

the Commonwealth of Puerto Rico and the Territory of the Virgin Islands without change. Furthermore, this action is being made effective immediately as it poses no hardship on any source.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 111, 301(a), Clean Air Act, as amended (42 U.S.C. 7413 and 7601))

Dated: May 28, 1980.

Douglas M. Costle,
Administrator, Environmental Protection Agency.

Part 62, Subchapter C, Chapter I, Title 40 of the Code of Federal Regulations is amended by adding §§ 62.13101 and 62.13351 as follows:

Subpart BBB—Puerto Rico

Sulfuric Acid Mist Emissions From Sulfuric Acid Plants

§ 62.13101 Identification of plan— Negative declaration.

The Commonwealth Environmental Quality Board submitted, on January 31, 1978, a letter certifying that there are no existing sulfuric acid plants in the Commonwealth subject to Part 62, Subpart A of this chapter.

Subpart CCC—Virgin Islands

Sulfuric Acid Mist Emissions From Sulfuric Acid Plants

§ 62.13351 Identification of plan— Negative declaration.

The Territory Department of Conservation and Cultural Affairs submitted, on November 8, 1977, a letter certifying that there are no existing sulfuric acid plants in the Territory subject to Part 62, Subpart A of this chapter.

[FR Doc. 80-16756 Filed 6-2-80; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 423

[FRL 1501-1]

Reinstatement of Coal Pile Pollutant Discharge Limitations at Electric Powerplants Under the Clean Water Act

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is reinstating pollutant discharge limitations for coal piles at electric power plants under the Clean Water Act. The limitations were issued in 1974 and vacated by court order in 1976.

DATES: In accordance with 40 CFR 100.01 (45 FR 26048), this amendment shall be issued for purposes of judicial review at 1:00 p.m. eastern time on June 17, 1980. This amendment shall become effective on July 17, 1980.

FOR FURTHER INFORMATION CONTACT: John W. Lum or Teresa Wright, Effluent Guidelines Division (WH-552), EPA, 401 M Street, SW., Washington, D.C. 20460 (202) 426-4617.

SUPPLEMENTARY INFORMATION: On October 8, 1974, EPA promulgated effluent limitations guidelines under the Clean Water Act for the steam electric power generating industry. 39 FR 36198. These guidelines covered a wide variety of pollution discharges from power plants, and included a special subcategory of rainfall "runoff" controls. 40 CFR Part 423, Subpart D. This subcategory applied basically to three types of runoff sources at power plants: (1) Coal piles, (2) ash piles, and (3) construction sites.

On July 16, 1976, the Fourth Circuit Court of Appeals vacated several portions of EPA's power plant guidelines. *Appalachian Power v. Train*, 545 F. 2d 1351 (4th Cir. 1976). In its order, the Court vacated the runoff regulations in their entirety. 545 F. 2d at 1378.

In its discussion of the runoff regulations (545 F. 2d at 1372-75), however, the Court found no fault with the coal pile portions of the regulations. In fact, the power companies did not challenge the coal pile portions. Accordingly, EPA petitioned the Court on September 21, 1976 to reinstate the rainfall runoff regulations solely as they applied to coal piles. The power companies opposed EPA's request on the grounds that EPA was free to republish the coal pile portions without any further action from the Court because the Court had found no fault with the coal pile portions.

On November 17, 1976, the Court responded, in an unreported order, that "the relief sought by the Administrator may be supplied by him by reinstating such aspects of the standards affected in which the court found no deficiency, so long as such reinstatement is not inconsistent with our opinion and orders." Thus, while the Court declined to amend its order, it made clear that EPA was free to reinstate the coal pile portions administratively.

Since that time, power plants have generally consented to abide by the

technically-vacated coal pile limitations. EPA has consequently not considered formal reinstatement a matter of priority.

EPA is now, however, preparing to propose major amendments to the existing steam electric guidelines in accordance with the 1977 Clean Water Act Amendments and the Consent Decree in *NRDC v. Train*, 8 ERC 2120, modified at 12 ERC 1833 (D.D.C. 1976, 1979). Before such a proposal is published, it would be appropriate to clarify precisely which portions of the area runoff regulations are now effective. Thus, consistent with the *Appalachian* orders of July 16 and November 17, 1976, EPA is today reinstating the coal pile portions of the regulations.

