

ENVIRONMENTAL PROTECTION  
AGENCY

40 CFR Parts 35 and 745

[FRL-6373-1]

RIN 2030-AA55

Environmental Program Grants—State,  
Interstate, and Local Government  
Agencies

AGENCY: Environmental Protection  
Agency.

ACTION: Proposed rule.

SUMMARY: This regulation proposes to  
revise and update requirements in  
several Environmental Protection  
Agency regulations, particularly subpart  
A of part 35, governing grants to State,  
interstate and local government agencies  
from EPA under several environmental  
programs. The regulation advances  
ongoing efforts to build more effective

State-EPA partnerships and to improve  
environmental conditions by providing  
States with increased flexibility to direct  
resources where they are needed most to  
address environmental and public  
health needs. This regulation: updates,  
clarifies, and streamlines requirements  
governing environmental program  
grants; establishes requirements for the  
new Performance Partnership Grant  
(PPG) program; and establishes  
requirements for grant programs that  
began after the original rule was  
published. (A regulation governing  
environmental program grants to Indian  
Tribes and Tribal Consortia is published  
elsewhere in this issue of the **Federal  
Register**.)

DATES: Please submit comments on this  
proposed rule by September 7, 1999.

ADDRESSES: Written comments should  
be submitted to: Performance  
Partnership Grants—State Comment  
Clerk (Docket #WD-98-9); Water Docket

(MC-4104); U.S. Environmental  
Protection Agency; 401 M Street, SW;  
Washington, DC 20460. Comments may  
be hand-delivered to the Water Docket;  
U.S. Environmental Protection Agency;  
401 M Street, SW; East Tower Basement;  
Washington, DC 20460. Comments may  
be submitted electronically to  
owdocket@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: W.  
Scott McMoran, Grants Operations  
Branch B (3903R), United States  
Environmental Protection Agency, 401  
M Street, SW, Washington, DC 20460,  
(202) 564-5376.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities eligible to receive the  
environmental grants listed in 40 CFR  
35.100 are regulated by this rule.  
Regulated categories and entities  
include:

Category	Regulated entities
Government .....	State Governments/Agencies. Local Governments/Agencies. Interstate Agencies.

This table is not intended to be  
exhaustive, but rather provides a guide  
for readers regarding entities eligible  
under EPA's authorizing and  
appropriations statutes that EPA is now  
aware could potentially be regulated by  
this action. Other types of entities could  
also be regulated. To determine whether  
your organization is regulated by this  
action, you should carefully examine  
the applicability criteria in § 35.134 and  
the program-specific provision in  
§§ 35.140 through 35.418 of the rule. If  
you have questions regarding the  
applicability of this action to a  
particular entity, consult the person  
listed in the **FOR FURTHER INFORMATION  
CONTACT** section.

II. Comments and Record

Please submit an original and three  
copies of your comments and enclosures  
(including references). The Agency  
requests that commenters follow the  
following format: Type or print  
comments in ink, and cite, where  
possible, the paragraphs in this notice to  
which each comment refers. Electronic  
comments must be submitted as a  
WP5.1 or WP6.1 file or as an ASCII file  
avoiding the use of special characters.  
Comments and data will also be  
accepted on disks in the formats above.  
Electronic comments may be filed  
online at many Federal Depository  
Libraries. Commenters who want EPA to

acknowledge receipt of their comments  
should include a self-addressed,  
stamped envelope. No facsimiles (faxes)  
will be accepted.

Availability of Record: The record for  
this Notice, which includes supporting  
documentation as well as printed, paper  
versions of electronic comments, is  
available for inspection from 9 a.m. to  
4 p.m. (Eastern Time), Monday through  
Friday, excluding legal holidays, at the  
Water Docket, U.S. EPA Headquarters,  
401 M Street, SW; East Tower Basement;  
Washington, DC 20460. For access to  
docket materials, please call (202) 260-  
3027 to schedule an appointment.

III. Background

Since EPA was formed in 1970, State  
capacity and responsibility for  
implementing environmental and public  
health protection programs has grown  
steadily. Meanwhile, environmental  
problems and their solutions have  
grown more complex. In light of these  
changes, State and EPA leaders  
recognized that continued  
environmental progress could be best  
achieved if EPA and States worked  
together more effectively—as partners.

