

DEPARTMENT OF THE TREASURY**Fiscal Service****31 CFR Part 205**

RIN 1510-AA38

Rules and Procedures for Funds Transfers

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends regulations on rules and procedures for funds transfers which implement the Cash Management Improvement Act of 1990 (CMIA), as amended. CMIA governs the transfer of funds between the Federal Government and States under Federal assistance programs, and requires Federal agencies and States to minimize the amount of time between the transfer of Federal funds to a State and the payout of those funds by a State for program purposes. Under the regulations, the application of CMIA is limited to major Federal assistance programs. The purpose of this final rule is to revise the dollar thresholds used to define major Federal assistance program for purposes of the regulations in order to add flexibility and, thereby, make it easier for States to comply with the requirements of the regulations. This final rule does not make any substantive changes.

EFFECTIVE DATE: May 5, 1999.

ADDRESSES: Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, Financial Management Service, 401 14th Street, SW, Room 420, Washington, DC 20227. A copy of the final rule is being made available for downloading from the Financial Management Service's web site at the following address: <http://www.fms.treas.gov/>

FOR FURTHER INFORMATION CONTACT: Stephen K. Kenneally (Financial Program Specialist, Cash Management Policy and Planning Division) at (202) 874-6799; Cynthia L. Johnson (Director, Cash Management Policy and Planning Division) at (202) 874-6590; or Randall Lewis (Attorney-Advisor) at (202) 874-6680.

SUPPLEMENTARY INFORMATION:**Background**

This rulemaking is authorized by the Cash Management Improvement Act of 1990 ("CMIA"), Public Law 101-453, as amended. See 31 U.S.C. 3335, 6501, and 6503. The purpose of the CMIA is to ensure greater efficiency, effectiveness, and equity in the exchange of funds

between the Federal Government and the States for Federal assistance programs.

For major Federal assistance programs, States and the Financial Management Service (the "Service") negotiate Treasury-State Agreements which include the procedures used to determine the timing and amount of funds transfers. In the absence of an agreement, the Service is authorized to issue default procedures. In accordance with the CMIA, these funds transfer procedures are developed with the objective of minimizing the time between the transfer of cash from the Treasury and the payout of cash for program purposes by a State. Non-major Federal assistance programs generally are not addressed in Treasury-State Agreements, but are subject to requirements in Subpart B of Part 205 which limit funds transfers to the minimum amounts needed at the time of the request.

Under the current regulation, the distinction between major and non-major Federal programs is based on dollar thresholds contained in the Single Audit Act of 1984, Public Law 98-502. The Single Audit Act of 1984 used these thresholds to determine which Federal programs were subject to the substantive provisions of the Single Audit Act. In 1992, the Service adopted the Single Audit Act's thresholds as a means of meeting the CMIA's goals of efficient, effective, and equitable transfers of funds between the Federal Government and the States, while limiting the burden of implementing the CMIA. Use of these thresholds also eased implementation of the CMIA by incorporating a framework that was familiar to Federal agencies, States and auditors. See 57 FR 10102.

The Single Audit Act Amendments of 1996, Public Law 104-156, revised the thresholds and added risk-based criteria to the determination of major programs. 31 U.S.C. 7501 *et seq.* As a consequence, the thresholds published in Appendix A to Subpart A of Part 205 no longer are consistent with the thresholds used by States and their auditors for purposes of conducting Single Audits. Revising Appendix A to Subpart A of Part 205 by incorporating the new Single Audit Act thresholds allows States the option to keep their CMIA and Single Audit Act thresholds consistent.

However, in implementing the CMIA, the Service's primary concern is cash management. CMIA requires Federal agencies and States to minimize the amount of time between transfers of Federal funds to a State and the payout of those funds by States for program purposes. The risk-based criteria

included in the Single Audit Act's new definition of major program address other risk management issues which are not related to cash management, and their inclusion in the CMIA definition of major Federal assistance program would not ensure that a majority of funds transferred are covered in Treasury-State agreements. For that reason, the Service is not incorporating the risk-based criteria into Part 205.

