

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974.)

Issued: March 24, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance
Administrator.

[FR Doc.76-11974 Filed 4-23-76; 8:45 am]

[Docket No. FI-327]

PART 1920—PROCEDURE FOR MAP CORRECTION

Letter of Map Amendment for the Township of Berkeley, New Jersey

On August 12, 1974, in 39 F.R. 28891, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas which included the Township of Berkeley, New Jersey. Map No. H 340369 11 indicates that Lot 8, Block 1301, Berkeley Township, New Jersey, as shown on a Plot Plan prepared by Horn, Tyson, & Associates dated August 15, 1962, as recorded in Deed Book 2246, Pages 195 through 198, in the office of the County Clerk of Ocean County, New Jersey, is in its entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the existing structures on the above property are not within the Special Flood Hazard Area. Accordingly, Map No. H 340369 11 is hereby corrected to reflect that the structures on the above property are not within the Special Flood Hazard Area identified on August 2, 1974.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974.)

Issued: March 24, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance
Administrator.

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Title 38—Pensions, Bonuses, and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

ANNUAL INCOME

On pages 9396 and 9397 of the FEDERAL REGISTER of March 4, 1976, there was published a notice of proposed regulatory development to change provisions in Part 3 of Title 38, Code of Federal Regulations, relating to the computation of

income in claims for benefits. Interested persons were given 30 days in which to submit comments, suggestions, or objections regarding the proposed regulations.

Two written comments on the proposed change were received. These comments were in favor of the proposed changes. The proposed amendments are hereby adopted without change as set forth below.

§ 3.261 Character of income; exclusions and estates.

Dependency (parents)	Dependency and indemnity compensation (parents)	Pension; protected (veterans, widows, and children)	Pension; Public Law 96-211 (veterans, widows, and children)	See—
(a) Income:				
(33) The following programs administered by the ACTION Agency:				
Foster Grandparent Program and Older Americans Community Service Programs payments (Public Law 93-29; 87 Stat. 55).	Excluded...	Excluded...	Excluded...	Sec. 3.262(q)(1).
Volunteers in Service to America (VISTA), University Year for ACTION (UYA), Program for Local Services (PLS), ACTION Cooperative Volunteers (ACV), Foster Grandparent Program (FGP), and Older American Community Service Programs, Retired Senior Volunteer Program (RSVP), Senior Companion Program (Public Law 93-113; 87 Stat. 394).	do.....	do.....	do.....	Sec. 3.262(q)(2).

2. In § 3.262, paragraphs (o) introduction, (p) and (q) (2) are revised to read as follows:

§ 3.262 Evaluation of income.

(o) *Final expenses of veteran or parent's spouse; dependency and indemnity compensation.* In claims for dependency and indemnity compensation there will be excluded from the income of a parent, as provided in paragraph (p) of this section, amounts equal to amounts paid by the parent for:

(p) *Final expenses; year of exclusion.* For the purpose of paragraphs (m), (n) and (o) of this section, in the absence of contradictory information, the claimant's statement will be accepted as to the nature, amount and date of payment, and identity of the creditor. Except as provided in this paragraph, payments will be deducted from annual income for the year in which such payments are made. Payments made by a veteran, the wife or husband of a veteran, widow, widower, child or, in dependency and indemnity compensation claims, by a parent during the calendar year following the year in which the veteran, spouse or child died may be deducted from the claimant's income for the year of last illness or burial if this deduction is advantageous to the claimant.

(q) *Volunteer programs.* * * *

(2) *Payments under domestic volunteer service act programs.* Effective Oc-

tober 1, 1973, compensation or reimbursement received under a Domestic Volunteer Service Act Program (including Volunteers in Service to America (VISTA), University Year for ACTION (UYA), Program for Local Services (PLS), ACTION Cooperative Volunteers (ACV), Foster Grandparent Program (FGP) and Older American Community Service Program, Retired Senior Volunteer Program (RSVP), Senior Companion Program, Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE), will be excluded from income in claims for compensation, pension and dependency and indemnity compensation. (Pub. L. 93-113; 87 Stat. 394)

Approved: April 20, 1976.

By direction of the Administrator.

[SEAL]

ODELL W. VAUGHN,
Deputy Administrator.

