

Energy Conservation Program

Monday
August 11, 1980

Part XII

Department of Energy

Residential Conservation Service Program
and Interpretation of Title V, Subpart B
of the Energy Security Act

DEPARTMENT OF ENERGY

10 CFR Part 456

[Docket No. CAS-RM-79-101]

Residential Conservation Service
Program Notice of Proposed
Rulemaking and Correction to Final
Rule

AGENCY: Department of Energy (DOE).

ACTION: Notice of proposed rulemaking.

SUMMARY: The following notice proposes changes to the final rule issued as CAS-RM-79-101 in the Wednesday, November 7, 1979 issue of the *Federal Register*, Vol. 44, No. 217, Part II, pp. 64602-64727. This notice is issued to correct clerical, grammatical and typographical errors in the Final Rule which do not reflect policy changes of the Department, as well as a small number of changes which reflect proposed substantive changes to the Final Rule.

DATE: Written comments on proposed rulemaking must be received by September 10, 1980, 4:30 p.m., e.s.t., in order to ensure their consideration.

ADDRESSES: Comments should be addressed to: Joanne Bakos, Office of Conservation and Solar Energy, Department of Energy, Mail Stop 6B-025, 1000 Independence Avenue, SW., Washington, D.C. 20585. See "Comment Procedures" under Supplementary Information below. Copies of all reports and analyses referred to in this notice are available for review in the DOE Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

- I. Introduction.
- II. Regulatory Analysis and Urban Impact Assessment.
- III. Environmental Impact Statement.
- IV. Consultation with Other Federal Agencies.

V. Contractor Contributions to the Rulemaking.

VI. Executive Order 12044.

VII. Comment Procedures.

VIII. Amendments.

I. Introduction

On November 7, 1979, the Department of Energy (DOE) published a final rule (44 FR 64602) to establish the Residential Conservation Service (RCS) Program to encourage and facilitate the installation of energy conservation measures and renewable resource measures. Subsequent to that publication, DOE became aware of a number of amendments to the final rule which needed to be made to clarify DOE's position on several matters and to correct clerical errors. These amendments are being proposed by this publication. Written comments will be accepted until September 10, 1980, and will be considered by DOE before issuance of amendments in final form.

Of the changes proposed below, most are either typographical or grammatical. A number of non-clerical amendments are also proposed which would affect no substantive change in the rule, but consist of clarifications or equivalents. However, DOE is proposing a small number of changes which might substantively effect some portions of the final rule or a significant number of people.

As the reasons for most of the proposed changes are self-evident, no accompanying explanation is given. However, for those cases in which the reasons for certain amendments are not readily apparent and where a substantive change is being proposed, explanations are set forth below in the first part of this Introduction. The proposed amendment to the applicability criteria for wind energy devices is set forth in a separate part of the Introduction due to the extensive nature of the discussion.

A. Discussion of Proposed Amendments

2. and 4. These changes are to the preamble of the final rule rather than to the regulatory language itself. Although the preamble is not legally binding, we wish to clarify our intent in these two areas. Amendment No. 2 would amend the preamble to the final rule to clarify DOE's position with respect to redress procedures. No State is required by the RCS rule to pass new legislation affecting the State's sovereign immunity. Amendment No. 4 would make the preamble consistent with the final rule.

8. and 16. Ceiling insulation for mobile homes was excluded from the Final Rule because DOE did not believe that any product existed which might pay for its

costs within its useful life in this application. Since the publication of the Final Rule, we have learned of at least one product, a flexible insulated roof blanket installed on the exterior of a mobile home, which has the potential for reducing mobile home energy use (particularly for air conditioning) in a cost-effective manner. Because of the limited number of retrofit conservation measures which apply to mobile homes, and because of the severe effects of energy costs on low-income mobile home occupants, we propose to amend section 456.307(b) to require that ceiling insulation be audited in mobile homes. We also propose to amend the definition of ceiling insulation to make it clear that many insulation materials have exterior applications. Section 456.907 contains an installation standard for exterior installation of some insulation products. We seek comment on these changes, particularly with regard to the following questions:

(1) Should DOE prescribe additional standards for either the materials or the installation of products which can be used in mobile home ceiling insulation?

(2) Which products or types of products can be used cost-effectively to insulate mobile home ceilings?

(3) Are these products durable?

(4) Is there adequate manufacturing capacity to handle increases in demand which might result from the inclusion of this application of ceiling insulation?

(5) Some exterior insulations may affect surface temperatures as well as R-values of the roof assembly. Are any special calculation procedures needed to estimate savings of exterior insulations?

10. and 19. Amendment No. 10 would change the measure now listed in § 456.105(v) as "Window Heat Gain Retardants", to "Window Heat Gain and/or Loss Retardant." DOE referenced the full range of benefits associated with several of the individual devices (including those related to heat loss as well as those related to heat gain) in the audit portion of the rule, but inadvertently described the measure in the definitions sections as only those that retard heat gain in the summertime. However, these devices may also save substantial energy by minimizing loss of wintertime heating through windows.

Although the maximum heat gain retardance would occur through southerly windows, substantial sunlight heating could and would normally occur through windows facing other directions. Reduction in wintertime heat loss is relatively insensitive to directional considerations except that maximum loss generally occurs in the direction of prevailing winter winds. In most cases, winter winds are prevalent

in directions other than South $\pm 45^\circ$. In such circumstances, where a house is equipped with insulated shades, the owner would achieve maximum savings by lowering shades on all windows other than southerly (i.e., reduce heat loss, maximize southern heat gain). Therefore, DOE is proposing to modify the identification of the measure to reflect the additional savings achievable.

Because one or more of the devices incorporated within this measure should produce energy savings for virtually any home as a heat gain (summer) retardant and/or a heat loss retardant (winter), DOE is further proposing to remove the present applicability criterion. See Amendment No. 17.

Because various other window heat gain/loss measures (such as storm windows) are already required as basic components of the home audit, and because these devices were to have been addressed in nearly all homes under the present definition, DOE concludes that these proposals would have an insignificant effect on aggregate audit time and costs.

12. Reference to the treatment of requests for information submitted to DOE under the RCS program was inadvertently omitted from the final rule. Therefore, DOE is proposing procedures that are consistent with DOE's Freedom of Information Act regulations, 10 CFR Part 1004 (44 FR 1908, January 8, 1979). Although DOE believes that there will be little information of a proprietary nature submitted to DOE under the RCS program, the Department believes that the procedures by which an individual may make a claim of confidentiality should be specifically included in the RCS rule.

13. Under the current § 456.205(e)(2), a State wishing to amend a previously approved State plan would be required to comply with all of the requirements for submission of a State plan (except the time limit) regardless of the nature of the amendment. DOE believes that exceptions to these requirements should be available if the State is able to make a good cause showing that some or any of the submission requirements should be waived (e.g.: where the amendment is not significant and the burden of requiring full-scale State hearings would be substantial).

14. This amendment would correct the regulatory requirements for utilities exempt from the prohibition against supply, installation and financing of energy conservation and renewable resource measures. The statutory requirements in NECPA regarding unfair discrimination among customers, among measures, and among suppliers,

contractors and lenders apply only to those activities that are mandated under the RCS State Plan and not to voluntary activities such as the supplying, installing, or financing of measures. Such voluntary activities come under the preview of State and local utility regulations and, unless DOE is given specific authority by Federal legislation to monitor or regulate such utility activities, DOE believes that such regulation is best left with State and local authorities. Therefore, DOE proposes to correct the regulation to conform to the statutory requirement.

15, 24-26. These amendments clarify DOE's intent that only those entities which supply, install or finance in accordance with the RCS listing requirements should be entitled to the benefits of publicizing their services in connection with the RCS program.

17. See discussion in Part B below. 23. Uncertainties have been expressed regarding the definition and use of the term "Nearest Measuring Station" contained in section 456.307(c)(10)(iii). DOE is concerned with the effect of such uncertainties on the usefulness of the procedures described in this section, on the proposed change in the applicability criterion discussed below.

In order to clarify the term "Nearest Measuring Station", DOE proposes to substitute the term "Nearest Qualified Measuring Station" and to define the requirements for qualification. DOE believes there is a sufficient technical basis at this time to propose minimum data-collection requirements for measured wind data used by utilities or fuel suppliers in the RCS wind energy audit.

The proposed change would provide assurance that wind data used in the audit procedure and, if finalized, in the proposed applicability criterion, would be credible and uniform nationwide. The proposed requirements reflect the minimum procedures for data collection necessary for the purposes of the RCS program. DOE concludes that the wind resource data base, as well as the resultant wind atlases (discussed below under "B. Applicability Criterion"), are acceptable as "qualified" within the requirements of the proposal. The proposal amendment would have the additional benefit of providing the basis for States to employ other resource data without sacrificing uniformity or credibility. DOE does not intend that these requirements necessarily be applicable beyond the RCS program.

27. This amendment would prohibit utilities from arranging financing for consumers' do-it-yourself installations of furnace efficiency modifications, devices associated with load

management techniques, and wind energy devices. DOE has determined that do-it-yourself installations for these measures should not be encouraged under the RCS program because of their complexity and the potential for safety risks. The installation of these measures should be carried out only by individuals specially trained for such installation.