Because this rulemaking merely republishes a rule which the industry did not challenge and for which the Court found no fault, I find that proposal and public comment are unnecessary. In light of the utility companies' position on this matter, judicial review of today's action appears to be unlikely. In the event parties seek such review, however, EPA has specified above that the "two week deferral" contained in its new "racing" regulations (45 FR 26048, April 17, 1980) applies to this action.

(Secs. 301, 304, 501, Clean Water Act, 33 U.S.C. 1311, 1314, 1361)

Dated: May 27, 1980.

Douglas M. Costle,
Administrator.

§§ 423.40 and 423.41 [Amended]

1. 40 CFR 423.40 is amended to read as follows:

The provisions of this subpart are applicable to discharges resulting from runoff from coal piles at units subject to the limitations in Subparts A, B, or C of this part.

2. 40 CFR 423.41(b) is revoked.

3. 40 CFR 423.41(c) is revoked.

4. 40 CFR 423.41(d) is redesignated as 40 CFR 423.41(b).

[FR Doc. 80-16762 Filed 6-2-80; 8:45 am]

BILLING CODE 6560-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 101

[FPMR Temp. Reg. A-11, Supp. 9]

Changes to Federal Travel Regulations; Corrections.

AGENCY: Transportation and Public Utilities Services, General Services Administration.

ACTION: Temporary regulation; Corrections.

SUMMARY: FPMR Temporary Regulation A-11, Supplement 9, published on April 23, 1980 (FR Doc. 80-12512), which amends the Federal Travel Regulations, is changed to (1) correct the spelling of "Pease AFB," that is included in the definition of Portsmouth/Newington, New Hampshire, high rate geographical area, (2) correct the rate for Casper, Wyoming, and (3) add a change to paragraph 2-5.2.

FOR FURTHER INFORMATION CONTACT: Mrs. Phyllis Hickman, Federal Travel Management Division (202-275-6144).

SUPPLEMENTARY INFORMATION: In FR Doc. 80-12512 appearing at page 27436 in the *Federal Register* of Wednesday, April 23, 1980, the following changes should be made:

1. On page 27440, under the heading "Designated high rate geographical areas," the Portsmouth/Newington definition is corrected to read as follows:

New Hampshire:

Portsmouth/Newington (all locations within the corporate limits of Portsmouth and Newington, including Pease AFB) (See also Kittery, ME.)

2. On page 27441, under the heading, "Designated high rate geographical areas," Casper, Wyoming, is corrected to read as follows:

Wyoming:

Casper.....\$46

3. On page 27441, paragraph 2-5.2 is updated to bring paragraph b into conformance with the rest of the document as follows:

b. *Additional time in certain cases.* To the extent determined to be necessary, expenses as provided above may be allowed for a period not to exceed an additional 30 consecutive days while the employee and family are occupying temporary quarters if the employee is transferred either to or from Hawaii, Alaska, the territories and possessions, the commonwealth of Puerto Rico, or the areas and installations in the Republic of Panama made available to the United States under the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979). The same considerations as expressed above are applicable in allowing any extension of the additional period.

* * * * *

Dated: May 28, 1980.

Ray Kline,
Acting Administrator of General Services.
[FR Doc. 80-16626 Filed 6-2-80; 8:45 am] -
BILLING CODE 6820-AM-M

41 CFR Part 101-11

[FPMR Amdt. B-44]

Records Management; Disposition of Federal Records; Correction

AGENCY: General Services Administration.

ACTION: Correction.

SUMMARY: This document corrects the text of FPMR Amendment B-44 concerning the disposition of Federal Records.

FOR FURTHER INFORMATION CONTACT: George N. Scaboo, Deputy Assistant Archivist for Federal Records Centers, Office of Federal Records Centers (202-724-1614).

In FR Doc. 80-2237 appearing at page 5704 in the *Federal Register* of January 24, 1980, the citation in the last line of paragraph (a)(1) of § 101-11.404-1 appearing on page 5706 is corrected to read § 101-11.406-8.

Dated: May 22, 1980.

R. G. Freeman III,
Administrator of General Services.
[FR Doc. 80-16765 Filed 6-2-80; 8:45 am]
BILLING CODE 6820-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 59

Grants for Family Planning Services

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: The Public Health Service Act authorizes the Secretary of Health and Human Services to administer a program of grants for family planning services projects. This regulation amends the current rules in order to implement statutory amendments which require projects to: offer natural family planning methods, infertility services, and services to adolescents; assure that economic status not be a deterrent to receiving services; assure that local and regional entities participate in decisions to consolidate their projects and also have a voice in the ongoing decisionmaking of their consolidated grantees; and establish procedures for

local review and approval of informational and educational materials.