1. In § 3.261, paragraph (a) (33) is revised to read as follows:

tober 1, 1973, compensation or reimbursement received under a Domestic Volunteer Service Act Program (including Volunteers in Service to America (VISTA), University Year for ACTION (UYA), Program for Local Services (PLS), ACTION Cooperative Volunteers (ACV), Foster Grandparent Program (FGP) and Older American Community Service Program, Retired Senior Volunteer Program (RSVP), Senior Companion Program, Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE), will be excluded from income in claims for compensation, pension and dependency and indemnity compensation. (Pub. L. 93-113; 87 Stat. 394)

[FR Doc.76-11985 Filed 4-23-76; 8:45 am]

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

DELETION OF OBSOLETE PROVISIONS

On page 9201 of the FEDERAL REGISTER of March 3, 1976, there was published a notice of proposed regulatory development to make regulatory changes in Part 3 of Title 38, Code of Federal Regulations, to delete certain provisions which were made obsolete by Public Law 94-71 (89 Stat. 395). This act increased monthly rates of dependency and indemnity compensation for widows, widowers and children effective August 1, 1975.

Interested persons were given 30 days in which to submit comments, suggestions, or objections regarding the proposed regulations.

No written comments have been received and the proposed regulations are hereby adopted without change and are set forth below.

Effective date. VA Regulations 3.400 and 3.702 are effective August 1, 1975, and VA Regulations 3.656, 3.658 and 3.659 are effective April 20, 1976.

Approved: April 20, 1976.

By direction of the Administrator.

[SEAL]

ODELL W. VAUGHN,
Deputy Administrator.

1. In § 3.400, paragraph (c) (3) (i) and (iii) is revised to read as follows:

§ 3.400 General.

(c) *Death benefits.* * * *

(3) *Dependency and indemnity compensation—(1) Deaths prior to January 1, 1957 (§ 3.702).* Date of receipt of election.

(iii) *Deaths on or after May 1, 1957 (in-service waiver cases; §§ 3.5(b) (3) and 3.702).* Date of receipt of election.

2. In § 3.656, paragraph (d) is revised to read as follows:

§ 3.656 Disappearance of veteran.

(d) When any veteran has disappeared for 90 days or more and his (or her) whereabouts remain unknown to members of his (or her) family and the Veterans Administration, any pension under Pub. L. 86-211 (73 Stat. 432) or Spanish-American War pension which the veteran was receiving or entitled to receive may be paid to or for the spouse or children. The status of the veteran at the time of disappearance, with respect to permanent and total disability, income and net worth will be presumed to continue unchanged. Payment for the wife (husband) or children will be effective the day following the date of last payment to the veteran if a claim is received within 1 year after that date; otherwise from date of receipt of a claim. The total amount payable will be the lesser of these amounts:

- (1) Death pension.
- (2) Amount of pension payable to the veteran at the time of disappearance. (38 U.S.C. 507)

3. Section 3.658 is revised to read as follows:

§ 3.658 Offsets; dependency and indemnity compensation.

(a) When an award of dependency and indemnity compensation is made covering a period for which death compensation or benefits under the Federal Employee's Compensation Act, based on military service, have been paid to the same payee based on the same death, the award of dependency and indemnity compensation will be made subject to an offset of payments of death compensation

or benefits under the Federal Employees' Compensation Act over the same period.

(b) When an award of dependency and indemnity compensation is made covering a period for which death benefits have been paid to the same payee based on the death of another spouse the award will be made subject to an offset of payments of death pension or compensation, or dependency and indemnity compensation over the same period in the case of the other spouse. (38 U.S.C. 103 (d) (2), 3104(b) (3))

4. In § 3.659, paragraph (b) is revised to read as follows:

§ 3.659 Two parents in same parental line.

(b) Any reduction or discontinuance of an award to the child or to a widow (widower) will be effective the day preceding the commencing date of death pension, compensation, or dependency and indemnity compensation or, under the circumstances described in § 3.707, the commencing date of dependents' educational assistance under 38 U.S.C. ch. 35, to or on account of the child based on the service of another parent in the same parental line. Any increase to a widow (widower) or another child will be effective the commencing date of the award to the child.

5. In § 3.702, paragraphs (a) and (b) are revised to read as follows:

§ 3.702 Dependency and indemnity compensation.

