are prioritized to the elderly, people with disabilities, and families with children. These low-income households are often on fixed incomes or rely on income assistance programs and are most vulnerable to volatile changes in energy markets. High energy users or households with a high energy burden may also receive priority.

DOE works in partnership with State- and local-level agencies to implement the Weatherization Program. DOE's Project Management Center awards grants to State-level agencies, which then contract with local agencies. Weatherization programs operate in all 50 States, the District of Columbia, and among Native American tribes. Approximately 900 local agencies deliver weatherization services to eligible residents in every county in the nation. Since the inception of the Program in 1976, over 5.7 million households have received weatherization services. The Weatherization Program returns \$1.65 in energy-related benefits for every \$1 invested.

II. Definition of "State"

DOE allocates financial assistance for weatherization to States and Indian tribes. (10 CFR 440.10 and 440.11) Under the current regulatory definition "State" is defined as "each of the States and the District of Columbia." 10 CFR 440.3 section 411(c) of the Energy Independence and Security Act of 2007 amended section 412 of the Energy Conservation and Production Act to include under the definition of "State," the Commonwealth of Puerto Rico, and any other territory or possession of the United States. (42 U.S.C. 6862(8)) DOE is proposing to amend the regulatory definition of "State" under the Weatherization Program consistent with the statutory definition. The proposed definition of "State" would include American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, and the Virgin Islands (hereafter

collectively referred to as the U.S. territories).

The amended statutory definition of "State" includes territories or possessions of the United States generally, which would indicate that the territories of Palmyra Atoll and Wake Atoll would also be included. However, the territories of Palmyra Atoll and Wake Atoll do not have significant permanent populations to warrant inclusion in the Weatherization Program. Palmyra Atoll is a national Wildlife Refuge and access to Wake Atoll is restricted. (See, <http://www.doi.gov/oia/Firstpginfo/islandfactsheet.htm>, last visited September 30, 2008.) The purpose of the Weatherization Program is to provide grants "for the purpose of providing financial assistance with regard to projects designed to provide for the weatherization of dwelling units, particularly those where elderly or handicapped low-income persons reside, occupied by low-income families." (42 U.S.C. 6863(a)) Further DOE must "allocate financial assistance to each State on the basis of the relative need for weatherization assistance among low-income persons throughout the states." (42 U.S.C. 6864) The absence of permanent populations on Palmyra Atoll and Wake Atoll would make the inclusion of these Atolls superfluous. As such DOE is not proposing to include the territories of Palmyra Atoll and Wake Atoll in the regulatory definition of State for the purpose of the Weatherization Assistance Program.

III. Allocation of Funds

Each year Congress appropriates funds to implement the Weatherization Assistance Program. A portion of the appropriated funds is used for training and technical assistance. The remaining funds, comprising the majority of the appropriated funds, are distributed to the States as program funds based on a two-part allocation.

From the total appropriation, DOE reserves funds for national training and technical assistance (T&TA) activities that benefit all States. In addition, DOE specifically allocates funding to States for T&TA activities at both the State and local levels. The total funds for national, State, and local T&TA cannot exceed 10 percent of the Congressional appropriation (42 U.S.C. 6865(a)(1)). The remaining funds comprise the State program allocations.

If the State program allocations in a fiscal year (FY) are at or above the amount allocated to States in FY 1994 under Public Law 103-332 (September 30, 1994), (*i.e.*, the funds made available

to the Weatherization Assistance Program minus funds for T&TA, which equaled \$209,724,761) the State program allocations are distributed according to a two-part allocation procedure. Should total funds for State program allocation fall below \$209,724,761, the allocations to States are reduced proportionally. See 10 CFR 440.10(c).

The two-part allocation is comprised of a base allocation plus a formula allocation. See 10 CFR 440.10(b). The base allocation for each State is fixed, but differs for each State and was derived from each State's allocation under the appropriations for FY 1993.¹ The base allocation was developed to minimize fluctuations in funds received by States between fiscal years resulting from changes in the total amount of appropriated funds received for the Weatherization Assistance Program. The base allocation was established in response to concern that substantial fluctuation between annual funds could disrupt a State's program. The current sum of the base allocations for all States totals \$171,858,000. See 10 CFR 440.10(b)(1).