EFFECTIVE DATE: June 3, 1980.

ADDRESSES: Written comments, preferably in triplicate, on those provisions incorporated in the final regulation which were not addressed in the Notice of Proposed Rulemaking (NPRM) due to subsequent statutory amendments, should be sent to the Director, Division of Policy Development, Bureau of Community Health Services, Health Services Administration, Room 6-17, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received within 45 days of the date of publication of these regulations will be considered and will be available for public inspection and copying at the above address on weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. William White, Associate Bureau Director for Family Planning, Bureau of Community Health Services, Room 7-49, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301 443-2430).

SUPPLEMENTARY INFORMATION: In September 1971, a regulation was published governing administration of project grants for family planning services which are authorized by section 1001 of title X of the Public Health Service Act (the Act) (42 U.S.C. 300). Amendments to title X enacted by Pub. L. 94-63 on July 29, 1975, added requirements for natural family planning services, participation of local and regional entities in consolidation decisions, and assurance that economic status not be a deterrent to receipt of services. A Notice of Intent (NOI) to Issue Proposed Rules, published on April 11, 1977 (42 FR 8947), discussed approaches to implementing these amendments, presented an additional issue involving removal of the waiver provision with respect to age discrimination, and invited public comment. The proposed changes to the regulation and discussions of comments received in response to the NOI were included in the NPRM published on September 19, 1978 (43 FR 42020).

Passage of Pub. L. 95-613 on November 8, 1978, further amended title X by adding specific provisions requiring projects to include infertility services and services to adolescents in the range of family planning services offered. Prior to the latest legislative changes, the statute (as amended by Pub. L. 94-63) authorized grants or contracts for voluntary family planning projects which "offer a broad range of acceptable and effective family planning

methods (including natural family planning methods)." Public Law 95-613 expanded this requirement to "... family planning methods and services (including natural family planning methods, infertility services, and services for adolescents)." The regulation implements this statutory amendment by including these requirements in § 59.5(a)(1).

The new legislation also added a provision to assure that informational or educational materials developed or made available under title X projects are suitable for the family planning program's purposes and for the population or community for which they are intended. Grantees are required to establish broadly representative advisory committees to review and approve materials prior to distribution. To implement these requirements, a new subsection (§ 59.6) is added to the regulation. This section requires each project to establish an advisory committee of five to nine members who are broadly representative of the community, in such terms as race, religion, ethnicity, sex, age, educational level, cultural background and the standards of the population to be served. The committee is charged with assuring the factual correctness of the informational material and its acceptability to the community. The size of the committee (not less than five nor more than nine members) permits flexibility and was selected because it is a sufficient number of persons to carry out the requirement for broad representation, yet is small enough to act effectively and expeditiously in carrying out its functions; in order that the size limits not be unduly restrictive, however, the rule also includes a "good cause" waiver provision with respect to the number of advisory committee members.

As noted above, all provisions of these regulations are effective upon publication despite the fact that public comment was not requested upon those changes which implement the 1978 amendments. Those amendments do not have a major impact on the program and do not raise significant issues of policy. However, an additional period for public comment is being afforded on the provisions which reflect these amendments. Comments received by July 18, 1980 will be considered, and the regulation will be revised as warranted.

Summary of the Comments Received and the Department's Response

In response to the September 1978 NPRM, 35 comments were received from individuals, institutions, State entities, local organizations, and natural

associations. The issues raised in these comments are discussed below:

1. Public Law 94-63 amended section 1006(c) of the Act to require that the Secretary define the term "low-income family" to ensure that economic status will not be a deterrent to participation in the programs assisted under title X. By statute, low-income individuals are the priority group to receive family planning services and may not be charged for these services. The present regulatory definition places "low income" at fixed dollar levels, for example, \$5,000 annual income for a family of four. The legislative history of the amendment shows that it was intended that the levels be raised to dollar amounts which are more realistic in the current economy. The NPRM accordingly proposed to tie the income cutoff to an annually revised national standard or index. Specifically, "low income" was defined as 150 percent of the Community Services Administration (CSA) Income Poverty Guidelines. The NPRM further proposed that persons other than those from low-income families be charged in accordance with a schedule of discounts based on ability to pay, except that persons from families whose annual income exceeds 250 percent of the CSA Income Poverty Guidelines would receive no discount. Thus, 150 percent to 250 percent of the CSA Income Poverty Guidelines were the proposed parameters for the establishment of a sliding fee schedule.

