agreement incorporating their mutual responsibilities under CDWSP.

IX. Administration

(a) Initial Obligation of Funds

When HUD selects an application for funding, and notifies the recipient, it will obligate funds to cover the amount of the approved grant. The initial obligation of funds will be provided for student grants for two years.

(b) Disbursement

Recipients will receive grant payments by U.S. Treasury checks on a reimbursement basis.

(c) Deobligation and Recipient Repayment

(1) HUD may deobligate amounts for grants if proposed activities are not begun or completed within a reasonable time after selection.

(2) If a student's participation in CDWSP is terminated at any time before the completion of the two-year term of the student's program, the recipient will be required to repay to the Federal Government the amount of the tuition support and addition support provided to the student under section III.(b) (2) and (3), above. However, HUD may on a case-by-case basis and for good cause (e.g., serious illness of the student, etc.) make exceptions to this repayment requirement. Recipients will be required to make this repayment even though the student fails to fulfill his or her repayment obligation to the recipient under section V.(b). The recipient will be eligible to receive payment for the cost of the student stipend paid before the date of the student's termination and for an administrative allowance that is based on the proportion of the two-year term completed by the student. (See section III.(b)(1) and (c). A recipient may substitute a student to complete the two-year term whose participation has been terminated. The substitute student must be otherwise eligible for participation in CDWSP and must have a sufficient number of academic credits to complete the degree program within the remaining portion of the terminated student's two-year term.

(3) Consistent with OMB Circulars Nos. A-102 and A-110, HUD, in the grant agreement, will set forth in detail other circumstances under which funds may be deobligated, recipients may be liable for repayment, or other sanctions may be imposed.

Other Matters

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the **Federal Register.**

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CRF Part 58, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, at the address listed above.

Authority: Sec. 107(c) Housing and Community Development Act of 1974 (42 U.S.C. 5307); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated July 25, 1988.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 88-18496 Filed 8-16-88; 8:45 am]

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August 17, 1988

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

Community Development Block Grants; Relocation, Displacement and Acquisition; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-88-1405; FR-2474]

Community Development Block Grants; Relocation, Displacement and Acquisition

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule sets forth the displacement, relocation, replacement housing, and real property acquisition policies and requirements governing the Community Development Block Grant Programs (including the Entitlement Grants Program, the State CDBG Program and the HUD-Administered Small Cities Program) and the Urban Development Action Grant Program. The major purpose of this rule is to implement section 509 of the Housing and Community Development Act of 1987, which provides that grants under sections 106 and 119 of the Housing and Community Development Act of 1974 may be made only if the grantee certifies that it is following an anti-resident-displacement and relocation plan.

DATES: *Effective Date:* Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

Comment Due Date: October 17, 1988.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Harold J. Huecker, Director, or Melvin Geffner, Deputy Director, Relocation and Real Estate Division, Office of Urban Rehabilitation, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone: (202) 755-6336 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: This interim rule sets forth displacement, relocation, replacement housing and real property acquisition policies and requirements governing Community Development Block Grant (CDBG) Programs (including the Entitlement Grants Program, the State CDBG Program and the HUD-Administered Small Cities Program) and the Urban Development Action Grant Program (UDAG). The Department has consolidated these policies and requirements in 24 CFR 570.606 for the Entitlement Grants Program and the HUD-Administered Small Cities Program. A new § 570.496a has been added to govern the State CDBG Program under Subpart I. Section 570.457, which governs the UDAG program, has been amended to cross-reference the requirements of § 570.606. Except for provisions governing section 104(k) of the Housing and Community Development Act of 1974 (the Act) under the UDAG program, the requirements of these three sections are substantially identical.

I. Uniform Relocation Act

Sections 570.606(a) and 570.496(a) explain the circumstances under which State agency acquisition (and the resulting displacement) for a CDBG- or UDAG- assisted activity will be subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)(42 U.S.C. 4601). This interim rule retains the existing URA requirements, but revises the current regulations for clarity.

The Uniform Relocation Act Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17, enacted April 2, 1987) recently expanded URA coverage. Before the amendment, the relocation provisions of the URA applied only to the displacement of persons (families, individuals, businesses, nonprofit organizations or farms) that results from the acquisition of real property by a Federal agency, a State or a State agency for a Federal or federally assisted project or program. The 1987 amendments added displacement that directly results from rehabilitation, demolition, or privately undertaken acquisition for Federal or federally assisted programs. This revised coverage will apply to displacement that occurs on or after April 2, 1989.

On December 17, 1987 (52 FR 48015), the Department of Transportation (DOT), as the lead agency, along with sixteen other Federal agencies published an interim final rule implementing those provisions of the 1987 URA amendments that were explicit and which allowed for little, if any, administrative discretion or interpretation. These changes were reflected in 49 CFR Part 24. HUD was unable to participate in the government-wide publication due to Congressional review requirements applicable to HUD rules under section 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o). HUD subsequently published an interim rule making the December 17, 1988 government-wide interim final rule effective for HUD programs on April 2, 1989 (53 FR 4964, published February 19, 1988).

On July 21, 1988 (53 FR 27598), DOT published a proposed rule implementing the remaining 1987 URA amendments by revising the existing interim rule. The July 21, 1988 rule would apply to DOT, HUD and 16 other Federal agencies. Following the consideration of comments received in response to that proposed rule as well as comments received in response to the interim final rule, a final rule will be promulgated revising 49 CFR Part 24. HUD anticipates that the publication of a final rule in today's proceeding will be published concurrently with the final government-wide URA rule. HUD will incorporate appropriate revisions to the final rule in today's proceeding as necessary, to reflect the government-wide URA rule on or before April 2, 1989. Commenters interested in the URA requirements that will be imposed in this rule should also obtain the government-wide URA proposed rule, and make appropriate comments to DOT.

II. New Subsection 104(d) Requirements

Section 509 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) amended section 104 of the Housing and Community Development Act of 1974 (the Act) by adding a new subsection (d), and by redesignating existing subsections (d) through (j) as subsections (e) through (k) respectively.

The new section 104(d) of the Act provides that a grant under section 106 (CDBG Programs) or section 119 (UDAG Program) may be made only if the grantee certifies that it is following a "residential antidisplacement and relocation assistance plan." Grantees under the CDBG Entitlement Program and HUD-Administered Small Cities CDBG Program must make this certification to HUD. Grantees under the UDAG Program must make this certification to HUD in the application for each project. State recipients under the State CDBG Program must certify to the State.

Under section 509(b) of the 1987 Act, the new amendment is effective on October 1, 1988. HUD will apply the new requirements of this section as follows:

Entitlement Grants Program (Metropolitan Cities and Urban Counties)—The interim rule will govern all activities for which funds are first obligated by the grantee on or after the date the first grant from HUD is made after September 30, 1988, without regard to the source year of the funds for the activity.

UDAG and the HUD-administered Small Cities Program—The interim rule will govern grants made by HUD on or after October 1, 1988.

State CDBG Program—The interim rule will govern grant agreements from HUD to the State signed on or after October 1, 1988. Thus, the interim rule will apply to grants that a State makes to state recipients with grant amounts made available to the State by HUD after October 1, 1988.

The residential antidisplacement and relocation assistance plan under section 104(d) contains two components—a one-for-one replacement unit requirement and a relocation assistance component. These components are discussed below.

A. One-for-one Replacement Unit

1. *Replacement requirement.* The interim rule at §§ 570.606(b)(1)(i) and 570.496a(b)(1)(i) implements section 104(d)(2)(A)(i) of the Act. The rule provides that all occupied and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than as low/moderate-income dwelling units as a direct result of an activity assisted under Part 570 must be replaced with low/moderate-income dwelling units. The replacement dwelling units may include public housing, or existing housing receiving Section 8 project-based assistance under the United States Housing Act of 1937. The interim rule requires that the replacement low/moderate-income dwelling units must be provided within three years of the commencement of the demolition or rehabilitation related to the conversion, and must be:

—Located within the same community. (For the purposes of the interim rule, within the community has been interpreted to be within the recipient/grantee's jurisdiction.)

—Sufficient in number and size to house at least the number of occupants that could have been housed in the units that are demolished or converted. (The number of occupants that may be housed in units shall be determined by reference to local housing occupancy codes.)

—Provided in standard condition. Replacement units include units that have been raised to standard from substandard condition.

—Designed to remain low/moderate-income dwelling units for at least 10 years from the date of initial occupancy of the units.

For the purposes of the section 104(d) requirements, the interim rule defines low/moderate-income dwelling unit as a dwelling unit with a market rental including utility costs, that does not exceed the applicable Fair Market Rent (FMR) for existing housing and moderate rehabilitation, as established under the Section 8 Existing Housing Program. Based on a nationwide review comparing these FMR's with median incomes of families, the Department determined that, in nearly every jurisdiction, the FMR for a unit housing a four-person household is less than 30% of the gross household income of a family earning 80% of the median income for the jurisdiction. In many areas a family with an income of 60% or 70% of the median income for the jurisdiction can pay the FMR with 30% of its gross income.

The Department recognizes that, generally, a very low-income family—a family earning less than 50% of the median income—cannot afford a unit renting at the FMR level, unless the family is provided supplemental assistance. Therefore, the Department believes that housing vouchers and certificates under the Section 8 Existing Housing Program will remain an essential part of efforts to assist very low-income households. On the other hand, units with project-based subsidies, such as public housing and Section 8 moderate rehabilitation units will also meet the criteria for the one-for-one replacement units under section 104(d) of the Act.

Given the purpose of the new legislation, the Department believes that it is appropriate to require the replacement of substandard units that can be rehabilitated economically. Accordingly, "occupiable dwelling unit" is defined to mean a dwelling unit that is in a standard condition or in a substandard condition, but suitable for rehabilitation.

The conference report on section 509 stated that the conferees did not intend to make vacant and *un*occupiable housing subject to the one-for-one replacement requirement, unless the housing was vacated within the CDBG project site after the developer or city began preparations for the project or less than one year before the grant was approved. (H. Rep. No. 426, 100th Cong., 1st Sess. 228 (1987). HUD will consider dwelling units that are vacated within such a time period to be "occupied low/moderate income dwelling units that are demolished or converted to another use as a direct result of activities assisted" under Part 570, and will require the one-for-one replacement of such housing.

Except for grants under the State CDBG program, if the grantee has a HUD-approved Housing Assistance Plan (HAP) the definitions of "standard condition" and "substandard condition suitable for rehabilitation" established in the HAP will apply. If the grantee has no HUD-approved HAP, the grantee will be required to establish and make public its definition of these terms consistent with the requirements of § 570.306(e)(1). Under the State CDBG program, the State may define, or at its option, allow the state recipient to establish and make public its definition of these terms. If the state recipient establishes definitions, the State must determine if the definitions are acceptable.

2. *Submission and publication requirements.* To ensure that HUD (or the State) and the public are aware of the recipient/grantee's plans for the provision of replacement housing, the interim rule at §§ 570.606(b)(1)(ii) and 570.496a(b)(1)(ii) provides for submission of certain information to HUD or to the State, and requires the recipient/grantee to make this information public before obligating or expending funds for any activity that requires the provision of replacement housing.

3. *Exception.* Under section 104(d)(3) of the Act, the requirements discussed above will not apply if the Secretary finds, on the basis of objective data, that there is available on a nondiscriminatory basis in the area an adequate supply of habitable affordable housing for low- and moderate-income persons. Sections 570.606(b)(1)(iii) and 570.496a(b)(1)(iii) implement this provision. These sections state that the HUD Field Office will make the determination by considering the following factors: housing vacancy rates, the number of vacant low/moderate-income dwelling units, and the number of eligible families on waiting lists for assistance under programs

assisted under the United States Housing Act of 1937. The determination by the HUD Field Office that the one-for-one replacement requirement is inapplicable shall constitute the final agency action on the issue.

