Rules and Regulations

Federal Register
Vol. 75, No. 47
Thursday, March 11, 2010

DEPARTMENT OF ENERGY

10 CFR Part 440

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: Interim final rule.

SUMMARY: The U.S. Department of Energy (DOE) is amending its regulations to require all States and other service providers that participate in the Weatherization Assistance Program (WAP) 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).

DATES: *Effective Date:* This interim final rule is effective March 11, 2010 through December 6, 2010.

Comment Due Date: Comments on this interim final rule must be postmarked by no later than April 12, 2010.

ADDRESSES: Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: Privacy-FR-2010-WAP@hq.doe.gov.* Include RIN 1901–AC16 in the subject line of the message.
- *Postal Mail:* 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. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* 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. Please submit one signed original paper copy.

The public may review copies of all materials related to this rulemaking at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

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, e-mail: *robert.adams@ee.doe.gov.*

Bryan Miller, Esq., U.S. Department of Energy, Office of General Counsel, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8627.

SUPPLEMENTARY INFORMATION:

I. Authority and Background

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

II. Discussion

This rule applies to States, Tribes and their subawardees, including, but not limited to subrecipients, subgrantees, contractors and subcontractors (hereinafter "service providers"). DOE does not collect or maintain personal information regarding individuals applying for or receiving assistance under the WAP. Generally, DOE provides funding to States, which in turn provide funding to entities that manage weatherization projects ("weatherization service providers"), which, in turn, collect applicant information and make financial assistance awards to eligible applicants. The records collected by States and weatherization service providers in the course of administering the WAP are not Federal records for the purposes of applicable Federal law; however, DOE recognizes that a strong imperative exists to safeguard the privacy interests of individuals who participate in the programs that it administers. Therefore, the Department has concluded that it is prudent to provide formal standards for States and other service providers in responding to requests for personal information.

States receiving funds under the WAP have received requests for information regarding the implementation of programs funded through the American Recovery and Reinvestment Act. The information requests range from informal inquiries by local elected officials and other community leaders to requests for specific information about applicants and/or recipients from local and regional press outlets. Due, in part, to the increased levels of funding for the WAP—$5 billion over three years—we anticipate that there will be a number of similar such requests. DOE adheres to the transparency requirements placed on WAP and other government financial assistance programs instituted by the Administration and encourages the dissemination of information that provides insight into the government's use of WAP funding. FOIA clearly requires DOE to apply the Exemption (b)(6) balancing test to DOE records containing the personal information of individuals. Therefore, DOE hereby extends this requirement to States and other service providers that participate in the WAP to protect sensitive personal information in a manner consistent with DOE's obligations under the FOIA. DOE is committed to protecting the privacy of individuals who apply for or receive WAP funding.

By this interim final rule, DOE is requiring all States and other service providers under the WAP to apply the same balancing test set forth under FOIA Exemption (b)(6), 5 U.S.C. 552(b)(6), to WAP related information in the possession of the States and service providers that DOE would apply in considering the release of similar information. Thus, this minimum privacy protection applicable to

requests for WAP related information ensures that any request for such information must be analyzed using the same paradigm as a FOIA analysis in order to determine whether to release the information.

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. For example, information on the number of recipients in a county, city, or a zip code does not compromise the privacy of the WAP recipients. A State or other service provider may therefore disclose such aggregated information. However, the release of any information that personally identifies an individual or is linked or linkable to a specific individual must be carefully scrutinized using the principles of Exemption (b)(6).

Pursuant to FOIA Exemption (b)(6), records that contain personal information including but not limited to, names, addresses, and income information, are generally exempt from disclosure. Exemption (b)(6) is generally referred to as the "personal privacy" exemption; it provides that the disclosure requirements of FOIA do not apply to "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

In applying Exemption (b)(6), courts apply a balancing test in order to determine: (1) Whether a significant privacy interest would be invaded; (2) whether the release of the information would further the public interest by shedding light on the operations or activities of the Government; and (3) whether in balancing the privacy interests against the public interest, disclosure would constitute a clearly unwarranted invasion of privacy. 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.

Individuals have a strong privacy interest in protecting personal information including names, addresses, and financial information such as income levels or ranges, receipt of Government assistance, or any personal information likely to cause the individual involved personal distress or embarrassment. Absent a compelling public interest in disclosure, including the unavailability of less intrusive means of obtaining the information, the balancing test will generally favor the personal privacy interests of the individual. The burden of persuasion is on the requester claiming the public interest. Such assertions of public interest are closely scrutinized by courts to ensure that they legitimately warrant overriding important privacy interests and that a nexus exists between the information at issue and the public interest.