A number of respondents objected to the proposed 150 percent-of-poverty-income level as the definition of "low income," and recommended that it be revised downward to 100 percent. The commenters state that funding levels have not even kept pace with inflation, much less with a proposed increase in the number of persons to be served without charge. They point out that setting the "low income" cutoff at 150 percent of poverty would therefore decrease the total number of persons who could be served in a program with limited funding. A further objection was that establishing the 150 percent income level would create administrative burdens and increased costs for local programs (such as community health centers) which are working to integrate family planning services with primary care, because it would mean administering a different fee scale in the same health care delivery system.

This recommendation has been accepted. The Secretary has decided to revise the low-income parameter to 100 percent of the CSA Income Poverty Guidelines, making it possible to collect partial fees from persons with incomes

between 100 and 250 percent of the poverty level in accordance with their ability to pay. This change will permit the number of persons who can be served, in a program with limited funding, to be increased. The Secretary is retaining the 250 percent-of-poverty-income level as the outside parameter beyond which full charges must be made. (See § 59.5(a)(7) and § 59.5(a)(8).) The Department believes that this approach still assures that low-income persons receive priority and are not charged, yet it allows flexibility in administering the program so as to assure the economic viability of family planning projects. It is expected that the program will be administered in a manner to assure that individuals with incomes between 100 percent and 150 percent of the income poverty guide lines will not be deterred from participation in the family planning program. The reduction of "low income" from 150 percent to 100 percent of poverty is designed to permit the program to charge persons, with incomes at this level, who by their circumstances are able to pay for some portion of the cost of providing the services they receive. It must be recognized, however, that many individuals in this income range are not in a position to defray any portion of these costs, and the definition of "low income" in the final rule enables projects to take this into account. Thus, although the final rule permits charges to persons with annual incomes between 100 percent and 150 percent of poverty, it should be stressed that projects must implement this provision in a way which does not create barriers to the receipt of services.

2. The definition of "low-income family" provides that individuals whose families do not meet the established income cutoffs but who are otherwise unable to pay for family planning services receive service without charge. One comment supporting this concept urged that specific regulatory language be added to eliminate the possibility of any charge barriers to serving teenagers. Although the proposed rule contained requirements for the availability of services and the elimination of service barriers, it did not stress the provision of family planning services to teenagers without charge as appropriate. The Department agrees with this comment, particularly in light of the recent statutory inclusion of specific language mandating services for adolescents. The final rule is thus amended (see § 59.2 for definition of "low-income family") to require consideration of unemancipated minors on the basis of their own

resources, as appropriate, when they wish to receive services on a confidential basis. However, parental knowledge of and support for such teenage involvement in the program may enhance the effectiveness of the services, and adolescents should be encouraged to consult with their parents, whenever it is judged by an appropriate clinic staff member to be feasible.

3. Public Law 94-63 amended section 1001(a) of the Public Health Service Act to require that the range of the family planning methods offered by the family planning projects include natural family planning methods. Twenty-seven comments were received regarding the provision of natural family planning services by title X projects. Although most of these supported the requirement for a broad range of family planning methods, ten comments urged that the regulation be amended to permit direct grant assistance to organizations which offer only natural family planning methods. This recommendation was rejected as contrary to the statute. The statute (as amended by Pub. L. 94-63) requires that family planning projects "shall offer a broad range (emphasis added) of acceptable and effective family planning methods (including natural family planning methods)." Therefore, grants cannot be made to entities which propose to offer only one method or a limited number of methods. It should be noted, however, that a facility or entity offering only natural family planning methods can receive assistance under title X by participating, as a provider of natural family planning services, in an otherwise approvable project which offers a broad range of services.

One additional comment recommended that the regulation mandate the provision of natural family planning services either on site or by referral if such services are requested by a patient who may be able to pay for medical services, but cannot obtain natural family planning services in that community. The regulation requires, consistent with the statute, that natural family planning services be made available by the project. (See § 59.5(a)(1).) Thus, where such services are not available otherwise locally, the project must provide them directly. Therefore, it is unnecessary to revise the regulation.