Under the two-part allocation, funds in excess of the total base allocation are allocated among States according to the formula allocation set forth in 10 CFR 440.10(b)(3). A State's formula allocation is based on three factors for each State. Factor 1, Low-Income Population, represents the share of the nation's low-income households in each State expressed as a percentage of all U.S. low-income households. Factor 2, Climatic Conditions, is obtained from the heating and cooling degrees for each State, treating the energy needed for heating and cooling proportionately. Factor 3, Residential Energy Expenditures by Low-Income Households in each State, is an approximation of the financial burden that energy use places on low-income households. The approximation is necessary because State-specific data on residential energy expenditures by low-income households is generally lacking.

The Department is proposing to revise how funds are allocated under the Weatherization Assistance Program so as to include the U.S. territories. The Department is proposing revisions based on a method for determining the base and formula allocation for the U.S. territories that is consistent with how the current allocation method for States was developed. As indicated above, the

current process was based on the allocation in FY 1994. A complete discussion of the development of the current allocation method is provided at 60 FR 4480.

Essentially, the Department is following the development process used in 1995 to establish the existing allocation method (*i.e.*, basing the allocation formula on FY 1994 allocation) under the assumption that at that time the U.S. territories were included in the Weatherization Assistance Program. DOE recognizes that the data used to calculate a State's share of the funds under the 1995 rulemaking are not available for the U.S. territories. Therefore, DOE is proposing to use Hawaii's information for the U.S. territories. Similar to Hawaii, the U.S. territories are in hot climates with virtually no heating load, are all islands, and share a common main fuel type used in low-income households, electricity.

A. Allocation Threshold

As discussed in the previous paragraphs, the allocation of funding under the Weatherization Assistance Program is dependent first upon whether the total funds available for allocation to the States are at or above the level made available under Public Law 103-322, *i.e.*, \$209,724,761. In order to make the regulations clearer, the Department is proposing to replace the references in 10 CFR part 440 to the "total program allocations under Public Law No. 103-322" with the actual dollar value. This proposal would not impact the allocation process, and is intended solely for the purpose of making the current regulation easier to read and understand.

B. Amending the Base Allocation

To reflect the addition of the territories of the United States to the Weatherization Assistance Program, DOE is proposing to revise the base allocation to include the newly added jurisdictions. DOE is proposing to recalculate the base allocation using the amount of funding in the FY 1993 appropriations with the assumption that the U.S. territories had weatherization programs at that time. As discussed previously, DOE is proposing to rely on Hawaii's base allocation (\$120,000) as the base allocation for the U.S. territories. The proposed revision would not reduce the base allocation amount for any State, but instead would increase the total base allocation value so as to include the U.S. territories.

Under this approach, the revised base allocation in 10 CFR 440.10(b) would be as follows:

¹ Calculation of each State's share of the funds was based on a formula different from that in the current regulations. See, 60 FR 4480, 4482; January 23, 1995.

State	Base allocation
Alabama	\$1,636,000
Alaska	1,425,000
Arizona	760,000
Arkansas	1,417,000
California	4,404,000
Colorado	4,574,000
Connecticut	1,887,000
Delaware	409,000
District of Columbia	487,000
Florida	761,000
Georgia	1,844,000
Hawaii	120,000
Idaho	1,618,000
Illinois	10,717,000
Indiana	5,156,000
Iowa	4,032,000
Kansas	1,925,000
Kentucky	3,615,000
Louisiana	912,000
Maine	2,493,000
Maryland	1,963,000
Massachusetts	5,111,000
Michigan	12,346,000
Minnesota	8,342,000
Mississippi	1,094,000
Missouri	4,615,000
Montana	2,123,000
Nebraska	2,013,000
Nevada	586,000
New Hampshire	1,193,000
New Jersey	3,775,000
New Mexico	1,519,000
New York	15,302,000
North Carolina	2,853,000
North Dakota	2,105,000
Ohio	10,665,000
Oklahoma	1,846,000
Oregon	2,320,000
Pennsylvania	11,457,000
Rhode Island	878,000
South Carolina	1,130,000
South Dakota	1,561,000
Tennessee	3,218,000
Texas	2,999,000
Utah	1,692,000
Vermont	1,014,000
Virginia	2,970,000
Washington	3,775,000
West Virginia	2,573,000
Wisconsin	7,061,000
Wyoming	67,000
American Samoa	120,000
Guam	120,000
Puerto Rico	120,000
Northern Mariana Islands	120,000
Virgin Islands	120,000
Total	171,858,000

DOE requests comment on the appropriateness of this approach. If a commenter suggests that funds not be allotted to the U.S. territories under the base allocation, DOE specifically requests reasons for this position.