(a) *Right to elect.* A person who is eligible for death compensation and who has entitlement to dependency and indemnity compensation pursuant to the provisions of § 3.5(b) (2) or (3) may receive dependency and indemnity compensation upon the filing of a claim. The claim of such a person for service-connected death benefits shall be considered a claim for dependency and indemnity compensation subject to confirmation by the claimant. The effective date of payment is controlled by the provisions of § 3.400(c) (3).

(b) *Effect on child's entitlement.* Where a widow or widower is entitled to death compensation, the amount of which is based in part on the existence of a child who has attained the age of 18 years, and elects to receive dependency and indemnity compensation, the independent award of dependency and indemnity compensation to which the child is entitled will be awarded to or for the child without separate election by or for the child. Should such a widow or widower not elect to receive dependency and indemnity compensation, the independent dependency and indemnity compensation to which a child who has attained 18 years of age is entitled, may be awarded upon application by or for the child. The effective date of award in these situations will be in accordance with § 3.400(c) (3) (ii).

[FR Doc. 76-11986 Filed 4-23-76; 8:45 am]

Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 528-6]

PART 401—GENERAL PROVISIONS

PART 402—BEST TECHNOLOGY AVAILABLE FOR THE LOCATION, DESIGN, CONSTRUCTION, AND CAPACITY OF COOLING WATER INTAKE STRUCTURES FOR MINIMIZING ADVERSE ENVIRONMENTAL IMPACT

On December 13, 1973 notice was published in the FEDERAL REGISTER (38 FR 34410), that the Environmental Protection Agency (EPA or Agency) was proposing regulations concerning determinations to insure that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

The purpose of this notice is to establish final regulations regarding cooling water intake structures by amending 40 CFR Chapter I, Subchapter N, Part 401 and by adding a new Part 402. This final rulemaking is promulgated pursuant to sections 301, 306, 316(b) and 501(a) of the Federal Water Pollution Control Act, as amended, (the Act); 33 U.S.C. 1311, 1316, 1326(b) and 1261(a); 86 Stat. 816 et seq.; Pub. L. 92-500.

Section 316(b) of the Act requires that "any standard established pursuant to section 301 or section 306 of this Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact."

The regulations set forth below amend 40 CFR Part 401 (General Provisions) and establish a new part 402. The General Provisions set forth in Part 401 were published on February 4, 1974 (39 FR 4532).

Section 401.14, which is added to Part 401 by these regulations, provides that the location, design, construction and capacity of cooling water intake structures for any point source for which a standard is established pursuant to section 301 or 306 shall reflect the best technology available for minimizing adverse environmental impact in accordance with the provisions of Part 402.

Section 402.10 establishes the applicability of the provisions of Part 402. Section 402.11 provides definitions for several of the significant statutory terms which appear in Section 316(b) of the Act.

Section 402.12 provides that the information contained in the Development Document accompanying these regulations is to be used in determining compliance with the statutory standard.

The regulations as proposed were supported by a document entitled "Development Document for Proposed Best Technology Available for Minimizing Adverse Environmental Impact of Cooling Water Intake Structures." (December, 1973). This document was made available to the public and circulated to interested per-

sons at approximately the time of publication of the notice of proposed rulemaking.

Interested persons were invited to participate in the rulemaking by submitting written comments within 30 days from the date of publication. Because of delays in the printing of the supporting Development Document beyond the Agency's control, the period for public comment was extended an additional 90 days in order to afford a full opportunity to interested parties to participate fully in the rulemaking process (39 FR 4487). Prior public participation in the form of solicited comments and responses from the States, Federal agencies, and other interested parties were described in the preamble to the proposed regulation. The EPA has considered carefully all of the comments received and a discussion of these comments with the Agency's response thereto follows.

(a) Summary of Major Comments.

The following responded to the request for written comments which was contained in the preamble to the proposed regulations: Natural Resources Defense Council, Inc.; Duke Power Company; Shell Oil Company; Manufacturing Chemists Association; United States Atomic Energy Commission; United States Department of the Interior; Quirk, Lawler and Matusky Engineers; Indianapolis Power and Light Company; New York State Department of Environmental Conservation; State of Michigan Department of Natural Resources; National Oceanic and Atmospheric Administration; Tennessee Valley Authority; State of California—State Water Resources Control Board; Commonwealth Edison Company; Texas Electric Service Company; Consolidated Edison Company of New York, Inc.; Salt River Project; Otter Tail Power Company; State of New York Public Service Commission; Illinois Power Company; The Great Western Sugar Company; Edison Electric Institute; State of New Hampshire Fish and Game Department; Union Carbide Corporation; Texaco, Inc.; Mobil Oil Corporation; New York Power Pool; United States Department of Health, Education, and Welfare; Colorado Department of Public Health; Texaco, Inc.; Northern Indiana Public Service Company; New England Power Company; State of New York Department of Law; Debevoise and Liberman. The following is a summary of the significant comments and the Agency's response to those comments.

