

2. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Special Assistance under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Board Briefings. Closed pursuant to exemptions (8) and (9)(A)(ii).
5. Reprogramming of Agency FY 86 Budget Funds. Closed pursuant to exemption (9)(b).
6. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT:

Rosemary Brady, Secretary of the Board,
Telephone (202) 357-1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 86-20156 Filed 9-3-86; 1:49 am]

BILLING CODE 7535-01-M

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POSTAL RATE COMMISSION

TIME AND DATE: September 9, 1986 at
9:30 a.m.

PLACE: Conference Room, Suite 300, 1333
H Street, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Meet to
discuss the Opinion and Recommended
Decision on Docket No. MC86-2, Third-
Class Mail Preparation Requirements,
1986.

CONTACT PERSON FOR MORE

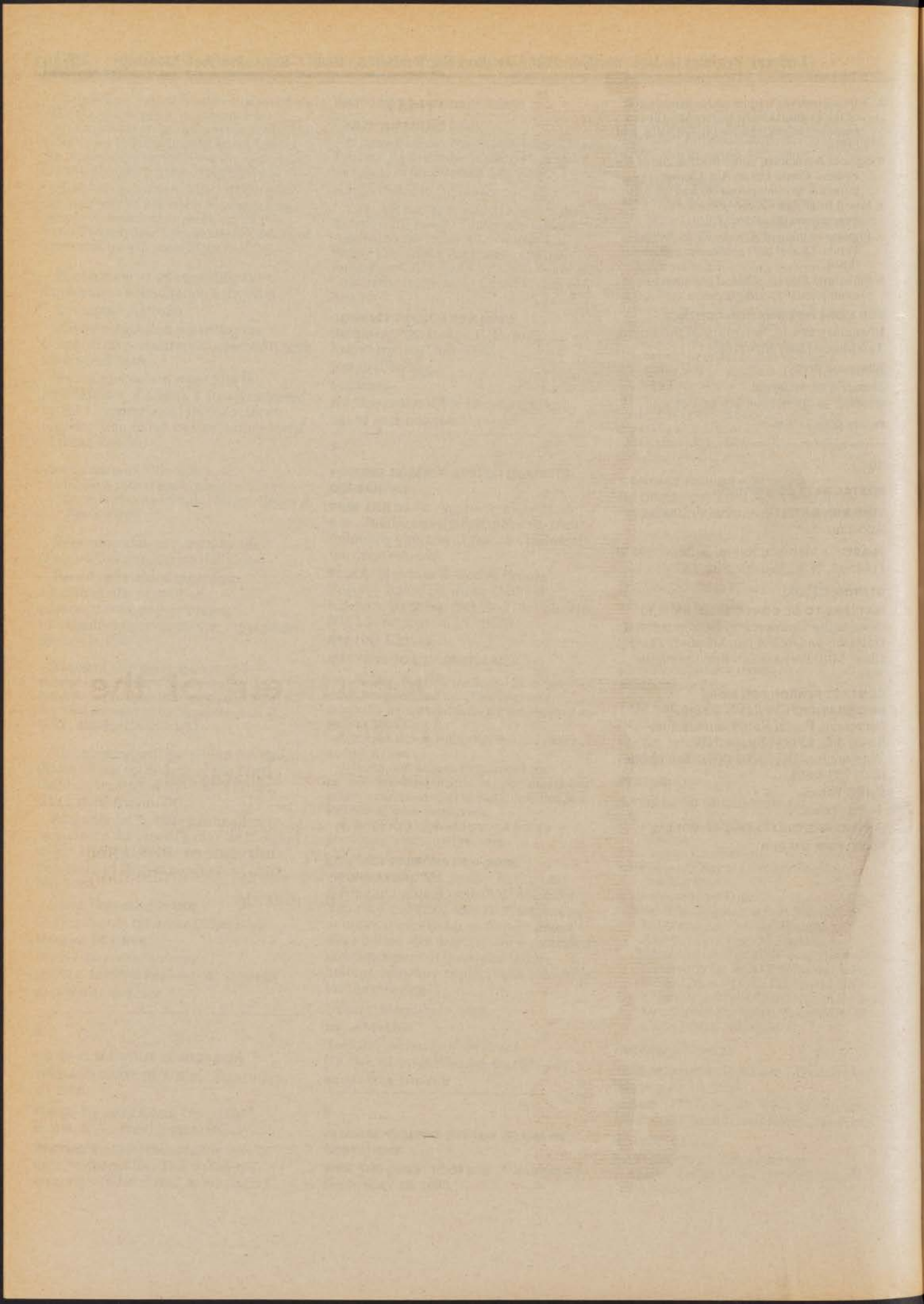
INFORMATION: Charles L. Clapp,
Secretary, Postal Rate Commission,
Room 300, 1333 H Street, NW.,
Washington, DC 20268-0001, Telephone
(202) 789-6840.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 86-20110 Filed 9-3-86; 9:31 am]

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FRIDAY SEPTEMBER 5, 1986 Part II Department of the Interior Bureau of Land Management 43 CFR Parts 2800 and 2880 Rights-of-Way; Amendment Providing Procedures for Rental Determination; Proposed Rulemaking

Friday
September 5, 1986

Part II

Department of the Interior

Bureau of Land Management

43 CFR Parts 2800 and 2880
Rights-of-Way; Amendment Providing
Procedures for Rental Determination;
Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2800 and 2880

[AA-330-06-4211-02-NCPF-2410]

Rights-of-Way; Amendment Providing Procedures for Rental Determination

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend 43 CFR Parts 2800 and 2880 to provide a rental schedule for most linear rights-of-way granted under section 28 of the Mineral Leasing Act of 1920, as amended, and title V of the Federal Land Policy and Management Act of 1976. The rental schedule in the proposed rulemaking is based on zones of similar value and the schedule would be adjusted annually using the Gross National Product Implicit Price Deflator Index as the basis of such adjustment. The proposed rulemaking also would provide that existing linear right-of-way grants not covered by the schedule may be brought under it upon reasonable notice to the holder. In addition, the proposed rulemaking is designed to substantially reduce the need for individual appraisals of rentals for new linear right-of-way grants, establish consistent rationale for determination of rental, reduce the differences between procedures now used by the U.S. Forest Service and the Bureau of Land Management, resolve conflicts which have led to numerous appeals of rental determinations and reduce both government and industry administrative costs. Finally, the proposed rulemaking would establish procedures for competitive bidding for site type right-of-way grants, such as communication sites, where there is competitive interest, and rent in the form of a royalty or a fixed percentage of the holder's gross receipts might be appropriate.

DATE: Comments should be submitted by October 20, 1986. Comments postmarked or received after the above date may not be considered as part of the decisionmaking process on issuance of final rulemaking.

ADDRESS: Comments should be sent to: Director (140) Bureau of Land Management Room 5555, Main Interior Bldg., 1800 C Street, NW, Washington, DC 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ted Bingham (202) 343-5441 or Robert C. Bruce (202) 343-8735.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management administers approximately 42,000 right-of-way grants, of which about 38,000 are linear facilities for facilities such as powerlines, pipelines, roads and ditches or canals.

Section 28(1) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185(1)), provides specific direction that fees for right-of-way uses and grants should reflect fair market value as follows:

The applicant for right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application, and the holder of a right-of-way or permit shall reimburse the United States for the cost incurred in monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities on such right-of-way or permit area and shall pay annually in advance the fair market rental value of the right-of-way or permit, as determined by the Secretary or agency head.

The Office of Management and Budget Circular No. A-25, as amended and supplemented, requires agencies to establish user charges based on sound business management principles and, to the extent feasible, in accordance with comparable commercial practices. Charges need not be limited to the recovery of costs; they may produce net revenue to the United States.

In 1964, the Bureau of the Budget (predecessor to the Office of Management and Budget) issued further guidelines in the *Natural Resources User Charges Study*, which provided for the use of Federal lands as follows:

... the Government should recover the fair market value for the use of Federal land resources. Competitive bidding will be used to establish the fair market value in all instances where an identifiable competitive interest exists. Where a competitive interest does not exist, fees should be comparable to those charged for the use of similar private lands. Fees and charges for long-term use should be established in such a manner as will allow for periodic timely adjustment.

The 1976 enactment of the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.) reinforced long-standing Congressional support for receipt of fair market value. Section 102(a) of the Act (43 U.S.C. 1701(a)) states that "... it is the policy of the United States that ... the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute ...". As to right-of-way grants, section

504(g) of the Act (43 U.S.C. 1764(g)) provides:

The holder of a right-of-way shall pay annually in advance the fair market value thereof as determined by the Secretary granting, issuing, or renewing such right-of-way: Provided, That when the annual rental is less than \$100, the Secretary concerned may require advance payment for more than one year at a time ... Rights-of-way may be granted, issued, or renewed to a Federal, State, or local government or any agency or instrumentality thereof, to nonprofit associations or nonprofit corporations which are not themselves controlled or owned by profitmaking corporations or business enterprises, or to a holder where he provides without or at reduced charges a valuable benefit to the public or to the programs of the Secretary concerned, or to a holder in connection with the authorized use or occupancy of Federal land for which the United States is already receiving compensation for such lesser charge, including free use as the Secretary concerned finds equitable and in the public interest.

Section 2803.1-2 of the existing regulations requires the payment in advance of the fair market rental value of the rights authorized as determined by appraisal by the authorized officer. The existing regulations further provide for review and adjustment, if warranted, of the rental at least every five years. In the past, these rental payments have been determined by individual Bureau of Land Management offices using a variety of appraisal methods.

In 1981, the Bureau of Land Management appraisers in New Mexico studied private transactions involving a payment per unit length and found that there was no apparent correlation with the underlying land value. Using this observed practice as a basis, they instituted a "going rate" method of appraising some oil and gas pipeline right-of-way grants. This "going rate" method is based on an analysis of prices paid by oil and gas companies for easements crossing private lands. The lump sum, the one-time private transaction price paid for these easements, was adjusted downward to reflect differences between a private easement and a right-of-way grant across public lands and was used as the basis for determining a rental by amortizing a one-time payment in perpetuity at an interest rate on similar investments. The "going rate" method was a departure from more traditional right-of-way appraisal methods and resulted in a substantial increase in holder rental payments. Later, the Bureau State offices in Wyoming and Colorado adopted the "going rate" method. Rentals determined under the "going rate" method resulted in the

holders appealing approximately 3,000 rental determinations to the Department of the Interior's Office of Hearings and Appeals. These cases have been remanded to the Bureau for reconsideration consistent with new regulations and procedures that would evolve from a series of reports, task force recommendations and comments received in response to the notices of intent to propose rulemaking.

The Interior Board of Land Appeals, a Board within the Department of the Interior's Office of Hearings and Appeals, suggested that in developing new regulations there must be a reasonable basis for the determination of fair market value even though the appropriate method of achieving fair market rental value is to be determined by the Secretary of the Interior. Further, it recommended that the Bureau of Land Management should develop a carefully reasoned analysis to support the new regulations and procedures. Additionally, it suggested the Bureau might prevent some problems by including the public in the development of the proper appraisal method. Public input would provide a broad basis upon which to make a reasonable final decision.

Public Participation in Developing a Proposed Rulemaking

On May 4, 1984, the Bureau of Land Management published in the *Federal Register* a notice of intent to propose rulemaking (49 FR 10949) requesting public comments on cost effective methods or procedures for estimating fair market rental payments. Comments were also requested concerning the application of market-derived formulas or schedules that could be applied on a State or regional basis. The notice stated that any suggested schedules or formulas should be applicable to linear right-of-way facilities crossing public lands and should result in rentals that are applied consistently for various right-of-way purposes. The notice of intent also suggested that the comments should reflect the legislative requirements established by the Federal Land Policy and Management Act and the Mineral Leasing Act, so as to reasonably estimate fair market rental value and result in cost effective implementation. The Forest Service requested similar information in a notice of intent to propose policy published in the *Federal Register* on April 20, 1984 (49 FR 16823).

A total of 26 comments were received in response to the notice of intent issued by the Bureau of Land Management and the Forest Service; 10 from companies related to oil and gas transportation, 6

from industry associations, 6 from electric utilities, 3 from State and other public agencies, and 1 from an individual.

In response to these comments, the Bureau of Land Management and the Forest Service cooperated on a second notice of intent to propose rulemaking which was published in the *Federal Register* on January 18, 1985 (50 FR 2697).

The second notice of intent described a proposed method for determining rental payments which would: (1) Use actual prices paid for similar right-of-way uses on private lands; (2) contain a reasonable adjustment to reflect differences in terms of conditions of "private" right-of-way easements and Federal right-of-way grants; (3) convert the adjusted right-of-way value to an annual rental by use of a readily obtainable market interest rate; and (4) provide a means for easily updating the information to maintain a current and usable schedule.

To gather and establish actual price data, the Bureau of Land Management and the Forest Service proposed to use market data surveys to establish right-of-way values by right-of-way type and geographic areas. To establish differences in value between the purchase of easements and a right-of-way grant across Federal lands, the Bureau of Land Management and the Forest Service indicated that they had considered three elements: (1) Annual vs. one-time payments; (2) periodic adjustment of the annual payment; and (3) other terms and conditions.

The Bureau of Land Management and the Forest Service sought to determine if paying annual rentals reduced the value of the right-of-way grant when compared to the value of an easement purchased by paying a one-time price. Also considered was whether the annual payment should be adjusted to offset any loss in value.

Data are limited for comparing similar rights-of-way that were obtained by annual payments and a one-time purchase of the easement. However, analysis of the data available found that the method of payment did not affect the value of the easement to the purchaser.

Next, the Bureau of Land Management and the Forest Service looked at the effect of periodic adjustments in the annual payments for right-of-way grants on Federal lands and whether these adjustments argue for an adjustment in the annual payment. As a result of the analysis, the Bureau of Land Management and the Forest Service, using real estate financing techniques, proposed a downward adjustment of 20

percent in market value of a right-of-way grant on Federal lands to offset the effect of periodic adjustment of the annual payments.

Finally, the Bureau of Land Management and the Forest Service compared the restrictions and constraints of terms and conditions in right-of-way grants on Federal lands to those in easements purchased outright to determine the extent of adjustment in value of the Federal grant. The adjustment for the more restrictive conditions found in Federal grants was proposed as a 10 percent downward adjustment for those right-of-way grants made under the Federal Land Policy and Management Act and 15 percent for grants made under the Mineral Leasing Act.