29. The amendment to § 456.311(a)(1) is proposed to clarify DOE's intent that § 456.311(a)(1) applies only to those charges made by utilities and participating home heating suppliers, and was not meant to apply to bills by other entities engaged in RCS activities.

31. Section 456.312(b)(1)(iv) would be amended to accommodate any changes which may result from the December 21, 1979 proposal of several new subsections of § 456.314.

32. DOE's intent in including bonding as a listing requirement was to protect consumers from contractors' failure to complete work contracted for. The word "liability" in the Final Rule was intended to refer to liability for nonperformance, not for negligence. Therefore, this change is proposed to more precisely articulate the requirement of a performance bond.

34. The proposed § 456.312(b)(4) would require installers of vent dampers, IIDS, and if DOE issues UF foam insulation standards, of UF foam, to carry liability insurance in order to be included on the RCS lists. DOE believes that improper installation of these measures is most likely to result in some personal injury or property damage. As most installers of these measures already carry liability insurance, DOE believes that it is not unduly burdensome to require that these installers carry liability insurance.

37. DOE proposes to change § 456.314 to prevent the States from shifting to other entities the ultimate responsibility for the training and certification of those individuals required to be trained and certified under RCS. DOE believe that the training and certification requirements are essential to an effective RCS program and therefore wants the State to closely oversee this part of the program.

44. Section 456.507(b) requires a utility which submits a request for determination or waiver to inform certain entities that those entities have ten days within which to submit comments on such request to DOE. The change made here is to clarify at what point those ten days begin to run: from the date the request is filed with the Assistant Secretary.

45. This new § 456.509, inadvertently omitted from the Final Rule, tracks the

language in section 216(f) of NECPA. This does not change any existing legal requirements since the statutory requirement of section 216(f) of NECPA has been effective since the November 9, 1978 enactment date. This amendment merely includes the statutory requirements in the regulation so that all RCS requirements may be found in one document.

53. Section 456.804(b)(6) is amended for consistency with the installation standard § 456.905(c)(1)(v).

55. and 59. These sections are amended to make clear that DOE would accept the CPSC approved label in lieu of the DOE label since the labels are equivalent. This is consistent with DOE's attempt to coordinate RCS standards with pre-existing standards, regulations, or labelling requirements imposed by other Federal agencies.

58. Section 456.805(b)(7) is amended for consistency with the installation standard § 456.906(d)(1)(ix).

66. The new § 456.813(b)(8) is inserted to coordinate the DOE rule with substantially similar regulations by the Department of Housing and Urban Development (HUD).

74., 76-80. These sections are amended with language which is intended to be clearer to installers, but is equivalent to that used in the final rule.

75. Section 456.907(d)(1) is amended to delete the reference to "Type III" since that reference is not commonly used nor is it defined in either the material or the installation standards. It is replaced with an equivalent phrase, so there is no substantive change in this section.

84. The installation standard for storm windows, thermal windows, multi-glazing units, storm doors, and thermal doors is being replaced by an identical ASTM standard. The DOE standard was introduced to ASTM over 2 years ago and was adopted in March 1980. This practice is consistent with DOE's intent to rely upon industry and consensus standards when such standards exist.

B. Applicability Criterion for Wind Energy Devices

1. Public Comment.

Section 456.705(g)(1)(i) of the Proposed Rule issued on December 21, 1979 (44 FR 75956), included proposed standards for wind energy devices, which are also referred to as Small Wind Energy Conversion Systems (SWECS). Several persons and organizations commented on the setback provisions for wind energy devices. Most of these comments also referenced the applicability criterion for wind energy devices contained in § 456.307(b)(2)(iv) of the Final Rule of November 7, 1979.

The commentors argued that the ¼ acre minimum lot size and 50 foot setback components of the applicability criterion would too severely limit the audience for audits. One commentor argued that these requirements lack substantial basis and that they would seriously and unjustifiably limit an emerging market for residential wind energy devices. Another commentor observed that the applicability criterion for wind energy devices is based on safety considerations, while the other applicability criteria of the final rule reflect concerns not related to safety, such as solar resource availability or the feasibility of installation of insulation materials. Other commentors argued that DOE had not given proper notice and opportunity to comment on the criterion which was contained in the Final Rule of November 7, 1979.

In response to these comments, and others to be identified subsequently, DOE is proposing to modify the applicability criterion for wind energy devices, § 456.307(b)(2)(iv).

2. Discussion of Comments.

In response to comments on the proposed RCS rulemaking of March 19, 1979 (44 FR 75956), DOE established an applicability criterion for each of the designated program measures. As a policy, this action was taken to reduce the number of audits for each program measure which would yield negative cost and savings estimates due to unfavorable local economics, unfavorable local environmental resources, or physical or technical limitations at the site.

In establishing these criteria, DOE also attempted to be responsive to other comments regarding the significant financial burden upon participating utilities and home heating suppliers of training every auditor to audit for each of the somewhat diverse inventory of program measures. To this end, DOE attempted to select criteria which a utility could conceivably utilize prior to a site visit in order to assign a selectively trained auditor to a residence. Although that is not possible for all measures in all situations, the criteria at a minimum should enable an auditor to terminate at an early stage the portion of an audit for measures that are economically or technically inapplicable to the specific residence, thereby reducing (at least in some cases) the amount of time spent at an individual residence. This shortening of average audit length would serve to increase the number of possible audits per auditor per day, and would tend to decrease the manpower associated costs (on the average) to the utility.

With respect to the applicability criterion for wind energy devices, DOE attempted to develop a simple mechanism to enable utilities to perform RCS wind audits only at those residences, within designated climatic zones, for which a wind application would be technically feasible and economically attractive. Because of this need for simplicity, because wind machine performance is dependent upon specific site characteristics, and because of the limited amount of specific site resource data available at that time, DOE established a criterion comprised of three components: a minimum setback, a minimum lot size, and access to the wind resource.

The component of the existing criterion related to access to the wind resource was intended to serve as an indicator of the potential for a wind machine to function properly at the site. Within the context of the DOE model audit procedure, a determination could be made at an early stage of the process as to the specific wind resource availability as correlated to data from the nearest wind measuring station.

The remaining components of the existing criterion (i.e., setback, and lot size) were in large measure drawn from the proposed siting criterion expressed in section 456.706 of the proposed rule of March 1979, and were meant to be indirect indicators of possible physical limitations of a SWECS installation.

In order to make the siting related components uniform and simple to apply, DOE applied the original siting requirement (i.e., 1½ tower heights separation from property lines or rights of way) to nominally sized SWECS to derive the specific 50 foot setback. Although this type of machine could be located on many lots smaller than .75 acre (in light of the 50 foot setback), DOE concluded that .75 acre would nearly always accommodate a SWECS sited according to the minimum requirement for machine setback.

Several commentors stated that DOE established a criterion having societal bias since only homes on lots of .75 acre or larger could be audited for wind energy devices. DOE reiterates that the only intent was to develop criteria indicating technical, economic, or physical limitations to a successful application of a wind device within the RCS program.

With respect to the concern expressed by industry members regarding the likelihood of an adverse impact on their ability to compete in general commerce (i.e., outside of the RCS program), DOE wishes to restate that RCS applicability criteria are meant to be utilized only within RCS as a simple tool in

determining the advisability of conducting or completing an audit. DOE recognizes that there will be many occasions in general commerce when an installation outside these generalized estimating techniques will be technically and economically feasible.

With respect to the commentors' argument that siting and/or safety requirements should be a function of program standards and not applicability criteria, DOE agrees that a separation is desirable, but not absolutely necessary where siting provisions could be employed as indicators of potential physical or technical limitations on equipment installation.

With respect to comments regarding the over restrictive nature of the original criterion, further analysis has indicated that the original criterion may eliminate more audits than contemplated at the time of criterion development. This conclusion is based upon an examination of census and FHA/HUD data which suggests that fewer than 5 percent of single family homes nationwide could qualify for a wind audit under the .75 acre component of the criterion. DOE is concerned that many audits that might result in positive indications would be excluded.

In response to arguments that the original requirement for machine setback had been premised upon unlikely problems (i.e., catastrophic tower failure), and in response to new evidence received through the comments on the proposed wind energy device standards, DOE has examined all available evidence, and now concludes that earlier presumptions regarding tower failure reflect an unlikely occurrence in the case of properly strengthened or guyed towers. DOE believes that it now has the capability to propose a significantly improved criterion which is more consistent with those developed for other program measures.

In developing this proposal, DOE considered a number of options concentrating on the six discussed below.

3. Options Considered.

a. *No or Minor Modification to the Existing Criterion.*

The present criterion consists of three requirements: (1) minimum setback, (2) minimum lot size, and (3) access to wind resource. DOE believes that (1) the setback requirement is most properly treated within the context of program standards; (2) that the lot size requirement could remain in an effective applicability criterion but the minimum size requirement would have to be reduced in order to alleviate the problem of excluding wind energy audits

where wind energy devices may be cost effective; and (3) that wind access should be included in the criterion but a more effective method of determining wind access is now available. (See discussion below on access to wind resources.) DOE has not selected this alternative for proposal since the capability exists to develop a revised criterion which more fully considers the availability and suitability of the wind resource. In the unlikely event that a substantial number of commentors disagree with this position, DOE does not foreclose the possibility of making minor modifications to the existing criterion or to using one of the other alternatives discussed below.