The interim rule provides that the "area" to be considered is the recipient/grantee jurisdiction, unless HUD determines, based on geographic and demographic factors, including location and access to places of employment, that the dwelling units located in a larger area should be considered. Such dwelling units will be considered if the Field Office determines that the units would be suitable to serve the needs of the low- and moderate-income households that could be served by the dwelling units that are to be demolished or converted to another use.

The Department welcomes public comment on additional factors for review of requests for exception. The Department would like to refine the rule's thresholds for making these determinations to assure that they are consistent with available data resources and provide communities with clear, understandable criteria to be considered when reviewing requests.

Except for grants under Subpart I, the grantee must submit a request for a determination to the HUD Field Office. State recipients under Subpart I must submit their request to the State which will provide a recommendation to the Field Office on the request.

B. Relocation Assistance Under Section 104(d)

The interim rule at §§ 570.606(b)(2) and 570.496a(b)(2) implements section 104(d)(2)(iii) of the Act. The rule provides that each low- or moderate-income household that is displaced by demolition or by the conversion of a low/moderate income dwelling unit to another use, as a direct result of an activity assisted under this Part 570 shall be provided with relocation assistance. Under the statute, relocation assistance includes reimbursement for actual and reasonable moving expenses, security deposits, credit checks, other moving-related expenses, including any interim housing expenses, and certain replacement housing assistance. Displaced persons have the right to elect, as an alternative to the benefits under section 104(d) of the Act, to receive benefits under the URA, if they determine that it is in their best interest to do so.

Where possible, the interim rule makes the relocation assistance under section 104(d) of the Act identical to the relocation benefits provided under the URA. Accordingly, displaced low- or moderate-income households will receive the relocation assistance provided to displaced persons required under 24 CFR 42, Subpart C (General Relocation Requirements) and Subpart D (Payment for Moving and Related Expenses) whether the household elects to receive assistance under the URA or under section 104(d) of the Act. The interim rule modifies the definition of "comparable replacement dwelling" to reflect affordability requirements contained in section 104(d), and makes other minor changes to the requirements of 24 CFR Part 42. As required by the statute, assistance under section 104(d) of the Act requires the provision of a different type of replacement housing assistance (see discussion below) and additional assistance in the form of payments of security deposits to rent a replacement dwelling and credit checks required to rent or purchase a replacement dwelling. Each displaced household is given an opportunity to elect to receive benefits prescribed under the URA or 1987 Act provisions.

Replacement housing assistance is described in section 104(d)(2)(A)(iii) of the Act. Under this section, displaced persons of low- and moderate-income must be provided with compensation sufficient to assure that, for a five-year period after relocation, the displaced family will not bear a ratio of shelter costs to income that exceeds 30 percent of income.

While section 509 provides that shelter costs shall not exceed 30 percent of *income*, the Conference report on this section requires that the recipient/grantee provide compensation to ensure that displaced low- and moderate-income households do not pay more than 30 percent of their *adjusted income* for rent (H. Rep. No. 426, 100th Cong., 1st Sess. 227 (1987)). While the Department recognizes that section 509, as enacted, is significantly different from the provision addressed in the Conference report, it does not appear that subsequent revisions were intended to impose an income standard different from adjusted income. In determining how to adjust gross income, HUD considered the use of the income computation standard used under the United States Housing Act of 1937 (see 24 CFR Parts 813 and 913), but determined that this approach would be inappropriate for programs under Part 570 since recipient/grantees are generally unfamiliar with the complicated requirements of these standards. Instead, HUD has decided to permit the grantee to make such adjustments to gross incomes as the grantee may deem appropriate. (In the case of state recipients the State, or if the State permits, the state recipient will make adjustments as it may deem appropriate.) Such an approach is similar to an approach used in the past under the Uniform Relocation Act.

Under the interim rule the recipient/grantee may provide this compensation either through the provision of a Section 8 housing voucher or certificate (through the local Public Housing Agency) or as cash rental assistance.

The Department encourages recipient/grantees to offer Section 8 housing vouchers or certificates to all displaced low- and moderate-income households, thereby increasing the likelihood that the household will be able to afford standard housing after the five-year period expires. Where the recipient/grantee provides assistance in the form of a Section 8 housing voucher or certificate, however, the household must be provided with referrals to comparable replacement dwelling units whose owners are willing to participate in the certificate or housing voucher programs. To ensure that a household will not bear a ratio of shelter costs to income that exceeds 30 percent, where a certificate or housing voucher is provided to a household, the comparable dwelling unit must be made available to the household at a monthly cost for rent and estimated average monthly utility cost that does not exceed the Fair Market Rent or the payment standard, respectively. Housing voucher recipients, of course, may reject the dwelling unit to which they are referred and use their voucher to rent another dwelling unit with a monthly cost in excess of the payment standard if they are willing to pay the difference between the rent to the owner and the housing assistance payment under the housing voucher.

If housing vouchers or certificates are not provided, the recipient/grantee must provide cash rental assistance in the form of payments equal to 60 months (*i.e.*, 5 years) times the amount that is obtained by subtracting 30 percent of the displaced household's monthly gross income (with adjustments as described above) from the lesser of: (1) The monthly cost of rent and utilities at a comparable replacement dwelling unit, or (2) the monthly cost of rent and utilities at the decent, safe and sanitary replacement dwelling to which the household relocates. Cash assistance may be in a lump sum or in installments.

In lieu of the housing voucher, certificate or cash assistance described above, the statute permits the household to elect to receive a lump sum payment to permit the household to secure participation in a housing cooperative or mutual housing association. The interim rule provides for the election of a lump sum payment in an amount equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting 30 percent of the displaced household's monthly gross income (with adjustments as described above) from the monthly cost of rent and utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments will be discounted at a rate that is equal to a rate of interest paid on passbook savings deposits by a federally insured bank or savings and loan institution conducting business in the recipient/grantee's jurisdiction. To the extent necessary to minimize hardship to the household, the recipient/grantee is encouraged, subject to appropriate safeguards to issue a payment in advance of the purchase of the interest in the cooperative or mutual housing association.

Under the interim rule, a low- or moderate-income household is eligible for relocation assistance under section 104(d) of the Act if:

(1) The household is required to move from the dwelling unit on or after the date that the owner submits a request to the recipient/grantee for financial assistance that is later approved for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA).

(2) The household is required to move from the dwelling unit on or after the date of the initial submission of a final statement under 24 CFR 570.302(a)(2) (Entitlement Grants Program); the initial submission of an application to HUD by a unit of general local government under §§ 570.426, 570.430, or 570.435(d) that is granted for the requested activity (HUD-administered Small Cities Program); the submission of an application to HUD by a city or urban county under § 570.458 that is granted for the requested activity (UDAG Program); or the date of the initial submission of an application to a State from a unit of general local government that is approved for the requested activity (State CDBG program). (This applies to dwelling units owned by a Federal or State agency, as defined under the URA.)

If the displacement occurs after this date, the household will not be eligible for assistance if the household is evicted for cause, if the household moved to the property after the date after receiving written notice of the expected displacement; or the grantee determines and HUD concurs that the displacement was not a result of the assisted activity. (Under the State CDBG program, the state recipient makes this determination with the State's concurrence.) If a displacement occurs before this date, the household may be eligible for assistance if the grantee or HUD determines that the displacement was a direct result of an activity assisted under Part 570. (Under the State CDBG program, either the state recipient, the State or HUD may make this determination.)

C. Steps To Minimize Displacement

Minimizing displacement has long been an integral part of the policies and requirements which govern HUD-assisted programs. Consistent with existing policies and the special emphasis on protecting low- and moderate-income persons, the Department has included at § 570.606(b), a requirement that grantees identify the steps they will take to minimize the displacement of persons from their homes and neighborhoods.

The Department believes that strong relocation assistance standards that require grantees to provide substantial levels of assistance to persons displaced by HUD-assisted programs constitute the most effective antidisplacement policy. In addition to providing meaningful help to those persons most directly affected by displacement-causing projects, the substantial costs paid by the displacing entity act as the strongest deterrent to unnecessary displacement. For these reasons, the Department has, wherever possible, included in HUD program regulations very specific relocation assistance requirements governing displacement, not subject to the URA.

The pending expansion of the URA coupled with the new relocation assistance requirements in § 570.606(b) represent the strongest antidisplacement measures to be applied to a HUD-assisted program. In determining whether grantees have met CDBG anti-displacement goals and objectives, HUD will rely primarily on the monitoring of actual displacement, including a careful examination of randomly selected relocation cases and a review of the assistance provided to persons displaced. Additionally on a random basis, the Department will interview displaced persons and inspect replacement housing. Special attention will be given to the displacement of low- and moderate-income households from their dwellings.

III. Section 104(k) Requirements

Section 104(k) of the Act states that each grantee "shall provide for reasonable benefits to any person involuntarily and permanently displaced" as a result of the use of CDBG/UDAG assistance to acquire or substantially rehabilitate property. This requirement, formerly section 104(j), was added by the Housing and Urban-Rural Recovery Act of 1983.

HUD has not, as yet, fully implemented section 104(k) for all programs covered under Part 570. Minimum section 104(k) standards for the UDAG program were added at § 570.457(c) on February 7, 1987 (52 FR 3614) and were effective on March 17, 1987. Revisions to § 570.606 implementing section 104(k) of the Act were proposed on October 31, 1984 (49 FR 43852), but a final rule in that proceeding has not as yet been issued. In the absence of regulations, technical advice concerning compliance with this provision was contained in HUD Notice CPD 88-7 (issued February 29, 1988).

The requirements of section 104(k) of the Act will effectively be superseded by April 2, 1989 by the 1987 URA amendments discussed above. All persons displaced on or after that date by acquisition, rehabilitation or demolition for a federally assisted activity will be entitled to relocation assistance under the URA. In light of the impact of section 104(k) of the Act after April 2, 1989, the Department has elected not to revise the regulations to provide detailed guidelines for providing rental assistance to persons covered by section 104(k) of the Act. The interim rule at §§ 570.606(c) and 570.496a(c) merely requires that reasonable relocation assistance be provided to persons (families, individuals, businesses, non-profit organizations, and farms) displaced (*i.e.*, permanently and involuntarily moved) as a result of the use of assistance received under Part 570 to acquire or substantially rehabilitate property, where such displacement is not subject to the URA or section 104(d) of the Act. As described under HUD Notice CPD 88-7, recipient/grantees have discretion to develop their own policies, subject to a minimum standard that all displaced persons be provided appropriate advisory service, reimbursed for their actual reasonable moving expenses, and provided with financial assistance sufficient to enable a person displaced from his or her dwelling to lease and occupy a suitable, decent, safe and sanitary replacement dwelling where the cost of rent and utilities does not exceed 30 percent of the household's gross income. (The Department encourages recipient/grantees to work with the local Public Housing Agency to provide section 8 housing vouchers or certificates along with referrals to suitable housing where the owner agrees to participate in the Section 8 Program.)

Rather than revise the existing section 104(k) requirements applicable to the UDAG program for the limited time period remaining before April 2, 1989, UDAG grantees will continue to be subject to the section 104(k) requirements as prescribed in the February 7, 1987 rule (see § 570.457(b)). HUD believes that this approach will avoid confusion for UDAG grantees during this interim period. (Provisions governing residential displacement have been revised slightly. See the discussion at Section VII., below.)

IV. Optional Relocation Assistance

Under section 105(a)(11) of the Act, a grantee may provide relocation payments and other relocation assistance for displaced individuals, families, businesses, organizations, and farm operations. Existing § 570.606(b) implements these requirements. These requirements are retained in the interim rule, with minor amendments.