(1) Several commenters recommended that the regulations provide that the "best technology available" be determined on the basis of an assessment of the cost of applying a particular technology in relation to the benefits to be attained.

No comparison of monetary costs with the social benefits of minimizing adverse environmental impacts, much less a formal, quantified "cost/benefit" assessment is required by the terms of the Act. The statute directs the Agency to insure that enumerated aspects of cooling water intake structures reflect the best technology available for minimizing ad-

verse environmental impacts. Once such adverse effects have been identified (or, in the case of new structures, predicted) then the effort must be to select the most effective means of minimizing (i.e., "reducing to the smallest possible amount or degree") those adverse effects. The brief legislative history of section 316(b) states that the term "best technology available" contemplates the best technology available commercially at an economically practicable cost. As with the statute, this language does not require a formal or informal "cost/benefit" assessment. Rather, the term "available commercially at an economically practicable cost" reflects a Congressional concern that the application of "best technology available" should not impose an impracticable and unbearable economic burden on the operation of any plant subject to section 316(b). Since the regulations require a case-by-case determination of the best available technology, consideration of the economic practicability of installing that technology must necessarily be conducted on a similarly individualized basis.

(2) Several commenters recommended that the Development Document include specific consideration of the age of facilities and other pertinent factors which bear upon the degree to which costs are reasonable for particular establishments. Others suggested that the Agency explicitly distinguish among the types of technology considered the best available on the basis of the nature of the water body on which the plant is located and the percentage of flow withdrawn.

Section 316(b) requires "that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact." Decisions relating to the best technology available are to be made on a case-by-case basis and may include factors such as age. The Development Document for Cooling Water Intake Structures contains information to be used in determining the best technology available. The Development Document accompanying effluent limitations and new source performance standards for particular industrial categories may be referred to for other factors specific to point sources within that category which may be relevant to consideration of economic practicability. The potential for adverse environmental effects associated with cooling water systems may depend upon such factors as size and type of water body and relative magnitude of flow withdrawn for cooling. The Agency expects such factors to be considered in determining the appropriate cooling water technology.

(3) Several commenters recommended that the construction technology information be deleted from the Development Document because its consideration by EPA would duplicate the actions of the U.S. Army Corps of Engineers.

The regulations of the Corps of Engineers primarily relate to hazards to navigation. The data in the Development Document concerning construction technology address factors related to "mini-

mizing adverse environmental impact" of cooling water intake structures and therefore supplement rather than duplicate the actions of the Corps of Engineers.

(4) Some commenters recommended that the Agency identify closed cycle or recirculating cooling systems as the best technology available for minimizing adverse environmental impact. Others recommended that, at least for steam electric powerplants located in estuaries and biologically important coastal areas the "best technology available" is closed cycle cooling, since minimization of cooling water intake capacity (volume of flow) is the most practical currently available means for minimizing mortality of marine species in passage through the internal cooling systems of these plants.

The Agency does not believe that closed cycle cooling systems are universally and necessarily the best technology available despite their undoubted and dramatic reduction in rates of water used. While the extent of entrainment and impingement damage is in many cases correlated with the amount of water withdrawn, the Agency believes that the appropriate technology is best determined after a careful evaluation of the specific aspects at each site. Moreover, because of the substantial cost of conversion to closed cycle cooling systems, its economic practicability will depend upon considerations relating to individual industrial plants which are, again, most effectively analyzed on a case by case basis.

While there is substantial evidence for concern about the potential destructive effects of open-cycle cooling systems on powerplants in biologically sensitive areas such as estuaries, the available data corresponding to certain of these plants do not support a blanket requirement that all similarly situated plants reduce the capacity of their intake structures so as to require conversion to recirculating cooling systems.

(5) One commenter observed that the cost of modifying an existing intake structure to comply with certain specifications will generally exceed the cost of designing and constructing a new intake structure to those standards. On this basis, it is urged that the Agency expressly provide that an existing structure which has minimal environmental impact "reflects" the "best technology" regardless of whether its design, location and capacity conform precisely to the related criteria set forth in the Development Document.