Regulatory Analysis

This rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Special Analyses

The Service is promulgating this final rule without opportunity for prior public comment, because the Service has determined notice and public procedure is unnecessary and contrary to the public interest. 5 U.S.C. 553(b)(3)(B).

This final rule makes only one change to Part 205; it revises the thresholds used in the definition of major Federal assistance programs for the purposes of CMIA. When FMS first published a Notice of Proposed Rulemaking ("NPRM") implementing CMIA, it proposed the inclusion of provisions which, after a phase-in period, limited the mandatory application of CMIA to programs defined as major Federal assistance programs under the Single Audit Act of 1984. (57 FR 10102). The specific thresholds, which are based on the total amount of Federally funded State expenditures in a given year, were included in Appendix A to Subpart A of Part 205. After notice and an opportunity for comment, the Service retained the proposed definition of major Federal assistance program in the final rule published on September 24, 1992 (57 FR 44272).

As stated in the NPRM, the Single Audit Act thresholds were incorporated into Part 205 because they provide a consistent standard between the application of CMIA and the Single Audit Act. Use of the threshold also allows the Service to limit the administrative burden and costs of compliance, while still covering the majority of Federal program funds transferred to the States. This final rule does not change the substantive policy determinations underlying Part 205, it only makes technical changes to the thresholds included in the definition of major Federal assistance program which

add flexibility to the requirements of Part 205. Because the new thresholds are incorporated in a manner which allows for the application of either the existing thresholds or the new thresholds, there is no detrimental impact on States. For most States, the final rule reduces administrative burden and costs of compliance.

The Service has determined that good cause exists to make this final rule effective immediately upon publication, without the 30 day period between publication and the effective date contemplated by 5 U.S.C. 553(d). Because this final rule does not make any substantive changes to Part 205, but, instead, adds flexibility which may

reduce the administrative burden and costs of compliance, making this final rule effective immediately is for the convenience of the States governed by Part 205.

List of Subjects in 31 CFR Part 205

Administrative practice and procedure, Electronic funds transfers, Grant programs, Intergovernmental relations.

Authority and Issuance

For the reasons set out in the preamble, the Service amends 31 CFR part 205 as follows:

PART 205—RULES AND PROCEDURES FOR FUNDS TRANSFERS

1. The authority citation for part 205 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 321, 3335, 6501, 6503.

2. Appendix A to subpart A of part 205 is revised to read as follows:

Appendix A to Subpart A of Part 205—Definition of Major Federal Assistance Program

Beginning with State fiscal year 2000, "Major Federal Assistance Program" for State governments is defined by the following criteria:

Total expenditure of Federal financial assistance for all programs	Major Federal assistance program means any program that exceeds
Between \$300,000 and \$100 million inclusive	\$300,000 or 3 percent of such total expenditures.
Over \$100 million but less than or equal to \$1 billion	\$3 million or 0.30 percent of such total expenditures.
Over \$1 billion but less than or equal to \$2 billion	\$4 million or 0.30 percent of such total expenditures.
Over \$2 billion but less than or equal to \$3 billion	\$7 million or 0.30 percent of such total expenditures.
Over \$3 billion but less than or equal to \$4 billion	\$10 million or 0.30 percent of such total expenditures.
Over \$4 billion but less than or equal to \$5 billion	\$13 million or 0.30 percent of such total expenditures.
Over \$5 billion but less than or equal to \$6 billion	\$16 million or 0.30 percent of such total expenditures.
Over \$6 billion but less than or equal to \$7 billion	\$19 million or 0.30 percent of such total expenditures.
Over \$7 billion but less than or equal to \$10 billion	\$20 million or 0.30 percent of such total expenditures.
Over \$10 billion	\$30 million or 0.15 percent of such total expenditures.

Dated: April 29, 1999.

Richard L. Gregg,

Commissioner.

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