The interim rule at §§ 570.606(d) and 570.496a(d) provides that optional relocation assistance may be provided if displacement is caused by an activity that is not subject to the URA, or to section 104 (d) or (k) of the Act. The recipient/grantee may also provide relocation assistance to persons covered by those laws beyond that required. Unless such assistance is provided pursuant to State or local law, the recipient/grantee is required to provide assistance only upon the basis of a written determination that the assistance is appropriate and must adopt a written policy available to the public that describes the relocation assistance that the recipient/grantee has elected to provide and that provides for equal assistance within each class of displacees.

V. Appeals

Existing § 570.606(b)(3) currently permits the owner or occupant of a property to appeal a grantee's determination that the URA does not apply to an acquisition or resulting displacement under 24 CFR part 42, Subpart J. The appeals provisions under §§ 570.606(e) and 570.496a(e) permit the appeal of determinations concerning the person's eligibility for, or the amount of, a relocation payment provided under any of the authorities described above. The interim rule requires the person to file a written appeal with the recipient/grantee, and prescribes the appeal procedures described in 24 CFR 42.10.

To comply with subsection 104(d)(2)(C) of the Act, the interim rule at § 570.606(e) and 570.496a(e) also permits a low- or moderate-income household that has been displaced from a dwelling to seek a review of the recipient/grantee's determination on his or her appeal. The review under the UDAG Program, CDBG Entitlement Program, and HUD-administered Small Cities CDBG Program is made by the HUD Field Office serving the locality. The review under the State CDBG Program is made by the State recipient.

VI. Responsibility of Grantee

Section 570.606(f) provides that the grantee is responsible for ensuring compliance with the relocation, displacement and acquisition requirements. (Under the State CDBG program, the State as grantee is responsible for ensuring compliance with these requirements by the state recipient. See § 570.496a(f).) This section also states that the cost of assistance required under the relocation, displacement and acquisition provisions may be paid from local public funds, funds provided under Part 570, or funds available from other sources, and requires the maintenance of records in sufficient detail to demonstrate compliance with the provisions of the section.

VIII. Displacement

Paragraphs (g) of §§ 570.606 and 570.496a provide that a displaced person is a person that is required to move permanently and involuntarily and includes residential tenants who move from the real property if:

—The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building or in a nearby building on the real property following the completion of the assisted activity at a monthly cost for rent and utilities that does not exceed the greater of 30 percent of the tenant household's average monthly gross income or the tenant's costs for rent and utilities before:

(1) The date that the owner submits a request to the recipient/grantee for financial assistance that is subsequently approved for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA.); or

(2) The date of the initial submission of a final statement under 24 CFR 570.302(a)(2) (Entitlement Grants Program); the initial submission of an application to HUD by a unit of general local government under §§ 570.426, 570.430, or 570.435(d) that is granted for the requested activity (HUD-administered Small Cities Program); the submission of an application to HUD by a city or urban county under § 570.458 that is granted for the requested activity (UDAG Program); or the initial submission of an application to the State from a unit of general local government requesting assistance that is later granted (States CDBG program). (This applies to dwelling units owned by a Federal or State agency, as defined under the URA.)

—The tenant is required to move to another dwelling in the real property but is not reimbursed for all actual reasonable out-of-pocket moving costs incurred in connection with the move; or

—The tenant is required to relocate temporarily and is not reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs and any increased rent and utility costs or other conditions of the temporary relocation are not reasonable.

Section 570.606(g) adopts the provisions currently contained in § 570.457(c), with minor miscellaneous clarifications to reflect existing HUD policies. One change to the cited UDAG provision involves the limitation on the amount of rent and utilities that may be charged a tenant upon the completion of the assisted activity. Under § 570.457(c) the limitation is based, in part, on the tenant's costs for rent and utilities on the date of preliminary funding approval for the UDAG assistance. Under the interim rule, the limitation is based upon the date of submission of a request for financial assistance, or in some cases, on the date of the application requesting assistance. HUD believes that this change is necessary to ensure a consistent relocation and displacement policy among the various programs under Title I of the Act. The modification should not have a significant impact on residential tenants required to move as a result of UDAG activities.

VIII. Loan Guarantee Provisions

In addition to the revisions discussed above, the interim rule incorporates existing policies regarding the applicability of the relocation, displacement, and acquisition requirements to activities that are financed with loan guarantees under section 108 of the Act. The interim rule revises § 570.702 to provide that the applicant for loan guarantee (or the designated public agency) must comply with requirements identical to the above-described relocation, displacement and acquisition requirements in connection with activities that are financed in whole or in part with the loan guarantee.

Interim rule

Section 509(b) of the 1987 Act requires that the provisions of section 104(d) of the Act be effective on October 1, 1988. Department believes that the statutory duty to implement this section by that date, to explain the relationship between the various authorities governing relocation and displacement under the CDBG and UDAG progams, and to ensure that the benefits provided under section 104(d) are made available to effected members of the public as soon as possible, makes this prior notice and comment impracticable and contrary to the public interest. For these reasons, the Department does not believe that it is appropriate to subject this rule to notice and comment rulemaking before making it effective. Public comments, however, are invited for 60 days following publication of the interim rule. These comments will be considered in the adoption of a final rule.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule does not affect the amount of funds provided under the CDBG or UDAG programs, but rather modifies and updates program requirements to comport with recently enacted legislation.

This rule was listed as Item No. 998 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.218, 14.219, 14.221, 14.225 and 14.227.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the Federal Register.

List of Subjects in 24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

Accordingly, the Department amends 24 CFR Part 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for Part 570 is revised to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–20); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 570.201, paragraph (i) is revised to read as follows:

§ 570.201 Basic eligible activities.

* * * * *

(i) *Relocation.* Relocation payments and other assistance for permanently and temporarily relocated individuals, families, businesses, nonprofit organizations, and farm operations where the assistance is:

(1) Required under the provisions of § 570.606 (a), (b) or (c); or

(2) Determined by the recipient to be appropriate under the provisions of § 570.606(d).

* * * * *

3. In § 570.303, paragraph (h) is redesignated as paragraph (i), and a new paragraph (h) is added to read as follows:

§ 570.303 Certifications.

* * * * *

(h) It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as required under § 570.606(a) and HUD implementing regulations at 24 CFR Part 42; the requirements in § 570.606(b) governing the residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (the Act) (including a certification that the grantee is following such a plan); the relocation requirements of § 570.606(c) governing displacement subject to section 104(k) of the Act; and the relocation requirements of § 570.606(d) governing optional relocation assistance under section 105(a)(11) of the Act.

* * * * *

§ 570.403 [Amended]

4. The reference to "24 CFR 570.602 (a), (b), and (c)" in § 570.403(i)(2)(i) is revised to read "24 CFR 570.606(a)".

5. Section 570.457 is revised to read as follows:

§ 570.457 Relocation, displacement and acquisition.

(a) *General.* The following relocation, displacement and acquisition provisions under 24 CFR 570.606 apply to applicants under this Subpart G:

(1) The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601), as described in 24 CFR 570.606(a);

(2) The residential antidisplacement and relocation assistance plan requirements of section 104(d) of the Act, as described in 24 CFR 570.606(b);

(3) The relocation requirements of section 104(k) of the Act, as described in § 570.606(c) and modified in paragraph (b) of this section below;

(4) The optional relocation assistance requirements of section 105(a)(11) of the Act, as described in 24 CFR 570.606(d); and

(5) The appeals procedures, grantee responsibilities and displacement provisions described in 24 CFR 570.606 (e), (f) and (g).

(b) *Section 104(k) relocation requirements.* In addition to the requirements of 24 CFR 570.606(c), the written statement of relocation assistance standards under section 104(k) must include the following minimum requirements.

(1) Eligibility criteria for relocation assistance must cover:

(i) Any tenant legally occupying the property at the time the grantee enters into a contract to provide assistance for the acquisition or rehabilitation; and

(ii) Any tenant who legally moves into the property between such event and the actual acquisition or rehabilitation without receiving prior written notice of his or her possible displacement as a result of the planned acquisition or rehabilitation.

(2) Any residential or nonresidential tenant which is determined under grantee standards to be displaced as a direct result of rehabilitation or acquisition assisted under this part (not subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 or section 104(d) of the Act) must be provided with relocation assistance, including at a minimum:

(i) Reasonable moving expenses

(ii) Advisory services needed to help in relocating; and

(iii) For a displaced residential tenant:

(A) Referral to at least one suitable, decent, safe and sanitary replacement dwelling unit. The grantee shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such a manner that, whenever feasible, they will have a choice between relocating within their neighborhoods and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing; and

(B) Either (*1*) payment at least equal to 24 times the increase, if any, between the monthly cost of rent and utilities at the dwelling unit from which the tenant is displaced and the cost of rent and utilities at a suitable decent, safe and sanitary replacement dwelling unit; or

(*2*) The provision through the local Public Housing Agency of a certificate or housing voucher for rental assistance payments under the Section 8 Housing Assistance Payments Program, if the tenant is an eligible lower income person and such assistance is available.

6. In § 570.458, paragraph (c)(14)(ix)(I) is amended to read as follows:

§ 570.458 Full applications.

* * * * *

(c) * * *

(14) * * *

(ix) * * *

(I) The acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as required under § 570.457(a)(1) and HUD implementing regulations at 24 CFR Part 42; the requirements in § 570.457(a)(2) governing the residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (the Act) (including a certification that the applicant is following such a plan); the relocation requirements of § 570.457 (a)(3) and (b) governing displacement subject to section 104(k) of the Act; and the relocation requirements of § 570.457(a)(4) governing optional relocation assistance under section 105(a)(11) of the Act.

* * * * *

7. Part 570, subpart I is amended by adding a new § 570.496a to read as follows:

§ 570.496a Relocation, displacement and acquisition.

(a) *Uniform Relocation Act.* (1) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601) and HUD implementing regulations at 24 CFR Part 42 apply to the acquisition of real property by a State agency for an activity assisted under this subpart and to the displacement of any family, individual, business, nonprofit organization or farm that results from such acquisition. The State's certification of compliance with the URA is required in the grant agreement.

(2) An acquisition and resulting displacement by a State agency is "for an assisted activity" if it occurs on or after the date of the initial submission of an application to the State by a unit of general local government requesting assistance under this subpart that is granted for the requested activity. However, an acquisition or displacement that occurs on or after the described date is not subject to the URA if the State determines that the acquisition or displacement was not carried out for an assisted activity, and the HUD Field Office concurs in that determination. An acquisition or displacement that occurs before the described date is subject to the URA, if the state recipient, the State or the HUD Field Office determines that the acquisition or displacement was carried out for the assisted activity. The State may, at any time, request a HUD determination whether an acquisition or displacement will be considered to be for an assisted activity and thus subject to these regulations. To be eligible for relocation assistance, however, a person must also meet the eligibility criteria in 24 CFR Part 42.

(b) *Residential antidisplacement and relocation assistance plan.* Under section 104(d) of the Act, the State must ensure that each state recipient adopts, makes public and certifies to the State that it is following a residential antidisplacement and relocation assistance plan providing one-for-one replacement units (paragraph (b)(1) of this section), and relocation assistance (paragraph (b)(2) of this section). Additionally under section 106(d)(5)(A) of the Act, the state recipient must also certify to the State that it will minimize displacement of persons as a result of assisted activities.

(1) *One-for-one replacement units.* (i) All occupied and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than as low/moderate-income dwelling units as a direct result of an activity assisted under this subpart must be replaced by governmental agencies or private developers with low/moderate-income dwelling units. Replacement low/moderate-income dwelling units may include public housing, or existing housing receiving Section 8 project-based assistance under the United States Housing Act of 1937. The replacement low/moderate-income dwelling units must be provided within three years of the commencement of the demolition or rehabilitation related to the conversion, and must meet the following requirements:

(A) The units must be located within the state recipient's jurisdiction.