Several comments recommended inclusion of a definition of "natural family planning methods." This recommendation was not accepted. The statute requires that family planning methods supported under title X projects

be acceptable and effective, and § 59.5(a)(1) implements this requirement with respect to natural family planning services (as well as other methods of family planning) by funding only those methods which are acceptable and effective. The National Institute for Child Health Development, Center for Population Research, uses funds appropriated under title X to conduct research to determine effective family planning methods. As research in the field of natural planning makes new information available, the Department will broaden its range of approvable natural family planning methods and notify the interested public to this effect. A regulatory definition of "natural family planning methods" therefore could be restrictive, and hence has not been adopted.

4. The requirement that projects provide medical services (e.g., a physician's examination, laboratory services, and referral to other medical facilities when indicated) was the subject of nineteen comments. Sixteen favored this requirement, but three opposed it as unnecessary in conjunction with the provision of natural family planning services. One of the purposes of the law is that comprehensive family planning services be offered, and these services include medical services. The Department recognizes that provision of effective natural family planning services must include counseling, with a particular focus and degree of intensiveness designed to teach use of natural family planning methods, as well as other social and ancillary services. However, medical services also are necessary to assure that abnormal conditions related to fertility planning are detected and that all risks and benefits are known to the individual and considered in the selection of an appropriate method. The requirement for a medical examination and other appropriate medical services with respect to the family planning methods (including natural family planning) offered by assisted projects is therefore retained.

5. Two comments addressed manpower competencies required in the delivery of natural family planning methods. One respondent recommended the inclusion of objective and performance-based competency standards for personnel providing instruction in natural family planning methods. Another comment included the suggestion that specific language regarding qualifications for natural family planning providers be added to the regulation in those subsections of the regulation which address training or

experience requirements. These suggestions were not accepted because the regulation already provides that standards and qualifications be established for all personnel and for all facilities to be used by the project (§ 59.4(c)(3)). These standards and qualifications must be submitted as part of an application and are subject to approval during the review process. Qualifications for providers of specific methods of family planning are spelled out in program guidelines. Therefore, no change in this regard is made in the regulation.

6. Five comments recommended revision of data reporting requirements for natural family planning services so that more accurate data regarding current use of these methods would be available. Data reporting requirements are administratively imposed in accordance with departmental priorities, and the inclusion of specific data elements could impose undesirable inflexibility. Therefore, no change is made in the regulation.

7. Section 1001(b) of the Act, as amended, assures local and regional entities of the right to apply directly for title X grants, and requires the Secretary by regulation to "fully provide for and protect such right." The legislative history of section 1001(b) shows that the intent of this provision is to prevent "systematic" consolidation of grantees. The present regulation gives local and regional entities the right to apply directly for such assistance; the proposed rule required, in addition, appropriate documentation that local and regional entities have participated in consolidation decisions, to ensure that their concerns are considered. This latter provision is consistent with the legislative history of the amendment to section 1001(b), which indicated that the amendment was intended to assure local and regional entities of the right to participate in consolidation decisions which would affect their operations, as well as to assure potential and existing subgrantees of the right to participate in the ongoing decisionmaking of their respective consolidated grantees.

Several comments were received regarding the need for regulatory language to protect the rights of potential subgrantees. One comment suggested that the regulation provide that local entities receive copies of all rules or proposed rules; another comment requested a definition of "potential subgrantee." In response to these concerns, the provision for a waiver of the requirement (included in the proposed rule) has been dropped, so as to implement the amendment to

section 1001(b) more effectively. Otherwise, the policies of the proposed rule have been retained unchanged.

One comment recommended that the regulation include a more specific monitoring procedure to assure subgrantee participation in decisionmaking. Because the regulation already requires applicants to document that entities which are potential subgrantees have been given an opportunity to participate in consolidation decisions, and describe how existing (or potential) subgrantees are to be given the opportunity to participate in the ongoing decisionmaking of their respective consolidated grantees (§ 59.5(a)(10)), it is felt that a specific monitoring procedure in the regulation is unnecessary and would be unduly burdensome. Therefore, this suggestion was not adopted.