The Bureau of Land Management and the Forest Service proposed the use of the 30-year Federal bond rate as of October 1 each year as the rate for converting the right-of-way value to an annual rental. Finally, the Bureau of Land Management and the Forest Service proposed updating the payment schedule by one of two alternatives: (1) Resampling the market data at least every five years; or (2) adjusting the schedule annually by the fluctuation in the 30-year bond rate and the Consumer Price Index.

The following illustrates how rental payments would be calculated by using this proposed method:

Formula: Annual rental payment = market value of the rights and privileges x factor for periodic adjustment of the annual payment x factor for terms and conditions x 30-year Federal bond rate.

Factors: Market value = \$100; Periodic adjustment factor = 0.80 (20 percent discount); Terms and conditions factor = 0.90 (10 percent discount for Federal Land Policy and Management Act grants); 30-year Federal Bond rate = 10.85 percent.

Calculation: $\$100 \times 0.80 \times 0.90 \times 0.1085 = \7.81 annual rental payment.

Analysis of Public Comments

In response to 13 requests for an extension of the comment period on the second notice of intent to propose rulemaking, the comment period was extended by publication of a notice of extension in the *Federal Register* on April 18, 1985 (50 FR 10998). A total of 37 comments were generated by the second notice of intent to propose rulemaking, with 19 from the oil and gas industry, 9 from the electric and phone utility industry, 4 from trade associations or ad hoc organizations, 2 from Federal sources, 2 from individuals and 1 from State or local governments.

The comments were very specific and contained recommendations applicable

to the payment calculation process proposed by the Bureau of Land Management and the Forest Service. Analysis of the comments pointed out the need for some modification of the first proposal. In developing this proposed rulemaking, both the Bureau of Land Management and the Forest Service gave careful consideration to all of the comments.

In addition, both the Department of the Interior and the Forest Service held meetings and discussions with holder and permittee representatives in and effort to seek an equitable resolution of holder's/permittee's concerns about the issues raised in the second notice of intent to propose rulemaking.

The following is a summary of the proposal contained in the second notice of intent to propose rulemaking, a summary of the comments on that notice, a summary of representative discussions, and, where applicable, a discussion of changes in the proposal set forth in the second notice of intent that resulted from consideration of the comments.

Right-of-Way Zone Determinations

The Bureau of Land Management and the Forest Service had proposed to complete a market survey to identify, if possible, zones of reasonably common purchase prices of easements. Upon determining common price zones, it was proposed to use that information to administratively select a single value for the zone by type of right-of-way and purchase price.

This proposal was discussed in most of the comments on the notice of intent to propose rulemaking. Industry comments suggested that land values be established locally by appraisers and that these values be restricted to the uses described in the Forest or Resource Management Plans, that these values then be adjusted to reflect the percentage of rights conveyed, and then that the values be reduced further by 40 to 90 percent to reflect the differences between a public grant and a private easement. This value amount then would be multiplied by 4 to 8 percent to reflect a rate of return for the lands, i.e., using a Resource Management Plan value of \$100 per acre, adjusted downward by 50 percent to reflect rights conveyed, a further downward adjustment of 65 percent for the differences between a public grant and private easement, and applying a rate of return of 5 percent, the annual rental would be \$0.88 an acre ($\$100 \times 0.50 \times 0.35 \times 0.05 = \0.88).

The comments on the establishment of zones were mixed. Some of the comments preferred a "mean" price for

a single zone, while other comments felt the establishment of "typical values" for specific areas would be more appropriate. The comments also were varied on the size of a zone. Many of the comments preferred large geographical zones, while other comments preferred small areas. A few of the comments recommended continuing with individual appraisals for each right-of-way grant. Most of the comments suggested that the zone values be based on land values rather than on one-time payment for purchases in the private market.

Based on these recommendations, the Department of the Interior has determined that rentals for linear right-of-way grants made by the Bureau of Land Management are to be based on the fair market value of the lands and will disregard those instances where private easements were acquired in the market in amounts exceeding the underlying land values. The Department believes the use of land values will provide a more consistent and equitable method for determining rental rates by eliminating the wide fluctuations which tend to occur with the acquisition of private easements.

Right-of-way zones presented in this proposed rulemaking are areas based on typical raw land values for the type of lands the Bureau of Land Management and Forest Service have in the past allowed and plan in the future to be occupied by linear rights-of-way. A corridor or window identified in the Management Plans, through which such uses must pass would be typical of the lands represented by the value zones.

The value of standing timber is not included in the value assigned to the zones because the timber is usually paid for separately and removed when the right-of-way grant is cleared.

A market survey was conducted by the Bureau of Land Management's State Office Chief Appraisers and their Forest Service Regional Office counterparts for the purpose of collecting data on what industry was paying for an easement. Part of the survey included estimating the land values for the lands covered by the easement. It is this information, together with additional information provided by the holder/permittee representatives that is used as a basis for establishing the right-of-way zones.

These right-of-way zones are not based on the values for urban or suburban residential areas, industrial parks, farms or orchards, recreation properties or other such types of lands. Also excluded from the zones are attractive public use areas such as lake frontage, stream frontage, scenic vista and scenic highway frontage areas

because these areas are usually avoided when granting linear rights-of-way. No representation is made in this proposed rulemaking that the zones reflect the value of private lands or other ownership unless those lands are comparable with the lands typically occupied by a right-of-way grant or permit from the Bureau of Land Management or the Forest Service. Specific sites within the value zones may have actual values higher or lower than the value of the assigned zone.

The zones are established by State and County jurisdiction for administrative convenience.

The payment schedule that would be used by the proposed rulemaking is designed for use in calculating the annual rental for the majority of linear right-of-way grants made by the Bureau of Land Management and the Forest Service. However, the Agencies reserve the right to use individual appraisals or other valuation procedures to calculate rentals for those grants that have unique characteristics. As an example, right-of-way grants involving highly productive timber lands, industrial or residential development areas, developed recreational areas, lakeshore and streamside areas and areas with atypically high value (generally above \$4,000 to \$5,000 per acre) may be determined by the authorized officer to have unique characteristics.

Differential Adjustment

Annual vs. One-time Payment

Generally, all of the comments stated a preference for acquiring a perpetual grant by paying a one-time, lump sum payment at the time of acquisition. In support of this preference, the industry comments asserted that the cost of billing on an individual basis instead of a company basis often exceeds the amount of rental. The comments also expressed the view that the law and regulations should be changed to allow the issuance of a perpetual easement for a lump sum payment. Many of the comments requested that a discount be applied to any lump sum payment.

Existing regulations provide that when the annual rental is less than \$100, the agency may require that the payment be made for a five-year or longer period. In addition, the existing regulations allow prepayment for any number of years, regardless of the amount of the annual rental, subject to the Bureau of Land Management's being able to periodically adjust the rental (generally, at five-year intervals) and collect or refund any difference in the rental. The proposed rulemaking would

continue the authority of the authorized officer to require payment of rentals of less than \$100 per year in five-year increments. The proposed rulemaking also would permit a holder/permittee to pay rental up to five years in advance, with the annual rental set for that five-year period, but at the end of the five-year term, the then current rental set for use of a grant/permit in that zone would be applicable.

To assist in reducing the administrative costs of the holder's/permittee's and the United States, the Bureau of Land Management would, once the payment system contained in this proposed rulemaking is in place, provide holders/permittees of multiple right-of-way grants with a single annual billing for all such right-of-way grants within the jurisdiction of a Bureau State office.

Annual Payment Schedule Adjustment

Two methods for maintaining an updated rental payment schedule were originally proposed in the second notice of intent to propose rulemaking. One method was to resample the market data at least every five years and the other was to adjust the schedule annually by the degree of fluctuation in the 30-year bond rate and the Consumer Price Index.

A majority of the comments on the two methods expressed the view that use of the Consumer Price Index would not accurately reflect changes in the market value of land. Some of the comments suggested that a new market analysis of land values in each zone was needed every five to ten years to properly update the payment schedule. In addition, several of the comments suggested the use of the Department of Agriculture's Farm Real Estate Market Developments annual report as an alternative basis for updating the payment schedule.

A number of the comments favored periodic adjustment of rental payments, with a recommendation that the update be made at five-year or less intervals. Based on past experience with reappraisals on five-year intervals, an annual adjustment was selected in order to better maintain a payment schedule which would reflect current values and reduce administrative costs of making appraisals.

After careful review of several indexes, the proposed rulemaking would provide that the per acre rental payments in the schedule, which are a function of both land values and interest rates, will be adjusted annually by multiplying the current year per acre rental by the annual change, third quarter to third quarter, in the Implicit

Price Deflator Index as published in the *Survey of Current Business* of the Department of Commerce, Bureau of Economic Analysis. This index provides users protection from rising prices and eliminates wide swings in rates which often result in appeals.

To assure that the rentals accurately reflect the rental value of the lands, the basis for each of the elements used in the original formula to calculate the per acre rental values shall be reviewed when the cumulative change in the Implicit Price Deflator Index exceeds plus or minus 30 percent, or a cumulative change in the one-year Treasury securities "Constant Maturity" rate exceeds plus or minus 50 percent. This review is for the purpose of determining whether market conditions and business practices have varied sufficiently from the index to warrant a revision in the elements or the complete formula.

Under this system, the rental for the ensuing calendar year for any single right-of-way grant or temporary use permit will be the rental per acre from the payment schedule times the number of acres embraced in right-of-way rounded to the nearest whole dollar, unless such rental is reduced or waived as provided in section 2803.1-2 of this proposed rulemaking.

Imposition of New Rates

The new rental payments provided in this proposed rulemaking would be effective for grants and permits issued

subsequent to the effective date of the final rulemaking. These new rental payments would become effective for existing grants or permits when they are scheduled for review and possible payment adjustment. In the past, this generally has been on a five-year rotation. The proposed rulemaking would provide for advance notification of adjustment before any conversion to this schedule is made.

In those situations where grants or permits were issued with the annual rental subject to future determinations (section 2803.1-2(b)), the new payment schedule would be applied with an appropriate adjustment back to the date of issuance of the grant by using the index discussed earlier in this preamble. Where a previous increase in the annual rental was appealed by the holder/permittee, the application of the new rental rate would be in accordance with the final decision on the appeal.

For existing right-of-way grants, where the increase in the annual rental would exceed \$100 and the increase in rental would be in excess of 100 percent, the amount of the new rental in excess of the 100 percent increase would be phased in by equal increments, plus an annual adjustment, over a three-year period. As an example of how this process would work, assume a current rental of \$100 per year, a new rental of \$500 per year, and an annual adjustment of plus 2 percent, then the payments would be as follows:

Year	Last year fee		First 100% increase		1/2 of increase balance		Annual adjustment		Current fee
1.....	\$100	+	\$100	+	\$100	+	\$0	=	\$300
2.....	300	+	0	+	100	+	10	=	410
3.....	410	+	0	+	100	+	10	=	520

Other Terms and Conditions

To provide for the differences between a Federal and private right-of-way grant, the January 1985 notice of intent to propose rulemaking used a 15 percent adjustment for right-of-way grants made under the Mineral Leasing Act, and 10 percent adjustment for grants made under the Federal Land Policy and Management Act. The Mineral Leasing Act adjustment was greater than that for right-of-way grants made under the Federal Land Policy and Management Act due to additional statutory requirements, for example the common carrier provision and relocation requirements, that are not required for grants under the Federal Land Policy and Management Act. This adjustment was the greatest point of concern in the

comments on the notice of intent. Some of the comments provided data based on cost of acquisition or construction by which they measured the differences between a Federal and private right-of-way grant. Most of the comments indicated that the adjustment for a Federal right-of-way grant should be not less than 40 percent; with some of the comments recommending adjustments ranging up to 100 percent for certain categories of right-of-way grants. Other comments expressed the view that there should be no adjustment made for the difference between Federal and private right-of-way grants.

Some of the comments recommended changes in the grant made by the United States in order to eliminate the perceived differences between Federal

and private right-of-way grants. The changes proposed in the comments included allowing perpetual easements, developing master permits common to both the Bureau of Land Management and the Forest Service, deletion of the requirement that a holder/permittee must relocate facilities at its expense as a result of a management decision by the agency, and permitting reassignment of permits without the Bureau of Land Management or the Forest Service being able to include new requirements.

After reviewing the comments and the Mineral Leasing Act and the Federal Land Policy and Management Act, the proposed rulemaking would make changes in the existing requirements for relocation cost to the holder/permittee and assignability of a grant or permit. Under this proposed rulemaking, the requirement for relocation at the holder's/permittee's expense would be removed and the assignment provisions would be amended to allow existing grants or permits to be assigned to qualified parties without change in terms and conditions of the grant or permit other than bonding requirements. These two changes would not be applicable to grants or permits that are exempt from the payment of fair market value rental, such as Rural Electrification Act financed facilities.

A number of comments suggested that additional requirements imposed on right-of-way grants on public lands, such as archeological studies, painting structures and seeding, are costly, unreasonable and, therefore, should be modified. Many of the requirements discussed in the comments are statutory requirements that cannot be changed through the rulemaking process and the proposed rulemaking takes no action on them.

Conclusion

The comments addressed above were primarily directed at the use of the market survey data base. The decision to change from a market survey data base to a land value base in this proposed rulemaking meets the objections raised in a majority of the comments on the intent to propose rulemaking.

The right-of-way grant and temporary use granted by the United States are not in fee ownership and the real estate market shows that, in most instances, the acquisition of a grant that is less than a fee grant make it less valuable than the granting of a fee. The real estate market is not sufficiently refined that it can accurately measure in exact dollars or percentages the value of a grant or permit that is for less than full fee. In arriving at the adjustment

concept used in this proposed rulemaking, professional judgment and all available data, including comments received on the notices of intent to propose rulemaking, discussions with permittee representatives and the impact of a grant or permit on the lands and their resources.

For right-of-way grants and temporary use permits for electric transmission and distribution lines, telephone lines and similar uses, a 30 percent adjustment has been proposed. The impact on the lands and their management made by energy pipelines, ditches, canals and roads, as a whole, is more severe than it is for electrical, telephone and other similar right-of-way grants. For this latter type of right-of-way grant, a 20 percent adjustment has been proposed.

For these reasons, the Department of the Interior proposes to charge 80 percent of the zone right-of-way grants for energy pipelines, ditches, canals and roads and 70 percent for electrical transmission, electrical distribution, telephone and other similar linear right-of-way grants.