(B) The units must be sufficient in number and size to house at least the number of occupants that could have been housed in the units that are demolished or converted. The number of occupants that may be housed in units shall be determined in accordance with local housing occupancy codes.

(C) The units must be provided in standard condition. Replacement low/moderate-income dwelling units may include units that have been raised to standard from substandard condition.

(D) The units must be designed to remain low/moderate-income dwelling units for at least 10 years from the date of initial occupancy.

(ii) Before obligating or expending funds provided under this subpart for any activity that will directly result in the demolition of low/moderate-income dwelling units or the conversion of low/moderate-income dwelling units to another use, the state recipient must advise the State that it is undertaking the activity. The state recipient must make public, and submit to the State, if requested, the following information in writing:

(A) A description of the proposed assisted activity;

(B) The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for low/moderate-income dwelling units as a direct result of the assisted activity;

(C) A time schedule for the commencement and completion of the demolition or conversion;

(D) The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units;

(E) The source of funding and a time schedule for the provision of replacement dwelling units;

(F) The basis for concluding that each replacement dwelling unit will remain a low/moderate-income dwelling unit for at least 10 years from the date of initial occupancy.

(iii) (A) The requirements of this paragraph (b)(1) do not apply if the HUD Field Office determines, based upon objective data, that there is an adequate supply of vacant low/moderate-income dwelling units in standard condition available on a nondiscriminatory basis within the state recipient's jurisdiction. In making this determination, the HUD Field Office will consider the housing vacancy rate for the jurisdiction, the number of vacant low/moderate-income dwelling units in the jurisdiction (excluding units that will be demolished or converted) and the number of eligible families on waiting lists for housing assisted under the United States Housing Act of 1937 in the jurisdiction.

(B) The HUD Field Office may consider the supply of vacant low/moderate-income dwelling units in a standard condition available on a nondiscriminatory basis in an area that is larger than the state recipient's jurisdiction. Such additional dwelling units shall be considered if the HUD Field Office determines that the units would be suitable to serve the needs of the low- and moderate income households that could be served by the low/moderate-income dwelling units that are to be demolished or converted to another use. The HUD Field Office must base this determination on geographic and demographic factors, such as location and access to places of employment and to other facilities.

(C) A state recipient must submit its request for a determination under this paragraph (b)(1)(iii) to the State. If the State agrees with the request, the State must provide a recommendation to the HUD Field Office on the request.

(2) *Relocation assistance.* (i) Each low- or moderate-income household that is displaced by demolition or by the conversion of a low/moderate income dwelling unit to another use, as a direct result of an activity assisted under this subpart shall be provided with relocation assistance. The low-or moderate-income household may elect to receive relocation assistance described at 24 CFR Part 42 (HUD's regulations implementing the URA), or may elect to receive the following relocation assistance:

(A) The relocation assistance described at 24 CFR Part 42, Subpart C (General Relocation Requirements) and Subpart D (Payment for Moving and Related Expenses). Relocation notices must be issued consistent with, and in the manner prescribed under, 24 CFR 42.203. The definition of "comparable replacement dwelling" used in 24 CFR Part 42 is modified as described in paragraph (b)(3)(i) of this section. Displaced households provided with replacement housing assistance under paragraph (b)(2)(i)(C), in the form of a certificate or housing voucher under Section 8 of the United States Housing Act of 1937, must be provided referrals to comparable replacement dwelling units whose owners are willing to participate in the housing voucher or certificate program. The state recipient shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such a manner that, whenever feasible, they will have a choice between relocating within their neighborhoods and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing;

(B) The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit, and credit checks required to rent or purchase the replacement dwelling unit; and

(C) Replacement housing assistance. Households are eligible to receive one of the following forms of replacement housing assistance:

(*1*) Each household must be offered compensation designed to ensure that, for a five-year period, the displaced household will not bear, after relocation, a ratio of shelter costs to income that exceeds 30 percent. Such compensation shall be either:

(*i*) A certificate or housing voucher for rental assistance provided through the local Public Housing Agency under Section 8 of the United States Housing Act of 1937; or

(*ii*) Cash rental assistance equal to 60 times the amount that is obtained by subtracting 30 percent of the displaced household's monthly gross income (with such adjustments as the State or, if the State permits, the state recipient may deem appropriate) from the lesser of: the monthly cost of rent and utilities at a comparable replacement dwelling unit or the monthly cost of rent and utilities at the decent, safe and sanitary replacement dwelling to which the household relocates.

The State, at its option, may require the state recipient to provide the cash payment in either a lump sum or in installments. The state recipient may at its discretion offer the household a choice between the certificate/housing voucher or cash rental assistance.

(*2*) If the household purchases an interest in a housing cooperative or mutual housing association and occupies a decent, safe and sanitary unit in the cooperative or association, the household may elect to receive a lump sum payment. This lump sum payment shall be equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting 30 percent of the displaced household's monthly gross income (with such adjustments as the State or, if the State permits, the state recipient may deem appropriate) from the monthly cost of rent and utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings deposits by a federally-insured bank or savings and loan institution conducting business within the state recipient's jurisdiction. To the extent necessary to minimize hardship to the household, the state recipient shall, subject to appropriate safeguards, issue a payment in advance of the purchase of the interest in the housing cooperative or mutual housing association.

(ii) Eligibility for relocation assistance. (A) A low- or moderate-income household that is required to move as a direct result of demolition or conversion of a low/moderate income dwelling unit to another use, is eligible for relocation assistance under this paragraph (b)(2) if:

(*1*) The household is required to move from the dwelling unit on or after the date that the owner submits a request to the state recipient for financial assistance that is later approved and funded for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA).

(*2*) The household is required to move from the dwelling unit on or after the date of the initial submission of an application to the State by the unit of general local government requesting assistance under this subpart that is later approved for the requested activity. (This applies to dwelling units owned by a Federal or State agency as defined under the URA.)

(B) If the displacement occurs on or after the appropriate date described in paragraph (b)(2)(ii)(A) of this section, the low- or moderate-income household is not eligible for relocation assistance if:

(*1*) The household is evicted for cause;

(*2*) The household moved into the property on or after the date described in paragraph (b)(2)(ii)(A) of this section, after receiving written notice of the expected displacement; or

(*3*) The state recipient determines that the displacement was not a direct result of the assisted activity, and the State concurs in that determination.

(c) If the displacement occurs before the appropriate date described in paragraph (b)(2)(ii)(A) of this section, the low- or moderate-income household is eligible for relocation assistance if the state recipient, the State, or HUD determines that the displacement was a direct result of an activity assisted under this subpart.

(3) *Definitions.* For the purposes of this paragraph (b):

(i) "Comparable replacement dwelling unit" means a dwelling unit that:

(A) Meets the criteria of 24 CFR 42.2(c)(1) through (4); and

(B) Is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed 30 percent of the household's average gross monthly income (with such adjustments to income as the State or, if the State permits, the state recipient may deem appropriate), after taking into account any rental assistance the household would receive.

Where a certificate or housing voucher is provided to a household under paragraph (b)(2)(i)(C)(*1*)(*i*) of this section, the dwelling unit must be available to the household at a monthly cost for rent and estimated average monthly utility cost that does not exceed the Fair Market Rent or the payment standard, respectively.

(ii) "Decent, safe and sanitary dwelling" means a decent, safe and sanitary dwelling as defined in 24 CFR 42.2(e).

(iii) "Low/moderate income dwelling unit" means a dwelling unit with a market rental (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing and moderate rehabilitation established under 24 CFR Part 888.

(iv) "Occupiable dwelling unit" means a dwelling unit that is in a standard condition, or is in a substandard condition, but is suitable for rehabilitation.

(v) "Standard condition" and "substandard condition suitable for rehabilitation." The State may define these terms, or may allow the state recipient to establish and make public its definition of these terms. If the state recipient establishes its definition of these terms, the State must determine if the state recipient's definition is acceptable.

(4) *Effective date.* The provisions of this paragraph (b) are applicable to grant agreements from HUD to the State signed on or after October 1, 1988.

(c) *Section 104(k) relocation requirements.* Section 104(k) of the Act requires that reasonable relocation assistance be provided to persons (families, individuals, businesses, nonprofit organizations, or farms) displaced (*i.e.*, moved permanently and involuntarily) as a result of the use of assistance received under this subpart to acquire or substantially rehabilitate property. If such displacement is subject to paragraph (a) or (b) of this section, above, this paragraph does not apply. The state recipient must develop, adopt and provide to persons to be displaced a written notice of the relocation assistance for which they are eligible. Persons entitled to assistance under this paragraph must be provided relocation assistance, including at a minimum:

(1) Reasonable moving expenses;

(2) Advisory services needed to help in relocating. The state recipient shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such a manner that, whenever feasible, they will have a choice between relocating within their neighborhoods and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing; and

(3) Financial assistance sufficient to enable any person displaced from his or her dwelling to lease and occupy a suitable, decent, safe and sanitary replacement dwelling where the cost of rent and utilities does not exceed 30 percent of the household's gross income.

(d) *Optional relocation assistance.* Under section 105(a)(11) of the Act, the State may permit state recipients to provide relocation payments and other relocation assistance for individuals, families, businesses, nonprofit organizations and farms displaced by an activity not subject to paragraph (a), (b) or (c) of this section above. The State may also permit the state recipient to provide relocation assistance to persons covered under paragraph (a), (b) or (c) of this section beyond that required. Unless such assistance is provided pursuant to State or local law, the state recipient must provide the assistance only upon the basis of a written determination that the assistance is appropriate and must adopt a written policy available to the public that describes the relocation assistance that the state recipient has elected to provide and that provides for equal relocation assistance within each class of displacees.

(e) *Appeals* If a person disagrees with the state recipient's determination concerning the person's eligibility for, or the amount of a relocation payment under this section, the person may file a written appeal of that determination with the state recipient. The appeal procedures to be followed are described in 24 CFR 42.10. A low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the state recipient decision to the State.

(f) *Responsibility of grantee.* (1) The State as grantee is responsible for ensuring compliance with the requirements of this section by its state recipients.

(2) The cost of assistance required under this section may be paid from local public funds, funds provided under this part or funds available from other sources.

(3) The State and the state recipient must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

(g) *Displacement.* For the purposes of this section, a "displaced person" is a person that is required to move permanently and involuntarily and includes a residential tenant who moves from the real property if:

(1) The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building or in a nearby building on the real property following the completion of the assisted activity at a monthly rent and estimated average cost for utilities that does not exceed the greater of:

(i) 30 percent of the tenant household's average monthly gross income; or

(ii) The tenant's monthly rent and average cost for utilities before:

(A) The date that the owner submits a request to the state recipient for financial assistance that is later approved for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA); or

(B) The date of initial submission of an application to the State by a unit of general local government requesting assistance under this subpart that is later approved for the requested activity. (This applies to dwelling units owned by a Federal or State agency as defined under the URA); or

(2) The tenant is required to move to another dwelling in the real property but is not reimbursed for all actual reasonable out-of-pocket costs incurred in connection with the move; or

(3) The tenant is required to relocate temporarily and:

(i) Is not reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs and any increased rent and utility costs; or

(ii) Other conditions of the temporary relocation are not reasonable.

8. Section 570.606 is revised to read as follows:

§ 570.606 Relocation, displacement and acquisition.

(a) *Uniform Relocation Act.* (1) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601) and HUD implementing regulations at 24 CFR Part 42 apply to the acquisition of real property by a State agency for an activity assisted under this part and to the displacement of any family, individual, business, nonprofit organization or farm that results from such acquisition. The grantee's certification of compliance with the URA is required in the grant agreement.