Accordingly, commentors are urged to consider this and the other alternatives.

b. *Availability of Sufficient Wind Resource As the Criterion.*

Sufficient wind resource must be available for effective operation of commercially available residential wind energy devices. Therefore, the availability of sufficient wind resource would be a reasonable applicability criterion. This option, as a resources related indicator of economic feasibility, is more directly in keeping with the criteria for other program measures. A minimum wind speed criterion would tend to curtail the number of audits for those sites where wind devices would be uneconomical. Moreover, this criterion could be applied early in the audit process to curtail the number of wind audits required.

Over the past few years, a substantial effort to characterize the domestic wind resource has been undertaken by a number of parties, including DOE and its field organizations. DOE now believes that sufficient credible data exists, principally through the DOE wind mapping effort, to support a criterion of this nature. The basic data are now available for general use and can be provided to RCS lead agencies upon request. Wind atlases, which characterize this basic data down to grids of approximately 15 miles, will be available in early 1981. It should be noted, however, that these data sources do not represent the only references acceptable to DOE. As elsewhere discussed, DOE is also proposing a clarification of its intent regarding the wind data requirement of § 456.307(c)(10)(iii). If finalized, this clarification would provide the basis whereby a participating utility or State not desiring to utilize the DOE sources could utilize credible data from the nearest qualified wind measuring station.

Credible wind resource data, could be utilized to determine whether the level

of wind energy at the site exceeds the required 10 miles per hour without requiring an actual visit to the residence. (The selection of 10 mph is discussed under "4. Proposed Applicability Criterion"). The chief advantages of this option are the ability to gauge economic feasibility and the ease of application, as compared to the proposed applicability criterion.

Due to physical limitations at an audit site (e.g., obstructions to the wind or insufficient space to locate the wind device), use of this applicability criterion alone would likely result in at least some audits being performed where operation of a wind energy device would not be feasible.

c. *Wind Access As The Criterion.*

Even if sufficient wind resources are available, an important factor in the effective operation of a wind device is unobstructed access to the wind resource. Upwind physical obstructions reduce the resources reaching the wind device, and obstructions in other directions cause turbulence that reduces efficiency.

A procedure has been developed as part of the RCS Model Audit for the assessment of significant obstructions. This procedure reduces substantially the training and judgment which might be required on the part of the auditor to determine applicability under this criterion. Under this procedure (which can be readily specialized to conform to local land properties) an auditor would be required to look for obstructions over 55 feet high and greater than 30 feet wide within 100 feet of the possible wind energy device location. An obstruction of these dimensions would be considered significant and no further wind audit would be required.

Use of this option would eliminate the time and expense of performing wind audits in areas where, due to obstructions, a wind device would not be feasible. This determination could be made onsite in the early stages of the wind audit but would be difficult to assess prior to a site visit. The primary disadvantage of sole use of this applicability criterion is that audits would be performed in areas that lack an adequate wind resource.

d. *Minimum Wind Machine Area as the Criterion.*

This criterion would require that an area exist in which a wind machine can be located free of other structures or trees which allows sufficient space to install, operate and maintain the unit. This minimum wind machine area would be a circle, 15 feet in diameter. Applicability could be determined onsite at an early stage of the audit, or through

a pre-audit telephone interview from the utility or fuel supplier's office.

Currently available residential sized wind energy devices normally range in rotor diameter size from 14 to 24 feet. Clear area alternatives considered for this criterion ranged from a minimum of 15 feet (7 foot radius wind energy device) to a maximum of 30 feet (15 foot radius) with provisions for heavy equipment access to the proposed location. While installation and servicing of many residential sized wind devices does not require the use of heavy equipment such as a crane, the installation, operation, and maintenance requirements are clearly machine dependent. DOE believes that an applicability criterion should reflect the minimum requirements for the use of a measure. Therefore, the area called for by this option (15 foot diameter circle) reflects the minimum radius needed around the tower for installation, operation and maintenance of a small residential sized wind energy device.

The advantage of this criterion is its recognition of a possible physical constraint to installation of a wind device. A major disadvantage of this criterion is that it does not address the limitations implied by consideration of specific machines. For example, installation of a 30 foot diameter SWECS within the 15 foot space may not provide an adequate area for installation and maintenance in all cases. Also, it does not by itself address other relevant issues such as the availability and/or suitability of the wind resource.

DOE believes that consideration of physical onsite constraints is most appropriately reflected in the audit itself or in the siting portion of a purchase decision which follows an audit of the RCS type, rather than as a component of a general applicability criterion.

e. Analysis of Prior Data Gathered at the Site as the Criterion.

This option would require the wind resource to have been measured for a minimum of 12 months at the site where the audit has been requested. Due to variations in wind resources from one site to another, the most accurate method to determine economic viability of a wind device is to perform onsite measurements. One year's data would provide an estimate of annual average wind speed, an indication of the seasonal variations in the wind resource at the site, and an indication of the prevailing wind direction which would allow better assessment of the impacts of existing obstructions.

This option would reduce the need for the auditor to correlate the site resource to that existing at the nearest measuring

station, could improve the accuracy of the cost and savings estimates, and could support a purchase decision immediately following the audit with little further investigation. Some correlation would still be required in order to properly relate the one year's data to historical data recorded at the nearest measuring station(s).

There are several disadvantages to this option. First, large numbers of resource measuring and recording equipment would be required. Second, States or utilities would need to establish additional administrative networks to assure the commonality and credibility of recorded data. Third, to fully characterize the site specific resource, measurements at multiple heights would be required. Fourth, selection of this alternative would necessitate a one to two year delay in wind audits. In light of the time penalties and administrative difficulties presented by this option, DOE considers it inappropriate for the RCS at this time.

f. No Applicability Criterion.

This option would require that wind audits be performed for all households within categories and climate zones designated by DOE in Appendix I to the Final Rule. Use of this option would be inconsistent with the requirements for other measures and could imply that wind energy devices are universally applicable and can be employed without any limitations.

DOE believes that if no criteria were developed, a significant increase in the number of wind audits would increase program costs without providing assurance of a commensurate increase in program benefits.

A variation of this option would be to require States to develop their own applicability criterion, subject to DOE approval. Such a requirement would be inconsistent with the treatment of other program measures and would tend to promote nonuniform treatment for SWECS throughout the country. The result would be delegation of a tough decision to a different level of Government, and could require an additional administrative system for monitoring and enforcing. It should be noted that States currently have the opportunity to adjust the Federal applicability criteria, subject to DOE approval.

4. Proposed Applicability Criterion.

Based on its assessment of the several options considered, DOE is proposing a modified wind energy device applicability criterion that combines two of the previously discussed options—wind resource and wind access. The proposed applicability criterion requires that a site have (1) an estimated wind

resource greater than 10 miles per hour at 10 meters above ground level, on an annual average basis, and (2) sufficient unrestricted access to the wind. This approach combines the strengths of two of the previously discussed options. Wind resource data are now available to allow for an estimate of a particular area's wind resource without the need for an onsite inspection. Once on site, an auditor could readily determine whether there are local wind obstructions that would reduce the resource to a level where small wind energy conversion systems would not operate satisfactorily.

DOE does not mean to imply that a wind energy device will not be economically viable in all cases where the annual average wind speed is less than 10 mph. Nor does DOE intend for this 10 mph criterion to necessarily have application beyond the RCS Program. There are many situations where a high-wind resource during certain times of year will be offset by a very low wind resource the rest of the year, producing an annual average lower than 10 mph. In such a case, where the competing fuel is particularly expensive or its use is high during a high wind resource period of the year, a wind device could still produce substantial energy and cost savings. This is not, however, the general situation. For the purpose of reducing the number of wind audits that would result in a negative recommendation, DOE believes that a national index of 10 mph is a reasonable minimum for use within the RCS Program. Until the small scale wind atlases are available, this means that in order for any residence to receive a wind audit, the average annual wind speed at the qualified measuring station nearest that site must be at least 10 mph at 10 meters above ground level. It is noted that the DOE Model Audit procedure will provide for a site-specific approximation of wind resource, based on the wind resource at the nearest qualified measuring station and the general topography in the immediate vicinity of the site.

This criterion was developed through application of a generalized (Rayleigh) wind speed distribution and nominal performance characteristics of currently available wind energy systems in the size range appropriate for residential applications. The Rayleigh distribution provides a specific statistical distribution that makes it possible to use the annual average wind speed to estimate the energy potential of wind resources at a site.

Current state of the art wind energy systems for residential applications

have minimum cut-in speeds of 7 mph with most machines having 8 mph or greater cut-in speeds. Rated wind speeds for currently available wind systems are a minimum of 20 mph, with most systems being rated at higher wind speeds.