Calculation of Annual Rental from Adjusted Right-of-Way Zone Value

The January 1985 notice of intent to proposed rulemaking recommended using the 30-year Federal Bond rate as of October 1 of each year as the applicable rate for converting the right-of-way zone value to an annual rental. The comments on this proposal were varied in their view as to what rate should be used, with most of the comments opposing the use of long-term financial rates on the basis that they do not reflect periodic adjustment in rentals. Some of the comments felt a Federal bond rate would be appropriate for use if it coincided with the payment term. Other comments expressed the view that the rate of return must be drawn from the land market relevant to the right-of-way, a view that has been accepted by the proposed rulemaking. Almost all of the comments supported a range of from 4 to 8 percent as the rate that should be used.

The proposed rulemaking would use the current one-year Treasury Securities "Constant Maturity" rate as published by the Federal Reserve in the statistical release report H. 15 (519) as the basis for calculating the annual rental for a right-of-way grant. Thereafter, annual adjustments in the rental would be made using the Implicit Price Deflator Index effective at the end of the third quarter of each year.

Other Issues Raised in the Comments

Should All Utilities Be Exempt for Rentals

Several of the comments suggested that private investor owned utilities should be exempt from paying rental for right-of-way grants on Federal lands. The Federal Land Policy and Management Act provides authority for waiver of rental fees, when equitable and in the public interest, for right-of-way grants to: Federal, State or local governments or any agency or instrumentality thereof, to nonprofit associations or nonprofit corporations which are not themselves controlled or owned by a profit making corporation or business entity; to holders who provide, without charge, or at a reduced charge, a valuable benefit to the public or to the programs of the Secretary of the Interior or of Agriculture; or to a holder in connection with the authorized use or occupancy of Federal lands for which the United States is already receiving compensation, including free use.

Numerous administrative appeal decisions have affirmed the position that no reduction of waiver of payments is appropriate for organizations whose principal source of revenue is customer charges. The legislative history of section 504(g) of the Federal Land Policy and Management Act reveals that the Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Several of the comments pointed out the decisions of the United States Court of Appeals for the Tenth Circuit in *Beaver, Bountiful, Enterprise v. Andrus*, 637 F. 2d 749 (1980), and expressed the view that the decision exempted all municipalities and other entities, including private investor utilities, from the payment of rental because the lands and resources utilized would continue to serve the general public. This view is incorrect in that the Court ruled that the plaintiffs, as local governmental entities were exempt from paying application processing costs under the Bureau of Land Management regulations in effect at that time. The Court did not rule on the question of whether private investor utilities should be exempt from the payment of annual rental.

Several of the comments expressed the view that the Act of May 25, 1984 (98 Stat 215), which amended the Federal Land Policy and Management Act to exempt electric and telephone facilities financed under the Rural Electrification Act from the payment of rental right-of-way grants on Federal lands, also

exempted public utilities from the payment of rental. This view is not supported by the provisions of that Act which specifically provides an exemption from rental only for facilities financed under the Rural Electrification Act or extensions of those facilities. Therefore, public utilities not financed under the Rural Electrification Act are not exempt from the requirement for the payment of an annual rental.

Unauthorized Double Charge

Some of the comments expressed the view that the requirement to pay both an annual rental and the costs of processing and monitoring the right-of-way grant or temporary use permit is an unauthorized double charge on an applicant/holder and suggested that this situation should be resolved by providing for an offset in one area for payments made in the other area. Both the Mineral Leasing Act and the Federal Land Policy and Management Act provide for the collection of both the costs connected with the processing and monitoring of grants or permits and the annual rental that reflects fair market value for the use of the Federal lands covered by a grant or permit.

Cooperative Relations

The holder/permittee representatives requested that the proposed rulemaking contain a provision requiring the Bureau of Land Management and the Forest Service to maintain cooperative relations with user groups. The Bureau of Land Management agrees that it is important to maintain a cooperative relationship with users of linear right-of-way grants across Federal lands and will continue to work closely with various user groups to resolve long standing issues, reduce administrative costs and improve the efficiency of the Federal right-of-way system. However, the proposed rulemaking does not contain such a requirement.

Summary of Proposed Rental Payment Procedure

Using data from the market survey and information obtained from holders, a right-of-way value zone map has been prepared. The right-of-way zone value was adjusted downward by 20 percent for energy pipelines, ditches, canals and roads and 30 percent for all other linear right-of-way uses. This adjusted value was then multiplied by the 1-year Treasury Securities "Constant Maturity" rate to arrive at the annual per acre rental payment for each value zone. A 7.07 percent rate has been used as the interest rate. The final rulemaking will be based on the rate at the time of finalization. The following sets out the

process used in calculating the rental fees used in this proposed rulemaking:

Formula: Rental payment/acre = Right-of-way zone value $\times$ differential adjustment $\times$ 1-year Treasury Security rate.

Factors: Zone value = \$100/acre; differential adjustment of 20 percent for energy pipelines, etc., and of 30 percent for others; 1-year Treasury Securities rate = 7.07 percent (as of March 7, 1986).

Calculation.

Energy pipelines, etc.: \$100/acre $\times$ 0.80 $\times$.0707 = \$5.66/acre rental payment.

Other right-of-way grants: \$100/acre $\times$ 0.70 $\times$.0707 = \$4.95/acre rental payment.

The proposed payment schedule by State, county and type of linear right-of-way use resulting from the above formula as it applies to right-of-way zone values is shown on tables that can be obtained from the "Address section" shown at the beginning of the preamble to this proposed rulemaking.

Competitive Bidding

In considering fair market rental value, it is recognized that competitive interest may exist for such uses as communications sites, wind farms and similar type site uses where the number of potential sites is limited. The existing regulations do not contain competitive bidding procedures. This proposed rulemaking contains provisions that would develop a specific process for issuing right-of-way grants on a competitive basis. Where a competitive interest is identified through the Bureau of Land Management's land use planning system or through indications of public interest, the authorized officer would be authorized to issue a notice indicating the availability of the lands and the proposed use, and offer a right-of-way under terms and conditions specified in the notice.

The principal author of this proposed rulemaking is Theodore Bingham, Division of Rights-of-Way, assisted by the staff of the Assistant Director, Land and Renewable Resources and the staff of the Division of Legislation and Regulatory Management, all part of the Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant

economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes that would be made by this proposed rulemaking will not, when the rental payments for all right-of-way grants and temporary use permits are considered, substantially increase the payments made by holders/permittees.

The changes that would be made by this proposed rulemaking should make the rental procedures used by the Bureau of Land Management more efficient and equitable, while more accurately assuring receipt of fair market value. The changes made by this proposed rulemaking will be equally applicable to all entities that receive right-of-way or permit grants from the Bureau of Land Management for use of the Federal lands for such right-of-way purposes.

There are no additional information collection requirements in this proposed rulemaking requiring approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects

43 CFR Part 2800

Administrative practice and procedure, Communications, Electric power, Highways and roads, Pipelines, Public lands—rights-of-way.

43 CFR Part 2880

Administrative practice and procedure, Common carriers, Oil and gas industry, Pipelines, Public lands—rights-of-way.

Under the authority of title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761-1771) and section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), it is proposed to amend Parts 2800 and 2880, Group 2800, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 2800—[AMENDED]

1. The authority citation for Part 2800 continues to read:

Authority: 43 U.S.C. 1761-1771.

2. Section 2803.1-2 is revised to read:

§ 2803.1-2 Rental.

(a) The holder of a right-of-way grant or temporary use permit shall pay annually, in advance, except as provided in paragraph (b) of this section, the fair market rental value as determined by the authorized officer applying sound business management principles and, so far as practicable and feasible, using comparable commercial practices. Annual rent billing periods

shall be set or adjusted to coincide with the calendar year by proration on the basis of 12 months; the initial month shall not be counted for right-of-way grants or temporary use permits having an anniversary date of the 15th or later in the month. Rental shall be determined in accordance with the provisions of paragraph (c) of this section; provided, however, that the minimum rental under paragraph (c)(1) shall not be less than the annual payment required by the schedule for 1 acre; provided, further, that in those instances where the annual payment is \$100 or less, the authorized officer may require an advance lump sum payment for 5 years.

(b) The following officer may reduce or waive the rental payment under the following circumstances:

(1) The holder is a Federal, State or local government or agency or instrumentality thereof, except municipal utilities and cooperatives whose principle source of revenue is customer charges;

(2) The holder is a nonprofit corporation or association which is not controlled by or is not a subsidiary of a profit making corporation or business enterprise;

(3) The holder provides without charge, or at reduced rates, a valuable benefit to the public or to the programs of the Secretary;

(4) The facilities constructed on the right-of-way are or were financed in whole or in part under the Rural Electrification Act of 1936, as amended, or are extensions from such Rural Electrification Act financed facilities;

(5) The right-of-way was or is issued pursuant to a statute that did or does not require the payment of rental;

(6) The holder holds an outstanding permit, lease, license or contract for which the United States is already receiving compensation, except under an oil and gas lease where the lessee is required to secure a right-of-way grant or temporary use permit under part 2880 of this title; and:

(i) Needs a right-of-way grant or temporary use permit within the exterior boundaries of the permit, lease, license or contract area; or

(ii) Needs a right-of-way across the public lands outside the permit, lease, license or contract area in order to reach said area;

(7) With the concurrence of the State Director, the authorized officer, after consultation with an applicant/holder, determines that the requirement to pay the full rental will cause undue hardship on the holder/applicant and that it is in the public interest to reduce or waive said rental. In order to complete such consultation, the State Director may

require the applicant/holder to submit data, information and other written material in support of a proposed finding that the right-of-way grant or temporary use permit qualifies for a reduction or waiver of rental; and

(8) A right-of-way involves a cost share road or reciprocal right-of-way agreement not subject to part 2812 of this title. Any fair market value rental required to be paid under this paragraph shall be determined by the proportion of use.

(c)(1)(i) Except for those linear right-of-way grants or temporary use permits that the authorized officer determines to have unique characteristics, an applicant shall, prior to the issuance of a linear right-of-way grant or temporary use permit, submit an annual rental payment in advance for such right-of-way grant or temporary use permit in accordance with the following schedule:

Zone	Rental per acre	
	Energy pipelines, roads, ditches & canals	All others
I.....	\$2.83	\$2.47
II.....	5.66	4.95
III.....	11.31	9.90
IV.....	16.97	14.85
V.....	22.62	19.80
VI.....	28.28	24.75
VII.....	33.94	29.69
VIII.....	56.56	49.49

A listing of rental per acre, by State and County, which will be updated annually, is available from any Bureau State or District office or may be obtained by writing: Director (330), Bureau of Land Management, Room 3660, Main Interior Bldg., 1800 C Street, NW., Washington, D.C. 20240.

(ii) The schedule will be adjusted annually by multiplying the current year's rental per acre by the annual change, from the last Friday in September to the last Friday in the following September, in the Gross National Product Implicit Price Deflator Index as published in the *Survey of Current Business* of the Department of Commerce, Bureau of Economic Analysis.

(iii) At such times as the cumulative change in the index used in subparagraph (ii) of this paragraph exceeds 30 percent or the change in the interest rate exceeds plus or minus 50 percent, the zones and rental per acre figures shall be reviewed to determine whether market and business practices have differed sufficiently from the index to warrant a revision in the base zones and rental per acre figures.

(iv) Rental for the ensuing calendar year for any single right-of-way grant or

temporary use permit shall be the rental per acre times the number of acres embraced in the grant or permit, rounded to the nearest whole dollar, unless such rental is reduced or waived as provided in paragraph (b) of this section.

(2)(i) Existing linear right-of-way grants and temporary use permits may be made subject to the schedule provided by this paragraph upon reasonable notice to the holder.

(ii) Where the increase in annual rental exceeds \$100 and is more than a 100 percent increase over the current rental, the new annual rental in excess of the 100 percent increase shall be phased in by equal increments, plus the annual adjustment, over a 3-year period.

(3)(i) The rental for linear right-of-way grants and temporary use permits not covered by the schedule set out above in this paragraph, including those the authorized officer determines under paragraph (c)(1) of this section to have unique characteristics, and for non-linear-right-of-way grants and temporary use permits (e.g., communications sites, reservoir sites, plant sites and storage sites) shall be determined by the authorized officer and paid annually in advance. Said rental shall be based on either a market survey of comparable rentals, or on an application of the rental from the schedule provided in this paragraph where appropriate, or on a value determination for specific parcels or groups of parcels unless such rental is reduced or waived as provided in paragraph (b) of this section. Where the authorized officer determines that a competitive interest exists for right-of-way grants such as wind farms, communications sites, etc., rental may be determined through competitive bidding procedures set out in § 2803.1-3 of this title.

(ii) To expedite the processing of any grant or permit covered by paragraph (c)(3) of this section, the authorized officer may estimate rental and collect a deposit in advance with the agreement that upon completion of a rental value determination, the advance deposit shall be adjusted according to the final fair market rental value determination.

(4) Decisions on rental determinations are subject to appeal under subpart 2804 of this title.

(5) Upon the holder's written request, rentals may be prepaid for 5 years in advance.

(d) If the rental required by this section is not paid when due, and such default continues for 30 days after notice, action may be taken to terminate the right-of-way grant or temporary use

permit. After default has occurred, no structures, buildings or other equipment may be removed from the subservient lands except upon written permission from the authorized officer.

3. Sections 2803.1-3 and 2803.1-4 are renumbered §§ 2803.1-4 and 2803.1-5, respectively.

4. A new § 2803.1-3 is added to read:

§ 2803.1-3 Competitive bidding.

(a) Where, as a result of the land use planning process or indications of public interest, the desirability of allowing use of the public lands for right-of-way purposes or providing increased service to the public from such use of the public lands is demonstrated to the satisfaction of the authorized officer and no equities, such as prior use of the lands, warrant noncompetitive land use authorization, the authorized officer may identify a right-of-way use for the public lands and notify the public through publication of a notice of realty action as required by paragraph (b)(1) of this section that proposals for utilizing the public lands through a right-of-way will be considered. A right-of-way grant shall be awarded on the basis of the public benefit to be provided, the financial and technical capability of the bidder to undertake the project and the bid offer. Each bid shall be accompanied by the information required by the notice of realty action and a statement over the signature of the bidder or anyone authorized to sign for the bidder that he/she is in compliance with the requirements of the law and these regulations. A bid of less than the fair market rental value of the lands offered shall not be considered.