(2) An acquisition and resulting displacement by a State agency is "for an assisted activity" if it occurs on or after the date of the initial submission of a final statement under 24 CFR 570.302(a)(2) (Entitlement Grants); the initial submission of an application to HUD by a unit of general local government under §§ 570.426, 570.430, or 570.435(d) that is granted for the requested activity (HUD administered Small Cities Program); or the submission of an application to HUD by a city or urban county under § 570.458 that is granted for the requested activity (UDAG). However, an acquisition or displacement that occurs on or after the described date is not subject to the URA if the grantee determines that the acquisition or displacement was not carried out for an assisted activity, and the HUD Field Office concurs in that determination. An acquisition or displacement that occurs before the described date is subject to the URA, if the grantee or the HUD Field Office determines that the acquisition or displacement was carried out for the assisted activity. The grantee may, at any time, request a HUD determination whether an acquisition or displacement will be considered to be for an assisted activity and thus subject to these regulations. To be eligible for relocation assistance, however, a person must also meet the eligibility criteria in 24 CFR Part 42.

(b) *Residential antidisplacement and relocation assistance plan.* Under section 104(d) of the Act, each grantee must adopt, make public and certify that it is following a residential antidisplacement and relocation assistance plan providing one-for-one replacement units (paragraph (b)(1) of this section), and relocation assistance (paragraph (b)(2) of this section). The plan must also indicate the step that will be taken consistent with other goals and objectives of this part to minimize the displacement of persons from their homes as a result of any activities assisted under this part.

(1) *One-for-one replacement units.* (i) All occupied and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than as low/moderate-income dwelling units as a direct result of an activity assisted under this part must be replaced by governmental agencies or private developers with low/moderate-income dwelling units. Replacement low/moderate-income dwelling units may include public housing, or existing housing receiving Section 8 project-based assistance under the United States Housing Act of 1937. The replacement low/moderate-income dwelling units must be provided within three years of the commencement of the demolition or rehabilitation related to the conversion, and must meet the following requirements:

(A) The units must be located within the grantee's jurisdiction.

(B) The units must be sufficient in number and size to house at least the number of occupants that could have been housed in the units that are demolished or converted. The number of occupants that may be housed in units shall be determined in accordance with local housing occupancy codes.

(C) The units must be provided in standard condition. Replacement low/moderate-income dwelling units may include units that have been raised to standard from substandard condition.

(D) The units must be designed to remain low/moderate-income dwelling units for at least 10 years from the date of initial occupancy.

(ii) Before obligating or expending funds provided under this part for any activity that will directly result in the demolition of low/moderate-income dwelling units or the conversion of low/moderate-income dwelling units to another use, the grantee must make public, and submit the following information in writing to HUD:

(A) A description of the proposed assisted activity;

(B) The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for low/moderate-income dwelling units as a direct result of the assisted activity;

(C) A time schedule for the commencement and completion of the demolition or conversion;

(D) The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units;

(E) The source of funding and a time schedule for the provision of replacement dwelling units;

(F) The basis for concluding that each replacement dwelling unit will remain a low/moderate-income dwelling unit for at least 10 years from the date of initial occupancy.

(iii)(A) The requirements of this paragraph (b)(1) do not apply if the HUD Field Office determines, based upon objective data, that there is an adequate supply of vacant low/moderate-income dwelling units in standard condition available on a nondiscriminatory basis within the grantee's jurisdiction. In making this determination, the HUD Field Office will consider the housing vacancy rate for the jurisdiction, the number of vacant low/moderate-income dwelling units in the jurisdiction (excluding units that will be demolished or converted) and the number of eligible families on waiting lists for housing assisted under the United States Housing Act of 1937 in the jurisdiction.

(B) The HUD Field Office may consider the supply of vacant low/moderate-income dwelling units in a standard condition available on a nondiscriminatory basis in an area that is larger than the grantee's jurisdiction. Such additional dwelling units shall be considered if the HUD Field Office determines that the units would be suitable to serve the needs of the low- and moderate-income households that could be served by the low/moderate-income dwelling units that are to be demolished or converted to another use. The HUD Field Office must base this determination on geographic and demographic factors, such as location and access to places of employment and to other facilities.

(C) The grantee must submit a request for a determination under this paragraph (b)(1)(iii) directly to the HUD Field Office.

(2) *Relocation assistance.* (1) Each low- or moderate-income household that is displaced by demolition or by the conversion of a low/moderate income dwelling unit to another use as a direct result of an activity assisted under this part shall be provided with relocation assistance. The low- or moderate-income household may elect to receive relocation assistance described at 24 CFR Part 42 (HUD's regulations implementing the URA), or may elect to receive the following relocation assistance:

(A) The relocation assistance described at 24 CFR Part 42, Subpart C (General Relocation Requirements) and Subpart D (Payment for Moving and Related Expenses). Relocation notices must be issued consistent with, and in the manner prescribed under, 24 CFR 42.203. The definition of "comparable replacement dwelling" used in 24 CFR Part 42 is modified as described in paragraph (B)(3)(i) of this section. Displaced households provided with replacement housing assistance under paragraph (b)(2)(i)(C) of this section, in the form of a certificate or housing voucher under Section 8 of the United States Housing Act of 1937, must be provided referrals to comparable replacement dwelling units whose owners are willing to participate in the housing voucher or certificate program. The grantee shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such a manner that, whenever feasible, they will have a choice between relocating within their neighborhoods and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing;

(B) The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit, and credit checks required to rent or purchase the replacement dwelling unit; and

(C) Replacement housing assistance. Households are eligible to receive one of the following forms of replacement housing assistance:

(*1*) Each household must be offered compensation designed to ensure that, for a five-year period, the displaced household will not bear, after relocation, a ratio of shelter costs to income that exceeds 30 percent. Such compensation shall be either:

(*i*) A certificate or housing voucher for rental assistance provided through the local Public Housing Agency under Section 8 of the United State Housing Act of 1937; or

(*ii*) Cash rental assistance equal to 60 times the amount that is obtained by subtracting 30 percent of the displaced household's monthly gross income (with such adjustments as the grantee may deem appropriate) from the lesser of: The monthly cost of rent and utilities at a comparable replacement dwelling unit or the monthly cost of rent and utilities at the decent, safe and sanitary replacement dwelling to which the household relocates.

The grantee may provide the cash payment in either a lump sum or in installments. The grantee may at its discretion offer the household a choice between the certificate/housing voucher or cash rental assistance.

(*2*) If the household purchases an interest in a housing cooperative or mutual housing association and occupies a decent, safe and sanitary unit in the cooperative or association, the household may elect to receive a lump sum payment. This lump sum payment shall be equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting 30 percent of the displaced household's monthly gross income (with such adjustments as the grantee may deem appropriate) from the monthly cost of rent and utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings deposits by a federally-insured bank or savings and loan institution conducting business within the grantee's jurisdiction. To the extent necessary to minimize hardship to the household, the grantee shall, subject to appropriate safeguards, issue a payment in advance of the purchase of the interest in the housing cooperative or mutual housing association.

(ii) Eligibility for relocation assistance. (A) A low- or moderate-income household that is required to move as a direct result of demolition or conversion of a low/moderate income dwelling unit to another use, is eligible for relocation assistance under this paragraph (b)(2) if:

(*1*) The household is required to move from the dwelling unit on or after the date that the owner submits a request to the grantee for financial assistance that is later approved for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA).

(*2*) The household is required to move from the dwelling unit on or after the date of the initial submission of a final statement under 24 CFR 570.302(a)(2) (Entitlement Grants); the initial submission of an application to HUD by a unit of general local government under §§ 570.426, 570.430, or 570.435(d) that is granted for the requested activity (HUD administered Small Cities Program); or the submission of an application to HUD by a city or urban county under § 570.458 that is granted for the requested activity (UDAG). (This applies to dwelling units owned by a Federal or State agency as defined under the URA.)

(B) If the displacement occurs on or after the appropriate date described in paragraph (b)(2)(ii)(A) of this section, the low- or moderate-income household is not eligible for relocation assistance if:

(*1*) The household is evicted for cause;

(*2*) The household moved into the property on or after the date described in paragraph (b)(2)(ii)(A) of this section, after receiving written notice of the expected displacement; or

(*3*) The grantee determines that the displacement was not a direct result of the assisted activity, and the HUD office concurs in that determination.

(C) If the displacement occurs before the appropriate date described in paragraph (b)(2)(ii)(A) of this section, the low- or moderate-income household is eligible for relocation assistance if the grantee or HUD determines that the displacement was a direct result of an activity assisted under this part.

(3) *Definitions.* For the purposes of this paragraph (b):

(i) "Comparable replacement dwelling unit" means a dwelling unit that:

(A) Meets the criteria of 24 CFR 42.2(c)(1) through (4); and

(B) Is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed 30 percent of the household's average gross monthly income (with such adjustments to income as the grantee may deem appropriate) after taking into account any rental assistance the household would receive.

Where a certificate or housing voucher is provided to a household under paragraph (b)(2)(i)(C)(*1*)(*i*), the dwelling unit must be available to the household at a monthly cost for rent and estimated average monthly utility cost that does not exceed the Fair Market Rent or the payment standard, respectively.

(ii) "Decent, safe and sanitary dwelling" means a decent, safe and sanitary dwelling as defined in 24 CFR 42.2(e).

(iii) "Low/moderate income dwelling unit" means a dwelling unit with a market rental (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing and moderate rehabilitation established under 24 CFR Part 888.

(iv) "Occupiable dwelling unit" means a dwelling unit that is in a standard condition, or is in a substandard condition, but is suitable for rehabilitation.

(v) "Standard condition" and "substandard condition suitable for rehabilitation". If the grantee has a HUD-approved Housing Assistance Plan, the definitions of "standard condition" and "substandard condition suitable for rehabilitation" established in the plan will apply. It the grantee does not have a HUD-approved Housing Assistance Plan, the grantee must establish and make public its definition of these terms consistent with the requirements of § 570.306(e)(1).

(4) *Effective date.* For all grants except those made under Subpart D of this part (Entitlement Grants), the provisions of this paragraph (b) are applicable to grants made on or after October 1, 1988. For grants made under Subpart D, these provisions will govern all activities for which funds are first obligated by the grantee on or after the date the first grant is made after September 30, 1988, without regard to the source year of the funds used for the activity.

(c) *Section 104(k) relocation requirements.* Section 104(k) of the Act requires that reasonable relocation assistance be provided to persons (families, individuals, businesses, nonprofit organizations, or farms) displaced (*i.e.*, moved permanently and involuntarily) as a result of the use of assistance received under this part to acquire or substantially rehabilitate property. If such displacement is subject to paragraph (a) or (b) of this section, above, this paragraph does not apply. The grantee must develop, adopt and provide to persons to be displaced a written notice of the relocation assistance for which they are eligible. The minimum requirements for such assistance under the UDAG Program are described at § 570.457(b). Under CDBG programs, persons entitled to assistance under this paragraph must be provided relocation assistance, including at a minimum:

(1) Reasonable moving expenses;

(2) Advisory services needed to help in relocating. The grantee shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such a manner that, whenever feasible, they will have a choice between relocating within their neighborhoods and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing; and

(3) Financial assistance sufficient to enable any person displaced from his or her dwelling to lease and occupy a suitable, decent, safe and sanitary replacement dwelling where the cost of rent and utilities does not exceed 30 percent of the household's gross income.

(d) *Optional relocation assistance.* Under section 105(a)(11) of the Act, the grantee may provide relocation payments and other relocation assistance for individuals, families, businesses, nonprofit organizations and farms displaced by an activity not subject to paragraph (a), (b) or (c) of this section above. The grantee may also provide relocation assistance to persons covered under paragraph (a), (b) or (c) of this section beyond that required. Unless such assistance is provided pursuant to State or local law, the grantee must provide the assistance only upon the basis of a written determination that the assistance is appropriate (see 24 CFR 570.201(i)) and must adopt a written policy available to the public that describes the relocation assistance that the grantee has elected to provide and that provides for equal relocation assistance within each class of displacees.