8. The present regulation requires that family planning services be available without discrimination on the basis of religion, creed, age, sex, number of pregnancies, or marital status except when grantees receive a waiver of this requirement for "good cause shown." One respondent stated that no State laws require parental consent prior to providing family planning services to minors and opposed the waiver provision on this basis. The recommendation to delete the waiver provision has been accepted, and the final regulation reflects this change. The Secretary believes that making the requirement nonwaivable is appropriate public policy and is consistent with the purpose of the Act to assist in making family planning services "readily available to all" (emphasis added) persons desiring such services," Pub. L. 91-572, sec. 2(1). Moreover, it should be noted that no waiver is needed where refusal to serve minors is based on their inability to provide legally effective consent; in such case, denial of services is not based on parental-consent requirements and is not discrimination on the basis of age.

In addition to the above, extensive editorial changes have been made to the regulation. These changes have been made in accordance with the ongoing departmental effort to simplify and clarify departmental regulations.

Accordingly, the existing 42 CFR Part 59, Subpart A is revoked and a new Part 59, Subpart A is adopted as set forth below.

Dated: February 25, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: May 27, 1980.

Patricia Roberts Harris,

Secretary.

PART 59—GRANTS FOR FAMILY PLANNING SERVICES

Subpart A—Project Grants for Family Planning Services

Sec.

59.1 To what programs do these regulations apply?

59.2 Definitions.

59.3 Who is eligible to apply for a family planning services grant?

59.4 How does one apply for a family planning services grant?

59.5 What requirements must be met by a family planning project?

59.6 What procedures apply to assure the suitability of informational and educational material?

59.7 What criteria will the Department of Health and Human Services (HHS) use to decide which family planning services projects to fund and in what amount?

59.8 How is a grant awarded?

59.9 For what purposes may grant funds be used?

59.10 What other HHS regulations apply to grants under this subpart?

59.11 Confidentiality.

59.12 Inventions or discoveries.

59.13 Additional conditions.

Authority: The provisions of this Subpart A are issued under sec. 6(c), 84 Stat. 1507, 42 U.S.C. 300a-4; sec. 6(c), 84 Stat. 1506, 42 U.S.C. 300.

Subpart A—Project Grants for Family Planning Services

§ 59.1 To what programs do these regulations apply?

The regulations of this subpart are applicable to the award of grants under section 1001 of the Public Health Service Act (42 U.S.C. 300) to assist in the establishment and operation of voluntary family planning projects. These projects shall consist of the educational, comprehensive medical, and social services necessary to aid individuals to determine freely the number and spacing of their children.

§ 59.2 Definitions.

As used in this subpart:

"Act" means the Public Health Service Act, as amended.

"Family" means a social unit composed of one person, or two or more persons living together, as a household.

"Low income family" means a family whose total annual income does not exceed 100 percent of the most recent Community Services Administration Income Poverty Guidelines (45 CFR 1060.2). "Low-income family" also

includes members of families whose annual family income exceeds this amount, but who, as determined by the project director, are unable, for good reasons, to pay for family planning services. For example, unemancipated minors who wish to receive services on a confidential basis must be considered on the basis of their own resources.

"Nonprofit," as applied to any private agency, institution, or organization, means that no part of the entity's net earnings benefit, or may lawfully benefit, any private shareholder or individual.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

"State" means one of the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, Northern Marianas, or the Trust Territory of the Pacific Islands.

§ 59.3 Who is eligible to apply for a family planning services grant?

Any public or nonprofit private entity in a State may apply for a grant under this subpart.

§ 59.4 How does one apply for a family planning services grant?

(a) Application for a grant under this subpart shall be made on an authorized form.

(b) An individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of the grant, including the regulations of this subpart, must sign the application.

(c) The application shall contain—

(1) a description, satisfactory to the Secretary, of the project and how it will meet the requirements of this subpart;

(2) a budget and justification of the amount of grant funds requested;

(3) a description of the standards and qualifications which will be required for all personnel and for all facilities to be used by the project; and

(4) such other pertinent information as the Secretary may require.

§ 59.5 What requirements must be met by a family planning project?

(a) Each project supported under this part must:

(1) Provide a broad range of acceptable and effective medically approved family planning methods (including natural family planning methods) and services (including infertility services and services for adolescents). If an organization offers only a single method of family planning, such as natural family planning, it may

participate as part of a project as long as the entire project offers a broad range of family planning services.

(2) Provide services without subjecting individuals to any coercion to accept services or to employ or not to employ any particular methods of family planning. Acceptance of services must be solely on a voluntary basis and may not be made a prerequisite to eligibility for, or receipt of, any other service, assistance from or participation in any other program of the applicant.²

(3) Provide services in a manner which protects the dignity of the individual.

