

# Rules and Regulations

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## DEPARTMENT OF ENERGY

### 10 CFR Part 440

[Docket No. EEWAP0130]

RIN 1904-AC16

#### Weatherization Assistance for Low-Income Persons: Maintaining the Privacy of Applicants for and Recipients of Services

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

**ACTION:** Final rule.

**SUMMARY:** The U.S. Department of Energy (DOE) published an interim final rule on March 11, 2010, requiring that all States and other service providers that participate in the Weatherization Assistance Program (WAP) treat all requests for information concerning applicants and recipients of WAP funds in a manner consistent with the Federal Government's treatment of information requested under the Freedom of Information Act (FOIA). DOE published a final rule on June 7, 2010, adopting the interim final rule as final without change. This adoption inadvertently caused the sunset date of December 6, 2010, stated in the interim final rule to also be adopted as final. DOE is today adopting the amendments to 10 CFR part 440 of chapter II of title 10, Code of Federal Regulations set forth in the interim final rule without adopting the sunset date.

**DATES:** This rule is effective February 28, 2012.

**FOR FURTHER INFORMATION CONTACT:**

Robert Adams, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Weatherization Assistance Program, EE-2K, 950 L'Enfant Plaza, SW., Room P201D, Washington, DC 20585-0121, (202) 287-1591, email: [robert.adams@ee.doe.gov](mailto:robert.adams@ee.doe.gov). For legal issues contact Kavita

Vaidyanathan, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC-71, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-0669, email: [kavita.vaidyanathan@hq.doe.gov](mailto:kavita.vaidyanathan@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:**

#### I. Background and Authority

Title IV, Energy Conservation and Production Act, as amended, authorizes DOE to administer the WAP. All grant awards made under this program must comply with applicable authorities, including regulations contained in Title 10 of the Code of Federal Regulations (10 CFR part 440).

#### II. Discussion

On March 11, 2010, (75 FR 11419), DOE published an interim final rule requiring all States and other service providers that participate in the WAP treat all requests for information concerning applicants and recipients of WAP funds in a manner consistent with the Federal Government's treatment of information requested under the FOIA. The background and explanation of that interim final rule was set out in the March 11 publication. DOE received one comment letter and published a final rule on June 7, 2010, (75 FR 32089), adopting the interim final rule as final without change because some of the suggestions in the comments were already incorporated in the interim final rule and DOE declined to adopt the other suggestions.

The final rule was effective on July 7, 2010. However, the adoption of the interim final rule as final without change inadvertently caused the sunset date of December 6, 2010, stated in the interim final rule to also be adopted as final. To correct the inclusion of the interim final rule's sunset date in the final rule, DOE is today adopting the amendments to 10 CFR part 440 of chapter II of title 10, Code of Federal Regulations set forth in the interim final rule without adopting the sunset date.

#### III. Procedural Issues and Regulatory Review

##### A. Review Under Executive Order 12866

Today's regulatory action is not a significant regulatory action under section 3(f)(1) of Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735 (Oct. 4, 1993)). Accordingly, today's action was not reviewed by the

Office of Information and Regulatory Affairs in the Office of Management and Budget.

##### B. Administrative Procedure Act

DOE finds that providing prior notice and comment on today's final rule would be unnecessary. See, 5 U.S.C. 553(b)(3)(B). As noted above, today's final rule corrects an inadvertent application of a sunset date to a final rule that was previously subject to notice and comment. DOE received and responded to the one comment received as a result of that public notice and comment opportunity. Today's final rule adopts the regulatory language as finalized in the prior final rule.

##### C. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule before 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).