In 1995, they agreed to develop and  
implement the National Environmental  
Performance Partnership System  
(NEPPS). NEPPS is designed to: promote  
joint planning and priority setting by  
EPA and the States; provide States with  
greater flexibility to direct resources

where they are needed most; foster use  
of integrated and innovative strategies  
for solving water, air, and waste  
problems; achieve a better balance in  
the use of environmental indicators and  
traditional activity measures for  
managing programs; and improve public  
understanding of environmental  
conditions and the strategies being used  
to address them.

The changes proposed in this rule are  
intended to promote State-EPA  
collaboration; provide opportunities for  
innovation; and reduce paperwork—  
while ensuring sound fiscal  
management and accountability for  
environmental performance—in a  
manner consistent with NEPPS. For  
example, EPA hopes to foster joint  
planning and priority-setting by  
explicitly requiring that State priorities  
and needs be considered, along with  
national and regional guidance, in  
negotiating grant work plans. Under this  
rule, a State can choose to organize its  
grant work plans in accordance with  
environmental goals and objectives or in  
other new ways rather than using  
categories pre-defined by EPA. The  
length of a grant budget period will be  
negotiable. These flexibilities are  
available to all States, regardless of  
whether they are actively participating  
in other aspects of NEPPS.

More than half of the States have  
elected to negotiate and enter into

Performance Partnership Agreements (PPAs) with EPA as the primary mechanism for implementing NEPPS. Although each PPA is different, PPAs typically set out jointly developed goals, objectives, and priorities; the strategies to be used in meeting them; the roles and responsibilities of the State and EPA; and the measures to be used in assessing progress. (In some cases, comparable negotiated agreements are given a different name, such as Environmental Performance Agreements.) A PPA is generally based on information about the environmental and program conditions of the State as well as national and regional priorities and concerns. A State may apply for and receive any grant, including a PPG, without negotiating a PPA. However, a PPA can provide the strategic underpinning for the work a State plans to carry out with EPA financial assistance and the PPA can serve as a grant work plan if it meets other grant-related statutory and regulatory requirements.

Recognizing the limitations of traditional categorical grants to allow full achievement of the NEPPS goals, EPA asked Congress for new authority that would give States greater flexibility in the use of federal grant funds. In the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104-134) and EPA's FY 1998 Appropriation Act (Pub. L. 105-65), Congress authorized the award of Performance Partnership Grants (PPGs), in which State and interstate agencies (and Tribes and Intertribal Consortia) can choose to combine two or more environmental program grants.

Under a PPG, a recipient can achieve cost and administrative savings by reductions in the amount of grant paperwork as well as simplified accounting requirements that do not require the recipient to account for expenditures in accordance with their original funding sources. With PPGs, recipients can negotiate work plans with EPA that direct federal funds where the recipients need them most to address environmental and public health problems. Recipients can also try new multi-media approaches and initiatives, such as children's health protection programs, multi-media inspections, compliance assistance programs, and ecosystem management, that were difficult to fund under traditional categorical grants.

This rule is designed to accommodate all potential variations in how EPA and individual States may work to build partnerships. The rule is also designed to minimize duplicative effort by allowing for multiple uses of

information or processes wherever appropriate. A State may choose to negotiate a PPA or comparable strategic agreement with EPA. Where a State negotiates both a PPA and PPG, the processes and documentation can be integrated and, if appropriate, identical. Also, a State can receive a separate categorical grant for each environmental program, a PPG covering all programs eligible for inclusion, or a combination of separate categorical grants and PPGs covering only some programs.

These regulations will be codified in 40 CFR part 35 as EPA's Environmental Program Grant regulations. Subpart A applies to State, interstate, and local agencies. EPA is proposing to add to the existing subpart A provisions for the following programs: Performance Partnership Grants, Lead-Based Paint Grant Program; State Indoor Radon Grants; Toxic Substances Enforcement Grants; State Underground Storage Tank Grants; Pollution Prevention Incentives Grants for States; Water Quality Cooperative Agreements; and Wetlands Development Grant Program. EPA is also publishing subpart B in this issue of the **Federal Register**, which applies to Tribes and Intertribal Consortia.