A combination of a Rayleigh distribution and generalized wind system characteristics was used to obtain the following information for a group of annual average wind speeds of 8 mph to 11 mph:

- Proportion of time that no power could be obtained from the wind energy system (i.e., wind below machine cut-in speed),
- Proportion of time that rated power is obtained from the wind system (i.e., wind speed is at least equal to rated speed), and
- Estimated overall capacity factor (i.e., ratio of annual energy produced by wind system to the energy that would be produced if the wind system operated continuously at rated power).

The results are shown below:

Annual average wind speed	Percentage of time that—		Overall capacity factor
	No power is produced	Rated power is produced	
8	55	0	0.12
9	49	1	0.16
10	37	4	0.25
11	30	9	0.32

For average annual wind speeds of 8 and 9 mph, the wind system will produce no power for about half the time (or more). In addition, the system rated power will essentially never be obtained. Overall capacity factors are thus quite low (0.12 to 0.16) indicating that the likelihood of attaining a cost-effective wind system installation is very low.

At the 10 mph average annual wind speed, the proportion of time that no power is produced drops to slightly more than 1/2 and rated power is produced 4 percent of the time, leading to an estimated overall capacity factor of 0.25. This performance level could offer the prospect of a cost effective installation, depending on competing fuel price costs and other factors. In terms of selecting a minimum wind speed value to obtain a wind energy audit under RCS, DOE believes that annual average wind speeds below 10 mph are not attractive enough to routinely warrant the conduct of an RCS audit.

From an operational standpoint, the choice of 10 mph as the threshold value is workable since the DOE wind data base currently has such resource data

for 1,200 data points. The detailed wind atlases being prepared by DOE, and soon to be available for general use, will explicitly indicate geographic areas with potential wind resource levels below 10 mph.

5. Impact of Proposed Applicability Criterion.

The proposed modification in wind applicability criterion has implications for RCS program effectiveness, the cumulative amount of auditor time spent on wind audits, and the resources required of States, utilities, and home heating suppliers for program implementation. These, in turn, effect the costs and benefits of the program as a whole. DOE believes that the proposed change will result in a more effective targeting of program resources to those residences likely to act positively on information provided through the audit without imposing unreasonable burdens on participating States, utilities, and fuel suppliers.

The proposed change would eliminate the need for wind audits in specific areas that have marginal or insufficient wind resources but are part of a larger area that has been designated for wind energy audits. The proposal would increase the number of wind audits offered to residences within those general areas which do have sufficient wind resource. Utilities and fuel suppliers in areas with adequate wind resource would be required to perform more wind audits under the proposed change, while utilities in areas having an inadequate resource, and currently required to perform audits, would not have to do so.

To assess the potential impact of the proposed applicability criterion, DOE examined sample wind resource and housing data at the county and State level. Population and single family residence distributions were examined for the areas where wind is a program measure. This data suggests that the 10 mph criterion alone would eliminate approximately one-half of the residences in the designated areas.

Although it is difficult to quantify the number of residences that will have a significant obstruction to the available wind resource, this criterion will considerably reduce the number of residences eligible for a complete wind audit. This reduction will occur primarily in the core portion of urban areas, thereby tending to focus wind audits in more suburban or rural areas.

An analysis of the proposed criterion at the State level indicates that the requirement for wind audits will be reduced substantially in thirteen States and be increased substantially in twelve States. The remaining States will

experience some increase in audit activity. In the composite, it appears that the proposed change in applicability criterion for wind energy devices would increase the number of residences that would be eligible for a wind audit nationwide as compared to the current criterion, but not to an unreasonable degree in light of program objectives.

DOE believes the level of audit requirements would more closely approximate those contemplated at the time of development of the existing criterion and will certainly fall within the boundaries discussed in the final Regulatory Analysis.

DOE recognizes that the proposed change would place an increased burden on RCS planning resources, especially in those States where planning activities are already well underway based on existing applicability criteria. The direction and magnitude of the impact would vary among States depending on the nature of existing wind audit requirements. DOE believes the introduction of the proposed applicability criterion would favorably effect the planning process for many States by providing a more definitive representation of where wind auditors would be required in that State.

In those States where the number of wind audits would increase or decrease as a result of the proposed change, the requirement for training activities would be affected. However, the proposed applicability criterion would enable States to better determine the areas of the State where wind related training will be required, whereas the current applicability criteria would require training for wind audits in all areas where wind is a program measure. This targeting of training activities should result in a reduction of training costs.

As a result of recent field trials of the Model Audit, DOE estimates that training for the wind audit would represent approximately 10-15 percent of the auditor training for all renewable resource measures. This is significantly less than original estimates and would result in a reduction in program costs. Additionally, as a result of development of the Model Audit, DOE is now convinced that the skills required to perform a wind audit are consistent with the skills required to perform audits for other RCS measures, and DOE believes that one individual can be trained to perform audits of all RCS measures, including wind. DOE concludes that the increase in the number of wind audits should be offset, on the average, by a decrease in the amount of time required for auditor training and qualification.

DOE does not anticipate any other significant impacts on costs to States.

DOE Model Audit field trials indicate that it takes ten to fifteen minutes on site to perform a wind audit. This is substantially less time than earlier estimates used to assess the program cost. Thus, any increase in the number of audits will be substantially offset by the reduced average time on site. On balance, DOE expects a moderate increase in RCS costs to utilities and home heating suppliers corresponding to an increase in the number of wind audits offered.

II. Regulatory Analysis and Urban Impact Assessment

The President, by Executive Order 12044, has directed agencies of the Executive Branch to conduct a Regulatory Analysis of regulations that they prepare that are likely to have a major economic impact. In accordance with OMB Circular A-116, an Urban and Community Impact Assessment should be prepared when the proposed rule is a major policy and program initiative. This assessment should be incorporated into the Regulatory Analysis.

DOE determined that the Residential Conservation Service Program, authorized under Title II, Part 1 of the National Energy Conservation Policy Act, was a major action and required preparation of a Regulatory Analysis and an Urban and Community Impact Assessment. Consequently, the Department prepared the two analyses in draft in conjunction with the publication of the Proposed Rule for the RCS Program on March 19, 1979 (44 FR 16546). These analyses were finalized for publication in conjunction with the Final Rule which was published November 7, 1979 (44 FR 64602). This proposed rule does not constitute a major action since it does not significantly impact the November 7, 1979 regulation. DOE has analyzed the potential impact of the proposed applicability criteria for wind energy devices and concluded that it would not have a substantial effect on the RCS program. See discussion in I.B of this section.

III. Environmental Impact Statement

In accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, DOE prepared an Environmental Impact Statement for the entire Residential Conservation Service Program. The subject matter of this rulemaking was evaluated in the programmatic Environmental Impact Statement. A notice of availability of the Final Environmental Impact Statement

was published in the *Federal Register* on November 7, 1979 (44 FR 64602). A copy of the final Environmental Impact Statement may be obtained by writing: Mr. James R. Tanck, Director, Residential Conservation Service Program, Office of the Assistant Secretary for Conservation and Solar Energy, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, D.C. 20585.

IV. Consultation With Other Federal Agencies

In preparing this Proposed Rule, DOE consulted with representatives of the National Bureau of Standards and the Consumer Product Safety Commission.

V. Contractor Contributions to the Rulemaking

The following entities have made contributions to this proposed rulemaking:

The Solar Energy Research Institute (SERI); Rocky Flats Plant of North American Rockwell; and Science Applications, Inc. (SAI) assisted in the development of the proposed standard for wind energy systems.

VI. Executive Order 12044

Executive Order 12044 (43 FR 12661, March 23, 1978) generally requires agencies to provide the public at least 60 days to comment on proposed significant regulations. DOE's implementing procedures are contained in DOE Order 2030 (44 FR 1032, January 3, 1979). DOE feels that for the reasons listed below it is necessary and reasonable to reduce the comment period to 30 days.

First, most of the amendments proposed in this rule are not "significant" inasmuch as they are not expected to effect important policy concerns or to engage public interest.

Secondly, the November 9, 1979 Final Rule required lead agencies to submit State Plans for approval by June 4, 1980. The plans must be approved or disapproved by DOE within 90 days from submission. Utilities must begin the program within 6 months of DOE's approval. Therefore, it is imperative that DOE implement these provisions as expeditiously as possible to provide adequate notice for implementation of the plans.

VII. Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed procedures, requirements, and criteria. Comments should be submitted to the address indicated in the addresses section of this

preamble and should be identified on the envelope and on the documents submitted to DOE with the designation "Residential Conservation Service Program [Docket No. CAS-RM-101]." Fifteen copies should be submitted. All written comments must be received by September 10, 1980, 4:30 p.m., e.s.t., to ensure consideration.

All written comments received on this Proposed Rule will be available for public inspection in the DOE Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday. Any information or data considered by the person furnishing it to be confidential must be so identified and one copy submitted in writing. DOE reserves the right to determine the confidential status of the information or data and treat it according to its determination.

In consideration of the foregoing, the Department of Energy proposes to amend Chapter II, Title 10 of Part 456 of the Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., on August 4, 1980.

Thomas G. Stelson,
Assistant Secretary, Conservation and Solar Energy.

