**PART 440—WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS**

**Abridged and Highlighted**

**Section Contents**
[§ 440.1   Purpose and scope.](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=91c5da9ab4fd51ffa8ab8f234c6d26c5;rgn=div5;view=text;node=10%3A3.0.1.4.22;idno=10;cc=ecfr#10:3.0.1.4.22.0.85.1)
[§ 440.2   Administration of grants.](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=91c5da9ab4fd51ffa8ab8f234c6d26c5;rgn=div5;view=text;node=10%3A3.0.1.4.22;idno=10;cc=ecfr#10:3.0.1.4.22.0.85.2)
[§ 440.3   Definitions.](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=91c5da9ab4fd51ffa8ab8f234c6d26c5;rgn=div5;view=text;node=10%3A3.0.1.4.22;idno=10;cc=ecfr#10:3.0.1.4.22.0.85.3)
[§ 440.10   Allocation of funds.](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=91c5da9ab4fd51ffa8ab8f234c6d26c5;rgn=div5;view=text;node=10%3A3.0.1.4.22;idno=10;cc=ecfr#10:3.0.1.4.22.0.85.4)
[§ 440.11   Native Americans.](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=91c5da9ab4fd51ffa8ab8f234c6d26c5;rgn=div5;view=text;node=10%3A3.0.1.4.22;idno=10;cc=ecfr#10:3.0.1.4.22.0.85.5)
[§ 440.12   State application.](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=91c5da9ab4fd51ffa8ab8f234c6d26c5;rgn=div5;view=text;node=10%3A3.0.1.4.22;idno=10;cc=ecfr#10:3.0.1.4.22.0.85.6)
[§ 440.13   Local applications.](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=91c5da9ab4fd51ffa8ab8f234c6d26c5;rgn=div5;view=text;node=10%3A3.0.1.4.22;idno=10;cc=ecfr#10:3.0.1.4.22.0.85.7)
[§ 440.14   State plans.](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=91c5da9ab4fd51ffa8ab8f234c6d26c5;rgn=div5;view=text;node=10%3A3.0.1.4.22;idno=10;cc=ecfr#10:3.0.1.4.22.0.85.8)
[§ 440.15   Subgrantees.](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=91c5da9ab4fd51ffa8ab8f234c6d26c5;rgn=div5;view=text;node=10%3A3.0.1.4.22;idno=10;cc=ecfr#10:3.0.1.4.22.0.85.9)
[§ 440.16   Minimum program requirements.](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=91c5da9ab4fd51ffa8ab8f234c6d26c5;rgn=div5;view=text;node=10%3A3.0.1.4.22;idno=10;cc=ecfr#10:3.0.1.4.22.0.85.10)
[§ 440.17   Policy Advisory Council.](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=91c5da9ab4fd51ffa8ab8f234c6d26c5;rgn=div5;view=text;node=10%3A3.0.1.4.22;idno=10;cc=ecfr#10:3.0.1.4.22.0.85.11)
[§ 440.18   Allowable expenditures.](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=91c5da9ab4fd51ffa8ab8f234c6d26c5;rgn=div5;view=text;node=10%3A3.0.1.4.22;idno=10;cc=ecfr#10:3.0.1.4.22.0.85.12)
[§ 440.19   Labor.](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=91c5da9ab4fd51ffa8ab8f234c6d26c5;rgn=div5;view=text;node=10%3A3.0.1.4.22;idno=10;cc=ecfr#10:3.0.1.4.22.0.85.13)
[§ 440.20   Low-cost/no-cost weatherization activities.](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=91c5da9ab4fd51ffa8ab8f234c6d26c5;rgn=div5;view=text;node=10%3A3.0.1.4.22;idno=10;cc=ecfr#10:3.0.1.4.22.0.85.14)
[§ 440.21   Weatherization materials standards and energy audit procedures.](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=91c5da9ab4fd51ffa8ab8f234c6d26c5;rgn=div5;view=text;node=10%3A3.0.1.4.22;idno=10;cc=ecfr#10:3.0.1.4.22.0.85.15)
[§ 440.22   Eligible dwelling units.](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=91c5da9ab4fd51ffa8ab8f234c6d26c5;rgn=div5;view=text;node=10%3A3.0.1.4.22;idno=10;cc=ecfr#10:3.0.1.4.22.0.85.16)
[§ 440.23   Oversight, training, and technical assistance.](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=91c5da9ab4fd51ffa8ab8f234c6d26c5;rgn=div5;view=text;node=10%3A3.0.1.4.22;idno=10;cc=ecfr#10:3.0.1.4.22.0.85.17)
[§ 440.24   Recordkeeping.](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=91c5da9ab4fd51ffa8ab8f234c6d26c5;rgn=div5;view=text;node=10%3A3.0.1.4.22;idno=10;cc=ecfr#10:3.0.1.4.22.0.85.18)
[§ 440.25   Reports.](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=91c5da9ab4fd51ffa8ab8f234c6d26c5;rgn=div5;view=text;node=10%3A3.0.1.4.22;idno=10;cc=ecfr#10:3.0.1.4.22.0.85.19)
[§§ 440.26-440.29   [Reserved]](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=91c5da9ab4fd51ffa8ab8f234c6d26c5;rgn=div5;view=text;node=10%3A3.0.1.4.22;idno=10;cc=ecfr#10:3.0.1.4.22.0.85.20)
[§ 440.30   Administrative review.](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=91c5da9ab4fd51ffa8ab8f234c6d26c5;rgn=div5;view=text;node=10%3A3.0.1.4.22;idno=10;cc=ecfr#10:3.0.1.4.22.0.85.21)
[Appendix A to Part 440—Standards for Weatherization Materials](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=91c5da9ab4fd51ffa8ab8f234c6d26c5;rgn=div5;view=text;node=10%3A3.0.1.4.22;idno=10;cc=ecfr#10:3.0.1.4.22.0.85.22.47)