These regulations supplement EPA's Grants and Cooperative Agreements to State and Local Governments regulations (40 CFR part 31). Part 31 applies to grants and subawards to State governments, interstate agencies, and local governments, including a council of governments (whether or not incorporated as a nonprofit under State law), and any other regional or interstate government entity.

This rule proposes to delete 40 CFR 745.330, which authorizes EPA to make grants to States and Indian Tribes under section 404(g) of the Toxic Substances Control Act for lead-based paint programs. Provisions governing those grants are included in this proposed subpart A and in proposed subpart B of 40 CFR part 35.

#### **IV. Requirements for Environmental Program Grants**

Sections 35.100 through 35.118 of the proposed rule apply to all environmental program grants covered by subpart A of part 35, including PPGs. This rule contains changes to foster State-EPA partnerships, improve accountability for environmental and program performance, and streamline administrative requirements. Some of the proposed rule's key features are discussed below.

##### *State-EPA Partnerships*

To foster joint planning and priority setting, the rule explicitly requires

consideration of State priorities along with national and regional guidance in negotiating grants. However, the EPA Regional Administrator must consult with the National Program Manager before agreeing to a State work plan that differs substantially from national guidance. A State is provided flexibility through the work plan negotiation process, and in particular through its ability to organize work plan components in whatever way fits best. States applying for PPGs will have still greater flexibility as described in the PPG discussion below. Where appropriate, the grant work plan will reflect both EPA and State roles and responsibilities and there will be a negotiated joint performance evaluation process.

##### *Accountability*

The rule has been updated to accommodate results-oriented approaches to planning and managing environmental programs. Definitions and other aspects of the rule dovetail with the new Government Performance and Results Act (GPRA) and reflect efforts to establish goals and objectives as well as environmental and program performance measures at both the national and State levels. The rule recognizes the need for a mix of outcome (results) and output (activity) measures for management purposes. While the revised rule encourages States to organize their work plans around goals and objectives, States may continue to use existing structures if they wish.

##### *Administrative Changes*

Under the rule, States can negotiate budget periods of one or more years with EPA. EPA recommends, however, that budget periods not exceed five years because it is difficult to account for funds and maintain records for longer periods.

The rule streamlines some requirements and eliminates other requirements associated with changes made to grant work plan commitments and budgets. These requirements replace those found in 40 CFR 31.30. Prior written approval from EPA is still required for significant changes in a grantee's work plan commitments. Written, but not prior, approval is required for changes requiring increases in grant amounts and extensions of the budget period. EPA approval is no longer required for other changes in the work plan or budget, changes in key persons or decisions to carry out portions of the work through subgrants or contracts unless the Regional Administrator determines, on a case-by-

case basis, that circumstances warrant imposing additional approval requirements on a particular recipient.

#### *Pre-award Costs*

Pre-award costs may be reimbursed under the grants without prior approval so long as they are incurred within the budget period, identified in the approved grant application, and would have been allowable if incurred after the award.

#### *Insular Areas*

EPA is proposing conforming changes in the rule to reflect the change in status of the Marshall Islands, the Federated States of Micronesia, and Palau. They were previously entities within the Trust Territory of the Pacific Islands, but they have entered into Compacts of Free Association with the Government of the United States. As a result, each is now a sovereign, self-governing State and as such is no longer eligible to receive grants as a territory or possession of the United States. Because the Trust Territory of the Pacific Islands no longer exists, the rule's provisions regarding allotments omit any reference to the Trust Territory and references to the Trust Territory in environmental program grant statutes, including the references in the definitions of "State," no longer have legal effect.

The Administrator of EPA is authorized to consolidate grants and waive administrative requirements for grants made to certain insular areas. 48 U.S.C. 1469a. Through this regulation that authority is delegated to the Regional Administrators.

#### **V. Performance Partnership Grants**

Sections 35.130 through 35.138 contain requirements that apply only to Performance Partnership Grant (PPGs). In a Performance Partnership Grant, the recipient can combine funds from two or more environmental program grants into a single grant under streamlined administrative requirements. Funds may be used for eligible cross-media activities or strategies and do not need to be accounted for in accordance with their original program sources. Key features of the PPG rule are discussed below.