VIII. Amendments

1. On page 64626, third column, fourth full paragraph, delete the word "lender" and insert in lieu thereof the word "biller".

2. On page 64631, first column, at the end of the third full paragraph, add the following sentences:

DOE's intent in including this section was to insure an adequate procedure by which a customer may have recourse against a contractor. DOE believes that new legislation would not be necessary in most jurisdictions where an injured party may rely on pre-existing negligence or contract laws. This section was not intended to require initiation of new laws affecting States' sovereign immunity.

3. On page 64636, third column, amend the sixth full paragraph to read as follows:

Federal Specification HH-I-1030A is referenced for its requirement and test for corrosiveness. Federal Specification HH-I-515D is referenced for its requirements and tests for odor emission and fungi resistance. As with mineral fiber loose fill, requirements for moisture adsorption were deleted from the final rule.

4. On page 64639, amend the last paragraph, second sentence, by adding a

period after the word "requirements". Delete the remainder of that sentence and insert a new sentence which reads as follows: "Only core materials, however, need be tested."

5. On page 64641, first full paragraph, amend the second sentence to read as follows: "The purpose of exterior storm windows is primarily to provide an insulating air space and not to reduce infiltration."

§ 456.105 [Amended]

6. On page 64662, third column, § 456.105(f)(3)(iii), insert following the words "Modification" and "modification" the phrases "(Vent Damper)" and "(vent damper)", respectively.

7. On page 64662, third column, § 456.105(f)(3)(iv), delete the phrases "Electrical or Mechanical Ignition System" and "electrical or mechanical ignition system" and insert in lieu thereof the phrases "Intermittent Pilot Ignition Device (IID)" and "intermittent pilot ignition device (IID)".

8. On page 64663, first column, § 456.105(f)(5), add the following sentence at the end thereof: "The term 'ceiling insulation' also includes such material installed on the exterior of the roof."

9. On page 64663, third column, § 465.105(g)(3), delete the temperature "68°F" and insert in lieu thereof "65°F".

10. On page 64664, third column, § 456.105(v)(4)(iv), delete the phrase "South-facing (+ or 45° of True South)" and wherever the phrase "window heat gain retardant" appears insert the phrase "and/or loss" after the phrase "window heat gain". Following the word "through" insert the phrase "or wintertime heat loss".

§ 456.106 [Amended]

11. On page 64665, first column, § 456.106, line 4, change the phrase "and eligible customer" to read "an eligible customer".

12. On page 64665, first column, insert a new § 456.107 as follows:

§ 456.107 Request for confidential treatment.

(a) *Request.* If you wish to file a document with DOE claiming some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (FOIA), 5 U.S.C. 552, or is otherwise exempt by law from public disclosure, and if you wish to request that DOE not disclose information, you must comply with the DOE FOIA regulations set forth in 10 CFR 1004 (44 FR 1908, Jan. 8, 1979).

(b) *Disposition of request.* DOE retains the right to make its own determination with regard to any claim of confidentiality. Notice of the decision by DOE to deny such claim, in whole or in part, and an opportunity to respond thereto, will be given to the person claiming confidentiality of the information no less than seven days prior to the public disclosure of such information.

(c) *Document by document identification.* Each request for confidential treatment must be made with respect to each separately identified document and must be made at the time that document is first submitted to DOE.

§ 456.205 [Amended]

13. On page 64666, first column, § 456.205(e)(2), add the following sentence at the end: "Exception: The Assistant Secretary may, for good cause shown, waive any of the submission requirements for proposed amendments."

§ 456.304 [Amended]

14. On page 64667, second column, delete § 456.304 (d)(2) and (d)(3), and insert in lieu thereof: "(2) not have an adverse effect on competition."

§ 456.306 [Amended]

15. On page 64668, first column, § 456.306(a)(10), delete the phrase "finances the sale or installation of such measures" and insert in lieu thereof the phrase "is a lender listed in accordance with § 456.312(b)(3)".

§ 456.307 [Amended]

16. On page 64668, third column, § 456.307(b)(2)(iii), delete the phrase "and the building is not a mobile home;" and change the coma to a semi-colon.

17. On page 64669, first column, § 456.307(b)(2)(iv), delete the existing paragraph (iv) and insert in lieu thereof the following paragraph:

(iv) With respect to wind energy devices: (A) the estimated average annual wind resource in the vicinity of the site is 10 miles per hour, or greater, at 10 meters (33 feet) above ground level; and (B) there are no major wind obstructions over 55 feet high, greater than 30 feet wide, within 100 feet of a potential location for the wind energy device.

18. On page 64669, first column, § 456.307(b)(2)(xii), delete the word "part" and insert in lieu thereof the word "pool".

19. On page 64669, first column, delete § 456.307(b)(2)(xvii).

20. On page 64669, second column, § 456.307(b)(6)(i), delete the phrase "has been" and insert in lieu thereof the phrase "will be".

21. On page 64669, second column, § 456.307(b)(6)(iii), delete the phrase "and received".

22. On page 64669, third column, § 456.307(c)(2), following the word "insulation" insert the phrase "and active solar space heating systems and combined active solar space heating and solar domestic hot water systems".

23. On page 64670, second column, § 456.307(c)(10)(iii), delete the existing paragraph (iii) and insert in lieu thereof, the following paragraph (iii):

(iii) The average yearly wind speed at the nearest qualified wind measurement station and the relationship between that data and the likely wind speeds at the residence. A qualified wind measuring station is one which meets the following minimum requirements:

(A) The anemometer is located no less than 10 meters (33 feet) above ground level;

(B) Data used to determine the annual average wind speed has been collected for one year or more and contains at least one month's continuous hourly reading for every four-month period of time; and

(C) Calibration of the data collection and recording instrument(s) had been certified by the instrument manufacturer(s) at the time of purchase; and

24. On page 64670, third column, § 456.307(e)(2), second sentence, delete the phrase "supplies, installs or finances and sale or installation of program or State measures" and insert in lieu thereof the phrase "is a supplier, installer or lender listed in accordance with § 456.312(b)".

§ 456.308 [Amended]

25. On page 64671, second column, § 456.308(d), second sentence, delete the phrase "supply or install program measures" and insert in lieu thereof the phrase "are listed in accordance with § 456.312(b) (1) or (2)".

§ 456.309 [Amended]

26. On page 64671, third column, § 456.309(d), second sentence, delete the phrase "finance program measures" and insert in lieu thereof the phrase "are listed in accordance with § 456.312(b)(3)".

27. On page 64671, third column, § 456.309, insert a new paragraph (h) as follows:

(h) Prohibit each covered utility and participating home heating supplier from arranging financing for the purchase or installation of furnace efficiency modifications, devices associated with load management techniques, and wind energy devices for installation by the eligible customer unless such customer is qualified to perform such installation pursuant to § 456.314.

§ 456.310 [Amended]

28. On page 64672, second column, § 456.310(b)(3)(i), delete the word "random".

§ 456.311 [Amended]

29. On page 64672, second column, § 456.311(a)(1), following the word "charge" insert the phrase "by a covered utility or a participating home heating supplier".

30. On page 64672, third column, § 456.311(b)(1), second sentence, delete the word "monthly" and insert in lieu thereof the word "periodic".

§ 456.312 [Amended]

31. On page 64673, third column, § 456.312(b)(1)(iv), delete the existing paragraph (iv) and insert in lieu thereof the following paragraph:

(iv) Comply with any applicable qualification requirements set forth in the State Plan pursuant to § 456.314.

32. On page 64673, third column, § 456.312(b)(1)(vii), delete the entire sentence and insert in lieu thereof the following sentence: "Have a performance bond sufficient in the judgment of the lead agency to aid in protecting eligible customers."

33. On page 64673, third column, § 456.312(b)(2)(ii), following the word "applicable" insert the word "material".

34. On page 64674, first column, renumber existing § 456.312(b)(4) as § 456.312(b)(5) and insert a new § 456.312(b)(4) as follows:

(4) The State Plan shall require that all installers of vent dampers and IID's included in the Master Record have liability insurance sufficient in the judgment of the Governor to indemnify themselves against possible liability arising from installation when installing such measures under the circumstances described in the State Plan pursuant to § 456.305.

§ 456.313 [Amended]

35. On page 64674, third column, § 456.313(b)(1)(i), insert at the end thereof: "(F) Combined active solar space heating and solar domestic hot water systems."

§ 456.314 [Amended]

36. On page 64675, first column, § 456.314(a)(6), delete the phrase "steady state" and insert in lieu thereof the word "seasonal".

37. On page 64675, second column, § 456.314(f), insert the following sentences after the first sentence:

*** This description shall identify the State entity(ies) responsible for conducting training, testing or any other qualification methods. The State entity(ies) may assign duties to another person for the purpose of aiding in the performance of such duties, but the lead agency or another State entity and no other persons, shall be ultimately responsible for developing the qualification methods and for designating individuals as qualified.

§ 456.503 [Amended]

38. On page 64679, second column, § 456.503, delete the word "Exception" in the title and insert in lieu thereof the word "Exemption".