C. Formula Allocation

In addition to a base allocation, DOE is proposing to allocate weatherization funds to the U.S. territories through the formula allocation. Essentially, the

weatherization funds would be based on the U.S. territories' (1) number of low-income households (10 CFR 440.10(b)(3)(i)), (2) number of "heating degree" and "cooling degree" days (10 CFR 440.10(b)(3)(ii) and (iii)), and (3) average residential household energy expenditures (10 CFR 440.10(b)(3)(v)). DOE recognizes that data for the third factor of the formula allocation, *i.e.*, average residential household energy

expenditures, are not available for the U.S. territories. In the absence of this data, DOE is proposing to again rely on comparable data from a comparable State, *i.e.*, Hawaii. This approach would not require revisions to the regulatory text for the formula allocation.

DOE requests comment on the proposed approach taken in applying the formula allocation to the U.S. territories.

D. Practical Implications of the Proposed Revisions

To demonstrate the implications of today's proposed rule, the following

table provides the allocation of funding to the States in FY 2008 under the current regulations, and for comparison,

provides the allocation of funding in FY 2008 were today's proposal in effect.

TABLE 1—ESTIMATED STATE ALLOCATIONS UNDER PROPOSED APPROACH

State	FY 2008 total allocation (\$)	FY 2008 total allocation (under proposed approach) (\$)
Alabama	2,396,413	2,369,282
Alaska	1,672,643	1,667,526
Arizona	1,352,772	1,328,435
Arkansas	2,061,017	2,039,278
California	6,265,676	6,205,804
Colorado	5,454,329	5,431,980
Connecticut	2,495,304	2,479,459
Delaware	572,412	568,910
District of Columbia	646,384	643,058
Florida	1,948,403	1,880,791
Georgia	2,914,609	2,875,908
Hawaii	203,581	201,446
Idaho	1,964,431	1,956,311
Illinois	13,784,473	13,695,484
Indiana	6,520,687	6,481,878
Iowa	4,966,077	4,940,585
Kansas	2,518,837	2,501,273
Kentucky	4,498,867	4,472,826
Louisiana	1,723,424	1,687,948
Maine	3,053,961	3,040,267
Maryland	2,640,259	2,620,848
Massachusetts	6,517,890	6,480,033
Michigan	15,118,849	15,042,578
Minnesota	9,809,089	9,770,586
Mississippi	1,640,948	1,620,925
Missouri	5,975,410	5,934,156
Montana	2,507,786	2,498,874
Nebraska	2,482,462	2,470,109
Nevada	831,718	825,116
New Hampshire	1,501,762	1,494,753
New Jersey	5,078,993	5,041,792
New Mexico	1,900,941	1,890,993
New York	20,075,816	19,939,418
North Carolina	4,139,225	4,096,592
North Dakota	2,485,405	2,476,499
Ohio	13,676,435	13,590,214
Oklahoma	2,579,529	2,554,620
Oregon	2,808,354	2,796,527
Pennsylvania	14,638,184	14,547,920
Rhode Island	1,150,982	1,144,728
South Carolina	1,767,384	1,744,810
South Dakota	1,907,964	1,899,574
Tennessee	4,162,066	4,132,707
Texas	5,549,413	5,435,085
Utah	2,067,579	2,058,365
Vermont	1,272,118	1,266,503
Virginia	3,997,991	3,967,181
Washington	4,519,063	4,500,475
West Virginia	3,196,901	3,180,129
Wisconsin	8,528,669	8,489,599
Wyoming	1,169,217	1,165,147
American Samoa	0	182,775
Guam	0	188,072
Puerto Rico	0	820,775
Northern Mariana Islands	0	183,777
Virgin Islands	0	191,998
Headquarters T&TA	4,508,595	4,508,595
Total	227,221,297	227,221,297
Navajo Grant:	321,735	318,447
Inter-Tribal Council of America Grant:	88,741	87,145
Northern Arapahoe Grant:	99,863	99,516
Arizona (adjusted)	1,128,755	1,108,447