#### *Funds and Activities Eligible for Inclusion in a PPG*

Funds for any particular environmental program grant may be included in a PPG only if the funds for that grant are appropriated in the same specific appropriation (earmark) as the funds for PPGs. EPA will announce any changes in its appropriation acts that affect the list of programs in § 35.101.

Currently, funds from all but two of the environmental program grants listed in § 35.101 are eligible for inclusion in a PPG. Funds for Water Quality Management Planning grants under section 205(j)(2) of the Clean Water Act are not available for inclusion in PPGs because funds for these grants are reserved from a different earmark in the Agency's appropriation act. In addition, there are no funds appropriated for State Administration grants under section 205(g) of the Clean Water Act.

A PPG recipient may use PPG funds to carry out any activity that would be authorized under at least one of the environmental program grants from which funds are combined in the PPG. This means that a PPG recipient may not spend PPG funds on an activity unless the PPG includes some funds from an environmental program grant under which that activity would be eligible. For example, a PPG recipient could not use PPG funds for an activity that is authorized only under sections 205(g) or 205(j)(2) of the Clean Water Act because no section 205(g) or 205(j)(2) funds will have been included in the PPG. On the other hand, if an activity would be authorized under section 106 of the Clean Water Act, and the PPG includes section 106 funds, then the activity may be funded by the PPG.

A State or interstate agency must meet the requirements for award of each of the environmental programs from which funds are combined in the PPG, with a few specified exceptions. The exceptions are requirements that restrict how a specific environmental program grant can be used after award. These requirements are not appropriate to be carried over to Performance Partnership Grants because after funds are awarded in a Performance Partnership Grant they may be used for cross-media purposes and States interstate agencies do not need to account for the funds in accordance with their original program sources.

#### *Entities Eligible for PPGs*

The types of organizations eligible for PPGs are determined by the authorizing statutes for the PPG program, which are EPA's FY 1996 and 1998 appropriation acts, (Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104-134, 110 Stat. 1321, 1321-299 (1996); Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998, Public Law 105-65, 111 Stat. 1344, 1373 (1997)). Consistent with those statutes, only States and interstate agencies will be eligible for PPGs under this proposed

rule. Interstate agencies are only eligible for PPGs that combine funds from a few existing grant programs because interstate agencies are only authorized to receive grants under those few environmental programs. Specifically, interstate agencies are eligible for PPGs that include funds from the following programs: Air Pollution Control (section 105 of the Clean Air Act); Water Pollution Control (section 106 of the Clean Water Act); Wetlands Development Grants (section 104(b)(3) of the Clean Water Act); and Water Quality Cooperative Agreements (section 104(b)(3) of the Clean Water Act). Recipients must be interstate agencies as defined by either the Clean Water Act, the Clean Air Act, or both, depending on which funds are included in the PPG. Congress authorized EPA to award PPGs to interstate agencies, but only as provided in authorizing statutes; Congress did not intend to change any of the existing program grant eligibility requirements, including the definition of interstate agency. The ability of recipients to make subgrants will not be affected by combining funds into a PPG.

#### *Competitive Grants and PPGs*

States must compete for some of the environmental programs eligible for a PPG (e.g., pollution prevention incentives for States, wetlands program development, and water quality cooperative agreements). States must first be selected in the competitive process in order to include these competitive grants in a PPG. In some programs, this process may include the awarding of funds to a State agency through decisions made during a joint planning process. To maintain the integrity of the competitive process and ensure that the work that was the basis for EPA's selection of the proposal is performed, the State must include the work plan commitments proposed in the competitive grant application in the PPG work plan. However, as with other program funds included in a PPG, the State does not need to account for these funds in accordance with the funds' original environmental program source. Although a State must agree to complete the work plan commitments proposed in the competitive work plan, it need not account for the funds spent on a specific environmental program or activity. Also, if the time required to complete work under the competitive program is longer than the budget period for the States' PPG, States must make provisions to carry the activities (and funds, if appropriate) to subsequent PPG budget periods to complete them.