(b) The offering of public lands for right-of-way use under competitive bidding procedures shall be conducted in accordance with the following:

(1)(i) A notice of realty action indicating the availability of public lands for competitive right-of-way offering shall be published in the *Federal Register* and at least once a week for 3 consecutive weeks in a newspaper of general circulation in the area where the public lands are situated or in such other publication as the authorized officer may determine. The successful qualified bidder shall, prior to the issuance of the right-of-way grant, pay his/her proportionate share of the total cost of publication.

(ii) The notice of realty action shall include the use proposed for the public lands and the time, date and place of the offering, including a description of the lands being offered, terms and conditions of the grant(s), the minimum acceptable bid for rental and/or royalty

rates, bidding requirements, payment required, where bid forms may be obtained, the form in which the bids shall be submitted and any other information or requirements determined appropriate by the authorized officer.

(2) Bids may be made either by a principal or duly qualified agent.

(3) All sealed bids shall be opened at the time and date specified in the notice of realty action, but no bids shall be accepted or rejected at that time. The right to reject any and all bids is reserved. Only those bids received by the close of business on the day prior to the sale or at such other time stated in the notice of realty action and made for at least the minimum acceptable bid shall be considered. Each bid shall be accompanied by U.S. currency or certified check, postal money order, bank draft or cashier's check payable in U.S. currency and made payable to the Department of the Interior—Bureau of Land Management for not less than one-fifth of the amount of the bid, and shall be enclosed in a sealed envelope which shall be marked as prescribed in the notice of realty action. If 2 or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing. The drawing shall be held by the authorized officer immediately following the opening of the sealed bids.

(4) In the event the authorized officer rejects the highest qualified bid or releases the bidder from such bid, the authorized officer shall determine whether the public lands involved in the offering shall be offered to the next highest bidder, withdrawn from the market or reoffered.

(5) If the highest qualified bid is accepted by the authorized officer, the grant form(s) shall be forwarded to the qualifying bidder for signing. The signed grant form(s) with the payment of the balance of the first year's rental and the publication costs shall be returned within 30 days of its receipt by the highest qualified bidder and shall qualify as acceptance of the right-of-way grant(s).

(6) If the successful qualified bidder fails to execute the grant form(s) and pay the balance of the rental payment and the costs of publication within the allowed time, or otherwise fails to comply with the regulations of this subpart, the one-fifth remittance accompanying the bid shall be forfeited.

§ 2803.6-3 [Amended]

5. Section 2803.6-3 is amended by removing from where it appears in the

next to last sentence the phrase "plus any additional terms and conditions and any special stipulations that the authorized officer may impose" and adding at the end of the section a new sentence "The authorized officer may, at the time of approval of the assignment, modify or add bonding requirements."

6. Section 2803.6-4 is revised to read:

§ 2803.6-4 Reimbursement of costs for assignments.

(a) All filings for assignments, except as provided in paragraph (b) of this section, made pursuant to this section shall be accompanied by a non-refundable payment of \$50 from the assignor. Exceptions for a nonrefundable payment for an assignment are the same as in § 2803.1 of this title.

(b) Where a holder assigns more than 1 right-of-way grant as a single action, the authorized officer may, due to economies of scale, set a nonrefundable fee of less than \$50 per assignment.

PART 2880—[AMENDED]

7. The authority citation for part 2880 continues to read:

Authority: 30 U.S.C. 185, unless otherwise noted.

§ 2881.1-1 [Amended]

8. Section 2881.1-1(g) is amended by removing the period at the end of the last sentence thereof and adding the phrase ", except that where a holder assigns more than 1 right-of-way grant as part of a single action, the authorized officer, due to economies of scale, may set a fee of less than \$50 per assignment."

§ 2881.2 [Amended]

9. Section 2881.2 is amended by removing paragraph (a)(2) in its entirety and redesignating the existing paragraphs (a) (3), (4), and (5) as paragraphs (a) (2), (3), and (4), respectively.

§ 2883.1-2 [Amended]

10. Section 2883.1-2 is amended by removing from where it appears the citation "§ 2803.1-2(c)" and replacing it with the citation "§ 2803.1-2(b)".

August 18, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

Note: The following will not appear in the Code of Federal Regulations.

LINEAR RIGHTS-OF-WAY RENTAL SCHEDULE
 [Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of- way
Alabama: All counties.....	\$22.62	\$19.60
Arizona:		
Apache	5.66	4.95
Coconino, north of the Colo- rado River		
Cochise		
Gila		
Graham		
La Paz		
Mohave		
Navajo		
Pima		
Yavapai		
Yuma		
Coconino, south of the Colo- rado River	22.62	19.60
Greenlee		
Maricopa		
Pinal		
Santa Cruz		
Arkansas: All counties.....	16.97	14.85
California:		
Imperial	11.31	9.90
Inyo		
Lassen		
Modoc		
Riverside		
San Bernardino		
Siskiyou	16.97	14.85
Alameda	28.28	24.75
Alpine		
Amador		
Butte		
Calaveras		
Colusa		
Contra Costa		
Del Norte		
El Dorado		
Fresno		
Glenn		
Humboldt		
Kern		
Kings		
Lake		
Madera		
Mariposa		
Mendocino		
Merced		
Mono		
Napa		
Nevada		
Placer		
Plumas		
Sacramento		
San Benito		
San Joaquin		
Santa Clara		
Shasta		
Sierra		
Solano		
Sonoma		
Stanislaus		
Sutter		
Tehama		
Toulumne		
Trinity		
Tulare		
Yolo		
Yuba		
Los Angeles.....	33.94	29.69
Marin		
Monterey		
Orange		
San Diego		
San Francisco		
San Luis Obispo		
San Mateo		
Santa Barbara		
Santa Cruz		
Ventura		
Colorado:		
Adams	5.66	4.95
Arapahoe		
Bent		

**LINEAR RIGHTS-OF-WAY RENTAL SCHEDULE—
Continued**
 [Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of- way
Cheyenne		
Crowley		
Elbert		
El Paso		
Huerfano		
Kiowa		
Kit Carson		
Lincoln		
Logan		
Moffat		
Montezuma		
Morgan		
Pueblo		
Sedgewick		
Washington		
Weld		
Yuma		
Baca	11.31	9.90
Dolores		
Garfield		
Las Animas		
Mesa		
Montrose		
Otero		
Prowers		
Rio Blanco		
Routt		
San Miguel		
Alamosa	22.62	19.60
Archuleta		
Boulder		
Chaffee		
Clear Creek		
Conejos		
Costilla		
Custer		
Delta		
Denver		
Douglas		
Eagle		
Fremont		
Gilpin		
Grand		
Gunnison		
Hinsdale		
Jackson		
Jefferson		
Lake		
La Plata		
Larimer		
Mineral		
Ouray		
Park		
Pitkin		
Rio Grande		
Saguache		
San Juan		
Summit		
Teller		
Connecticut: All counties.....	5.66	4.95
Delaware: All counties.....	5.66	4.95
Florida:		
Baker	33.94	29.69
Bay		
Bradford		
Calhoun		
Clay		
Columbia		
Dixie		
Duval		
Escambia		
Franklin		
Gadsden		
Gilchrist		
Gulf		
Hamilton		
Holmes		
Jackson		
Jefferson		
Lafayette		
Leon		
Liberty		

**LINEAR RIGHTS-OF-WAY RENTAL SCHEDULE—
Continued**
 [Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of- way
Madison		
Nassau		
Okaloosa		
Santa Rosa		
Suwannee		
Taylor		
Union		
Wakulla		
Walton		
Washington		
All other counties.....	56.56	49.49
Georgia:		
All counties.....	33.94	29.69
Idaho:		
Cassia	5.66	4.95
Gooding		
Jerome		
Lincoln		
Minidoka		
Oneida		
Owyhee		
Power		
Twin Falls		
Ada	16.97	14.85
Adams		
Bannock		
Bear Lake		
Bonewah		
Bingham		
Blaine		
Boise		
Bonner		
Bonneville		
Boundary		
Butte		
Camas		
Canyon		
Caribou		
Clark		
Clearwater		
Custer		
Elmore		
Franklin		
Fremont		
Gem		
Idaho		
Jefferson		
Kootenai		
Latah		
Lemhi		
Lewis		
Madison		
Nez Perce		
Payette		
Shoshone		
Teton		
Valley		
Washington		
Illinois: All counties.....	16.97	14.85
Indiana: All counties.....	28.28	24.75
Iowa: All counties.....	16.97	14.85
Kansas:		
Morton	11.31	9.90
All other counties.....	5.66	4.95
Kentucky: All counties.....	16.97	14.85
Louisiana: All counties.....	33.94	29.69
Maine: All counties.....	16.97	14.85
Maryland: All counties.....	5.66	4.95
Massachusetts: All counties.....	5.66	4.95
Michigan:		
Alger	16.97	14.85
Barga		
Chippewa		
Delta		
Dickinson		
Gogebic		
Houghton		
Iron		
Keweenaw		
Luce		
Mackinac		
Marquette		

LINEAR RIGHTS-OF-WAY RENTAL SCHEDULE—
Continued

[Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of- way
Menominee		
Ontonagon		
Schoolcraft		
All other counties	22.62	19.80
Minnesota: All counties	16.97	14.85
Mississippi: All counties	22.62	19.80
Missouri: All counties	16.97	14.85
Montana:		
Big Horn	5.66	4.95
Blaine		
Carter		
Cascade		
Chouteau		
Custer		
Daniels		
Dawson		
Fallon		
Fergus		
Garfield		
Glaicor		
Golden Valley		
Hill		
Judith Basin		
Liberty		
McCone		
Meagher		
Musselshell		
Petroleum		
Phillips		
Pondera		
Powder River		
Prairie		
Richland		
Roosevelt		
Rosebud		
Sheridan		
Teton		
Toole		
Treasure		
Valley		
Wheatland		
Wibaux		
Yellowstone		
Beaverland	16.97	14.85
Broadwater		
Carbon		
Deer Lodge		
Flathead		
Gallatin		
Granite		
Jefferson		
Lake		
Lewis and Clark		
Lincoln		
Madison		
Mineral		
Missoula		
Park		
Powell		
Ravalli		
Sanders		
Silver Bow		
Stillwater		
Sweet Grass		
Nebraska: All counties	5.66	4.95
Nevada:		
Churchill	2.83	2.47
Elko		
Esmeralda		
Eureka		
Humboldt		
Lander		
Lincoln		
Lyon		
Mineral		
Nye		
Pershing		
Washoe		
White Pine		
Clark	11.31	9.90
Carson City	28.28	24.75
Douglas		

LINEAR RIGHTS-OF-WAY RENTAL SCHEDULE—
Continued

[Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of- way
Story		
New Hampshire: All counties	16.97	14.85
New Jersey: All counties	5.66	4.95
New Mexico:		
Chaves	5.66	4.95
Curry		
De Baca		
Dona Ana		
Eddy		
Grant		
Guadalupe		
Harding		
Hidalgo		
Lea		
Luna		
McKinley		
Otero		
Quay		
Roosevelt		
San Juan		
Socorro		
Torrence		
Rio Arriba	11.31	9.90
San Doval		
Union		
Bernalillo	22.62	19.80
Catron		
Cibola		
Colfax		
Lincoln		
Los Alamos		
San Miguel		
Santa Fe		
Sierra		
Taos		
Valencia		
New York: All counties	22.62	19.80
North Carolina: All counties	33.94	29.69
North Dakota: All counties	5.66	4.95
Ohio: All counties	22.62	19.80
Oklahoma:		
Beaver	11.31	9.90
Cimmaron		
Roger Mills		
Texas		
La Flore	16.97	14.85
McCurtain		
All other counties	5.66	4.95
Oregon:		
Harney	5.66	4.95
Lake		
Maiheur		
Baker	11.31	9.90
Crook		
Deschutes		
Gilliam		
Grant		
Jefferson		
Klamath		
Morrow		
Sherman		
Umatilla		
Union		
Wallowa		
Wasco		
Wheeler		
Coos	16.97	14.85
Curry		
Douglas		
Jackson		
Josephine		
Benton	22.62	19.80
Clackamas		
Clatsop		
Columbia		
Hood River		
Lane		
Lincoln		
Linn		
Marion		
Multnomah		
Polk		

LINEAR RIGHTS-OF-WAY RENTAL SCHEDULE—
Continued

[Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of- way
Tillamook		
Washington		
Yamhill		
Pennsylvania: All counties	22.62	19.80
Puerto Rico: All	33.94	29.69
Rhode Island: All counties	5.66	4.95
South Carolina: All counties	33.94	29.69
South Dakota:		
Butte	16.95	14.85
Custer		
Fall River		
Lawrence		
Meade		
Pennington		
All other counties	5.66	4.95
Tennessee: All counties	22.62	19.80
Texas:		
Culberson	5.66	4.95
El Paso		
Hudspeth		
All other counties	33.94	29.69
Utah:		
Beaver	5.66	4.95
Box Elder		
Carbon		
Duchesne		
Emery		
Garfield		
Grand		
Iron		
Jaub		
Kane		
Millard		
San Juan		
Tooele		
Unitah		
Wayne		
Washington	11.31	9.90
Cache	16.97	14.85
Daggett		
Davis		
Morgan		
Piute		
Rich		
Salt Lake		
Sanpete		
Sevier		
Summit		
Utah		
Wasatch		
Weber		
Vermont: All counties	22.62	19.80
Virginia: All counties	22.62	19.80
Washington:		
Adams	11.31	9.90
Asotin		
Benton		
Chelan		
Columbia		
Douglas		
Franklin		
Garfield		
Grant		
Kittitas		
Klickitat		
Lincoln		
Okanagan		
Spokane		
Walla Walla		
Whitman		
Yakima		
Ferry	16.97	14.85
Pend Oreille		
Stevens		
Clallam	22.62	19.80
Clark		
Cowlitz		
Grays Harbor		
Island		
Jefferson		
King		
Kitsap		

LINEAR RIGHTS-OF-WAY RENTAL SCHEDULE—
Continued

[Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of- way
Lewis		
Mason		
Pacific		
Pierce		
San Juan		
Skagit		
Skamania		
Snohomish		
Thurston		
Wahkiakum		
Whatcom		
West Virginia: All counties.....	22.62	19.80
Wisconsin: All counties.....	16.97	14.85
Wyoming:		
Albany.....	5.66	4.95
Campbell		
Carbon		
Converse		
Fremont		
Goshen		
Johnson		
Laramie		
Lincoln		
Natrona		
Niobrara		
Platte		
Sheridan		
Sublette		
Sweetwater		
Uinta		
Big Horn.....	16.97	14.85
Crook		
Hot Springs		
Park		
Washakie		
Weston		
Teton		

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BILLING CODE 4310-84-M

Best Food Labels

Friday
September 5, 1986

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1230

Pork Promotion, Research, and Consumer Information Order; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

Pork Promotion, Research, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Pork Promotion, Research, and Consumer Information Act of 1985, approved December 23, 1985 (7 U.S.C. 4801-4819), authorizes the establishment of a national, industry-funded and operated pork promotion, research, and consumer information program. On February 14, 1986, the Agricultural Marketing Service (AMS) published an invitation to submit proposals for a pork promotion, research, and consumer information order. AMS received an industry proposal which was published for public comment in the March 19, 1986, issue of the *Federal Register*. Additionally, a public meeting was held April 21, 1986, to facilitate a better understanding of the proposed order and to solicit comments on the proposal.