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

**Source:**   49 FR 3629, Jan. 27, 1984, unless otherwise noted.

**§ 440.1   Purpose and scope.**

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This part implements a weatherization assistance program to increase the energy efficiency of dwellings owned or occupied by low-income persons or to provide such persons renewable energy systems or technologies, 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.

[65 FR 77217, Dec. 8, 2000, as amended at 71 FR 35778, June 22, 2006]

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**§ 440.3   Definitions.**

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As used in this part:

*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.

*Incidental Repairs* means those repairs necessary for the effective performance or preservation of weatherization materials. Such repairs include, but are not limited to, framing or repairing windows and doors which could not otherwise be caulked or weather- stripped and providing protective materials, such as paint, used to seal materials installed under this program.

*Weatherization Materials* mean:

(1) Caulking and weatherstripping of doors and windows;

(2) Furnace efficiency modifications including, but not limited to—

(i) Replacement burners, furnaces, or boilers or any combination thereof;

(ii) Devices for minimizing energy loss through heating system, chimney, or venting devices; and

(iii) Electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

(3) Cooling efficiency modifications including, but not limited to—

(i) Replacement air conditioners;

(ii) Ventilation equipment;

(iii) Screening and window films; and

(iv) Shading devices.

**§ 440.12   State application.**

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(a) To be eligible for financial assistance under this part, a State shall submit an application to DOE in conformity with the requirements of this part not later than 60 days after the date of notice to apply is received from the Support Office Director. After receipt of an application for financial assistance or for approval of an amendment to a State plan, the Support Office Director may request the State to submit within a reasonable period of time any revisions necessary to make the application complete or to bring the application into compliance with the requirements of this part. The Support Office Director shall attempt to resolve any dispute over the application informally and to seek voluntary compliance. If a State fails to submit timely appropriate revisions to complete the application, the Support Office Director may reject the application as incomplete in a written decision, including a statement of reasons, which shall be subject to administrative review under §440.30 of this part.