In applying the principles of a FOIA analysis to requests for this type of information in the possession of States and other service providers, DOE, is, by this rule, requiring all States and other service providers under the WAP to apply the balancing test of Exemption (b)(6) to WAP related records in their possession, custody, or control. DOE is extending its expertise in carrying out Exemption (b)(6) FOIA analyses and States and service providers are encouraged to contact DOE's Office of the Assistant General Counsel for General Law, (202) 586–1522, for assistance in applying the balancing test to requests for information.

III. Request for Comment

DOE seeks comment on this interim final rule. In addition, DOE requests public comment as to whether it should consider extending any other aspects of the FOIA to information collected and maintained by States and their subawardees in their administration of the WAP.

IV. Procedural Requirements

A. Executive Order 12866

Today's regulatory action is a "significant regulatory action" under section 3(f) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Administrative Procedure Act

The Department of Energy finds good cause to waive the requirement to provide prior notice and an opportunity for public comment on these regulations pursuant to 5 U.S.C. 533(b)(B), and the 30-day delay in effect date pursuant to 5 U.S.C. 553(d). Notice and comment procedures on this rule are impracticable and contrary to the public interest. DOE is aware of at least one currently pending instance of a request seeking personal information of WAP participants in the possession of a State. Participation in WAP is limited to low-income individuals. DOE is of the opinion that if such information is released, these families would likely be subjected to harassment, discrimination, embarrassment, predatory lending, and other forms of economic and social harm. Disclosure of this information would be comparable to releasing a person's status as a food-stamp or welfare recipient—information that the Federal government keeps strictly confidential.

DOE is also of the opinion that release of information such as the names, private income and address information of WAP participants will have a serious chilling effect on an individual's willingness to participate in the WAP, which would frustrate the program's purpose. Providing prior notice and an opportunity for public comment on this rule may result in the release of the information in the possession of the State thereby resulting in the very harm that DOE seeks to avoid.

There is good cause to waive the required 30-day delay in effect for these same reasons. Therefore, these regulations are effective March 11, 2010 through December 6, 2010.

However, while not required, DOE is interested in receiving public comment on this rulemaking after its effective date. As such, this rule is being published on an interim final basis.

DOE intends to issue a final rule in this proceeding prior to the expiration of this interim final rule on December 6, 2010, in which it will respond to comments received.

C. National Environmental Policy Act

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. This rule amends an existing rule without changing its environmental effect, and, therefore, is covered by the Categorical Exclusion A5 found in appendix A to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

D. 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 must be proposed for public comment, unless the agency certifies that the rule will have no 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 the General Counsel's Web site at *http://www.gc.energy.gov.* Because a notice of proposed rulemaking is not required under the Administrative Procedure Act or other applicable law, the Regulatory Flexibility Act does not require certification or the conduct of a regulatory flexibility analysis for this rule.

E. Paperwork Reduction Act

This rulemaking imposes no new information or recordkeeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For proposed regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA 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." UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be affected before establishing a requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*). Today's interim final rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

G. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's rule would have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is unnecessary to prepare a Family Policymaking Assessment.

H. Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. DOE has examined this interim final rule and determined that it would not preempt State law and would have no 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. Executive Order 13132 requires no further action.

I. 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, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Regarding the review required by section 3(a), 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 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, this rule meets the relevant standards of Executive Order 12988.

J. Treasury and General Government Appropriations Act, 2001

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 under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation an interim 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 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 is not a significant regulatory action under Executive Order 12866 or any successor order; would not have a significant adverse effect on the supply, distribution, or use of energy; and has not been designated by the Administrator of OIRA as a significant

energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Executive Order 12630

Pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 15, 1988), DOE has determined that this rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

M. Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy must comply with section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). (15 U.S.C. 788) Section 32 provides that where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Department of Justice and the Federal Trade Commission concerning the impact of the commercial or industry standards on competition. This interim final rule does not authorize or require the use of any commercial standards. Therefore, no consultation with either DOJ or FTC is required.

N. 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).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this interim final rule.

List of Subjects in 10 CFR Part 440

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

Issued in Washington, DC, on February 4, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons stated in the preamble, DOE is amending Part 440 of chapter II of title 10, Code of Federal Regulations, 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. 2010–5195 Filed 3–10–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0656; Directorate Identifier 2009–NM–038–AD; Amendment 39–16056; AD 2009–22–05]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

There have been several cases of wing leading edge anti-ice piccolo duct failure reported on CL–600–2B19 (CRJ) aircraft. Upon investigation, it was determined that ducts manufactured since May 2000 are susceptible to cracking due to the process used to drill holes in the ducts. This cracking may cause air leakage, with a possible adverse effect on the anti-ice air distribution pattern and anti-ice capability, without annunciation to the flight crew [and consequent reduced controllability of the airplane].

* * * * *

It has subsequently been determined that faulty ducts may also have been installed in a number of leading edge assemblies built as spares and whose current locations are not specifically known. * * *

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We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 15, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 15, 2010.