After evaluation of the comments, the transcript of the public meeting, and other available material, it has been determined that, with minor modifications, the proposed order and all terms and conditions thereof will assist in carrying out the Act. Accordingly, the proposed order, with minor modifications, has been adopted as a final rule.

DATES: This final rule is effective September 5, 1986, except that § 1230.71, which provides for the collection of assessments, will be effective November 1, 1986, and the collection of assessments shall begin on that date.

ADDRESS: Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA, Room 2610-S, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ralph Tapp, Chief, Marketing Programs and Procurement Branch, (202) 447-2650.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Invitation to submit proposals, published February 14, 1986, (51 FR 5542).

Proposed Rule—Procedures for Nominations and Elections of Pork Producers and Nominations of Importers for Appointment to the Initial National Pork Producers Delegate Body, published February 21, 1986, (51 FR 6255).

Final Rule—Procedures for Nominations and Elections of Pork Producers and Nominations of Importers for Appointment to the Initial National Pork Producers Delegate Body, published April 4, 1986, (51 FR 11553).

Proposed Rule—Pork Promotion, Research, and Consumer Information Order, published March 19, 1986, (51 FR 9602).

This action was reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation No. 1512-1, and is hereby classified as a nonmajor rule because the annual economic impact will be less than \$100 million. Accordingly, a regulatory impact analysis is not required. This action was also reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Pork Promotion, Research, and Consumer Information Act of 1985 (Act) (7 U.S.C. 4801 *et seq.*) provides for the establishment of a coordinated program of promotion and research designed to strengthen the pork industry's position in the marketplace and to maintain and expand foreign and domestic markets and uses for pork and pork products. This program will be financed by assessments on domestic and imported porcine animals (swine) and on imported pork and pork products. The initial assessment rate will be 0.25 percent of the value of porcine animals or the equivalent thereof in the case of imported pork and pork products. For imported porcine animals, pork and pork products, the assessment will be collected at the time of importation. For porcine animals sold in the United States, the assessment will be collected the first time an animal is sold in each of the categories established by the Act and the order. The categories are feeder pigs, market hogs, and breeding stock. For example, a feeder pig sold by the original owner will be subject to an assessment, and the same animal will be subject to an assessment when sold for slaughter. However, if that animal were sold twice as a feeder pig, it would not be subject to an assessment for the second sale as a feeder pig. The Act also provides authority to require certain records and reports which are necessary to administer the program.

The Act specifies in detail required terms which must be included in the order. It also authorizes the Secretary to include such terms and conditions, not inconsistent with the provisions of the Act, as are necessary to effectuate the

other provisions of the order. The Act is very specific in certain areas, such as the procedure for issuing an order, composition of the Delegate Body and the Board, powers and duties of the Delegate Body and the Board, source and collection of funds, level of assessment, and referendum requirements.

The Act provides that after notice and opportunity for public comment, the Secretary shall issue a pork promotion, research, and consumer information order, if the Secretary finds that the order and all terms and conditions thereof will assist in carrying out the Act.

The Act also requires the Secretary to conduct a referendum among producers and importers not earlier than 24 nor later than 30 months after the issuance of the order to determine whether a majority of those voting favor continuation of the program under the order. Prior to the approval of the continuation of the order, any person who pays an assessment and who does not support the program established under the Act may receive a full refund by making a written request to the Board within 30 days from the end of the month in which the assessment was paid. The Secretary is also authorized to conduct periodic referenda to determine whether a termination or suspension of the order is warranted.

Information available to the Department indicates that nearly all pork producers can be classified as small businesses. Additionally, a substantial number of the auction markets, dealers, order buyers, packers, and importers are considered small businesses under the RFA.

The funding of pork promotion, research, and consumer information programs by assessments is not a new concept. Thirty-eight States already have organizations conducting pork promotion, research, and consumer information programs funded by collections from producers, and the enabling legislation for a national program was initiated by the pork industry. The Act provides that this national promotion, research, and consumer information program be conducted in conjunction with existing programs, and encourages cooperation and coordination between State and national pork promotion, research, and consumer information programs and the National Pork Board established under this order. Although the Act precludes States from collecting funds from pork producers for promotion and consumer education programs while the order is in force, the Act provides that the existing

State programs shall receive a share of the assessments collected under the order.

The total estimated market value of porcine animals marketed in the United States or imported into the United States and the equivalent market value of the live animals from which imported pork and pork products were produced is about \$10 billion per year. It is estimated that the promotion, research, and consumer information program will raise approximately \$21 million per year, which is about two-tenths of one percent of the annual market value described above. The net impact of the national program would actually be considerably less because about \$10 million is already being collected under existing State programs.

The reporting and recordkeeping requirements will not necessitate any significant additional cost or effort. Persons who collect or remit assessments are required to submit reports showing the number and value of the porcine animals subject to assessments, the amount of assessments collected, the month when collected, and the State in which the porcine animals were produced. Assessments on porcine animals sold through livestock markets will be collected and remitted by the market; for private sales, assessments will be collected and remitted by the buyer for feeder pigs and slaughter hogs, and will be remitted by the seller for breeding stock. Assessments on porcine animals slaughtered for sale by the producer will be remitted by the producer. The ordinary business records kept by these persons for other purposes will virtually always contain the required information.

Very little additional recordkeeping or reporting will be required of importers. The U.S. Customs Service will serve as the collecting agent for importer assessments. It is anticipated that an existing reporting form and procedure will be utilized to provide a one or two line entry for recording such assessments.

In determining that the research and promotion program under the order will not have a significant economic impact on a substantial number of small entities, all of the issues discussed above were considered. The order provisions were closely reviewed, and every effort was made to minimize any unnecessary costs or duplicative requirements. Although the promotion, research, and consumer information program will impose some additional costs on producers and importers, it is anticipated that the program will strengthen the position of the pork

industry in the marketplace and will expand domestic and foreign markets. Therefore, the additional costs, particularly when viewed in light of the annual market value of porcine animals, pork, and pork products, should be more than offset by the benefits derived from expanded markets and sales.

Paperwork Reduction

The Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) seeks to minimize the paperwork burden imposed by the Federal Government while maximizing the utility of the information requested. In accordance with the procedures contained in Title 5 of the Code of Federal Regulations, Part 1320, the information collection and recordkeeping requirements contained in this subpart have been approved by the Office of Management and Budget and have been assigned OMB Control Number 0581-0151.

Background

The Pork Promotion, Research, and Consumer Information Act (Act) (7 U.S.C. 4801 *et seq.*) approved December 23, 1985, provides for the establishment of a national pork promotion, research, and consumer information program. The Agricultural Marketing Service issued an invitation to submit proposals for an initial order in the February 14, 1986, issue of the *Federal Register*. In response to the invitation to submit proposals, one proposed order was received from the National Pork Producers Council. As provided in the Act, the Agricultural Marketing Service published this proposed order for comment on March 19, 1986. Additionally, a public meeting was held on April 21, 1986, to provide an opportunity for a full discussion on the proposal and to facilitate a better understanding of the proposed rule and to solicit comments.

The Department of Agriculture received 30 comments related to the proposed Pork Promotion, Research, and Consumer Information Order from individuals, pork producer associations, general farm organizations, importers, and other industry organizations. The commenters generally supported the proposed order with certain qualifications. No comments were received which opposed the issuance of a Pork Promotion, Research, and Consumer Information Order.

After review of the proposed order and the comments and testimony, a number of technical changes of a non-substantive nature were made in this final rule, primarily in style, format, and organization. The substantive changes suggested by commenters are discussed

below, together with changes made upon review of the proposed order by the Agency. For the reader's convenience, the discussion is organized by the topic headings of the proposed order.

Definitions

Most of the definitions in this final rule were adopted from the proposed rule without change. Most of the changes which were made result from a change in the method of calculating assessments on imported pork and pork products. The term "market value" has been expanded, and the term "equivalent value" has been deleted; two new terms, "Customs Service" and "imported pork and pork products" have been added. These changes as they relate to imported pork and pork products are discussed below, under *Expenses and Assessments*.

The term "market value" was also modified in order to provide methods for calculating assessments on porcine animals slaughtered for sale by the producer and on imported porcine animals. The methods are, respectively, the most recent annual seven-market average for barrows and gilts, and the declared value. These provisions were added because otherwise the collection of assessments could not begin until additional regulations establishing some method for determining the market value of such animals had been prescribed by the Board and approved by the Secretary. The methods set forth in the definition in this final rule are based upon the best information presently available to the Agency. If experience should demonstrate that these methods are unsatisfactory, the order may be amended to establish other methods.

The term "to market" has been replaced by "market," and the definition has been clarified. The term is used in the order only in reference to actions by domestic producers. The definition should not refer to the sale or other disposition of pork or pork products but rather, to the sale, slaughter for sale, or other disposition of porcine animals, because assessments on producers do not apply to pork or pork products. The definition has been modified accordingly.

Several commenters, including the proponents of the proposed order, suggested that the definition of "producer" should be clarified as to who may vote in elections to nominate members of the Delegate Body. The terms "producer" and "person" are defined in the proposed order just as they are in the Act. The Act defines a

"producer" as a person who produces porcine animals in the United States for sale in commerce. The Act further defines a "person" as an individual, group of individuals, partnership, corporation, association, organization, cooperative, or other entity. No further clarification of these terms is necessary at this time for the efficient operation of the order. If clarification is desirable with respect to elections for nominations to the Delegate Body or for the referendum, this may be accomplished through regulations prescribed by the Board and approved by the Secretary. This procedure would allow the Board to consider the matter, and would provide producers, importers, and other interested persons notice and opportunity to comment on any proposed clarification. Accordingly, this suggestion is not adopted in this final rule.

The proponents of the proposed order suggested that the term "imported pork and pork products" should be defined and that the definition specifically identify, by Tariff Schedule of the United States numbers, those imported pork and pork products which would be subject to assessment under the order. This suggestion has substantial merit. Accordingly, a definition and associated list of Tariff Schedule numbers has been included in this final rule. This list may be revised from time to time by regulations prescribed by the Board and approved by the Secretary.

National Pork Producers Delegate Body

Section 1230.30 "Establishment and Membership" of the proposed order has been modified in several respects in this final rule. The section began with a general description of the method of determining the number of producer members from each State and the number of importer members. This general provision is unnecessary in view of the detailed provisions specifying the manner of determining the number of producer members from each State, and importers, and the number of votes which may be cast by each member. Accordingly, it has been deleted in this final rule. Also, this section of the proposed order has been clarified by removing the phrase "aggregate amount of assessments." The reasons for this clarification are discussed below under *Expenses and Assessments*.

Section 1230.31 "Nominations for Producer Members" of the proposed order provided that in cases where there is no State association, or the State association does not submit nominations, the Secretary may appoint producer members from that state after consulting with representatives of the

pork industry in that State. The proposed order did not specifically provide for cases where a State association does not submit the necessary number of nominations, or does not submit them in a valid manner. This section has been modified in this final rule to allow the Secretary to obtain additional nominees by consulting with representatives of the pork industry in any such State. This modification is necessary to assure that in accordance with the Act each State will receive the appropriate number of members. The section has also been renamed "Nomination and Appointment of Producer Members" and has been modified to include appointment of producer members.

One of the methods authorized by the Act for selecting nominees for appointment to the Delegate Body is by election in each State. The proposed order contained detailed provisions for conducting such elections. The precise manner in which such elections are conducted would more appropriately be contained in implementing regulations rather than in the order itself. Further, since the proposed order was submitted, elections have been conducted in the States to select nominees. It would be appropriate for the Board to consider regulations for conducting any future elections in light of the experience of producers in the elections held for the initial Delegate Body. Accordingly, such detailed provisions for conducting elections contained in §§ 1230.33 through 1230.39 and § 1230.41 of the proposed order have been deleted in this final rule, and the final rule sets forth only the requirements established by the Act. The requirements of the order pertaining to the conduct of elections to select nominees to the Delegate Body are set forth in § 1230.32 of the final rule.

Several State pork producer associations suggested that the Board should be responsible for paying the expenses of any elections to nominate pork producers to the Delegate Body after the initial Delegate Body has been appointed. After the establishment of the initial Delegate Body, elections are not required for the selection of nominees for subsequent Delegate Bodies; other procedures authorized by the Act may be approved by the Secretary. If elections are to be held, the possible reimbursement or sharing of expenses is a matter which would be appropriate for consideration at that time. Accordingly, this suggestion is not adopted in the final rule.

Several comments were received from producer associations and individuals

suggesting that the order provide for alternate members of the Delegate Body. However, the Act does not provide for the appointment of alternate members of the Delegate Body. Further, the size of the Delegate Body makes the appointment of alternate members impractical. Accordingly, this suggestion is not adopted in this final rule.

National Pork Board

No substantial changes have been made in the sections of the proposed order dealing with the National Pork Board.

Importer representatives suggested in testimony at the public meeting that the order should guarantee importers one or more seats on the Board. Numerous comments were received from producer associations arguing that neither importers nor any particular State or segment of the industry should be guaranteed a seat on the Board. The Act provides that the Delegate Body shall nominate not less than 23 persons for appointment to the Board, and it does not provide for any specific State or segment of the pork industry to be represented on the Board. Accordingly, the suggestion that importers should be guaranteed a seat on the Board is not adopted in this final rule.

A change has been made in § 1230.55 "Vacancies" in order to clarify the procedures for removal, and to clarify that the Secretary may remove employees of the Board if it is determined that their continued service would be detrimental to the purposes of the Act.