(b) Each application shall include:

(1) The name and address of the State agency or office responsible for administering the program;

(2) A copy of the final State plan prepared after notice and a public hearing in accordance with §440.14(a), except that an application by a local applicant need not include a copy of the final State plan;

(3) The budget for total funds applied for under the Act, which shall include a justification and explanation of any amounts requested for expenditure pursuant to §440.18(d) for State administration;

(4) The total number of dwelling units proposed to be weatherized with grant funds during the budget period for which assistance is to be awarded—

(i) With financial assistance previously obligated under this part, and

(ii) With the program allocation to the State;

(5) A recommendation that a tribal organization be treated as a local applicant eligible to submit an application pursuant to §440.13(b), if such a recommendation is to be made;

 (6) A monitoring plan which shall indicate the method used by the State to insure the quality of work and adequate financial management control at the subgrantee level;

**§ 440.16   Minimum program requirements.**

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Prior to the expenditure of any grant funds each grantee shall develop, publish, and implement procedures to ensure that:

(a) No dwelling unit may be weatherized without documentation that the dwelling unit is an eligible dwelling unit as provided in §440.22;

(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.

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

(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;

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

(f) The low-income members of an Indian tribe shall receive benefits equivalent to the assistance provided to other low-income persons within a State unless the grantee has made the recommendation provided in §440.12(b)(5);

(g) No dwelling unit may be reported to DOE as completed until all weatherization materials have been installed and the subgrantee, or its authorized representative, has performed a final inspection(s) including any mechanical work performed and certified that the work has been completed in a workmanlike manner and in accordance with the priority determined by the audit procedures required by §440.21; and

(h) Subgrantees limit expenditure of funds under this part for installation of materials (other than weatherization materials) to abate energy-related health and safety hazards, to a list of types of such hazards, permissible abatement materials and their costs which is submitted, and updated as necessary at the same time as an annual application under §440.12 of this part and which DOE shall approve if—

(1) Elimination of such hazards are necessary before, or as a result of, installation of weatherization materials; and

(2) The grantee sets forth a limitation on the percent of average dwelling unit costs which may be used to abate such hazards which is reasonable in light of the primary energy conservation purpose of this part;

(i) The benefits of weatherization to occupants of rental units are protected in accordance with §440.22(b)(3) of this part.

(Approved by the Office of Management and Budget under control number 1904–0047)

[49 FR 3629, Jan. 27, 1984, as amended at 58 FR 12526, Mar. 4, 1993; 65 FR 77218, Dec. 8, 2000]

**§ 440.21   Weatherization materials standards and energy audit procedures.**

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(a) Paragraph (b) of this section describes the required standards for weatherization materials. Paragraph (c)(1) of this section describes the performance and quality standards for renewable energy systems. Paragraph (c)(2) of this section specifies the procedures and criteria that are used for considering a petition from a manufacturer requesting the Secretary to certify an item as a renewable energy system. Paragraphs (d) and (e) of this section describe the cost-effectiveness tests that weatherization materials must pass before they may be installed in an eligible dwelling unit. Paragraph (f) of this section lists the other energy audit requirements that do not pertain to cost-effectiveness tests of weatherization materials. Paragraphs (g) and (h) 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 (i) of this section explains that a State's energy audit procedures and priority lists must be re-approved by DOE every five 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)(1) A system or technology shall not be considered by DOE to be a renewable energy system under this part unless:

(i) It will result in a reduction in oil or natural gas consumption;

(ii) It will not result in an increased use of any item which is known to be, or reasonably expected to be, environmentally hazardous or a threat to public health or safety;

(iii) Available Federal subsidies do not make such a specification unnecessary or inappropriate (in light of the most advantageous allocation of economic resources); and

(iv) If a combustion rated system, it has a thermal efficiency rating of at least 75 percent; or, in the case of a solar system, it has a thermal efficiency rating of at least 15 percent.

(2) Any manufacturer may submit a petition to DOE requesting the Secretary to certify an item as a renewable energy system.

(i) Petitions should be submitted to: Weatherization Assistance Program, Office of Energy Efficiency and Renewable, Mail Stop EE–2K, 1000 Independence Avenue, SW., Washington, DC 20585.