(4) Provide services without regard to religion, race, color, national origin, handicapping condition, age, sex, number of pregnancies, or marital status.

(5) Not provide abortions as a method of family planning.

(6) Provide that priority in the provision of services will be given to persons from low-income families.

(7) Provide that no charge will be made for services provided to any person from a low-income family except to the extent that payment will be made by a third party (including a Government agency) which is authorized to or is under legal obligation to pay this charge.

(8) Provide that charges will be made for services to persons other than those from low-income families in accordance with a schedule of discounts based on ability to pay, except that charges to persons from families whose annual income exceeds 250 percent of the levels set forth in the most recent CSA Income Poverty Guidelines (45 CFR 1060.2) will be made in accordance with a schedule of fees designed to recover the reasonable cost of providing services.

(9) If a third party (including a Government agency) is authorized or legally obligated to pay for services, all reasonable efforts must be made to obtain the third-party payment without application of any discounts. Where the cost of services is to be reimbursed under title XIX or title XX of the Social Security Act, a written agreement with

the title XIX or title XX agency is required.

(10)(i) Provide that if an application relates to consolidation of service areas or health resources or would otherwise affect the operations of local or regional entities, the applicant must document that these entities have been given, to the maximum feasible extent, an opportunity to participate in the development of the application. Local and regional entities include existing or potential subgrantees which have previously provided or propose to provide family planning services to the area proposed to be served by the applicant.

(ii) Provide an opportunity for maximum participation by existing or potential subgrantees in the ongoing policy decisionmaking of the project.

(11) Provide for an Advisory Committee as required by § 59.6.

(b) In addition to the requirements of subsection (a) of this section, each project must meet each of the following requirements unless the Secretary determines that the project has established good cause for its omission. Each project must:

(1) Provide for medical services related to family planning (including physician's consultation, examination, prescription, and continuing supervision, laboratory examination, contraceptive supplies) and necessary referral to other medical facilities when medically indicated, and provide for the effective usage of contraceptive devices and practices.

(2) Provide for social services related to family planning, including counseling, referral to and from other social and medical service agencies, and any ancillary services which may be necessary to facilitate clinic attendance.

(3) Provide for informational and educational programs designed to (i) achieve community understanding of the objectives of the program, (ii) inform the community of the availability of services, and (iii) promote continued participation in the project by persons to whom family planning services may be beneficial.

(4) Provide for orientation and inservice training for all project personnel.

(5) Provide services without the imposition of any durational residency requirement or requirement that the patient be referred by a physician.

(6) Provide that family planning medical services will be performed under the direction of a physician with special training or experience in family planning.

(7) Provide that all services purchased for project participants will be

authorized by the project director or his designee on the project staff.

(8) Provide for coordination and use of referral arrangements with other providers of health care services, local health and welfare departments, hospitals, voluntary agencies, and health services projects supported by other Federal programs.

(9) Provide that if family planning services are provided by contract or other similar arrangements with actual providers of services, services will be provided in accordance with a plan which establishes rates and methods of payment for medical care. These payments must be made under agreements with a schedule of rates and payment procedures maintained by the grantee. The grantee must be prepared to substantiate that these rates are reasonable and necessary.

(10) Provide, to the maximum feasible extent, an opportunity for participation in the development, implementation, and evaluation of the project by persons broadly representative of all significant elements of the population to be served, and by others in the community knowledgeable about the community's needs for family planning services.

§ 59.6 What procedures apply to assure the suitability of informational and educational material?

(a) A grant under this section may be made only upon assurances satisfactory to the Secretary that the project shall provide for the review and approval of informational and educational materials developed or made available under the project by an Advisory Committee prior to their distribution, to assure that the materials are suitable for the population or community to which they are to be made available and the purposes of title X of the Act. The project shall not disseminate any such materials which are not approved by the Advisory Committee.

(b) The Advisory Committee referred to in subsection (a) of this section shall be established as follows:

(1) *Size.* The Committee shall consist of no fewer than five but not more than nine members, except that this provision may be waived by the Secretary for good cause shown.

(2) *Composition.* The Committee shall include individuals broadly representative (in terms of demographic factors such as race, color, national origin, handicapped condition, sex, and age) of population or community for which the materials are intended.