Promotion, Research, and Consumer Information

Many comments were received from individuals and producer associations favoring the authorization of brand advertising. However, these commenters suggested that the prior approval of the Secretary should not be required because it could delay promotional programs. Section 1619(b)(3) of the Act provides that no plan, project, or budget, including those for which State associations receive funds from the Board, may become effective unless approved by the Secretary; this provision also applies to brand advertising. The statutory requirement is implemented by paragraph (e) of § 1230.58 "Powers and Duties of the Board." Therefore, the suggestion that paragraph (d) of § 1230.60 "Promotion, Research, and Consumer Information" be deleted is not adopted in this final rule.

An individual commenter suggested that the reference in this section to

projects to maintain, develop, or expand markets for pork and pork products should include both domestic and foreign markets. It is clear that this is the intent of the Act; accordingly, the suggested change has been made in this final rule.

One comment was received from a public interest group suggesting that the order contain specific provisions for the content of promotional materials, in addition to the general prohibition of false, deceptive, misleading, or unfair advertising. No convincing case has been made that any such additional restrictions are necessary. Accordingly, the suggestion is not adopted in this final rule.

Expenses and Assessments

A general farm organization suggested that the administrative expenses of the Board, the National Pork Producers Council, and the State associations be limited to no more than five percent of their respective share of the projected revenue for a fiscal period. The Act does not provide for a specific administrative expense ceiling. Rather, the Act and the order authorize the efficient use of assessments through the fullest utilization of resources, staff, and facilities available to the Board through the use of contracts or agreements with existing organizations. These provisions, together with the Secretary's authority to review the Board's budgets, will ensure appropriate restraint on administrative expenses.

Section 1230.71 "Assessments" has been modified in several respects in this final rule. Persons who sell porcine animals directly to consumers as a part of a custom slaughter operation are made responsible for remitting assessments on such animals. This situation is very similar to slaughter for sale by the producer, and the purposes of the Act would not be furthered by requiring ordinary consumers to remit assessments.

The proponents of the proposed order and several importer representatives suggested that the U.S. Customs Service would be the most appropriate entity to provide cost effective and efficient collection of assessments due on imported porcine animals, pork, and pork products. The U.S. Customs Service has agreed in principle to serve as the collecting mechanism for importer assessments due under the Act and § 1230.71 "Assessments" has been revised to provide that importers shall remit assessments to the Customs Service, unless a different manner is established by regulations. The provision of the proposed order concerning the manner of remittance has

been placed with the provisions concerning who must collect and remit assessments on domestic porcine animals. Also, the term "Customs Service" has been added to the definitions in this final rule.

The proposed order also provided that assessments would be remitted to the Secretary until the Board is established. This provision is not necessary, because the Board will be established before assessments begin. This is possible because elections have already been conducted to select nominees for the Delegate Body, which will nominate the members of the Board. Accordingly, references to the remittance of assessments to the Secretary and distribution by the Secretary have been eliminated in this final rule.

One individual commenter suggested that there be a common collection point for importer assessments, a common remittance date, and a single late payment penalty for assessments due under both the Pork Promotion, Research, and Consumer Information Act of 1985 and the Beef Promotion and Research Act of 1985. The Acts require the issuance of separate orders and the establishment of separate governing bodies which are responsible for the collection of assessments under each order's enabling legislation. The authorized programs while similar are not identical, and although coordination between the two may be desirable, such coordination can only be achieved through coordination between the officials of the two programs. It would be inappropriate to establish the requirements proposed by the commenter in either order.

The proposed order provided that the assessment rate would be 0.25 percent of market value, or a lesser percentage established by the Secretary upon the recommendation of the Delegate Body. In order to avoid uncertainty, this final rule provides that the initial rate of assessment shall be 0.25 percent. This modification does not diminish the authority of the Delegate Body to recommend a lower rate. If such a recommendation were made, it would be reviewed promptly and, if appropriate, the initial rate would be lowered.

The rate of assessment for imported pork and pork products was the subject of much concern at the public meeting and in the comments submitted to the Department.

The proposed order provided that assessments on imported pork and pork products be determined by applying the assessment rate to 70 percent of the value of the pork and pork products. Importer representatives suggested that

one uniform assessment rate be established for all imported pork and pork products for ease of calculating such assessments. These methods do not meet the requirements set forth in the Act. A set percentage of the value of imported pork and pork products does not represent the equivalent value of the live porcine animals from which such pork and pork products were produced. Additionally, a single assessment rate, as proposed by the importers, could be unfair to importers dealing primarily in products which should be assessed at a lower rate.

Accordingly, the Agency has determined that assessments on imported pork and pork products shall be expressed in an amount per pound for each type of product subject to assessment. These amounts will be based upon the equivalent value of the live porcine animal from which such pork and pork products were produced. This shall be accomplished by first converting the weight of imported pork or pork products to a carcass weight equivalent utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the non-pork components of pork products. Second, the carcass weight equivalent will be converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of hogs in the United States. Third, the equivalent value of the live porcine animal will be determined by multiplying the live animal equivalent weight by an annual average seven-market price for barrows and gilts as reported by the USDA Agricultural Marketing Service's Livestock and Grain Market News Branch. This average price is published on a yearly basis during the month of January in the Livestock and Grain Market News' "Livestock, Meat, and Wool Weekly Summary and Statistics" publication. Finally, the equivalent value would be multiplied by the applicable assessment rate to determine the assessment amount due on imported pork or pork products. The end result would be expressed in an amount per pound for each type of pork or pork product.

The § 1230.72 "Distribution of Assessments" has been modified in several respects in this final rule. This section of the proposed order provided that State associations would receive a percentage determined by the Delegate Body of the aggregate assessments

attributable to porcine animals produced in that State, but that this amount would be reduced by the same percentage of the amount of refunds paid to producers in that State. Several individuals and State producer associations suggested that the phrase "aggregate assessments" was confusing and should be defined. The suggestion that the section be clarified has merit. The section has been modified in this final rule by eliminating the references to "aggregate assessments" and paragraph (f), concerning shares of refunds, and using instead the term "net assessments attributable to that State." The meaning of the section is not affected by these modifications.

This section of the proposed order also provided that State associations which have been conducting pork promotion programs would receive amounts in addition to the percentage set by the Delegate Body so that the total amount received under the order would not be less than the amount they would have received and retained under the preexisting programs. The determination of this amount requires the exercise of judgment and discretion by the Board, and it cannot easily be reduced to a formula, as the proposed order attempted. Accordingly, this section has been modified in this final rule by eliminating the formula and providing instead that a State association which was conducting a pork promotion, research, and consumer information program from July 1, 1984 to June 30, 1985, shall receive on an annual basis the amount that would have been collected and retained in that State under that program.

As previously discussed, the provisions for distribution of assessments by the Secretary prior to the establishment of the Board have been eliminated as unnecessary. In connection with this change, the section has been reorganized for clarity. In the proposed order, the provisions for distribution of assessments were organized by the time period in which they would be distributed, that is, before the establishment of the Board, and before and after the referendum. In this final rule, the provisions governing distribution of assessments are set forth in separate paragraphs for State associations and the Council.

An importer organization suggested that the order should provide that no funds collected from importers be used in any manner to restrict or limit the importation of pork or pork products. It is assumed that the commenter was concerned about the use of assessments collected from importers to influence

governmental action to limit importations. The suggestion that funds collected under the order should not be used for such purposes has merit. Section 1230.74 "Prohibited Use of Distributed Assessments" has been modified in this final rule to reflect the long-standing policy of the Department that funds collected under research and promotion programs may not be used to influence governmental action, except to recommend to the Secretary amendments to the order and associated regulations. Also, a new paragraph has been added to clarify that the Board and the Secretary may require reports to verify that distributed assessments have not been used for prohibited purposes.

The proponents of the order suggested that the order should provide that the refund application form should show the name, address, and telephone number of the person requesting a refund. The refund application form must, in any event, include the information necessary for processing, and it is not necessary that the order contain such details. Accordingly, this suggestion is not adopted in this final rule.

An importer suggested that a provision should be included in the order to refund any assessments collected on product returns (products which are refused entry into the U.S. after customs duties have been paid). This suggestion has merit; however, such a situation should be treated as an adjustment of accounts rather than as a refund. Section 1230.75 "Adjustment of Accounts" has been modified slightly in this final rule to provide for payment when the matter cannot be handled by a credit to an account.

Reports, Books, and Records

The proponents of the proposed order suggested that the § 1230.80 "Reports" should be modified so that the reports required to be submitted with remittance of assessments "may" rather than "will" include the information set forth in that section. The proponents stated that the purpose of the suggested change would be to avoid the required collection of unnecessary information. This suggestion has merit. The section has been revised in this final rule so as to require only the information which is essential to the administration of the order. The section also provides for the issuance of regulations to require other information, if that should prove necessary for the efficient administration of the order. If the submission of essential information were not required by the order, the collection of assessments could be delayed until implementing regulations were issued.

Miscellaneous

Section 1230.88 "Patents, Copyrights, Inventions, and Publications" has been modified upon review by the Agency to remove the mandatory provision for payment of royalties to persons who patent inventions using funds collected under the order. No convincing case has been made that the payment of a royalty would be appropriate in every such instance. The manner of compensation for employees and agents of the Board should be left to the discretion of the Board subject to the approval of the Secretary.

Rules of Practice

No comments were received concerning the proposed Rules of Practice Governing Proceedings on Petitions to Modify or Be Exempted From an Order. These provisions, with minor modifications, are included in this final rule. They are not, however, part of the order, but are a separate subpart which implements the order.

Other Comments

One individual commenter suggested that the order should ensure minimum funding to the National Livestock and Meat Board (NLSMB) and the National Pork Producers Council (NPPC) so that both organizations may continue their efforts to promote pork and pork products and to respond to important issues concerning the pork industry. The Act does not provide for funding of the NLSMB but it does provide funding for the NPPC until 12 months after the initial referendum. The order does, however, allow contractual relationships between the Board and the NLSMB, the NPPC and other organizations for promotion, research, and consumer information projects by submitting the plans for such projects. Accordingly, this suggestion has not been adopted in this final rule.

A general farm organization suggested that provisions for the suspension or termination of the orders should be included in the order. However, the Act contains specific procedures for suspending or terminating the order, and it is not necessary that the provisions be incorporated into the order. Accordingly, this suggestion is not adopted in this final rule.

Several individual producers and general farm organizations suggested that procedures for the referendum should be included in the order. While the procedures for the referendum must be established before the referendum is held, it is not necessary that they be established at this time. No comments suggested what the procedures should

be, and therefore, the Board should consider the matter before the procedures are established. Accordingly, this suggestion is not adopted in this final rule.

Two general farm organizations and several individuals suggested that periodic referenda should be mandatory, for example, every 5 years. The Act provides that, after the initial referendum, the Secretary may conduct a referendum on the request of a representative group comprising 15 per centum or more of the total number of pork producers and importers. This provision in the statute provides adequate authority for periodic referenda, and it is unnecessary to include any further provision in the order. Accordingly, the suggestion is not adopted in this final rule.

It is hereby determined that it is impractical, unnecessary, and contrary to the public interest to delay the effective date of this final rule for 30 days after its publication in the Federal Register. In order to carry out the statutory timetable for the implementation of the Act, it is necessary that this final rule become effective on September 1, 1986, except that § 1230.71, which provides for the collection of assessments, will be effective November 1, 1986, and the collection of assessments will begin on that date.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Meat and meat products, Pork and pork products.

7 CFR is amended as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR 1230 continues to read as follows:

Authority: 7 U.S.C. 4801-4819.

2. Subpart A is redesignated as Subpart D.

3. New Subparts A and B are added to read as follows:

Subpart A—Pork Promotion, Research, and Consumer Information Order

Definitions

Sec.	
1230.1	Act.
1230.2	Department.
1230.3	Secretary.
1230.4	Board.
1230.5	Consumer information.
1230.6	Council.
1230.7	Customs Service.
1230.8	Delegate Body.

Sec.	
1230.9	Fiscal period.
1230.10	Imported.
1230.11	Imported pork and pork products.
1230.12	Importer.
1230.13	Market.
1230.14	Market value.
1230.15	Part and subpart.
1230.16	Person.
1230.17	Plans and projects.
1230.18	Porcine animal.
1230.19	Pork.
1230.20	Pork product.
1230.21	Producer.
1230.22	Promotion.
1230.23	Research.
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Subpart B—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Pork Promotion, Research, and Consumer Information Order

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Subpart A—Pork Promotion, Research, and Consumer Information Order

Definitions

§ 1230.1 Act.

"Act" means the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801-4819) and any amendments thereto.

§ 1230.2 Department.

"Department" means the United States Department of Agriculture.

§ 1230.3 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Secretary's stead.

§ 1230.4 Board.

"Board" means the National Pork Board established pursuant to § 1230.50.

§ 1230.5 Consumer information.

"Consumer information" means an activity intended to broaden the understanding of the sound nutritional attributes of pork and pork products, including the role of pork and pork products in a balanced, healthy diet.

§ 1230.6 Council.

"Council" means the National Pork Producers Council, a nonprofit corporation of the type described in section 501(c)(5) of the Internal Revenue Code of 1954 and incorporated in the State of Iowa.

§ 1230.7 Customs Service.

"Customs Service" means the United States Customs Service of the United States Department of Treasury.

§ 1230.8 Delegate Body.

"Delegate Body" means the National Pork Producers Delegate Body established pursuant to § 1230.30.

§ 1230.9 Fiscal period.

"Fiscal period" means the 12-month period ending on December 31 or such other consecutive 12-month period as the Secretary or Board may determine.

§ 1230.10 Imported.

"Imported" means entered, or withdrawn from a warehouse for

consumption, in the customs territory of the United States.

§ 1230.11 Imported pork and pork products.

"Imported pork and pork products" means products which are imported into the United States which the Secretary determines contain a substantial amount of pork, including those products which have been assigned one or more of the following numbers in Schedule 1 of the Tariff Schedules of the United States Annotated (1985): 106.4020; 106.4040; 106.8000; 106.8500; 107.1000; 107.1500; 107.3020; 107.3040; 107.3060; 107.3515; 107.3525; 107.3540; and 107.3560.

§ 1230.12 Importer.

"Importer" means a person who imports porcine animals, pork, or pork products into the United States.

§ 1230.13 Market.

"Market" means to sell, slaughter for sale, or otherwise dispose of a porcine animal in commerce.

§ 1230.14 Market value.