§ 456.504 [Amended]

39. On page 64679, second column, § 456.504, delete the word "Exception" in the title and insert in lieu thereof the word "Exemption".

§ 456.505 [Amended]

40. On page 64679, third column, § 456.505(a)(1), delete the word "covered" and insert in lieu thereof the word "regulated".

41. On page 64679, third column, § 456.505(b), amend the referenced to "paragraph (a)(2)(i)" to read "paragraph (a)(2)(ii)".

§ 456.506 [Amended]

42. On page 64679, third column, § 456.506, delete the word "Exception" in the title and insert in lieu thereof the word "Exemption".

43. On page 64679, third column, § 456.506(a)(1), insert after the word "regulation" the phrase "in effect on November 9, 1978,".

§ 456.507 [Amended]

44. On page 64680, first column, § 456.507(b), delete the first sentence and insert in lieu thereof following sentence:

*** In addition to any other requirement that may be applicable, any utility making an application or petition under this section shall give direct notice to the Governor, State Energy Office, and State Regulatory Authority of any State in which such exemption or waiver would be applicable, informing

them that they have ten days from the date the application or petition is filed with the Assistant Secretary to submit comments to the Assistant Secretary on the application or petition.

45. On page 64680, first column, insert a new § 456.509 that reads as follows:

§ 456.509 Certain exempt activities and compliance with accounting, costing, billing, and repayment provisions.

Any covered utility conducting activities pursuant to the exemptions provided for in § 456.503 or § 458.504(b) or the waiver provisions of § 456.505 shall comply with the requirements of §§ 456.310(a), (b) (2), (3), and (5), and § 456.311 with respect to those activities. Any covered utility carrying out activities pursuant to the exemptions provided for in § 456.504(a) shall, within such reasonable time as the Secretary prescribes, comply with the requirements of §§ 457.310(a), (b)(2), (3), and (5) and § 456.311 with respect to such activities.

§ 456.602 [Amended]

46. On page 64680, second column, § 456.602(a), amend the reference to "§ 456.206" to read "§ 456.205".

§ 456.802 [Amended]

47. On page 64681, third column § 456.802(a)(1), delete the phrase "marked, 'Conforms to DOE Standards,'" and insert in lieu thereof the phrase "identified as conforming to DOE standards."

48. On page 64682, first column, § 456.802(b)(6), amend the reference to "ASTM 576-76" to read "ASTM E 576-76".

49. On page 64682, second column, § 456.802(b)(25), amend the references to "HH-I-0125B" to read "HH-I-1252B".

50. On page 64682, second column, § 456.802(b)(29), correct the word "preassembled" to read "preassembled".

Table I [Amended]

51. On page 64683, second and third columns, amend the Table I title to read as follows "Coverage Chart for Cellulosic Loose Fill Insulation", and amend Table II title to read "Coverage Chart for Loose-Fill Insulation (other than Cellulosic)".

52. On page 64683, second and third columns, footnote to Table I, delete the phrase "recommended installed" and insert in lieu thereof the word "settled".

§ 456.804 [Amended]

53. On page 64683, first column, § 456.804(b)(6), delete the phrase ", and shall include the following information:" and insert in lieu thereof the following:

If a product is tested and meets the requirements of ASTM E-136 and is labeled as such, it need not be labeled with the specific requirements of CPSC Part 1404 relating to vents and chimneys. Each bag shall also be marked with the following information: * * *

54. On page 64683, first column, § 456.804(b)(6)(iv), insert the following sentence after the word "different": "Products not intended for sidewall applications shall be labeled with a statement to that effect and need not carry the sidewall portion of the coverage chart."

55. On page 64683, second column, § 456.804(b)(6)(v), insert the phrase "or a CPSC approved label" following the word "statements".

§ 456.805 [Amended]

56. On page 64683, second column, § 456.805(b)(1)(i), delete the phrase "(known as Type I)".

57. On page 64683, third column, § 456.805(b)(1)(i), delete the phrase "(known as Type III)".

58. On page 64684, first column, § 456.805(b)(7), delete the phrase ", and shall include the following information:" and insert in lieu thereof the following:

If a product is tested and meets the requirements of ASTM E-136 and is labeled or marked as such, it need not be labeled with the specific requirements of CPSC Part 104 relating to vents and chimneys. Each bag shall also be marked the following information: * * *

59. On page 64684, first column, § 456.805(b)(7)(ii), insert the phrase "or a CPSC approved label" following the word "statements".

§ 456.806 [Amended]

60. On page 64684, second column, § 456.806(b)(5)(v), amend the fifth line to read "of application if the coverage is".

§ 456.808 [Amended]

61. On page 64684, third column, § 456.808(b)(4), delete the word "and" and capitalize the word "the" in paragraph (iii), and insert thereafter the following new paragraph (iv): * * *

(iv) "Products not intended for interior application shall contain the following statement instead: 'Intended for exterior application only.'" * * *

§ 456.809 [Amended]

62. On page 64684, third column, § 456.809(b)(3)(ii), insert a new paragraph (A) heading as follows: "(A) For products intended for interior application:" before the phrase "Interior

Applications * * *". At the end of paragraph (B), insert the following new paragraph (B): * * *

(B) Products not intended for interior applications shall contain the following statement instead: "Intended for exterior application only" * * *

§ 456.811 [Amended]

63. On page 64684, third column, § 456.811(a), insert the word "foil" following the word "aluminum".

§ 456.812 [Amended]

64. On page 64685, first column, § 456.812(a), delete the word "of" and insert in lieu thereof the word "or".

§ 456.813 [Amended]

65. On page 64685, third column, § 456.813(b)(6), delete the notation "/c" following the number "0.00075 m³".

66. On page 64685, third column, § 456.813(b), insert the following new paragraph (8): * * *

(8) As an alternative to meeting provisions (b)(1) through (b)(7), HUD Use of Materials Bulletin #39 may be substituted for use with aluminum windows, and HUD Use of Materials Bulletin #59 may be substituted for use with wood windows. * * *

§ 456.814 [Amended]

67. On page 64686, first column, § 456.814(e), amend the reference to "UL 599" to read "UL 559".

68. On page 64686, first column, § 456.814(g)(1)(ii), amend the reference to "ANSI XZ 21.67-978" to read "ANSI Z21.67-1978".

§ 456.903 [Amended]

69. On page 64687, third column, § 456.903(b)(26), Note 1, amend the word "draft" to read "kraft".

70. On page 64687, third column, § 456.903(b)(28), amend the phrase "frame spread" to read "flame spread".

§ 456.905 [Amended]

71. On page 64688, third column, § 456.905(c)(3)(A), amend the reference to "1 ft 2" to read "1 ft 2".

72. On page 64689, first column, § 456.905(c)(3)(B), amend the references to "1 ft 2" and "300 ft" to read "1 ft 2" and "300 ft", respectively.

§ 456.906 [Amended]

73. On page 64690, third column, § 456.906(c)(2)(i)(C), amend the reference to "(90² mm)" to read "(900 mm)".

§ 456.907 [Amended]

74. On page 64692, first column, § 456.907(c)(2), delete the existing sentence and insert in lieu thereof the following sentence: "For interior applications of rigid board insulation on walls and ceilings, install, on all exposed faces and edges of the insulation material, a cover of gypsum board 12.5 mm (0.5 inches) thick, or an equivalent fire barrier when tested in accordance with ASTM E-119-76."

75. On page 64692, second column, § 456.907(d)(1), delete the last sentence and insert in lieu thereof the following sentence: "Insulation board must be covered on all sides with 6-mil polyethylene or equivalent."

76. On page 64694, second column, § 456.907(f)(3)(v), delete the first sentence and insert in lieu thereof the following sentence: "After all insulation board is applied, install a cover of gypsum board 12.5 mm (0.5 inches) thick, or an equivalent fire barrier when tested in accordance with ASTM E-119-76."

77. On page 64695, first column, § 456.907(i)(3)(iv), delete the existing sentence and insert in lieu thereof the following sentence: "Install a cover of gypsum board 12.5 mm (0.5 inches) thick, or an equivalent fire barrier when tested in accordance with ASTM E-119-76."

78. On page 64694, third column, § 456.907(h)(4)(i), delete the sentence and insert in lieu thereof the following sentence: "Ensure that all surfaces and edges of insulation board are covered with gypsum board 12.5 mm (0.5 inches) thick, or an equivalent fire barrier when tested in accordance with ASTM E-119-76."

79. On page 64695, second column, § 456.907(j)(3)(iv), delete the existing sentence and insert in lieu thereof the following sentence: "Install a cover of gypsum board 12.5 mm (0.5 inches) thick, or an equivalent fire barrier when tested in accordance with ASTM E-119-76."

80. On page 64695, second column, § 456.907(j)(4)(i), delete the existing sentence and insert in lieu thereof the following sentence: "Ensure that all surfaces and edges of insulation board are covered with gypsum board 12.5 mm (0.5 inches) thick, or an equivalent fire barrier when tested in accordance with ASTM E-119-76."

§ 456.908 [Amended]

81. On page 64696, third column, § 456.908(b)(1)(iii), Note 2, delete the word "approximate" and insert in lieu thereof the word "appropriate".