### *Administrative Flexibility*

A primary advantage of PPGs is the administrative flexibility provided to all PPG recipients. A PPG requires only a single application, work plan, and budget regardless of how many environmental programs provide the funds for the PPG. Once funds are awarded in a PPG, recipients can direct the funds as needed to achieve work plan commitments and need not account for funds in accordance with their original funding program sources. The minimum cost share required for a PPG is the sum of the cost share amounts required for each of the environmental program grants combined in the PPG. If a program has both a match and a maintenance of effort requirement, the greater of the two amounts will be used to calculate the minimum cost share attributed to that program. Just as federal funds in the PPG do not need to be accounted for on the basis of their original program source, the non-federal share of a PPG may be expended on work plan commitments without regard to the original source of the cost share requirement. These administrative features also make it possible for States to negotiate a work plan that includes cross-media or innovative strategies for addressing environmental problems.

### *Programmatic Flexibility*

If approved by the EPA Regional Administrator, a PPG can also provide the State with programmatic flexibility to increase efforts in some program areas where the State's needs are greater and decrease them in others where the State's needs are less. In applying for programmatic flexibility, the State agency must provide a rationale commensurate with the type and amount of flexibility being proposed, explaining the basis for the State's priorities and the environmental or other benefits it expects to achieve. The State must also assure that basic programs are maintained for all programs combined in the grant. The Regional Administrator and State agency will negotiate regarding the environmental and other information that EPA needs to make a decision regarding the application for flexibility. Information useful in supporting a State's proposal for programmatic flexibility may already exist, such as in a PPA, a recent water quality report, or a previous grant evaluation. Such information should be used to the extent possible to minimize duplication of effort.

### *Performance Incentives*

One goal of the performance partnership grant program is to find ways to encourage and reward outstanding State recipient performance. EPA believes this regulation will establish the foundation for such an incentive program by assuring—

- States and EPA's regions agree to measurable outcomes and outputs when awards are signed in accordance with the agreement on core measures.
- Outcome and output accomplishments are measured and documented through the joint evaluation process developed and agreed to by the States and EPA under the rule.

We would expect such a program to be based on each year's performance evaluation. We are considering incentive approaches such as—

- Using a part of each year's funds to provide incentive bonuses to States which are most successful in meeting commitments, and
- Using a part of each year's funds to provide bonuses to States which assume primacy/authorization for programs such as drinking water and hazardous waste.

There may be many other possible incentive approaches and we are soliciting recommendations for them. We also request your comments on the options suggested above.

## **VI. Implementing GPRA**

The Agency has developed an approach toward the integrated implementation of GPRA, the Chief Financial Officers Act (CFOA), and the Federal Financial Management Improvement Act of 1996 (FFMIA). These laws provide EPA with a framework to demonstrate to Congress and the taxpayers the costs to the federal government of EPA's program goals and objectives. The States, by virtue of delegated program authorities and as recipients of EPA grant funds, play an integral part in achieving those goals and objectives. Thus EPA's reports of Agency resources associated with outcomes and outputs will incorporate—at some level—expenditures incurred in the form of payments under grants and cooperative agreements. In order to comply with the Paperwork Reduction Act and the federal government's general grant regulations, EPA also has a responsibility to minimize additional administrative reporting requirements and costs borne by the States. In addition, under current regulations EPA generally may not impose accounting

requirements on States beyond those currently required by 40 CFR part 31.

EPA will therefore use the budget information that States provide in grant applications as a basis for linking the Agency's actual expenditures with outcomes. EPA will be able to rely on State budget information to determine the costs of EPA's outcomes, as long as the following three conditions exist, which are all required by the proposed regulation:

- (1) States provide the program budget information required as part of the application;
- (2) EPA and the States explicitly define work plan activities, outcomes, and outputs, as well as the program flexibility contained in the work plan; and
- (3) States report back on work plan accomplishments.

The proposed rule ensures that States will meet these three conditions, thus providing a reasonable basis for using State grant program budgets to estimate State contributions to the costs of achieving EPA's outcomes.

EPA's regional offices, with necessary consultation with recipients, will be responsible for cross-walking the State budget information (grant application and work plan data) into the GPRA goals and objectives architecture. If a grant is subsequently amended to reflect significant adjustments to work plan commitments, the region will consult with the State to develop an estimate of the budget associated with the revision so that it can be reflected in regional GPRA reporting. The Office of the Chief Financial Officer will provide regions with guidance on the approach to use for the cross-walk process to ensure that the results achieved by States with EPA funds are captured in the Agency's Annual Performance Reports.