The Agency recognizes that the cost of modification to existing structures may exceed that of constructing a new intake structure to comparable standards. The Agency expects that higher costs associated with "retrofitting" existing structures, as well as the relationship of those costs to the remaining expected useful life of the facility, will be taken into account in determining the extent to which the specific technological measures described in the Development Document

are available at an "economically practicable cost."

(6) Some commenters recommended that the Development Document should provide that the proper test for minimizing adverse environmental impact is related to damage to the aquatic ecosystem and not to the number of fish and other aquatic organisms killed or damaged.

Section 316(b) requires that the best technology available be used to minimize adverse environmental impacts. As noted in the Development Document, there are many factors that should be considered when determining whether an adverse environmental impact exists or is likely to exist. The factors noted by the commenters are among those to be considered. All pertinent factors, rather than reliance on a single factor, should receive adequate consideration.

(7) Some commenters recommended that the regulations should not establish nationally uniform deadlines for compliance.

Inasmuch as the available technologies of cooling water intake structures for minimizing adverse environmental impact, as well as effluent thermal control system characteristics governed by section 316(a) of the Act, are closely related to the capacity (volume of flow) and other features of the cooling water intake system, the practicable implementation of requirements concerning intake structures and effluent heat should consider both requirements. Therefore, compliance dates should be determined on a case-by-case basis taking into consideration any compliance dates for limitations on the discharge of heated effluent and other pertinent factors.

(8) Some commenters recommended that the regulations should refer independently to entrainment damage or that the Development Document should be enlarged to cover harm from entrainment. A countervailing recommendation submitted by some commenters was that the regulations apply only to the physical intake structures themselves and not to entrainment damage within other parts of the cooling system.

The terms of the Act and the legislative history related to section 316(b) indicate that the best technology available for cooling water intake structures be used for minimizing any adverse environmental impact. The Development Document has been enlarged to include factors relating to the entrainment problem which, as commenters noted, is of environmental concern, and which realistically cannot be separated from intake structure capacity or location.

(9) A commenter recommended that the time period be identified over which the percentage of flow attributable to cooling is to be calculated.

The definition of the term "cooling water intake structure" indicates that the major portion of the water directed through the structure is to absorb waste heat. An adequate period of time should be used to minimize short term water use variations. This period of time should be at least twelve months, except where shorter periods are warranted.

(10) One commenter criticized the omission of energy penalties associated with operation of some closed cycle cooling systems and suggested that the Agency should address this cost as well as the capital costs of construction.

The Agency has undertaken an economic analysis of the regulations in response to this comment and in order to assess the potential economic effects of installing the best available cooling water technology on intake structures at electric powerplants—which are the largest industrial users of cooling water. This analysis addresses the energy and capacity loss costs of closed cycle cooling, assuming that these systems were to be required. The analysis is necessarily tentative since the regulations do not attempt to establish rigid rules governing the selection of best technology available. Nevertheless, the analysis indicates that even under conservative assumptions of the number of plants affected, the increase in energy (fuel) consumption is less than one half of one percent of total fuel consumption by the power industry.

(11) It was suggested that the information and data collection requirements for the intake structure determinations under section 316(b) be coordinated with those of section 316(a) which addresses the environmental effects of heat in the discharge of cooling water.

The Agency agrees that duplication in the collection of biological and hydrological data should be avoided. To the extent that relevant data are assembled in connection with 316(a) proceedings, or other studies, they should be used in making determinations pursuant to section 316(b). However, the Agency rejects the related suggestion that a determination under section 316(a) that the thermal component of a discharge will not disrupt the balanced indigenous aquatic community in the receiving waters should be conclusive for purposes of 316(b). In some cases, the data available in 316(a) proceedings will not be sufficient to make a judgment as to 316(b) concerns. Even where the data are complete, however, the conclusion in a 316(a) hearing should not necessarily govern the outcome of 316(b). Certainly, the Agency would not deny a request for less stringent thermal effluent limitations under 316(a) where the necessary statutory showing had been made because of entrainment effects of the plant's intake structure. Similarly, the Agency should not be precluded from addressing evident entrainment problems simply because the plant's thermal effluent is not itself environmentally unacceptable. The concerns of the two sections are different and the legal standards by which compliance with their requirements is to be judged are similarly distinct.