§ 456.910 [Amended]

82. On page 64697, third column, § 456.910(a), amend the reference to "Figure 1" to read "Figure 4".

83. On page 64698, the sample "Certification of Insulation" is "Figure 4", not "Figure 1".

§ 456.911 [Amended]

84. On page 64699, § 456.911, delete (a) through the end of (g), column 2 on page 64703. Replace with the following:

The installation of storm windows, thermal windows, multi-glazing units, and storm doors and thermal doors shall be done in accordance with ASTM E-737-80 "Standard Practice for the Installation of Storm Windows, Replacement Windows, Multi-glazing, Storm Doors, and Replacement Doors." For purposes of this installation practice thermal windows and doors shall meet the definition contained in § 456.105(f)(11) and be treated as replacement windows and doors.

§ 456.912 [Amended]

85. On page 64703, third column, § 456.912(b)(2), amend the reference to "Figure 7" to read "Figure 8".

86. On page 64703, third column, § 456.912(b)(3)(ii), amend the reference to "Figure 8" to read "Figure 9".

87. On page 64703, third column, § 456.912(b)(3)(iii), amend the reference

to "Figure 8" to read "Figure 9".

88. On page 64703, third column, § 456.912(b)(4)(i), amend the reference to "Figure 9" to read "Figure 10".

89. On page 64704, amend the references to "Figures 7", "8", and "9" to read "8", "9", and "10" respectively.

90. On page 64705, first column, § 456.912(b)(4)(ii), amend the reference to "Figure 9" to read "Figure 10".

§ 456.913 [Amended]

91. On page 64705, third column, § 456.913(b)(1)(xviii), amend the reference to "Figures 10 or 11" to read "Figures 11 or 12".

92. On page 64706, amend the reference to "Figure 10" to read "Figure 11".

93. On page 64707, amend the reference to "Figure 11" to read "Figure 12".

94. On page 64708, first column, § 456.913(d)(1), amend the word "handbook" to read "handbook".

§ 456.914 [Amended]

95. On page 64709, first and second columns, § 456.914, amend Appendix A to Subpart I, which reads as follows:

$$N_{SS} = 100 - L_{L,A} - L_{S,SS,A}$$

$$R_{T,F} = A + \frac{B}{X_{CO_2,S}}$$

$$L_{S,SS,A} = \frac{100}{HHV_A} \sum_{i=1}^5 [(i + A/F)(CF(i) + (A/F)(R_{T,F} - 1)(CA(i))) \times [(T_{F,SS} + 460)^i - (T_{RA} + 460)^i]]$$

to correctly read as follows:

$$N_{SS} = 1000 - I_{L,A} - L_{S,SS,A}$$

$$R_{T,F} = A + \frac{B}{X_{CO_2,S}}$$

$$L_{S,SS,A} = \frac{100}{HHV_A} \sum_{i=1}^5 [(1 + A/F)(CF(i) + (A/F)(R_{T,F} - 1)(CA(i))) \times [(T_{F,SS} + 460)^i - (T_{RA} + 460)^i]]$$

96. On page 64709, second column, § 456.914, Appendix A to Subpart I, amend the first sentence to read as

follows: "The steady state efficiency of the furnace may be determined directly from Figure 11 for furnaces using No. 1

fuel oil or from Figure 12 for furnaces using No. 2 fuel oil."

Appendix I—[Amended]

97. On page 64710, first column, Appendix I, section (d), following the word "displayed" insert the phrase "by inclusion of an 'X'."

98. On pages 64711 to 64725, Appendix I, move all numbers listed next to the

"X" in all columns labeled "Solar Domestic Hot Water Systems" to the columns labeled "Active Solar Space Heating Systems".

99. On page 64720, Appendix I, after the first row, which begins "New York (continued)", insert a new row (the same notation as for "South Carolina 2" on page 64722) as follows:

"North Carolina	2	Electricity	22	X		X	X	X"
		Gas	19	X				
		Oil	19	X			X	
		Electric Heat Pump	19	X				

100. On page 64720, Appendix I, after the fifth row, which begins "North Dakota", insert a new row for Ohio

(indicating the same program measures as for "Oregon 5" on page 64721) as follows:

"Ohio	5	Electricity	30	X	19	X	X	"
		Gas	30	X	11	X		
		Oil	30	X	11	X		
		Electric Heat Pump	30	X	11	X		

101. On page 64726, second column, amend the address of BOCA to read as follows: "179265 Halsted Street,

Chicago, Illinois 60430".

[FR Doc. 80-24179 Filed 8-8-80; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY

10 CFR Part 456

Interpretation of Title V, Subtitle B of the Energy Security Act (S. 932)

AGENCY: Department of Energy.

ACTION: Interpretative rule.

SUMMARY: The General Counsel of the Department of Energy (DOE) hereby interprets Title V, Subtitle B, of the Energy Security Act (ESA), June 30, 1980, which amends the National Energy Conservation Policy Act (NECPA), with respect to the Residential Conservation Service (RCS) Program (10 CFR Part 456). The major amendments to NECPA affect (1) the warranty requirements, (2) treatment of utility costs, and (3) the prohibition against utility supplying, installing and financing of residential energy conservation measures. Pursuant to NECPA, DOE is required to review and approve or disapprove RCS plans in accordance with the RCS regulations, within 90 days of submission. In most cases, the approval/disapproval date is September 2, 1980. Since the ESA amendments were made effective upon enactment (June 30, 1980), the NECPA authority for the RCS regulations has been repealed by the ESA in certain areas and new requirements have been mandated. DOE intends to issue regulations within 120 days which will amend the existing regulations to comport with the ESA amendments.

In the meantime, however, the plan review process must continue without delay. Therefore, this notice sets forth DOE's interpretation of the immediate effect of the ESA on the plan review process.

EFFECTIVE DATE: August 11, 1980.

FOR FURTHER INFORMATION CONTACT: Laura Rockwood, U.S. Department of Energy, Office of General Counsel, 1000 Independence Avenue, S.W., Room 1E-258, Washington, D.C. 20585, (202) 252-9519.

SUPPLEMENTARY INFORMATION:**Background**

On June 30, 1980, the Energy Security Act (ESA), Pub. L. 96-294, 94 Stat. 611, was signed into law. Subtitle B of Title V of ESA (reproduced in Appendix I) amends Part I of Title II of the National Energy Conservation Policy Act (NECPA), 42 U.S.C. 8211 *et seq.*, 92 Stat. 3206 *et seq.*, which established the Residential Conservation Service (RCS) Program. DOE issued final RCS regulations on November 7, 1979.

The ESA provides for the following major amendments, among others, to the RCS program: (1) a revised warranty provision for manufacturers of

conservation and renewable resource measures which amends the scope of the warranty and reduces the warranty period from 3 years to 1 year; (2) a new one-year contractor's warranty; (3) deletions and additions to the utility cost and accounting provisions; (4) elimination of the prohibition against utility financing of measures; (5) and relaxation of the prohibitions against utilities supplying and installing measures. Pursuant to section 549(a) of ESA, the amendments made by Title V, Subtitle B of ESA were made effective on the date of enactment (June 30, 1980). Section 549(d) states, however, that these amendments shall not cause any delay in the deadlines for submission and approval or disapproval of the RCS plans submitted under NECPA. Because State and nonregulated utility RCS plans were due on June 4, 1980, the plans do not reflect the changes mandated by ESA. Since the amendments are effective immediately, DOE cannot approve an RCS plan which does not meet the minimum requirements of NECPA as amended by ESA. Therefore, DOE issues this interpretive rule to set forth DOE's interpretation of the immediate effect of the ESA on the RCS plan review process. Although DOE will issue proposed rules implementing the ESA amendments to the RCS program within the next few months, and final rules to follow, all RCS plans must comply with existing law as soon as possible in order to begin the RCS program on time.

DOE will therefore require that each State and non-regulated utility agree to incorporate the new requirements of ESA into their plans before DOE approves them. DOE will issue guidance to each State or utility regarding the particular amendments which their plan would require, although information provided in this notice, especially in the two appendices, should enable the States to begin amending their plans at once.

Discussion*I. State and Nonregulated Utility Plans.*

The ESA amendments can be divided into three groups. The first group includes those amendments which reduce the requirements for plan approval, and which a State or nonregulated utility has discretion to change or not to change. For example, plans no longer need to include the requirements that utility costs for materials and installation of measures be charged to the customer for whom these costs are incurred, 10 CFR 456.310(b)(2). Plans may either retain or eliminate this requirement. However, as

with all plan provisions, this requirement would have to be enforceable under State law or regulation (in the case of a State plan), 10 CFR 456.303(a)(3). The second group includes those amendments which increase the requirements for plan approval. For example, due to the ESA relaxation of the prohibition against utility supply and installation of energy conservation and renewable resource measures, all plans must now include specific requirements to be applied to utilities who supply or install such measures. The third group of ESA amendments includes those which have no effect on plans. For example, the additional requirements for DOE to report to the Congress need not appear in RCS plans.