(ii) A petition for certification of an item as a renewable energy system must be accompanied by information demonstrating that the item meets the criteria in paragraph (c)(1) of this section.

(iii) DOE may publish a document in the Federal Register that invites public comment on a petition.

(iv) DOE shall notify the petitioner of the Secretary's action on the request within one year after the filing of a complete petition, and shall publish notice of approvals and denials in the Federal Register.

(d) 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.

(e) The energy audit procedures must assign priorities among individual weatherization materials in descending order of their cost-effectiveness according to paragraph (d) 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 (e)(1) of this section.

(f) 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.

(g) 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 (f) 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.

(h) 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.

(i) 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.

[65 FR 77218, Dec. 8, 2000, as amended at 71 FR 35778, June 22, 2006]

**§ 440.22   Eligible dwelling units.**

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(a) A dwelling unit shall be eligible for weatherization assistance under this part if it is occupied by a family unit:

(1) Whose income is at or below 200 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget,

(2) Which contains a member who has received cash assistance payments under Title IV or XVI of the Social Security Act or applicable State or local law at any time during the 12-month period preceding the determination of eligibility for weatherization assistance; or

(3) If the State elects, is eligible for assistance under the Low-Income Home Energy Assistance Act of 1981, provided that such basis is at least 200 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget.

(b) A subgrantee may weatherize a building containing rental dwelling units using financial assistance for dwelling units eligible for weatherization assistance under paragraph (a) of this section, where:

(1) The subgrantee has obtained the written permission of the owner or his agent;

(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:

(i) Are eligible dwelling units, or

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

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

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

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

(iii) The enforcement of paragraph (b)(3)(ii) of this section is provided through procedures established by the State by which tenants may file complaints, and owners, in response to such complaints, shall demonstrate that the rent increase concerned is related to matters other than the weatherization work performed; and

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

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

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

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

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

(c) In order to secure the Federal investment made under this part and address the issues of eviction from and sale of property receiving weatherization materials under this part, States may seek landlord agreement to placement of a lien or to other contractual restrictions;

(d) As a condition of having assistance provided under this part with respect to multifamily buildings, a State may require financial participation, when feasible, from the owners of such buildings. Such financial participation shall not be reported as program income, nor will it be treated as if it were appropriated funds. The funds contributed by the landlord shall be expended in accordance with the agreement between the landlord and the weatherization agency.

(e) In devising procedures under paragraph (b)(3)(iii) of this section, States should consider requiring use of alternative dispute resolution procedures including arbitration.

(f) A State may weatherize shelters. For the purpose of determining how many dwelling units exist in a shelter, a grantee may count each 800 square feet of the shelter as a dwelling unit or it may count each floor of the shelter as a dwelling unit.

[58 FR 12528, Mar. 4, 1993, as amended at 65 FR 77219, Dec. 8, 2000; 74 FR 12540, Mar. 25, 2009; 75 FR 3856, Jan. 25, 2010]

**Appendix A to Part 440—Standards for Weatherization Materials**

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The following Government standards are produced by the Consumer Product Safety Commission and are published in title 16, Code of Federal Regulations:

Thermal Insulating Materials for Building Elements Including Walls, Floors, Ceilings, Attics, and Roofs Insulation—organic fiber—conformance to Interim Safety Standard in 16 CFR part 1209;

Fire Safety Requirements for Thermal Insulating Materials According to Insulation Use—Attic Floor—insulation materials intended for exposed use in attic floors shall be capable of meeting the same flammability requirements given for cellulose insulation in 16 CFR part 1209;

Enclosed spaces—insulation materials intended for use within enclosed stud or joist spaces shall be capable of meeting the smoldering combustion requirements in 16 CFR part 1209.

The following standards which are not otherwise set forth in part 440 are incorporated by reference and made a part of part 440. The following standards have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on April 5, 1993 and a notice of any change in these materials will be published in theFederal Register.The standards incorporated by reference are available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal\_register/code\_of\_federal\_regulations/ibr\_locations.html.*