## **VII. Program Specific Provisions**

Requirements applicable to each environmental grant program are located in §§ 35.140 through 35.418.

### *Eligibility*

The requirements that recipients must meet to qualify to receive funds under specific environmental programs are included in the program-specific provisions (see §§ 35.140 through 35.418).

### *Cost Share*

The required cost share for each environmental program is identified in the program specific sections. Some programs do not have cost share requirements, while others have percentage matching share

requirements, level of effort requirements, or both.

### VIII. Conclusion

This regulation will be the foundation for continuing efforts to improve partnerships between EPA and its State, interstate, and local environmental protection partners. All recipients will benefit from the streamlined and simplified requirements of the regulation. In addition, it will provide recipients choosing to participate in the PPG program with programmatic flexibility to better use funds to address environmental priorities.

#### *Regulatory Flexibility Act*

The Agency has determined that the requirement in the Regulatory Flexibility Act (RFA) to prepare a regulatory flexibility analysis does not apply to this rule. A regulatory flexibility analysis must be prepared only where the Agency is required by Administrative Procedure Act (APA) or another statute to publish a general notice of proposed rulemaking. 5 U.S.C. 603. Grant making matters, such as this rule, are not subject to the notice and comment requirements of the APA (5 U.S.C. 553(a)(1)). Nor is this rule required to undergo notice and comment rulemaking under any other statute.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, 2 U.S.C. 1501 *et seq.*, 109 Stat. 48 (1995), establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. This regulation contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The UMRA excludes from the definitions of "federal intergovernmental mandate" and "federal private sector mandates" duties that arise from conditions of federal assistance.

#### *National Technology Transfer and Advancement Act*

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), EPA is required to use

voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used, the Act requires EPA to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

This proposed rule does not involve any technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. Commenters who disagree with this conclusion should indicate how the Notice is subject to the Act and identify any potentially applicable voluntary consensus standards.

#### *Executive Order 13045*

Executive Order 13045 applies to any rule that is determined to be: (1) "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA has determined that the proposed rule is not a covered regulatory action because it is not economically significant and it does not involve decisions based on environmental health or safety risks. As a result, the proposed rule is not subject to the requirements of the Executive Order.

#### *Executive Order 12866*

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is a "significant regulatory action" under the terms of Executive Order 12866 because the Performance Partnership Grant authority is a new type of grant authority and therefore raises novel policy issues. As such, this action was submitted to the Office of Management and Budget (OMB) for review. Changes made in response to OMB suggestions and recommendations are documented in the public record.

#### *Paperwork Reduction Act*

In keeping with the requirements of the Paperwork Reduction Act (PRA), as amended, 44 U.S.C. 3501 *et seq.*, the information collection requirements contained in this rule have been approved by OMB under information collection request number 0938.06 (OMB Control Number 2030-0020) and Quality Assurance Specifications and Requirements information request number 0866.05 (OMB Control Number 2080-033). This rule does not contain any collection of information requirements beyond those already approved. Since this action imposes no new or additional information collection, reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, no information request will be submitted to the Office of Management and Budget for review.

#### *Executive Order 12875*

Under Executive Order 12875, Enhancing Intergovernmental Partnerships, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and Tribal governments, the nature of their concerns, any written communications

from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This proposed rule does not create a mandate on State, local or Tribal governments nor does it impose any enforceable duties on these entities as it governs the award of financial assistance. Instead, this proposed rule is designed to reduce the administrative burden associated with grants for environmental programs. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply.

#### *Executive Order 13084*

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If a regulatory mandate is necessary, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This proposed rule does not affect the communities of Indian Tribal governments, because environmental program grants to Tribes and intertribal consortia are not covered in this rule; they are covered under 40 CFR part 35, subpart B, published elsewhere in this **Federal Register**. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply.

## **List of Subjects**

### *40 CFR Part 35*

Environmental protection, Administrative practice and procedures, Evaluation of performance, Performance partnership grants, Requirements for specific grant programs, Work plan requirements.

### *40 CFR Part 745*

Environmental protection, Administrative practice and procedures, Hazardous substances.