(3) *Function.* In reviewing materials, the Advisory Committee shall:

²Section 205 of Pub. L. 94-63 states: "Any (1) officer or employee of the United States, (2) officer or employee of any State, political subdivision of a State, or any other entity, which administers or supervises the administration of any program receiving Federal financial assistance, or (3) person who receives, under any program receiving Federal assistance, compensation for services, who coerces or endeavors to coerce any person to undergo an abortion or sterilization procedure by threatening such person with the loss of, or disqualification for the receipt of, any benefit or service under a program receiving Federal financial assistance shall be fined not more than \$1,000 or imprisoned for not more than one year, or both."

(i) Consider the educational and cultural backgrounds of individuals to whom the materials are addressed;

(ii) Consider the standards of the population or community to be served with respect to such materials;

(iii) Review the content of the material to assure that the information is factually correct;

(iv) Determine whether the material is suitable for the population or community to which it is to be made available; and

(v) Establish a written record of its determinations.

§ 59.7 What criteria will Health and Human Services use to decide which family planning services projects to fund and in what amount?

(a) Within the limits of funds available for these purposes, the Secretary may award grants for the establishment and operation of those projects which will in the Department's judgment best promote the purposes of section 1001 of the Act, taking into account:

(1) The number of patients and, in particular, the number of low-income patients to be served;

(2) The extent to which family planning services are needed locally;

(3) The relative need of the applicant;

(4) The capacity of the applicant to make rapid and effective use of the Federal assistance;

(5) The adequacy of the applicant's facilities and staff;

(6) The relative availability of non-Federal resources within the community to be served and the degree to which those resources are committed to the project; and

(7) The degree to which the project plan adequately provides for the requirements set forth in these regulations.

(b) The Secretary shall determine the amount of any award on the basis of his estimate of the sum necessary for the performance of the project. No grant may be made for less than 90 percent of the project's costs, as so estimated, unless the grant is to be made for a project which was supported, under section 1001, for less than 90 percent of its costs in fiscal year 1975. In that case, the grant shall not be for less than the percentage of costs covered by the grant in fiscal year 1975.

(c) No grant may be made for an amount equal to 100 percent of the project's estimated costs.

§ 59.8 How is a grant awarded?

(a) The notice of grant award specifies how long HHS intends to support the project without requiring the project to recompute for funds. This period, called

the project period, will usually be for 3 to 5 years.

(b) Generally the grant will initially be for 1 year and subsequent continuation awards will also be for 1 year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by HHS that continued funding is in the best interest of the Government.

(c) Neither the approval of any application nor the award of any grant commits or obligates the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

§ 59.9 For what purpose may grant funds be used?

Any funds granted under this subpart shall be expended solely for the purpose for which the funds were granted in accordance with the approved application and budget, the regulations of this subpart, the terms and conditions of the award, and the applicable cost principles prescribed in Subpart Q of 45 CFR Part 74.

§ 59.10 What other HHS regulations apply to grants under this subpart?

Attention is drawn to the following HHS Department-wide regulations which apply to grants under this subpart. These include:

42 CFR Part 50—PHS Informal Grant Appeals Procedure

45 CFR Part 16—Department Grant Appeals Process

45 CFR Part 19—Limitation on Payments or Reimbursements for Drugs

45 CFR Part 74—Administration of Grants

45 CFR Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services' Implementation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and Procedures for Hearings Under Part 80

45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

45 CFR Part 90—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance.

42 CFR Part 122, Subpart E—Health System Agency Reviews of Certain Proposed Uses of Federal Health Funds.

§ 59.11 Confidentiality.

All information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual's consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals.

§ 59.12 Inventions or discoveries.

(a) A project grant award is subject to the regulations of HHS as set forth in 45 CFR Parts 6 and 8, as amended. These regulations shall apply to any activity of the project for which grant funds are used, whether the activity is part of an approved project or is an unexpected byproduct of that project.

(b) The grantee and the Secretary shall take appropriate measures to assure that no contracts, assignments, or other arrangements inconsistent with the grant obligation are continued or entered into and that all personnel involved in the grant activity are aware of and comply with such obligations.

§ 59.13 Additional conditions.

The Secretary may, with respect to any grant, impose additional conditions prior to or at the time of any award, when in the Department's judgment these conditions are necessary to assure or protect advancement of the approved program, the interests of public health, or the proper use of grant funds.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 5726

[S-229]

California; Withdrawal for Reclamation Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will withdraw approximately 1,515 acres of national forest land located within the Tahoe National Forest from the operation of the mining laws for the construction, operation, and maintenance of the Sugar