"Market value" means, with respect to porcine animals which are sold, the price at which they are sold. With respect to porcine animals slaughtered for the sale by the producer, the term means the most recent annual seven-market average for barrows and gilts, as published by the Department. With respect to imported porcine animals, the term means the declared value. With respect to imported pork and pork products, the term means an amount which represents the value of the live porcine animals from which the pork or pork products were derived, based upon the most recent annual seven-market average for barrows and gilts, as published by the Department.

§ 1230.15 Part and subpart.

"Part" means the Pork Promotion, Research, and Consumer Information Order and all rules, regulations, and supplemental orders issued thereunder, and the aforesaid order shall be a "subpart" of such part.

§ 1230.16 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, organization, cooperative, or other entity.

§ 1230.17 Plans and projects.

"Plans and projects" means promotion, research, and consumer information plans, studies, or projects.

§ 1230.18 Porcine animal.

"Porcine animal" means a swine, that is raised as (a) a feeder pig, that is, a

young pig sold to another person to be finished for slaughtering over a period of more than 1 month; (b) for breeding purposes as seed stock and included in the breeding herd; and (c) a market hog, slaughtered by the producer or sold to be slaughtered, usually within 1 month of such transfer.

§ 1230.19 Pork.

"Pork" means the flesh of a porcine animal.

§ 1230.20 Pork product.

"Pork product" means an edible product produced or processed in whole or in part from pork.

§ 1230.21 Producer.

"Producer" means a person who produces porcine animals in the United States for sale in commerce.

§ 1230.22 Promotion.

"Promotion" means any action, including but not limited to paid advertising and retail or food service merchandising, taken to present a favorable image for porcine animals, pork, or pork products to the public, or to educate producers with the intent of improving the competitive position and stimulating sales of porcine animals, pork, or pork products.

§ 1230.23 Research.

"Research" means any action designed to advance, expand, or improve the image, desirability, nutritional value, usage, marketability, production, or quality of porcine animals, pork, or pork products, including the dissemination of the results of such research.

§ 1230.24 State.

"State" means each of the 50 States.

§ 1230.25 State association.

"State association" means the single organization of producers in a State that is organized under the laws of that State and is recognized by the chief executive officer of such State as representing such State's producers. If no such organization exists in a State as of January 1, 1986, the Secretary may recognize an organization that represents not fewer than 50 producers who market annually an aggregate of not less than 10 percent of the pounds of porcine animals marketed in such State. The Secretary may cease to recognize a State association and instead recognize another organization of producers in a State as that State's association if the Secretary determines either that a majority of the members of the existing State association are not producers or that a majority of the members of the

other organization seeking recognition are producers and that such organization better represents the economic interests of producers.

§ 1230.26 State where produced.

"State where produced" means with respect to a porcine animal marketed as a feeder pig or as breeding stock, the State in which that porcine animal was born, and with respect to a porcine animal that is marketed as a market hog, the State in which that porcine animal was fed for market.

National Pork Producers Delegate Body

§ 1230.30 Establishment and membership.

(a) There is hereby established a National Pork Producers Delegate Body which shall consist of producers and importers appointed by the Secretary.

(b)(1) At least two producer members shall be allocated to each State, but any State that has more than 300 but less than 601 shares shall receive three producer members; each State with more than 600 but less than 1,001 shares shall receive four producer members and each State with more than 1,000 shares shall receive an additional member in excess of four for each 300 additional shares in excess of 1,000 shares, rounded to the nearest 300.

(2) For the initial Delegate Body, shares shall be assigned to each State on the basis of one share for each \$400,000 of market value (rounded to the nearest \$400,000) attributable to porcine animals produced in such State (as determined by the Secretary based on the annual average of market value in the most recent three years for which data are available).

(3) In each fiscal period thereafter, shares shall be assigned to each State on the basis of one share for each \$1,000 (rounded to the nearest \$1,000) of the net amount of assessments attributable to such State.

(c)(1) The number of importer members to be appointed shall be determined by allocating three such members for the first 1,000 shares. Importers shall receive an additional member in excess of three for each 300 shares in excess of 1,000 shares, rounded to the nearest 300.

(2) For the initial Delegate Body, shares shall be assigned to importers on the basis of one share for each \$575,000 (rounded to the nearest \$575,000) of the market value of imported porcine animals, pork, or pork products (as determined by the Secretary, based on the three most recent years for which data are available).

(3) In each fiscal period thereafter, shares shall be assigned to importers on

the basis of one share for each \$1,000 (rounded to the nearest \$1,000) of the net amount of assessments attributable to importers.

§ 1230.31 Nomination and appointment of producer members.

(a) For the initial Delegate Body, nominations for appointment as producer members shall be submitted to the Secretary pursuant to Subpart D.

(b) For each subsequent Delegate Body, nominations for appointment as producer members shall be submitted to the Secretary in the number requested by the Secretary by each State association either after an election conducted in accordance with § 1230.32 and by nominating the producers who receive the highest number of votes in such State; or pursuant to a selection process that is approved by the Secretary, is given public notice at least one week in advance by publication in a newspaper or newspapers of general circulation in such State and in pork production and agriculture trade publications, and provides complete and equal access to every producer who has paid all assessments due under this subpart and who has not demanded any refund of an assessment paid pursuant to this subpart in the period since the selection of the previous Delegate Body;

(c) The Secretary shall appoint the producer members of each Delegate Body from the nominations submitted in accordance with this section, except that if a State association does not submit nominations in the required manner or number, or if a State has no State association, the Secretary shall select producer members from that State after consultation with representatives of the pork industry in that State.

§ 1230.32 Conduct of election.

If a State association selects nominees for appointment to the Delegate Body through an election, it shall be conducted in the following manner:

(a) Elections shall be administered by the Board and the Board shall determine the timing of any elections.

(b) Producers who are residents of that State may be named as candidates for election to be nominees for appointment to the Delegate Body:

(1) By a nominating committee of producers in that State appointed by the Board; or

(2) By written petition signed by 100 producers in that State or by 5 percent of the producers in that State, whichever number is less.

(c) To be eligible to vote in an election to nominate producer members from a State, a person must:

(1) Be a producer who is a resident of that State;

(2) Have paid all assessments due pursuant to this subpart; and

(3) Not have demanded any refund of an assessment paid pursuant to this subpart in the period since the selection of the previous Delegate Body.

(d) The Board shall cause notices of any election to be published at least one week prior to the election in a newspaper or newspapers of general circulation in that State, and in pork production and agriculture trade publications. The notices shall set forth the period of time and places for voting and such other information as the Board considers necessary.

(e) The identity of any person who voted and the manner in which any person voted shall be kept confidential.

§ 1230.33 Appointment of importer members.

The Secretary shall appoint the importer members of each Delegate Body after consultation with importers.

§ 1230.34 Term of office.

(a) The members of the Delegate Body shall serve for terms of one year, except that the members of the initial Delegate Body shall serve only until the completion of the nomination and appointment process of the succeeding Delegate Body.

(b) Each member of the Delegate Body shall serve until that member's term expires, or a successor is appointed, whichever occurs later.

§ 1230.35 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Delegate Body, the Secretary shall appoint a successor for the unexpired term of such member from nominations made either by the appropriate State association or by importers, depending upon whether the vacancy is a producer or importer vacancy.

§ 1230.36 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Delegate Body, but only if that majority is also entitled to cast a majority of the shares (including fractions thereof). Any action of the Delegate Body, including any motion or nomination presented to it for a vote, shall require a majority vote, that is, the concurring votes of a majority of the shares cast on that action. The Delegate Body shall give timely notice of its meetings. The Delegate Body shall give the Secretary the same notice of its meetings as it gives to its members in order that the Secretary or a

representative of the Secretary may attend meetings.

(b) The number of votes that may be cast by a producer member if present at a meeting shall be equal to the number of shares attributable to the State of such member divided by the number of producer members from such State. The number of votes that may be cast by an importer member if present at a meeting shall be equal to the number of shares allocated to importers divided by the number of importer members.

§ 1230.37 Officers.

The Delegate Body shall elect its Chairperson by a majority vote at the first annual meeting, but at each annual meeting after the first, the President of the Board shall serve as the Delegate Body's Chairperson.

§ 1230.38 Compensation and reimbursement.

The members of the Delegate Body shall serve without compensation but may be reimbursed by the Board for actual transportation expenses incurred by them in exercising their powers and duties under this Subpart. Such expenses shall be paid from funds received by the Board pursuant to § 1230.72.

§ 1230.39 Powers and duties of the Delegate Body.

The Delegate Body shall have the following powers and duties:

(a) To meet annually;

(b) To recommend the rate of assessment prescribed by the initial order and any increase in such rate;

(c) To determine the percentage of the net assessments attributable to porcine animals produced in a State that each State association shall receive; and

(d) To nominate not less than 23 persons, including producers from a minimum of 12 States or importers, for appointment to the initial Board and not less than one and one-half persons (rounded up to the nearest person) for each vacancy on the Board that requires nominations thereafter. Each nomination shall be by a majority vote of the Delegate Body voting in person in accordance with § 1230.36.

National Pork Board

§ 1230.50 Establishment and membership.

There is hereby established a National Pork Board of 15 members consisting of producers representing at least 12 States or importers appointed by the Secretary from nominations submitted pursuant to § 1230.39(d). The Board shall be deemed to be constituted

once the Secretary makes the appointments to the Board.

§ 1230.51 Term of office.

(a) The members of the Board shall serve for terms of three years, except that the members appointed to the initial Board shall be designated for, and shall serve terms as follows: One-third of such members shall serve for one year terms; One-third shall serve for two year terms; and the remaining One-third shall serve for three year terms.

(b) Each member of the Board shall serve until the member's term expires, or until a successor is appointed, unless the member is removed pursuant to § 1230.55(b).

(c) No member shall serve more than two consecutive terms provided that those members serving an initial term of one year are eligible to serve two additional consecutive terms, but in no event, more than seven years in total.

(d) The first year of the terms of the initial Board shall begin immediately on appointment by the Secretary and continue until July 1, 1988. In subsequent years, the term of office shall begin on July 1.

§ 1230.52 Nominations.

Nominations for members of the Board shall be made by the Delegate Body in accordance with § 1230.39(d).

§ 1230.53 Nominee's agreement to serve.

Any person nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

- (a) Serve on the Board if appointed;
- (b) Disclose any relationship with the Council or a State association or any organization that has a contract with the Board and thereafter disclose, at any time while serving on the Board, any relationship with any organization that applies to the Board for a contract; and
- (c) Withdraw from participation in deliberations, decisionmaking, or voting on matters concerning any entity referred to in paragraph (b) if an officer or member of the executive committee of such entity.

§ 1230.54 Appointment.

From the nominations submitted pursuant to § 1230.39(d), the Secretary shall appoint 15 producers or importers as members of the Board, but in no event shall the Secretary appoint producer members representing fewer than 12 States.

§ 1230.55 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a

successor for the unexpired term of such member from the most recent list of nominations made by the Delegate Body.

(b) If a member of the Board fails or refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that that member be removed from office. If the Secretary finds that the recommendation of the Board demonstrates adequate cause, the Secretary shall remove such member from office. A person appointed under this Part or any employee of the Board may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

§ 1230.56 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Board. Any action of the Board shall require the concurring votes of at least a majority of those present and voting. The Board shall give timely notice of its meetings. The Board shall give the Secretary the same notice of its meetings, including the meetings of its committees, as it gives to its members in order that the Secretary, or a representative of the Secretary, may attend the meetings.

(b) The Board may take action upon the concurring votes of a majority of its members by mail, telephone, telegraph or by other means of communication when, in the opinion of the President of the Board, such action must be taken before a meeting can be called. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing and recorded in the Board minutes. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board.

§ 1230.57 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for reasonable expenses incurred by them in the exercise of their powers and the performance of their duties under this subpart. Such expenses shall be paid from funds received by the Board pursuant to § 1230.72.

§ 1230.58 Powers and duties of the Board.

The Board shall have the following powers and duties:

(a) To meet not less than annually, and to organize and elect from among its

members, by majority vote, a President and such other officers as may be necessary;

(b) To receive and evaluate, or, on its own initiative, develop, and budget for proposals for plans and projects and to submit such plans and projects to the Secretary for approval;

(c) To administer directly or through contract the provisions of this subpart in accordance with its terms and provisions;

(d) To develop and submit to the Secretary for the Secretary's approval, plans and projects conducted either by the Board or others;

(e) To prepare and submit to the Secretary for the Secretary's approval, which is required for the following to be implemented: (1) Budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including the projected cost of plans and projects to be conducted by the Board directly or by way of contract or agreement; and (2) The budget, plans, or projects for which State associations are to receive funds under § 1230.72, including a general description of the proposed plan and project contemplated therein;

(f) With the approval of the Secretary, to enter into contracts or agreements with any person for the development and conduct of activities authorized under this subpart and for the payment of the cost thereof with funds collected through assessments pursuant to § 1230.71. Any such contract or agreement shall provide that:

(1) The contracting party shall develop and submit to the Board a plan or project together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its relevant transactions and make periodic reports to the Board of relevant activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party;

(g) To appoint or employ such persons as staff as it may deem necessary, to define the duties and determine the compensation of each, to protect the handling of Board funds through fidelity bonds, and to conduct routine business.

(h) To disseminate information to or communicate with producers or State

associations through programs or by direct contact utilizing the public postage system or other systems;

(i) To select committees and subcommittees of Board members and to adopt such rules and by laws for the conduct of its business as it may deem advisable;

(j) To utilize advisory committees of persons other than Board members to assist in the development of plans or projects and pay the reasonable expenses and fees of the members of such committees;

(k) To prescribe rules and regulations necessary to effectuate the terms and provisions of this subpart;

(l) To recommend to the Secretary amendments to this subpart;

(m) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1230.71 in, and only in, an obligation of the United States, a general obligation of any State or any political subdivision thereof, an interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or an obligation fully guaranteed as to principal and interest by the United States.

(n) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and prepare and submit such reports as the Secretary may prescribe from time to time, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(o) To prepare and make public and available to producers and importers at least annually, a report of its activities carried out and an accounting of funds received and expended;

(p) To have an audit of its financial statements conducted by a certified public accountant in accordance with generally accepted auditing standards at the end of each fiscal period and at such other times as the Secretary may request, and to submit a copy of each such audit report to the Secretary;

(q) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(r) To submit to the Secretary such information pursuant to this subpart as the Secretary may request; and

(s) To carry out an effective and coordinated program of promotion, research, and consumer information designed to strengthen the position of the pork industry in the marketplace and maintain, develop, and expand markets for pork and pork products.