Dated: June 30, 1999.

**Carol M. Browner,**  
*Administrator.*

For the reasons set forth in this preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

## **PART 35—[AMENDED]**

1. The authority citation for Part 35 is revised to read as follows:

**Authority:** 42 U.S.C. 4368b unless otherwise noted.

2. Revise § 35.001 to read as follows:

### **§ 35.001 Applicability.**

This part codifies policies and procedures for financial assistance awarded by the Environmental Protection Agency (EPA) to State, interstate, and local agencies, Indian Tribes and Intertribal Consortia for pollution abatement and control programs. These provisions supplement the EPA general assistance regulations in 40 CFR part 31.

3. Revise Subpart A to read as follows:

## **Subpart A—Environmental Program Grants**

### **All Grants—General**

Sec.

35.100 Purpose of the subpart.

35.101 Environmental programs covered by the subpart.

35.102 Definition of terms.

### **Preparing an Application**

35.104 Components of a complete application.

35.105 Time frame for submitting an application.

35.107 Work plans.

35.108 Budget period.

35.109 Consolidated grants.

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**Subpart A—Environmental Program Grants**

**Authority:** 42 U.S.C. 7401 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 300f *et seq.*; 42 U.S.C. 6901 *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 42 U.S.C. 13101 *et seq.*; Pub. L. 104-134, 110 Stat. 1321, 1321-299 (1996); Pub. L. 105-65, 111 Stat. 1344, 1373 (1997).

**All Grants—General****§ 35.100 Purpose of the subpart.**

This subpart establishes administrative requirements for grants awarded to State, interstate, and local agencies and other entities for the environmental programs listed in § 35.101. This subpart supplements

requirements in EPA's general grant regulations found at 40 CFR part 31. Sections 35.100-35.118 contain administrative requirements that apply to all environmental program grants included in this subpart. Sections 35.130 through 35.418 contain requirements that apply to specified environmental program grants. Many of these environmental programs also have programmatic and technical requirements that are published elsewhere in the Code of Federal Regulations.

**§ 35.101 Environmental programs covered by the subpart.**

(a) The requirements in this subpart apply to grants awarded for the following programs:

(1) Performance partnership grants (Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104-134, 110 Stat. 1321, 1321-299 (1996) and Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998, Public Law 105-65, 111 Stat. 1344, 1373 (1997)).

(2) Air pollution control (section 105 of the Clean Air Act).

(3) Water pollution control (section 106 of the Clean Water Act).

(4) Public water system supervision (section 1443(a) of the Safe Drinking Water Act).

(5) Underground water source protection (section 1443(b) of the Safe Drinking Water Act).

(6) Hazardous waste management (section 3011(a) of the Solid Waste Disposal Act).

(7) Pesticide cooperative enforcement (section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act).

(8) Pesticide applicator certification and training (section 23(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act).

(9) Pesticide program implementation (section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act).

(10) Nonpoint source management (sections 205(j)(5) and 319(h) of the Clean Water Act).

(11) Lead-based paint program (section 404(g) of the Toxic Substances Control Act).

(12) State indoor radon grants (section 306 of the Toxic Substances Control Act).

(13) Toxic substances compliance monitoring (section 28 of the Toxic Substances Control Act).

(14) State underground storage tanks (section 2007(f)(2) of the Solid Waste Disposal Act).

(15) Pollution prevention incentives for states (section 6605 of the Pollution Prevention Act of 1990).

(16) Water quality cooperative agreements (section 104(b)(3) of the Clean Water Act).

(17) Wetlands development grants program (section 104(b)(3) of the Clean Water Act).

(18) State administration of construction grant, permit, and planning programs (section 205(g) of the Clean Water Act).

(19) Water quality management planning (section 205(j)(2) of the Clean Water Act).

(b) Unless otherwise prohibited by statute or regulation, the requirements in § 35.100 through § 35.118 of this subpart also apply to grants under environmental programs established after this subpart becomes effective if specified in Agency guidance for such programs.

**§ 35.102 Definitions of terms.**

Terms are defined as follows when they are used in this subpart.

**Allotment.** EPA's calculation of the funds that may be available to an eligible recipient for an environmental program grant. An allotment is not an entitlement.