(e) *Appeals.* If a person disagrees with the grantee's determination concerning the person's eligibility for, or the amount of a relocation payment under this section, the person may file a written appeal of that determination with the grantee. The appeal procedures to be followed are described in 24 CFR 42.10. A low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the grantee decision, to the HUD Field Office.

(f) *Responsibility of grantee.* (1) The grantee is responsible for ensuring compliance with the requirements of this section, notwithstanding any third party's contractual obligation to the grantee to comply with the provisions of this part.

(2) The cost of assistance required under this section may be paid from local public funds, funds provided under this part, or funds available from other sources.

(3) The grantee must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

(g) *Displacement.* For the purposes of this section, a "displaced person" is a person that is required to move permanently and involuntarily and includes a residential tenant who moves from the real property if:

(1) The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building or in a nearby building on the real property following the completion of the assisted activity at a monthly rent and estimated average cost for utilities that does not exceed the greater of:

(i) 30 percent of the tenant household's average monthly gross income; or

(ii) The tenant's monthly rent and average cost for utilities before:

(A) The date that the owner submits a request to the grantee for financial assistance that is later approved for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA); or

(B) The date of the initial submission of a final statement under 24 CFR 570.302(a)(2)(Entitlement Grants); the initial submission of an application to HUD by a unit of general local government under §§ 570.426, 570.430, or 570.435(d) that is granted for the requested activity (HUD administered Small Cities Program); or the submission of an application to HUD by a city or urban county under § 570.458 that is granted for the requested activity (UDAG). (This applies to dwelling units owned by a Federal or State agency as defined under the URA); or

(2) The tenant is required to move to another dwelling in the real property but is not reimbursed for all actual reasonable out-of-pocket costs incurred in connection with the move; or

(3) The tenant is required to relocate temporarily and:

(i) Is not reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs and any increased rent and utility costs; or

(ii) Other conditions of the temporary relocation are not reasonable.

9. Section 570.702 is amended by adding a new paragraph (f) to read as follows:

§ 570.702 Application requirements.

* * * * *

(f) The applicant (or the designated public agency) shall comply with relocation, displacement and acquisition requirements in connection with activities financed in whole or in part with a loan guarantee under this subpart that are identical to the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as described at § 570.606(a) and HUD implementing regulations at 24 CFR Part 42; the requirements in § 570.606(b) governing the residential antidisplacement and relocation assistance plan under section 104(d) of the Act; the relocation requirements of § 570.606(c) governing displacement subject to section 104(k) of the Act; and the relocation requirements of § 570.606(d) governing optional relocation assistance under section 105(a)(11) of the Act.

10. Section 570.900 is amended by revising paragraph (a) to read as follows:

§ 570.900 Performance standards.

* * * * *

(a) *Relocation.* With respect to displacement, the grantee has complied with the relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as required under § 570.606(a) and HUD implementing regulations at 24 CFR Part 42; the requirements in 570.606(b) governing the residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (the Act)(including a certification that the applicant is following such a plan), the relocation requirements of § 570.606(c) governing displacement to section 104(k) of the Act, and the relocation requirements of § 570.606(d) governing optional relocation assistance under section 105(a)(11) of the Act.

* * * * *

Dated: July 26, 1988.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

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Part V

Environmental Protection Agency

40 CFR Part 700

Fees for Processing Premanufacture Notices, Exemption Applications and Notices, and Significant New Use Notices; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 700

[OPTS-260002A; FRL-3353-8]

Fees For Processing Premanufacture Notices, Exemption Applications And Notices, And Significant New Use Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a rule under section 26(b) of the Toxic Substances Control Act (TSCA). The rule requires manufacturers, importers, and processors to pay fees for premanufacture notices (PMNs), certain PMN exemption applications and notices, and significant new use notices submitted under TSCA section 5 (a) and (h) (section 5 notices). EPA is not requiring submitters to pay fees for low volume exemption notices under 40 CFR 723.50 and test market exemption applications under 40 CFR 720.38. EPA is requiring submitters to pay a fee of $1,000 for PMNs for intermediate chemical substances when such PMNs are submitted simultaneously with a PMN for the "final product" related to the intermediate chemical substance. Submitters of all other section 5 notices, including the "final product" PMN, are required to pay a fee of $2,500. However, EPA is only requiring a fee of $100 for section 5 notices submitted by small business concerns.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern (daylight or standard as appropriate) time on August 31, 1988. This rule shall become effective on September 30, 1988.

FOR FURTHER INFORMATION CONTACT: Mike Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202-554-1404), TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This rule establishes fees for processing PMNs, certain exemption applications and notices, and significant new use notices. This rule also establishes certain remittance procedures.

Public reporting burden for this collection of information is estimated to average five minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Authority

Section 26(b) of TSCA provides that the Administrator may, by rule, establish fees for persons required to submit data under sections 4 and 5 of TSCA (including premanufacture notices, significant new use notices, and exemption applications and notices) to defray the costs of administering TSCA. EPA must take into account a submitter's ability to pay the fee and the Agency's cost of reviewing the submitted data. Section 26(b) provides for maximum fees of $100 for a "small business concern" and $2,500 for all others. Section 26(b)(2) of TSCA gives EPA authority to define "small business concern."

In addition, since proposal of this rule, the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1988 (Pub. L. 100-202) was enacted which contains a provision authorizing EPA, in 1988, to assess and collect fees and to deposit an amount not to exceed $25 million into a special fund which shall be available for appropriation, and remain available until expended, to carry out the Agency's activities in the programs for which the fees or charges are made.

II. Background

EPA issued a Notice of Availability of its "PMN User Fee Background Paper" (the paper), published in the **Federal Register** of July 11, 1986 (51 FR 25250) which included (1) the costs that the Agency believes may be defrayed by the collection of such fees, (2) the major options that the Agency had identified for implementing section 26(b), (3) a preliminary estimate of the economic impacts of such options, and (4) a possible definition of "small business concern."

On April 20, 1987, EPA issued a proposed rule (52 FR 12941) to establish a fee of $100 for section 5 notices submitted by small business concerns, for low-volume exemption notices, and for test market exemption applications; and $2,500 for all other section 5 notices.

The costs that EPA believes may be defrayed through fees collected pursuant to section 26(b) include all costs associated with receiving, processing, storing, and analyzing data submitted pursuant to section 5, as well as all costs associated with regulatory and other actions that may be prompted by a submission. The direct cost elements that may be defrayed include the salaries and expenses (including supplies, training, travel, and equipment) of the EPA Office of Toxic Substances personnel associated with these section 5 activities, and the cost of associated data processing, computer equipment, and contractor effort. Direct costs also include support functions such as secretarial, clerical, and supervisory management. Indirect costs that may be defrayed include research and development in support of the PMN program. In addition, the Agency incurs other general overhead such as personnel processing, administrative management, budget execution, rent, and utilities.

EPA's analysis of direct costs (EPA, Office of Toxic Substances. D. Gutenson and J. Newsome. "Regulatory Impact Analysis") indicates that certain costs are generally incurred with every type of section 5 notice. These costs are associated with the activities of providing pre-filing assistance to submitters, providing protection for confidential business information (CBI), processing, duplicating, and storing documents contained in submission, and initial risk screening (usually including chemical characterization, environmental and human exposure analysis, and a preliminary toxicity review (including human and environmental effects)). These costs add up to approximately $3,500 per submission. Office of Toxic Substances overhead, including supervisors and managers, clerical and secretaries, adds another $1,800 per submission. Those submissions that require more detailed analysis and regulatory action cost approximately $13,000 to $15,000 more per submission. None of the above costs include indirect Agency costs, i.e., general Agency overhead such as costs incurred by the Office of General Counsel and the Office of Administration, and research and compliance costs.

The fees that the Agency is establishing pursuant to section 26(b) will recover substantially less than the total costs of administering section 5. For fiscal 1987, total Agency costs, both direct and indirect, could each approximately $22 million compared to the maximum recovery of costs that the Agency could receive pursuant to section 26(b) of approximately $3.8 million.

EPA received over 20 comments from the public on the proposed rule, and this final rule includes changes in response to the public comments. Those changes are discussed to Unit IV below.

III. Provisions of the Rule

After careful analysis of all the comments received by EPA of the proposed rule, and review of its economic analysis, the Agency has decided to establish a fee of $100 for all section 5 notices received from small business concerns, $1,000 for section 5 notices for certain intermediate chemical substances, and $2,500 for all other section 5 submissions, except low-volume exemption notices and test market exemption applications for which no fee is required. The fees will be collected at the time of submission of the section 5 notice. EPA also has defined "small business concern" as any firm whose sales when combined with its parent company's (or the firm's sales, if no parent exists) totaled $40 million or less in its fiscal year preceding the submission date of its section 5 notice.

The rule also clarifies the status of joint submitters. EPA allows persons to submit section 5 notices jointly with others (for example, see 40 CFR 720.40(e)). The fee is the same for a joint submission of a section 5 notice as for the same kind of notice submitted by a single firm. However, with respect to the lower $100 fee for small business concerns, the lower fee does not apply to a joint submission unless all the joint submitters qualify as small business concerns under the proposed definition. Each of the joint submitters is required in the section 5 notice to certify that it qualifies as a small business concern uder § 700.43.

IV. Response To Comments

The following unit summaries the major comments and discusses the changes in the final rule in response to those comments.

EPA received a number of comments suggesting that the Agency's costs of administering the fee program might substantially offset its financial benefit. The Agency's economic analysis shows that the fee program should generate $3.8 million; the costs of administering the program are estimated to total $35,000. The Agency believes that the administrative costs are a negligible percent of the expected revenues.

Most comments asserted that the establishment of fees for section 5 notices could or would affect innovation, although all but three of these failed to comment on the degree of the effect. One industry association and one company asserted that the 10 percent foregone submission rate that EPA attributed to its proposed rule was sufficiently high to contravene TSCA section 2(b)(3) which directs the Agency to exercise its authority so as "not to impede unduly or create unnecessary economic barriers to technological innovation * * *" Another industry association, whose comments were subscribed to by a number of member companies, suggested that a correct analysis of the data upon which EPA relied for its economic analysis would indicate a foregone submission rate of about one-third, or over three times EPA's estimate.

With respect to the foregone submission rate of 10 percent associated with the proposed rule, and the 7.3 percent rate associated with the final rule, EPA believes that these estimates are very conservative and cannot be equated exactly with the fees' true effect on innovation. Unit V below clarifies this observation. The agency also believes that Congress clearly intended that it collect fees for section 5 notices and that inherent in that intention is the notion that fees will cause some firms to decide not to submit notices. However, the Agency believes that the rule's effect on innovation has been carefully weighed against the purpose of section 26(b), that is, to raise revenues to defray Agency costs, and thus is not "undue" as that term is used in section 2.

Concerning the foregone submission rate that should be calculated from the data base that the Agency used for its economic analysis (Centaur Associates Inc, 1985: Analysis of Withdrawn and Voluntarily Tested PMNs), the comment fails to take into account the Agency's statements with respect to the limits to the value of the Centaur study in predicting a company's decision to submit a PMN. The Centaur study was designed to evaluate a firm's attitudes to initiating testing after EPA had already issued a section 5(e) or 5(f) order placing restrictions on a new substance's production or use. The Agency is aware, from anecdotal evidence, that some firms' decisions not to test stemmed from liability concerns and considerations other than cost. The Agency's economic analysis also notes other misleading effects that would result from strictly interpreting the Centaur study. Consequently, the Agency used the Centaur study to estimate firms' marketing behavior from ranges of financial effects. Thus, as EPA stated in its January 1987 "Economic Analysis of Proposed PMN User Fee Rule" (in support of its April 20, 1987 proposed rule), "* * * if user fees are no more than 1.0 percent of the present value of sales, the user fees should have a minimal impact on PMN sales and profits and mandatory user fees will not affect a firm's decision to commercialize the PMN chemical. User fees in the range of 1.0 to 3.0 percent of the expected present value of sales were assumed to have a moderate impact (i.e. 50 percent) on sales and an indeterminate effect on a firm's marketing decisions. If user fees are 3.0 percent or more of the present value of sales, it was assumed that user fees would have a severe impact on sales and that the impact is likely to prevent the firm from submitting a PMN."

