



United States  
Department of  
Agriculture

Forest  
Service

Washington Office

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File Code: 6540

Date: April 17, 2002

George Enneking  
President, Western Interstate Region, National  
Association of Counties  
P.O. Box 104  
Cottonwood, ID 83522

Dear Mr. Enneking:

Thank you for your letter of December 18, 2001, regarding implementation of Public Law 106-393, the Secure Rural Schools and Community Self-Determination Act of 2000 (the Act). I apologize for the delayed response. Due to mail security issues in the Washington, D.C. area, there are lengthy delays in receiving mail.

You have expressed concern over the lack of clear understanding of exactly what is allowed under Title III of the Act. You note "commissioners are faced with the difficult decision of opting out of Title III completely or running the risk of an audit." Certainly program review of county expenditures of Title III funds is a possibility, but I would hope not something to be feared by the counties. Recipients (States and/or Counties) of federal awards of \$300,000 or more in a year are required to comply with the Single Audit Act's amendments of 1996, as implemented by the Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. Pursuant to the Single Audit Act Amendments of 1996, and OMB A-133, federal award is defined as federal financial assistance that non-federal agencies receive directly or indirectly from federal agencies or pass-through entities. For specific guidance on the audit requirements for states and counties, please review OMB Circular A-133. If you have additional questions, contact the Forest Service's Chief Financial Officer's staff at (202) 205-1784.

Due to the tight timeframes associated with implementing the Act, the Department of Agriculture did not engage in formal rulemaking for purposes of clarifying legislative direction. As a result, the only formal guidance to the meaning of Title III is the language of the statute itself. However, Title III is actually one of the more prescriptive and specific portions of the legislation. Section 302 (b) clearly specifies the six authorized uses of Title III funds. While there is room for interpretation within these six uses, they do provide substantial direction to the counties.

Title III funds are considered county funds under the Act and as such, projects using these funds do not require approval by a federal agency prior to expenditure. Our experience has been that the vast majority of Title III projects around the country are squarely within the six authorized uses in Section 302 and would withstand any future audit. We have occasionally been asked to comment on proposed projects that appear to us as clearly *outside* of the authorized uses. In



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these cases our local or regional offices have sometimes informally offered their opinion that proceeding with such a project would be unwise. However, they are not in a position to approve or disapprove the county proposal, they are simply expressing an opinion.

In implementing any legislation, there are inevitably "gray areas." To the extent possible, it may be advisable to avoid these projects and focus Title III expenditures on those clearly authorized. However, we recognize that some potentially valuable county projects may fall in the gray area. Consultation with county legal counsel and/or comptrollers is recommended if there is concern over the consistency of the project with Section 302.

The Act states that "a project under this title shall be approved by the participating county only following a 45-day public comment period, at the beginning of which the county shall: (1) publish a description of the proposed project in the publications of local record; and (2) send the proposed project to the appropriate resource advisory committee established under Section 205, if one exists for the county." This process is one means by which a county can solicit additional feedback on the applicability of their proposal to Title III. If segments of the public question the validity of the project, this might indicate that further discussion with legal counsel is appropriate.

Our internet website offers some broad direction on use of Title III funds in the form of Questions and Answers. If you haven't visited this site I would recommend doing so ([www.fs.fed.us/payments](http://www.fs.fed.us/payments)). Boise State University (Environmental Science and Public Policy Research Institute) has discussed with us their willingness to host a website for posting Title III projects and related discussions. It is our understanding that this site will be up and operating within 60 days. Please contact John Fremuth at Boise State (208-426-3931) for more information about this service. Posting of projects on this site does not imply federal agency approval or concurrence.

We continue to hear many success stories from across the country regarding the excellent projects being implemented using both Title II and Title III funds. We encourage counties to evaluate the value of each title as they make their annual election decisions. If you have additional questions regarding implementation of Public Law 106-393, please contact Tom Quinn of our Policy Analysis Staff (202-205-0846).

Sincerely,

/s/ Dale N. Bosworth

DALE N. BOSWORTH  
Chief