TABLE 1—ESTIMATED STATE ALLOCATIONS UNDER PROPOSED APPROACH—Continued

State	FY 2008 total allocation (\$)	FY 2008 total allocation (under proposed approach) (\$)
New Mexico (adjusted)	1,714,483	1,705,389
Wyoming (adjusted)	1,069,354	1,065,631

IV. Effective Date

DOE is proposing that the amended allocation procedure for the Weatherization Assistance Program will be in effect for the 2009 program year.

V. Regulatory Analysis

A. Review Under Executive Order 12866

Today's notice of public rulemaking is not a significant regulatory action under section 3(f)(1) of Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735; October 4, 1993).

Accordingly, today's action was not subject to review by the Office of Information and Regulatory Affairs (OIRA) in 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 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>.

DOE has reviewed today's proposed rule for the Weatherization Assistance Program under the provisions of the Regulatory Flexibility Act. Today's proposed rule would incorporate statutory changes made to the Weatherization Assistance Program. The proposed amendments include the U.S. territories in the Weatherization Assistance Program to the same extent as States are currently included. This rule, if promulgated as a final rule, would directly affect States and individual recipients of assistance. It

would not have an economic impact on small entities. On this basis, DOE certifies that if the proposed rule were finalized that it would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking.

C. Review Under the Paperwork Reduction Act of 1995

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Department has submitted a proposed revision of the currently approved collection of information request (ICR) to the Office of Management and Budget (OMB): Weatherization Assistance Program, OMB Control No. 1910–517. If made final, today's proposed rule would add a total of 5 additional respondents (American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, and the Virgin Islands). (1) OMB No. 1910–5127; (2) Information Collection Request Title: Weatherization Assistance Program; (3) Purpose: The Weatherization Assistance Program provides grants to States, the District of Columbia and Native American Tribes annually; (4) Estimated Number of Respondents: 57 (Fifty Seven) States and territories; (5) Estimated Total Burden Hours: 3 hours per respondent; (6) Number of Collections: The information collection request contains 3 information and/or recordkeeping requirements.

Comments on the revision of the collection of information may be sent to OMB addressed to: Department of Energy Desk Officer, Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503. Persons submitting comments to OMB also are requested to send a copy to the DOE contact person at the address given in the ADDRESSES section of this notice. OMB is particularly interested in comments on: (1) The necessity of the proposed collection of information; (2) the accuracy of DOE's estimate of the burden; (3) ways to enhance the quality,

utility, and clarity of the information to be maintained; and (4) ways to minimize the burden on the requirements of the respondents.

D. Review Under the National Environmental Policy Act of 1969

DOE has tentatively determined that this proposed rule 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. The proposed rule in today's document would establish the procedure for allocating funds under the Weatherization Assistance Program so as to cover, in addition to the States and the District of Columbia, the U.S. territories. The proposed regulations would not have any independent environmental impact. Accordingly, DOE has not prepared an environmental assessment or an environmental impact statement.

E. 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 this proposed rule and has determined that it would not pre-empt State law and would 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 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 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 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, if finalized, this proposed rule would meet the relevant standards of Executive Order 12988.

G. 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.

If made final, this proposed rule would 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.

H. 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. This notice of proposed rulemaking would 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 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 notice of proposed rulemaking under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. 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 the 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 would 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.

K. 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 proposed regulatory action is not a policy that has "tribal implications" under Executive Order 13175.

Under the Weatherization Assistance Program, a tribal organization may qualify as a unit of general purpose local government and, therefore, be eligible to apply for funds. See 10 CFR 440.11. Today's regulatory action would not change the eligibility of Indian tribes to apply for or receive funds under the Weatherization Assistance Program. If made final, today's regulatory action would include Puerto Rico and the U.S. territories in the allocation of available funds. DOE has reviewed today's notice of proposed rulemaking under executive Order 13175 and has determined that it is consistent with applicable policies of that Executive Order.

VI. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this 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(2).

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's notice of proposed rulemaking.

List of Subjects in 10 CFR Part 440

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

Issued in Washington, DC, on December 11, 2008.