EPA, in its reevaluation of the impact of its proposed fees on innovation, determined that low-volume exemption notices and test market exemption applications were extremely sensitive to even a nominal fee of $100. The Agency's analysis shows a foregone submission rate of 36 percent for the low-volume exemption notices and 22 percent for the test market exemption applications. Because the Agency estimated fee revenue of less than $20,000 for these two categories of submissions combined, and considering their apparent high sensitivity to even a nominal fee, EPA decided not to establish any fee for these two types of submissions.

A number of comments suggested that companies be permitted to pay either all or a portion of the appropriate fee at the time they submitted their Notice of Commencement of Manufacture or Import (NOC) to the Agency. As EPA stated in its April 20, 1987 proposed rule, its fee structure would not sufficiently defray the Agency's costs of reviewing PMNs (which is not dependent on new chemical substances' commercialization) if it permitted payment of fees with an NOC. The Agency estimates that it would receive less than $1.5 million annually if it collected fees with NOCs. Furthermore, the Agency received no compelling arguments that collecting fees up front would have a significant impact on commercialization. One comment on the Agency's "PMN User Fee Background Paper" (see unit VI. RULEMAKING RECORD) stated that fees would not be a deciding factor as to commercialization after the PMN review is completed.

EPA received comments pointing out that the Agency treats consolidated PMNs as one in all respects except identification numbers, and consequently, it would be reasonable to charge just one fee for such consolidated PMNs. PMNs are consolidated as a result of a prenotice agreement between EPA and the submitter that the chemical substances in question are nearly identical in structure and are expected to have the same properties. EPA establishes one file and reviews the consolidated PMNs in the identical manner as a single unconsolidated PMN. The Agency did not address this issue in its proposed rule (although it did consider the issue of PMNs related to a sequence of intermediates in the same manufacturing process). EPA agrees that because it treats a consolidated PMN as one notice for review purposes, it is reasonable to charge just one fee for a consolidated PMN and has modified the rule accordingly.

EPA, in response to a comment, is clarifying what it means by the term "sequenced intermediate". The Agency means a section 5 notice for any new chemical substance that is "intermediate" of another new chemical substance for which a section 5 notice is also submitted. 40 CFR 720.3 defines "intermediate" as any chemical substance that is consumed, in whole or in part, in chemical reactions used for the intentional manufacture of other chemical substances or mixtures, or that is intentionally present for the purpose of altering the rates of such chemical reactions.

In response to comments suggesting that charging a substantial fee for "intermediate" PMNs would create a significant hurdle to commercialization, EPA reevaluated the effect that a range of fees would have on the rate of foregone submissions for intermediate chemical substances. EPA's analysis shows that charging a fee of either $1,000 or $2,500 for each intermediate PMN that is submitted simultaneously with a "final product" PMN (for which a $2,500 fee is also paid) would result in a foregone submission rate between 1 percent and 3 percent higher than the rate for all section 5 notices subject to the fee schedule in this rule. EPA has decided to impose the $1,000 fee on the "intermediate" submissions primarily to promote the policy goals of more efficient administration and review, and to save the resources associated with multiple duplicative reviews when the "final product" PMN and the "intermediate" PMNs are submitted to EPA and reviewed at different times.

EPA asked for comments concerning the impact of charging the proposed $2,500 fee for polymer exemption PMNs and received eight comments suggesting either a $100 fee, reduced fee, or no fee. EPA reanalyzed the impact of a $2,500 fee on polymer exemption PMNs and concluded that 11.1 percent of such submissions would be foregone. Because that rate is not significantly different from either the overall foregone submission rate associated with the proposed rule (10 percent) or of the final rule (7.3 percent), and because the expected revenues involved (over $500,000) are a significant proportion of the total revenues expected from the fee program, EPA decided to retain the $2,500 fee for this category of submission.

EPA received two comments that express the concern that upcoming Agency rules for treating "new" microorganisms for PMN purposes may result in a fee burden that would have a chilling effect on innovation. The Agency had little experience with the subject of PMNs for micoorganisms (EPA has received 12 PMNs to date for microorganisms). However, the Agency has, and expects to continue, to expend considerable resources reviewing this category of submission and has received no data or compelling argument to support lowering or eliminating fees for these submissions. The Agency will be considering fee issues when it proposes rules for review of microorganisms under TSCA. EPA recommends that companies comment on the effect of fees on the innovation of new microorganisms at the time that the Agency proposes those rules.

A number of comments questioned EPA's authority to collect fees pursuant to TSCA section 26 because at the time EPA proposed its fee rule the monies were expected to go to the general Treasury and thus not directly benefit the Agency. EPA's authority to collect fees under section 26(b) is not dependent on the disposition of the funds collected. In any event, as discussed in Unit I. above, recent budget legislation (Pub. L. 100–202) establishes a special fund for all agency user fees and provides for expenditure of those funds by the Agency subject to Congressional appropriation.

One comment recommended EPA established a $100 fee for any section 5 notice that did not receive Agency review subsequent to its Chemistry Review and Search Strategy (CRSS) decision. The Agency has determined that it spends more than $2,500 on handling a submission through the CRSS decision point, and is not persuaded that a lower fee is justified for this category of submission based solely on the argument that these submissions receive less attention than submissions that are reviewed subsequent to the CRSS decision.

In response to comments requesting that the Agency refund fees collected for notices for chemical substances that, subsequent to payment, are found by the Agency to be already on the Inventory, EPA has modified the rule to provide for such refunds.

One comment suggested crediting fees against test expenses. While such crediting might promote some increase in worthwhile testing, the Agency believes that such effect is problematic; the crediting would be very difficult to administer and it probably would result in negligible fee revenues.

Concerns were expressed that EPA's review process will be unduly delayed as a result of a submitter's check going to a location different than the section 5 notice destination. EPA will review section 5 notices in the same manner that the Agency has been reviewing them provided that submitters certify on their submission that they have paid the appropriate fee. The Agency is establishing procedures to verify the receipt of the remittances that should provide adequate time to make the verification. Should EPA, subsequent to its verification effort, determine that the appropriate fee was not remitted at the time the section 5 notice was submitted, the Agency will consider the notice to be incomplete and will so notify the submitter. Note that submissions will be considered incomplete if they lack a certification that the fee has been paid.

EPA received a number of comments suggesting various changes to the Agency's interpretation of TSCA that, if adopted, would make many PMNs unnecessary, or would permit a greater number of PMN exemptions. The Agency is not addressing these comments because they are beyond the scope of this rulemaking.

A number of comments addressed the question of the international impact of the fees. One importer suggested that the fees would create a marketing advantage for companies already established in the U.S.; one domestic company suggested that because fees would adversely affect domestic innovation, domestic producers will increasingly find themselves at the mercy of innovative imports; one association and a number of domestic companies asserted that because importers likely would not pay fees for intermediate chemicals, then their "final product" chemicals would have a competitive advantage over the domestic producer who did pay fees for intermediate as well as "final product" chemicals. The Agency does not believe that the modest level of fees contained in this rule would significantly affect the competitiveness of domestic producers vis-a-vis importers any more than it would affect innovation. The Agency's analysis of the effect of fees on decisions not to pursue PMN review suggests that fees in most instances will not affect a producer's decision to market and compete against either another domestic producer or an importer.

V. Economic Impacts

A. Introduction

In the Regulatory Impact Analysis (RIA), EPA considered the costs to society of this rule as being the sum of the direct costs to the government of administering the fee program and the net benefits that society would have realized from the new chemical substances that are foregone as a result of the fee rule. The fees themselves are not social costs, but rather transfers (the cost to industry of the fees equals the revenue received by the Agency). From the perspective of the regulated community, however, the fees are additional costs of doing business, and the RIA considers the impacts of these fees in relation to revenue from new chemical substances.

The Agency estimates that tracking and validating fees will cost the Agency approximately $29,000 to $35,000 per year. The Agency cannot quantitatively estimate the social cost of foregone activities, but it has estimated the number of foregone submissions, and has used this approach to reflect the potential for adverse effect on chemical innovation. EPA estimates that under the final rule 7.3 percent of the expected number of new chemical substance submissions would be foregone as a result of the user fee. The transfer (cost to industry and Agency revenue) is estimated to be $3.8 million.

B. Methodology

To assess fully the costs of the fees to society, the Agency would need first to estimate the impact on the expected profitability of the new chemical substance as a result of any potential fee. Since the Agency believes that at some reduced level of profitability, a firm will choose not to submit a notice for a new chemical substance rather than incur any additional costs prior to commercialization, the second step would be to translate the impact on profitability into an estimate of the number of new substances that would be foregone. The third step would be to estimate the benefits associated with those foregone new substances. The Agency cannot estimate the benefits from the foregone new substances; the RIA captures the costs of the fee rule by addressing the first two steps above, i.e., by analyzing the impact to industry in terms of the rate of foregone new substance submissions from any potential fee.

The impact is estimated by examining user fees as a portion of the present value of expected sales for a sample of new chemical substances, (potentially submitted in PMNs and exemptions). The Agency has observed a very low threshold for which companies decide to withdraw a submission rather than incur additional upfront costs. Decision criteria were developed from these observed thresholds which are used to predict the effect a user fee will have on a firm's decision to submit.

The Agency initially examined the impacts for 4 regulatory options. In addition to the categories of submissions considered in the economic analysis to support the proposed rule (small businesses, low volume exemptions and polymers), this analysis also estimates the impacts on submission of test market exemption applications and PMNs for intermediates (sequences of intermediates in the same manufacturing process).

The regulatory options are shown in Table I below.

TABLE I.—REGULATORY OPTIONS

Category description	Regulatory options			
	1	2	3	4
	(dollars per submission)			
Small business	100	100	100	100
Low volume exemption	100	100	100	100
Test market exemption	100	100	100	100
Polymer PMNs	2500	2500	100	100
Intermediate PMNs	2500	[1] 100 500 1000	2500	100
Others	2500	2500	2500	2500

[1] Regulatory Option 2 actually examines 3 alternative fees for PMNs for sequences of intermediates: $100, $500, $1000. In each case, the fee for the final PMN in the sequence is set at $2,500.

C. Impacts

The Agency estimates that 11.4 to 12.7 percent of submissions would be foregone as a result of the fees defined in these regulatory options. EPA estimates the cost of the fees (as well as agency revenue) to be between $3.28 and $3.99 million. Table II summarizes the impacts of options 1–4.

TABLE II.—IMPACTS OF INITIAL REGULATORY OPTIONS

Regulatory options	Percentage of submissions foregone	Total costs to industry (=EPA revenue) dollars million
1	12.7	3.99
2	12.2–12.5	3.87
3	11.9	3.49
4	11.4	3.28

The RIA indicates that two types of submissions are very sensitive to even low fees. Both low volume exemption notices (LVENs) and test market exemption applications (TMEAs) have high foregone submission rates (38 and 22.5 percent, respectively) at low ($100) user fee requirements. Because of the extreme sensitivity of these two types of submissions to low fees, the Agency re-evaluated the impacts of each regulatory option with a $0 fee LVENs and TMEAs. The results are shown in Table III below.