(b) Revision of the proposed regulation prior to promulgation.

As a result of public comment and a continuing review and evaluation of the proposed regulation by EPA, the follow-

ing changes have been made in the regulations.

The terms "location," "design," "construction," and "capacity" have been defined. Also, the effort to make an explicit distinction between new and existing intake structures has been deleted because the proposed regulation was unclear. Nevertheless, as indicated above, the Agency does consider the age of an intake structure to be a relevant factor and anticipates that it will be taken into account in the determination of best technology available.

(c) Economic impact.

Cost data for construction of various cooling water intake structure modes are included in the Development Document. An analysis of the projected economic effects of the regulation on the electric power industry, the segment most likely to be significantly impacted by these regulations, has been prepared and is available from the Agency upon request. The inflationary impact of these regulations has, as that analysis indicates, been evaluated in compliance with Executive Order No. 11821 and OMB Circular A-107.

(a) Final rule making.

In consideration of the foregoing, 40 CFR Chapter I, Subchapter N, Part 401 is hereby amended and a new Part 402 is established to read as set forth below, to be effective May 26, 1976.

Dated: April 16, 1976.

RUSSELL E. TRAIN,
Administrator.

40 CFR Chapter I is amended as follows:

1. Part 401 is amended by adding § 401.14 to read as set forth below

§ 401.14 Cooling water intake structures.

The location, design, construction and capacity of cooling water intake structures of any point source for which a standard is established pursuant to section 301 or 306 of the Act shall reflect the best technology available for minimizing adverse environmental impact, in accordance with the provisions of Part 402 of this chapter.

2. Part 402 is added, to read as follows:

Sec.
402.10 Applicability.
402.11 Specialized definitions.
402.12 Best technology available for cooling water intake structures.

AUTHORITY: Secs. 301, 306, 316(b), and 501(a), Federal Water Pollution Control Act, as amended (33 U.S.C. 1311, 1316, 1326(b) and 1261(a)); 86 Stat. 816 et seq.; Pub. L. 92-500.

§ 402.10 Applicability.

The provisions of this part are applicable to cooling water intake structures for point sources for which effluent limitations are established pursuant to section 301 or standards of performance are established pursuant to section 306 of the Act.

§ 402.11 Specialized definitions.

For the purpose of this part:

(a) The term "cooling water intake

structure" shall mean the total structure used to direct water into the components of the cooling systems wherein the cooling function is designated to take place, provided that the intended use of the major portion of the water so directed is to absorb waste heat rejected from the process or processes employed or from auxiliary operations on the premises, including air conditioning.

(b) The term "location" shall mean the position or site occupied by the cooling water intake structure.

(c) The term "design" shall mean the arrangement of elements that make up the cooling water intake structure.

(d) The term "construction" shall mean the process of physically constructing the cooling water intake structure, including site preparation.

(e) The term "capacity" shall mean the maximum withdrawal rate of water through the cooling water intake structure.

(f) The term "Development Document" shall mean the document entitled "Development Document for Best Technology Available for the Location, Design, Construction and Capacity of Cooling Water Intake Structures for Minimizing Adverse Environmental Impact", published by the U.S. Environmental Protection Agency.

§ 402.12 Best technology available for cooling water intake structures.

The information contained in the Development Document shall be considered in determining whether the location, design, construction and capacity of a cooling water intake structure of a point source subject to standards established under Section 301 or 306 reflect the best technology available for minimizing adverse environmental impact.

[FR Doc. 76-11877 Filed 4-23-76; 8:45 am]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 160g—ARTS EDUCATION PROGRAM

The Office of Education issues regulations governing grant awards to State and local educational agencies for arts education programs in elementary and secondary schools. The grants are intended to encourage and to assist in establishing, conducting, and improving arts programs as an integral part of the regular curriculum of elementary and secondary schools.

Notice of proposed rulemaking was published in the FEDERAL REGISTER on June 30, 1975 (40 FR 27486-91) proposing to add a new Part 160g to provide application criteria and procedures and to define the activities for which funds may be used under Section 409 of Pub. L. 93-380 (20 U.S.C. 1867). Interested persons were given 30 days in which to submit written comments, suggestions or objections.