David E. Rodgers,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend 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 440.3 is amended by revising the definition of "State" to read as follows:

§ 440.3 Definitions.

* * * * *

State means each of the States, the District of Columbia, American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, and the Virgin Islands.

* * * * *

3. Section 440.10 is amended by revising introductory paragraph (b), (b)(1) Table 1, and paragraph (c), to read as follows:

§ 440.10 Allocation of funds.

* * * * *

(b) Based on the total program allocations at or above the amount of \$209,724,761, DOE shall determine the program allocation for each State from available funds as follows:

(1) * * *

State	Base allocation (\$)
Alabama	1,636,000
Alaska	1,425,000

State	Base allocation (\$)
Arizona	760,000
Arkansas	1,417,000
California	4,404,000
Colorado	4,574,000
Connecticut	1,887,000
Delaware	409,000
District of Columbia	487,000
Florida	761,000
Georgia	1,844,000
Hawaii	120,000
Idaho	1,618,000
Illinois	10,717,000
Indiana	5,156,000
Iowa	4,032,000
Kansas	1,925,000
Kentucky	3,615,000
Louisiana	912,000
Maine	2,493,000
Maryland	1,963,000
Massachusetts	5,111,000
Michigan	12,346,000
Minnesota	8,342,000
Mississippi	1,094,000
Missouri	4,615,000
Montana	2,123,000
Nebraska	2,013,000
Nevada	586,000
New Hampshire	1,193,000
New Jersey	3,775,000
New Mexico	1,519,000
New York	15,302,000
North Carolina	2,853,000
North Dakota	2,105,000
Ohio	10,665,000
Oklahoma	1,846,000
Oregon	2,320,000
Pennsylvania	11,457,000
Rhode Island	878,000
South Carolina	1,130,000
South Dakota	1,561,000
Tennessee	3,218,000
Texas	2,999,000
Utah	1,692,000
Vermont	1,014,000
Virginia	2,970,000
Washington	3,775,000
West Virginia	2,573,000
Wisconsin	7,061,000
Wyoming	967,000
American Samoa	120,000
Guam	120,000
Puerto Rico	120,000
Northern Mariana Islands	120,000
Virgin Islands	120,000
Total	171,858,000

* * * * *

(c) Should total program allocations for any fiscal year fall below \$209,724,761, then each State's program allocation shall be reduced from its allocated amount under a total program allocation of \$209,724,761 by the same percentage as total program allocations for the fiscal year fall below \$209,724,761.

* * * * *

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM05-35-000]

Standard of Review for Modifications to Jurisdictional Agreements

Issued December 18, 2008.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Withdrawal of notice of proposed rulemaking and termination of rulemaking proceeding.

SUMMARY: The Commission withdraws a notice of proposed rulemaking, which proposed that, in the absence of specific contractual language enabling Commission review of proposed contractual modifications not agreed to by the signatories (or their successors) under a "just and reasonable" standard, the Commission would review such modifications under a "public interest" standard.

DATES: *Effective Date:* This withdrawal published at 71 FR 303, January 4, 2006, will become effective January 28, 2009.

FOR FURTHER INFORMATION CONTACT:

Hadas Kozlowski (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8030.

SUPPLEMENTARY INFORMATION:

125 FERC ¶ 61,310.
United States of America, Federal Energy Regulatory Commission.
Before Commissioners: Joseph T. Kelliher, Chairman; Suede G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellingshoff.

Standard of Review for Modifications to Jurisdictional Agreements; Withdrawal of Notice of Proposed Rulemaking and Termination of Rulemaking Proceeding.

Docket No. RM05-35-000

(Issued December 18, 2008.)

1. On December 27, 2005, the Commission issued a Notice of Proposed Rulemaking (NOPR) in this proceeding.¹ For the reasons set forth below, we are exercising our discretion to withdraw the NOPR and terminate this rulemaking proceeding.

I. Background

2. In the NOPR, the Commission proposed to repeal its regulation at 18 CFR 35.1(d) and, in its place,

¹ *Standard of Review for Modifications to Jurisdictional Agreements, Notice of Proposed Rulemaking*, 71 FR 303 (Jan. 4, 2006), FERC Stats. & Regs. ¶ 32,596 (2005) (NOPR).