TABLE III.—IMPACTS OF MODIFIED REGULATORY OPTIONS

Regulatory option	Percentage of foregone submissions	Cost of submissions (=EPA revenue)
1 [1]	7.5	3.97
2 [1]	7.0–7.3	3.84
3 [1]	6.7	3.47
4 [1]	6.2	3.26

[1] Options are the same as options 1–4 in Table I, except that fees for low volume exemption notices and test market exemption applications are set at zero.

Providing an exemption to LVEN and TMEA submissions reduces the foregone submission rate approximately 50 percent for each regulatory option. The total cost to industry of the fee as well as the Agency revenue is reduced by less than 1.0 percent.

Under the final rule (modified regulatory option 2) the fee for submissions from small businesses is set at $100, the fee for low volume exemption notices and test market exemption applications is set at zero, the fee for sequences of intermediates is set at $1000 for each (wirh the fee for the final submission in the sequence set at $2500), and the fee for all other submissions is set at $2500. The Agency estimates that, with this fee structure, 7.3 percent of the expected number of new chemical substance submissions would be foregone as a result of the fees. This is probably an upper bound estimate of the impacts.

There are several sources of bias introduced that could result in an overestimate of the impacts. First, the impact for the categories of submissions is based on a sample of submissions. The characteristics of some of the categories have changed since the time frame which the sample was drawn. Lower impacts would be expected if these differences could be quantitatively factored into the analysis.

Second, the decision criteria used to predict whether a firm will be choose to submit are based on the observed behavior of firms in response to a request for testing in a TSCA section 5(e) order. Thus, the firm was operating with the knowledge that the Agency had health or environmental concerns over the introduction of the new chemical substance. A given dollar amount of fee is not expected to have as great an impact on the firm's decision to submit a notice as would the same dollar amount of a testing requirement. Therefore, the decision criteria result in an overestimate of foregone submissions.

Finally, although 7.3 percent of submissions may be foregone, this does not necessarily mean that a similar percentage of the value of new chemical substance innovation will be lost. Indeed, it seems likely that the substances in those submissions which are foregone would be among the least valuable; therefore the loss to society would be significantly smaller than the seven percent estimate would imply.

VI. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-260002A). A public version of the record, without any confidential business information, is available to the public in the TSCA Public Docket Office, Rm. NE-G004, 401 M Street SW., Washington, DC 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The record includes information considered by EPA in developing this rule. The record now includes the following categories of information:

1. **Federal Register** notices.
2. Support documents.
3. Public comments.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of Regulatory Impact Analysis. This rule is not major as that term is defined in section 1(b) because: The annual effect on the rule on the economy will be less than $100 million (less than $4 million); it will not cause any significant increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets.

This rule was submitted to the Office of Management and Budget (OMB) for review prior to publication as required by Executive Order 12291.

B. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act (5 U.S.C. (b)), EPA certifies that this rule will not have a significant economic impact on a substantial number of small businesses because the fee proposed for small business concerns, although it will adversely affect the submission of some notices for new chemical substances is unlikely to have a significant impact on any firm's overall profitability.

C. Paperwork Reduction Act

The information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* have been assigned OMB control number 2070-0012 and 2070-0038.

The public reporting burden for this collection of information is estimated to average five minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

1. Chief, Information Policy Branch (PM-223), EPA, 401 M Street SW., Washington, DC 20460
2. Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503

(Attn: Desk Officer for EPA)

List of Subjects in 40 CFR Part 700

Chemicals, Environmental protection, User fees.

Dated: August 9, 1988.

Lee M. Thomas,

Administrator.

Therefore, 40 CFR, Chapter I, Subchapter R, is amended by adding Part 700, consisting at this time of Subpart C, to read as follows:

PART 700—GENERAL

Subparts A and B—[Reserved]

Subpart C—Fees

Authority: 15 U.S.C. 2625.

§ 700.40 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to collect fees from manufacturers, importers, and processors who submit notices and applications to EPA under section 5 of the Toxic Substances Control Act (15 U.S.C. 2604) to defray part of EPA's cost of administering the Act.

(b) *Applicability.* This subpart applies to all manufacturers, importers, and processors who submit certain notices and applications to EPA under section 5 of the Act.

§ 700.43 Definitions.

Definitions in section 3 of the Act (15 U.S.C. 2602), as well as definitions contained in §§704.3 and 720.3 of this chapter, apply to this subpart unless otherwise specified in this section. In addition, the following definitions apply:

"Consolidated premanufacture notice" or "consolidated PMN" means any PMN submitted to EPA that covers more than one chemical substance (each being assigned a separate PMN number by EPA) as a result of a prenotice agreement with EPA (*See* 48 FR 21734).

"Exemption application" means any application submitted to EPA under section 5(h)(2) of the Act.

"Exemption notice" means any notice submitted to EPA under § 723.175 of this chapter.

"Final product" means a new chemical substance (as "new chemical substance" is defined in § 720.3 of this chapter) that is manufactured by a person for distribution in commerce, or for use by the person other than as an intermediate.

"Intermediate premanufacture notice" or "intermediate PMN" means any PMN submitted to EPA for a chemical substance which is an intermediate (as "intermediate" is defined in § 720.3 of this chapter) in the production of a final product, provided that the PMN for the intermediate is submitted to EPA at the same time as, and together with, the PMN for the final product and that the PMN for the intermediate identifies the final product and describes the chemical reactions leading from the intermediate to the final product. If PMNs are submitted to EPA at the same time for several intermediates used in the production of a final product, each of those is an intermediate PMN if they all identify the final product and every other associated intermediate PMN and are submitted to EPA at the same time as, and together with, the PMN for the final product.

"Joint submitters" means two or more persons who submit a section 5 notice together.

"Person" means a manufacturer, importer, or processor.

"Premanufacture notice" or "PMN" means any notice submitted to EPA pursuant to section 5(a)(1)(A) of the Act in accordance with Part 720 of this chapter or § 723.250 of this chapter.

"Section 5 notice" means any PMN, consolidated PMN, intermediate PMN, significant new use notice, exemption notice, or exemption application.

"Significant new use notice" means any notice submitted to EPA pursuant to section 5(a)(1)(B) of the Act in accordance with Part 721 of this chapter.

"Small business concern" means any person whose total annual sales in the person's fiscal year preceding the date of the submission of the applicable section 5 notice, when combined with those of the parent company (if any), are less than $40 million.

§ 700.45 Fee payments.

(a) *Persons who must pay fees.* Persons submitting a section 5 notice to EPA shall remit for each such notice the appropriate fee identified in paragraph (b) of this section in accordance with the procedures in paragraph (e) of this section.

(b) *Fees.* Persons shall remit fee payments to EPA as follows:

(1) *Small business concerns.* Small business concerns shall remit a fee of $100 for each section 5 notice submitted.

(2) *Others.* Persons other than small business concerns shall remit fees according to the type of section 5 notice as follows:

(i) *Premanufacture notices and consolidated premanufacture notices.* Persons shall remit a fee of $2,500 for each PMN or consolidated PMN submitted.

(ii) *Intermediate premanufacture notices.* Persons shall remit a fee of $1,000 for each intermediate PMN. However, for the PMN for the final product the person shall submit the fee in paragraph (b)(2)(i) of this section.

(iii) *Significant new use notices.* Persons shall remit a fee of $2,500 for each significant new use notice submitted.

(iv) *Exemption applications.* Persons shall remit a fee of $2,500 for each exemption application submitted under section 5(h)(2) of the Act.

(v) *Exemption notices.* Persons shall remit a fee of $2,500 for each exemption notice submitted under § 723.175 of this chapter.

(c) *No fee required.* Persons are exempt from remitting any fee for submissions under §§ 720.38 and 723.50 of this chapter.

(d) *Joint submitters.* Joint submitters of a section 5 notice are required to remit the appropriate fee identified in paragraph (b) of this section for each section 5 notice regardless of the number of joint submitters for that notice. To qualify for the fee identified in paragraph (b)(1) of this section, each joint submitter of a section 5 notice must qualify as a small business concern under § 700.43.

(e) *Remittance procedure.* (1) Each remittance under this section shall be in United States currency and shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency.

(2) Each remittance shall be sent to the Environmental Protection Agency, HQ Accounting Operations Board, attention: TS/PMN, P.O. 360227M, Pittsburgh, PA 15251. The remittance shall not be sent to EPA with the section 5 notice. The section 5 notice is to be sent to Document Processing Center, Office of Toxic Substances (TS-790), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(3) Persons who submit a section 5 notice shall place a unique identifying number, which must include the letters "TS" followed by a combination of 6 numbers (letters may be substituted for some numbers), on the front page of each section 5 notice submitted. The same identifying number and the submitter's name must appear on the corresponding fee remittance under this section. If a remittance applies to more than one section 5 notice, the person shall include the name of the submitter, the identifying number for each section 5 notice to which the remittance applies, and the amount of the remittance which applies to each notice. Any remittance not having the identifying name and number described above will be returned to the remitter.

(4)(i) Each person who remits the fee identified in paragraph (b)(1) of this section for a PMN, consolidated PMN, intermediate PMN, or significant new use notice shall write or type the words, "The company named in Part 1, section A is a small business concern under 40 CFR 700.43 and has remitted a fee of $100 in accordance with 40 CFR 700.45(b)." under "CERTIFICATION" on Page 2 of the Premanufacture Notice for New Chemical Substances (EPA Form 7710-25 (4-26-83)).

(ii) Each person who remits the fee identified in paragraph (b)(1) of this section for an exemption application under section 5(h)(2) of the Act shall include the words, "Each company identified in this application is a small business concern under 40 CFR 700.43 and has remitted a fee of $100 in accordance with 40 CFR 700.45(b)." in the exemption application.

(iii) Each person who remits the fee identified in paragraph (b)(1) of this section for an exemption notice under § 723.175 of this Chapter shall include the words, "Each company identified in this notice is a small business concern under 40 CFR 700.43 and has remitted a fee of $100 in accordance with 40 CFR 700.45(b)." in the certification required in § 723.175(i)(1)(x) of this chapter.

(5)(i) Each person who remits a fee identified in paragraph (b)(2) of this section for a PMN, consolidated PMN, intermediate PMN, or significant new use notice shall write or type the words, "The company named in Part 1, section A has remitted the fee specified in 40 CFR 700.45 (b)." under "CERTIFICATION" on page 2 of the Premanufacture Notice for New Chemical Substances (EPA Form 7710-25 (4-26-83)).

(ii) Each person who remits the fee identified in paragraph (b)(2) of this section for an exemption application under section (5)(h)(2) of the Act shall include the words, "Each company identified in this application has remitted a fee of $2,500 in accordance with 40 CFR 700.45(b)." in the exemption application.

(iii) Each person who remits the fee identified in paragraph (b)(2) of this section for an exemption notice under § 723.175 of this chapter shall include the words, "Each company identified in this notice has remitted a fee of $2,500 in accordance with 40 CFR 700.45(b)." in the certification required in § 723.175(i)(1)(x) of this chapter.

(f) *Fee refunds.* EPA will refund any fee paid for a section 5 notice whenever the Agency determines:

(1) That the chemical substance that is the subject of a PMN, intermediate PMN, exemption application, or exemption notice is not a new chemical substance as of the date of submission of the notice.

(2) In the case of a significant new use notice, that the notice was not required.

(3) The notice is incomplete under § 720.65(c) of this chapter.

(Approved by the Office of Management and Budget under Control Number 2070–0012 and 2070–0038)

§ 700.49 Failure to remit fees.

EPA will not consider a section 5 notice to be complete unless the appropriate certification under § 700.45(e) is included and until the appropriate remittance under § 700.45(b) has been sent to EPA as provided in § 700.45(e) and received by EPA. EPA will notify the submitter that the section 5 notice is incomplete in accordance with § 720.65(c) of this Chapter.

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