A. Summary. Section 409 of Pub. L. 93-380 provides as follows:

"The Commissioner shall, during the period beginning after June 30, 1974 and ending on

June 30, 1978, through arrangements made with the John F. Kennedy Center for the Performing Arts, carry out a program of grants and contracts to encourage and assist State and local educational agencies to establish and conduct programs in which the arts are an integral part of elementary and secondary school programs * * *

The statute authorizes a very limited amount of Federal assistance for the program. Pub. L. 94-94 provides \$750,000 for fiscal year 1976. In order to best carry out the statutory purpose of making the arts an "integral part of elementary and secondary school programs," the Commissioner of Education has set forth the basic elements of an effective program. To complete successfully for assistance under this regulation, an educational agency must establish or maintain in a particular elementary or secondary school an arts education program with the elements spelled out in § 160g.3(c). Federal funds support activities (such as the employment of special staff or artists in residence) specifically related to such a school program. It is anticipated that the schools receiving assistance will serve as models for other schools.

Subpart A of the regulation contains general provisions that apply equally to State and local programs. These include the basic elements of an arts education program, a description of eligibility, the reservation of funds, and other general provisions. The role of the John F. Kennedy Center for the Performing Arts is described in § 160g.7, including technical and staff assistance, training and information, as well as assistance in the review of applications and evaluation of particular projects.

Subparts B and C of the regulation deal with local educational agency and State educational agency applications, respectively. Roughly analogous provisions relating to each type of application appear in each subpart. They relate to activities, application requirements, and the criteria for selection of applications. In addition, some provisions that relate solely to either local or State educational agencies are found in these subparts.

B. Public comment and changes in regulation. Many comments were submitted to the Office of Education in response to the notice of proposed rule making. Most of the comments were favorable to the central concept of arts education as an integral part of elementary and secondary education. Three comments resulted in significant changes to the regulation.

(1) One commenter suggested that the definition of "arts" in § 160g.2 be changed to the broader and more detailed definition of the term as set forth in section 3(b) of the National Foundation on the Arts and the Humanities Act (Pub. L. 89-209). The Office of Education agrees, and the definition has been changed accordingly.

(2) One commenter questioned the role of the Kennedy Center and inquired as to how its staff was selected to review applications for assistance under Part 160g. The role of the Kennedy Center is described in § 160g.7. The Office of Education has revised § 160g.7 to make it

clear that the Kennedy Center may use its resources as it deems appropriate to carry out its functions under this program. Selection of staff is the sole responsibility of the Kennedy Center.

(3) Several commenters suggested that the regulation specifically encourage arts education programs for handicapped children. While all students, including handicapped students, would be involved in any program approved for a grant, §§ 160g.2, 160g.16, and 160g.26 have been revised to emphasize and facilitate the inclusion of the handicapped in the program. Section 160g.2 has been revised to include a definition of handicapped children. Sections 160g.16 and 160g.26, which cover the criteria for selection of applications from local and State educational agencies, respectively, have been changed to include consideration of the extent of activities specially designed to encourage the participation of handicapped children in local agency programs, and the recognition of the special needs of handicapped children in State agency programs.

In addition to these three major changes, typographical and editorial corrections and technical changes have been made, and the regulation has been substantially reorganized, simplified, and shortened.

C. Response to other comments. A number of comments were considered which did not result in change in the regulation because the commenters suggested changes which the Office of Education believes are beyond its authority under the Act, relate to matters already covered by the regulation, or suggest initiatives beyond the scope of the program at current funding levels. The major comments which did not result in changes are summarized and discussed in greater detail below. (References are to sections in the final regulation.)

1. § 160g.2 Definitions; § 160g.3 Eligibility. Several commenters suggested that definitions of "local educational agency" and "State educational agency" be broadened to include such agencies as nonprofit corporations providing educational radio and television programs and regional arts councils, thereby making these entities eligible for direct Federal support.

These changes are beyond the scope of the Act. While the terms "local educational agency" and "State educational agency" are used but not defined in Section 409, they are defined in numerous other statutes relating to aid to education, including the Elementary and Secondary Education Act (20 U.S.C. 881 (f), (k)). These statutory definitions have been incorporated into the regulation. In the absence of special definitions, the Commissioner understands that Congress intends these terms to carry the meaning normally ascribed to them in other education aid statutes.

Similarly, a suggestion by several commenters that the category of eligible parties include arts councils, alternative schools, and community colleges, as well as a suggestion that adults (as distinguished from elementary and secondary students) be directly served by the pro-