Appendix II to this notice identifies the effects of the ESA amendments on the State and non-regulated utility plans currently being reviewed by DOE. The appendix lists the required and permissible plan amendments by subject matter, ESA section, NECPA section amended, and RCS regulations affected. The required amendments to RCS plans reflect the premise that each RCS plan satisfied, at the time of submission, the then-existing RCS regulatory requirements. This notice in no way implies approval of a particular plan and is not exclusive of any other changes which may have to be made for approval of any particular plan. At such time that DOE issues regulations amending the existing RCS rules to comply with the requirements of ESA, further amendments to State and nonregulated utility plans may be necessary.

Additionally, as a point of clarification, there is no Federal RCS requirement for an additional comment period and hearing prior to amending an unapproved RCS plan in order to bring it into compliance with ESA requirements.

II. Utility Supply, Installation, and Financing.

Section 546(a)(2) of the ESA amends NECPA to eliminate the general prohibition against a utility offering loans for energy conservation and renewable resource measures. In addition, section 546(a)(4) of ESA provides an exemption from the prohibition against a utility supplying or installing such measures if done through an independent contractor and in a fair and competitive manner. Since these amendments are effective immediately, section 549(a) of ESA, utilities may now finance energy conservation measures and may, subject to the criteria of section 546, supply and install such measures.

However, utilities should be aware as they undertake such activities that, as required by ESA, DOE will soon issue proposed regulations which, when finalized, may require additional procedures or standards to be followed in order to assure that the provisions of section 546 of the ESA are met. Also, section 547 of the ESA requires DOE to monitor these utility activities in consultation with the Federal Trade Commission, and allows DOE to stop any such activities which are determined to be unfair or anticompetitive.

Accordingly, the following interpretation is issued.

Issued in Washington, D.C., on July 28, 1980.

(Part 1 of Title II of the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3206 *et seq.*, Subtitle B of Title V of the Energy Security Act, Pub. L. 96-294, 94 Stat. 611 *et seq.*, Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 *et seq.*)

Theodore Wilson,
Acting Assistant General Counsel for
Conservation and Solar Energy.

Subject	ESA section	NECPA section amended	RCS regulations affected	Amendments to RCS plans
1. Definition of "Residential Building".	§ 541.....	§ 210(9).....	§ 456.105(w) ..	Amendment advisable to incorporate changes in definition. (Amendment will be required in further rules.)
2. State List of Suppliers and Contractors—warranty.	§ 542(a).....	§ 210(11).....	§ 456.105(j) § 456.105(ee) § 456.312(b)	Amendment required to change manufacturer's warranty from a useful life warranty to, at a minimum, a 1-year replacement of parts and materials warranty.
3. Warranty Provisions.....	§ 542(b).....	§ 212(b).....	§ 456.105(j) § 456.105(ee)	Amendment required to include requirements of a 1-year warranty to be offered by manufacturer, suppliers, and installers. The particular requirements for each differ.
4. Warranty Provisions Listing Requirement.	§ 542(c).....	§ 213(a)(2)(B)	§ 456.312(b) ..	Amendment required to require compliance by suppliers and installers with the warranty provisions in order to be listed.
5. Warranties—Other Laws.....	§ 542(d).....	§ 220(d).....		No plan amendments required by ESA. Addresses the relation between the ESA warranty provisions and existing State and Federal warranty laws.
6. State List of Financial Institutions.	§ 543.....	§ 213(a).....	§ 456.312(b)(3)	Amendment required to require that lists of lenders contain certain information about Solar Energy and Energy Conservation Bank Act.
7. Treatment of Utility Costs.....	§ 544(1).....	§ 215(c)(1)(C)	§ 456.305(a)(5) (iii) § 456.310(b)(3) § 456.310(c)	Amendment required if direct charge for program costs exceed \$15. Amendment permissible to reflect the manner of cost recovery. This amendment (1) eliminates the requirement in NECPA that utility costs be recovered either from all ratepayers or from individual customers receiving service, and (2) allows State regulatory authorities to set any cost-recovery scheme for the utility as long as the customer pays no more than \$15 in total direct charges for the program manager activities.
8.do.....	§ 544(2).....	§ 215(c)(1)(D)	§ 456.310(b)(2)	No plan amendments required by ESA. Eliminates the requirement that individual customer pay for purchase and installation of measures by the utility. This amendment thus removes the constraint in NECPA on rate-base treatment on installation costs.
9.do.....	§ 544(3).....	§ 215(c)(2)(A)	§ 456.310(b)(3) § 456.310(b)(5)	No plan amendments required by ESA. Deletes the requirement that State regulatory authority make certain findings with respect to interest costs on utility loans.
10.do.....	§ 544(4).....	§ 215(c)(2)(B)	None.....	No plan amendments required by ESA. Renumbers certain NECPA sections.
11.do.....	§ 544(5).....	§ 215(c)(2)(C)	None.....	No plan amendments required. Renumbers certain NECPA sections.
12.do.....	§ 544(6).....	§ 215(f).....	§ 456.311(b)(2)	Amendment required to require utilities to allow repayment of loans through utility bills upon request by lender. Amendment permissible to eliminate the 3-year repayment requirement for utility loans.
13.do.....	§ 545.....	§ 216(i).....		No plan amendments required by ESA. Addresses the Federal tax treatment of any subsidies paid by utilities to customers.
14. Supply Installation, and Financing by Utilities.	§ 546(a)(2)	§ 216(a).....	§ 456.501-508.	Amendment permissible to eliminate the prohibition against utility financing of measures.

Subject	ESA section	NECPA section amended	RCS regulations affected	Amendments to RCS plans
15. Exemption from Prohibition on Supply and Installation.	§ 545(a)(4)	§ 216(c)	§ 456.501-508.	Amendment permissible to exempt utilities from the prohibition against supply and installation if the utility meets certain conditions.
16. Plan requirements concerning Supply, Installation, and Financing.	§ 546(b)	§ 213(b)(2) (C) and (D).	§ 456.304 § 456.312(b) § 456.501-508	Amendment required to include provisions to assure that utilities making loans use local financial institutions as the source of funds under certain conditions. Amendment also required to assure compliance with § 216(c) of NECPA, as amended (see above) by utilities which supply or install measures.
17.do.....	§ 546(c)	§ 213(a)(9)	§ 456.318 § 456.501-508	Amendment required to require utilities engaged in supply, installation, or financing to notify DOE when program becomes effective.
18. DOE Authority to Monitor and Terminate Supply, Installation and Financing.	§ 547	§ 216(g)	§ 456.502(b) ..	No plan amendments required by ESA at the present time. Addresses DOE monitoring and enforcement of utility supply, installation, and financing activities.
19. Unfair Competitive Practices	§ 548	[not a NECPA amendment]		No plan amendments required by ESA. Clarifies Congressional Intent that the ESA amendments not preclude antitrust actions under other laws.
20. Effective Temporary Programs.	§ 549(c)	§ 218	§ 456.208	No plan amendment required by ESA. Addresses the time period within which temporary program requests may be submitted.
21. Relationship to Other Laws	§ 550	§ 220		No plan amendment required by ESA. Addresses relationship between NECPA and the Public Utility Holding Company Act.

[FR Doc. 80-24180 Filed 8-8-80; 8:45 am]

BILLING CODE 6450-01-M

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Federal Register

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Monday, August 11, 1980

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/FHWA	USDA/FSQS		DOT/FHWA	USDA/FSQS
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLSDC	HHS/FDA		DOT/SLSDC	HHS/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator. Office of

the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

46783 7-11-80 / Cotton classing, testing, and standards; revisions in sampling regulations

ENVIRONMENTAL PROTECTION AGENCY

46383 7-10-80 / Approval and promulgation of implementation plans; Mississippi; sour gas flares

46382 7-10-80 / Missouri Air Conservation Commission; disapproval of variance

46384 7-10-80 / Nevada State implementation plan; revised statutes and emergency episode plan

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46404 7-10-80 / Domestic public land mobile radio service; Tallahassee, Fla. included in table of assignments for air-ground stations

46405 7-10-80 / TV broadcast station assigned to Portland, Oreg.

FEDERAL RESERVE SYSTEM

40967 6-17-80 / Credit by brokers and-dealers; credit extended to exchange specialists

46337 7-10-80 / Credit restraint; short term financial intermediaries

40968 6-17-80 / Termination of suspension of uniform margin requirements for options specialists

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47104 7-11-80 / Grazing administration and trespass on public lands; amendments to regulations

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47108 7-14-80 / Federal-State Unemployment Compensation Program; interstate arrangement for combining employment and wages

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47120 7-14-80 / Federal Credit Unions; special share accounts; definitions of gross income; risk assets, and liquid assets

47119 7-14-80 / Return of capital upon withdrawal from membership in Central Liquidity Facility (CLF); interpretative ruling and policy statement

List of Public Laws

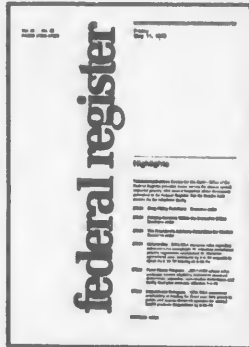
Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last Listing August 7, 1980



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