##### 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 February 17, 2012.

**Henry C. Kelly,**

*Acting Assistant Secretary, Energy Efficiency and Renewable Energy.*

For the reasons stated in the preamble, DOE is amending 10 CFR part 440 as set forth below:

#### PART 440—WEATHERIZATION ASSISTANCE 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 440.2 is amended by adding a new paragraph (e) to read as follows:

##### § 440.2 Administration of grants.

\* \* \* \* \*

(e)(1) States, Tribes and their subawardees, including, but not limited to subrecipients, subgrantees, contractors and subcontractors that

participate in the program established under this Part are required to treat all requests for information concerning applicants and recipients of WAP funds in a manner consistent with the Federal Government's treatment of information requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552, including the privacy protections contained in Exemption (b)(6) of the FOIA, 5 U.S.C. 552(b)(6). Under 5 U.S.C. 552(b)(6), information relating to an individual's eligibility application or the individual's participation in the program, such as name, address, or income information, are generally exempt from disclosure.

(2) A balancing test must be used in applying Exemption (b)(6) in order to determine:

(i) Whether a significant privacy interest would be invaded;

(ii) Whether the release of the information would further the public interest by shedding light on the operations or activities of the Government; and

(iii) Whether in balancing the privacy interests against the public interest, disclosure would constitute a clearly unwarranted invasion of privacy.

(3) A request for personal information including but not limited to the names, addresses, or income information of WAP applicants or recipients would require the State or other service provider to balance a clearly defined public interest in obtaining this information against the individuals' legitimate expectation of privacy.

(4) Given a legitimate, articulated public interest in the disclosure, States and other service providers may release information regarding recipients in the aggregate that does not identify specific individuals. However, a State or service provider must apply an FOIA Exemption (b)(6) balancing test to any request for information that can not be satisfied by such less-intrusive methods.

[FR Doc. 2012-4643 Filed 2-27-12; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 135

[Docket No.: FAA-2012-0007; Amdt. No. 135-126]

RIN 2120-AK02

#### Authorization To Use Lower Than Standard Takeoff, Approach and Landing Minimums at Military and Foreign Airports; Confirmation of Effective Date

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This action confirms the effective date of the direct final rule published on January 11, 2012. The rule allows qualified operators to conduct lower than standard instrument flight rules (IFR) airport operations at military airports or outside the United States when authorized to do so by their operations specifications.

**DATES:** The effective date for the direct final rule published on January 11, 2012, at 77 FR 1629, is confirmed as February 27, 2012.

**ADDRESSES:** For information on where to obtain copies of rulemaking documents and other information related to this action, see "How To Obtain Additional Information" in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Gregory French, Air Transportation Division, 135 Air Carrier Operations Branch, AFS-250, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-4112; email [gregory.french@faa.gov](mailto:gregory.french@faa.gov).

For legal questions concerning this action, contact Robert Frenzel, Office of the Chief Counsel, Operations Law Branch, (AGC-220), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3073; email [robert.frenzel@faa.gov](mailto:robert.frenzel@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Before publication of this direct final rule on January 11, 2012 (77 FR 1629), Title 14, Code of Federal Regulations (14 CFR) limited certain operators to a takeoff minimum visibility of 1 mile, and a landing minimum visibility of 1/2 mile when conducting IFR operations at

foreign and military airports, even when the operator has demonstrated the ability to safely conduct operations in lower visibility. The FAA has determined since many part 135 operators have met the requirement necessary to conduct lower than standard IFR operations authorized by OpSpec C079, it would amend the requirement to allow for lower than standard IFR operations at military and foreign airports only for those part 135 operators authorized through that OpSpec.

##### Discussion of Comments

The FAA received comments from two individual commenters. Both commenters supported the rule change. The commenters generally stated that the rule change permitted those operators that obtain authority to conduct lower than standard visibility operations at U.S. airports to exercise the same authority at foreign and military airports.

##### Conclusion

After consideration of the comments submitted in response to the direct final rule, the FAA has determined that no further rulemaking action is necessary. The rule will take effect on February 27, 2012.

##### How To Obtain Additional Information

###### A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visit the FAA's Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies/](http://www.faa.gov/regulations_policies/) or
3. Access the Government Printing Office's Web page at <http://www.gpo.gov>.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680.

###### B. Comments Submitted to the Docket

Comments received may be viewed by going to <http://www.regulations.gov> and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).