Promotion, Research, and Consumer Information

§ 1230.60 Promotion, research, and consumer information.

(a) The Board shall receive and evaluate, or, on its own initiative, develop, and submit to the Secretary for approval, any plans and projects. Such plans and projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans and projects for promotion, research, and consumer information with respect to pork and pork products designed to strengthen the position of the pork industry in the marketplace and to maintain, develop, and expand domestic and foreign markets for pork and pork products;

(2) The establishment and conduct of research and studies with respect to the sale, distribution, marketing, and utilization of pork and pork products and the creation of new products thereof, to the end that marketing and utilization of pork and pork products may be encouraged, expanded, improved, or made more acceptable.

(b) Each plan and project shall be periodically reviewed or evaluated by the Board to ensure that the plan and project contributes to an effective and coordinated program of promotion, research, and consumer information. If it is found by the Board that any such plan and project does not further the purposes of the Act, the Board shall terminate such plan and project.

(c) No plan or project shall make a false or misleading claim on behalf of pork or a pork product or a false or misleading statement with respect to an attribute or use of a competing product.

(d) No plan or project shall undertake to advertise or promote pork or pork products by private brand or trade name unless such advertisement or promotion is specifically approved by the Board, with the concurrence of the Secretary.

Expenses and Assessments

§ 1230.70 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve that would permit an effective promotion, research, and consumer information program to continue in years when the amount of assessments may be reduced) as the Secretary finds are reasonable and likely to be incurred by the Board for its administration, maintenance, and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart, including financing plans and projects. Such expenses shall be paid from assessments collected pursuant to

§ 1230.71 and other funds available to the Board, including donations.

(b) The Board shall reimburse the Secretary, from assessments collected pursuant to § 1230.71, for reasonable administrative expenses incurred by the Department with respect to this subpart after January 1, 1986, including any expenses reasonably incurred for the conduct of elections of nominees for appointment to the initial Delegate Body and for the conduct of referenda.

§ 1230.71 Assessments.

(a)(1) Each producer producing in the United States a porcine animal raised as a feeder pig that is sold shall pay an assessment on that animal, unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal as a feeder pig.

(2) Each producer producing in the United States a porcine animal raised for slaughter that is sold shall pay an assessment on that animal, unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal as a market hog.

(3) Each producer producing in the United States a porcine animal raised for slaughter that such producer slaughters for sale shall pay an assessment on that animal unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal as a market hog.

(4) Each producer producing in the United States a porcine animal raised for breeding stock that is sold shall pay an assessment on that animal, unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid by a person on that animal as breeding stock.

(5) Each importer importing a porcine animal, pork, or pork product into the United States shall pay an assessment on that porcine animal, pork, or pork product, unless such importer demonstrates to the Board by appropriate documentation that an assessment was previously paid for that porcine animal, pork, or pork product.

(b)(1) Each purchaser of a porcine animal raised by a producer as a feeder pig or market hog shall collect an assessment on such porcine animal if an assessment is due pursuant to paragraph (a) of this section, and shall remit that assessment to the Board. For the purposes of collection and remittance of assessments, any person engaged as a commission merchant, auction market, or livestock market in the business of

receiving such porcine animals for sale on commission for or on behalf of a producer shall be deemed to be a purchaser.

(2) Each producer of porcine animals slaughtered for sale by the producer or sold directly to a consumer in connection with a custom slaughter operation shall remit an assessment to the Board if an assessment is due pursuant to paragraph (a) of this section.

(3) Assessments on domestic porcine animals shall be remitted in the form of a negotiable instrument made payable to the "National Pork Board" and shall be sent to the address designated by the Board not later than the tenth day of the month following the month in which the animals were marketed and shall be accompanied by the reports required by § 1230.80.

(4) Each importer of a porcine animal, pork, or pork product shall remit an assessment to the Customs Service at the time such porcine animal, pork, or pork product is imported or in such manner as may be established by regulations prescribed by the Board and approved by the Secretary, if an assessment is due pursuant to paragraph (a) of this section.

(c) The initial rate of assessment shall be 0.25 percent of market value.

(d) The rate of assessment may, upon the recommendation of the Delegate Body, be increased by regulations prescribed by the Board and approved by the Secretary by no more than 0.1 percent of such market value per fiscal period to a total of not more than 0.5 percent of market value.

(e) Assessments on imported pork and pork products shall be expressed in an amount per pound for each type of pork or pork product subject to assessment. The initial amounts shall be as follows:

Pork and pork products (U.S. tariff schedule No.)	Assessment (cents per pound)
106.4020	0.0016
106.4040	.0016
106.8000	.0016
106.8500	.0016
107.1000	.0022
107.1500	.0022
107.3020	.0016
107.3040	.0016
107.3060	.0016
107.3515	.0024
107.3525	.0024
107.3540	.0016
107.3560	.0022

§ 1230.72 Distribution of assessments.

Assessments remitted to the Board shall be distributed as follows:

(a) Each State association shall receive on a monthly basis, a percentage determined by the Delegate Body or 16.5

percent, whichever is higher, of the net assessments attributable to that State. The net assessments attributable to a State is the total amount of assessments received from producers in a State less the amount of refunds paid to producers in that State.

(b) A State association which was conducting a pork promotion program in the period from July 1, 1984 to June 30, 1985, shall receive additional amounts at such times as the Board may determine, so that the total amount received on an annual basis would be equal to the amount that would have been collected in such State pursuant to the pork promotion program in existence in such State from July 1, 1984, to June 30, 1985, had the porcine animals subject to assessment and to which no refund was received, been produced from July 1, 1984, to June 30, 1985, and been subject to the rates of assessment then in effect from such State to the Council and other national entities involved in pork promotion, research, and consumer information. This paragraph shall apply to a State association only if the annual amount determined under this paragraph would be greater than the annual amount determined under paragraph (a) of this section.

(c) The Council shall receive on a monthly basis 35 percent of the net assessments until after the referendum is conducted, and 25 percent thereafter and until 12 months after the referendum.

§ 1230.73 Uses of distributed assessments.

(a) Each State association shall use its distribution of assessments pursuant to § 1230.72, as well as any proceeds from the investment of such funds pending their use, for financing plans and projects and the administrative expenses incurred in connection therewith, including the cost of administering nominations and elections of producer members of the Delegate Body.

(b) The Council shall use its distribution of assessments pursuant to § 1230.72, as well as any proceeds from the investment of such funds pending their use, for financing plans and projects and the Council's administrative expenses.

(c) The Board shall use its distribution of assessments pursuant to § 1230.72, as well as any proceeds from the investment of such funds pending their use, for:

- (1) Financing plans and projects;
- (2) The Board's expenses for the Board's administration, maintenance, and functioning as authorized by the Secretary;

(3) Accumulation of a reserve not to exceed one fiscal period's budget to permit continuation of an effective promotion, research, and consumer information program in years when assessment amounts may be reduced; and

(4) The Secretary's administrative costs in carrying out this part.

§ 1230.74 Prohibited use of distributed assessments.

(a) No funds collected under this subpart shall in any manner be used for the purpose of influencing legislation as that term is defined in section 4911 (d) and (e)(2) of the Internal Revenue Code of 1954, or for the purpose of influencing governmental policy or action except in recommending to the Secretary amendments to this part.

(b) Organizations receiving distributions of assessments from the Board shall furnish the Board with an annual report prepared by a certified public accountant of all funds distributed to such organization pursuant to this subpart and any other reports as may be required by the Secretary or the Board in order to verify the use of such funds.

§ 1230.75 Adjustment of accounts.

Whenever the Board or the Department determines, through an audit of a person's reports, records, books or accounts or through some other means that additional money is due the Board or that money is due such person from the Board, such person shall be notified of the amount due. Any amount due the Board shall be remitted to the Board by the next date for remitting assessments as provided in § 1230.71(b)(3). Any overpayment to the Board shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months except that the Board shall make prompt payment when an overpayment cannot be adjusted by a credit.

§ 1230.76 Charges.

Any assessment not paid when due shall be increased 1.5 percent each month beginning with the day following the date such assessment was due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the

Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board, whichever is earlier.

§ 1230.77 Refunds.

(a) Any producer or importer who is responsible for and pays an assessment under the authority of this subpart and does not support the pork promotion, research, and consumer information program established by this subpart shall have the right, prior to the approval of the continuation of this subpart pursuant to the referendum, to demand and receive from the Board a refund of such an assessment upon submission of proof satisfactory to the Board, that the producer or importer paid the assessment for which refund is sought and did not collect such assessment from another person.

(b) The producer or importer's demand shall be signed, if the producer or importer is an individual, by that producer or importer and, if other than an individual, by a person who is duly authorized, be mailed within a time period prescribed by the Board and approved by the Secretary, but not later than 30 days after the end of the month in which the assessment was paid, on a Board-approved refund application form.

(c) Refunds properly demanded in accordance with paragraphs (a) and (b) of this section shall be made by the Board to the producer or importer not later than 30 days after demand is received by the Board.

(d) The name of any producer or importer demanding a refund shall be kept confidential by all persons, except that the Board may utilize such information in determining who is entitled to vote in elections for Delegate Body that are administered by the Board.

Reports, Books, and Records

§ 1230.80 Reports.

Each person responsible for collecting or remitting any assessment under § 1230.71(b) shall report at the time for remitting assessments to the Board the following information:

(a) The quantity and market value of the porcine animals subject to assessment;

(b) The amount of assessment collected;

(c) The month the assessment was collected;

(d) The State where the porcine animals were produced; and

(e) Such other information as may be required by regulations prescribed by the Board and approved by the Secretary.

§ 1230.81 Books and records.

Each person who is subject to this subpart shall maintain and, during normal business hours, make available for inspection by employees of the Board and the Secretary such books and records as are necessary to carry out the provision of this subpart, including such records as are necessary to verify any required reports. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1230.82 Confidential treatment.

All information obtained from the books, records or reports required to be maintained under §§ 1230.80 and 1230.81 of this subpart shall be kept confidential by all persons, including employees and agents and former employees and agents of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and all employees and all former officers and employees of contracting parties having access to such information, and shall not be available to Board members. Only those persons having a specific need for such information in order to effectively implement, administer, or enforce the provisions of this subpart shall have access to such information. In addition, only such information so furnished or acquired shall be disclosed as the Secretary deems relevant and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of persons subject to this subpart or of statistical data collected therefrom, which statements or data do not identify the information furnished by any person; or

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

Miscellaneous

§ 1230.85 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the

Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of, or under the control of, the Board, including unpaid claims or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreement;

(3) From time to time account for all receipts and disbursements and deliver all property on hand together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the plans and projects authorized pursuant to this subpart.

§ 1230.86 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person with respect to any such violation.

§ 1230.87 Personal liability.

No member or employee of the Board shall be held personally liable, either individually or jointly, in any way whatsoever to any person for errors in judgment, mistakes, or other acts of either commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1230.88 Patents, copyrights, inventions, and publications.

Any patents, copyrights, trademarks, inventions, or publications developed

through the use of funds collected under the provisions of this subpart shall be the property of the United States Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications inure to the benefit of the Board as income and be subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this subpart, § 1230.85 shall apply to determine disposition of all such property.

§ 1230.89 Amendments.

The Secretary may from time to time amend provisions of this part. Any interested person or organization affected by the provisions of the Act may propose amendments to the Secretary.

§ 1230.90 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1230.91 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in this Subpart have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter and have been assigned OMB Control Number 0851-0151.

Subpart B—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Pork Promotion, Research, and Consumer Information Order

§ 1230.100 Words in singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1230.101 Definitions.

As used in this Subpart, the terms as defined in subpart A of this Part shall apply with equal force and effect. In addition, under the context otherwise requires:

(a) The terms "Administrative Law Judge" or "judge" mean any administrative law judge appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved;

(b) The term "Administrator" means the Administrator of the Agricultural

Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead;

(c) The term "Federal Register" means the publication provided for by the Federal Register Act (44 U.S.C. 1501-1511), and acts supplementary thereto and amendatory thereof;

(d) The term "order" means subpart A of this Part and any regulation which may be issued pursuant thereto or to the Act;

(e) The term "proceeding" means a proceeding before the Secretary arising under section 1625 of the Act (7 U.S.C. 4815);

(f) The term "hearing" means that part of the proceeding which involves the submission of evidence;

(g) The term "party" includes the Department;

(h) The term "hearing clerk" means the Hearing Clerk, United States Department of Agriculture, Washington, DC 20250;

(i) The term "decision" means the judge's initial decision in any proceeding and includes the judge's (1) findings of fact and conclusions with respect to all material issues of fact, law, or discretion as well as the reasons or basis therefor; (2) order; and (3) rulings on findings, conclusions and proposed orders submitted by the parties; and

(j) The term "petition" includes an amended petition.

§ 1230.102 Institution of proceeding.

(a) *Filing and Service of Petition.* Any person subject to the order desiring to complain that the order or any provision of thereof or any obligation imposed in connection therewith is not in accordance with law, shall file with the Hearing Clerk five copies of a petition in writing addressed to the Secretary, requesting a modification of such order or to be exempted from such order. Promptly upon receipt of the petition, the Hearing Clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of Petition.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if

a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioners' business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which complained of;

(4) A statement of the grounds on which the terms or provisions of the order or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law; and

(5) Request for the specific relief which the petitioner desires the Secretary to grant.

(c) *Motion to Dismiss Petition-Filing, Contents, and Responses Thereto.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply in form or content with the Act or with the requirements of paragraph (b) of this section, or is not filed in good faith or is filed for the purpose of delay, the Administrator may, within 30 days after the filing of the petition, file with the hearing clerk an application to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds of objection to the petition and if based, in whole or in part, on an allegation of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompanied by a memorandum of law. Upon receipt of such motion, the Hearing Clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition of such application, including any memorandum of law, must be filed by the petitioner with the hearing clerk, not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice or upon receipt of such papers from the petitioner, the Hearing Clerk shall transmit all papers which have been filed in connection with the motion to the Judge for consideration.

(d) *Further Proceeding.* Further proceedings on petitions to modify or to be exempted from any order shall be governed by §§ 900.52(c)(2) through

900.71 of this title (Rules of Practice Governing Proceeding on Petitions To Modify or To Be Exempted From Marketing Orders), except that each reference to "marketing order" in those sections shall mean "order."

Subpart C—[Added and Reserved]

4. Subpart C is added and reserved.

Done at Washington, DC, on: September 2, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

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