**Budget period.** The period specified in the grant agreement during which the recipient may expend or obligate funds for the purposes specified in the agreement.

**Consolidated grant.** A single grant made to a recipient consolidating funds from more than one environmental grant program. After the award is made, recipients must account for grant funds in accordance with the funds' original environmental program sources. Consolidated grants are not Performance Partnership Grants.

**Environmental program.** A program for which EPA awards grants under the authorities listed in § 35.101. The grants are subject to the requirements of this subpart.

**National program guidance.** Guidance issued by EPA's National Program Managers for establishing and maintaining effective environmental programs. This guidance establishes national goals, objectives, and priorities as well as the core performance measures and other information to be used in monitoring progress. The guidance may also set out specific environmental strategies, criteria for evaluating programs, and other elements of program implementation.

**Outcome.** The environmental result, effect, or consequence that will occur from carrying out an environmental program or activity that is related to an



environmental or programmatic goal or objective. Outcomes must be quantitative, and they may not necessarily be achievable during a grant budget period. See "output."

**Output.** An environmental activity or effort and associated work products related to an environmental goal or objective that will be produced or provided over a period of time or by a specified date. Outputs may be quantitative or qualitative but must be measurable during a grant budget period. See "outcome."

**Performance Partnership Agreement.** A negotiated agreement signed by the EPA Regional Administrator and an appropriate official of a State agency and designated as a Performance Partnership Agreement. Such agreements typically set out jointly developed goals, objectives, and priorities; the strategies to be used in meeting them; the roles and responsibilities of the State and EPA; and the measures to be used in assessing progress. A Performance Partnership Agreement may be used as all or part of a work plan for a grant if it meets the requirements for a work plan set out in § 35.107.

**Performance Partnership Grant.** A single grant combining funds from more than one environmental program. A Performance Partnership Grant may provide for administrative savings or programmatic flexibility to direct grant resources where they are most needed to address public health and environmental priorities (see also § 35.130). Each Performance Partnership Grant has a single, integrated budget and recipients do not need to account for grant funds in accordance with the funds' original environmental program sources.

**Planning target.** The amount of funds that the Regional Administrator suggests a grant applicant consider in developing its application, including the work plan, for an environmental program.

**Regional supplemental guidance.** Guidance to environmental program applicants prepared by the Regional Administrator, based on the national program guidance and specific regional and applicant circumstances, for use in preparing a grant application.

**Work plan commitments.** The outputs and outcomes associated with each work plan component, as established in the grant agreement.

**Work plan component.** A negotiated set or group of work plan commitments established in the grant agreement. A work plan may have one or more work plan components.

## Preparing an Application

### § 35.104 Components of a complete application.

A complete application for an environmental program must:

- (a) Meet the requirements in 40 CFR part 31, subpart B;
- (b) Include a proposed work plan (§ 35.107); and
- (c) Specify the environmental program and the amount of funds requested.

### § 35.105 Time frame for submitting an application.

An applicant should submit a complete application to EPA at least 60 days before the beginning of the proposed budget period.

### § 35.107 Work plans.

(a) **Bases for negotiating work plans.** The work plan is negotiated between the applicant and the Regional Administrator and reflects consideration of national, regional, and State environmental and programmatic needs and priorities.

(1) **Negotiation considerations.** In negotiating the work plan, the Regional Administrator and applicant will consider such factors as national program guidance; any regional supplemental guidance; goals, objectives, and priorities proposed by the applicant; other jointly identified needs or priorities; and the planning target.

(2) **National program guidance.** If an applicant proposes a work plan that differs significantly from the goals and objectives, priorities, or core performance measures in the national program guidance associated with the proposed activities, the Regional Administrator must consult with the appropriate National Program Manager before agreeing to the work plan.

(3) **Use of existing guidance.** An applicant should base the grant application on the national program guidance in place at the time the application is being prepared.

#### (b) Work plan requirements.

(1) The work plan is the basis for the management and evaluation of performance under the grant agreement.

(2) An approvable work plan must specify:

- (i) The work plan components to be funded under the grant;
- (ii) The estimated work years and funding amounts for each work plan component;
- (iii) The work plan commitments for each work plan component and a time frame for their accomplishment;

(iv) A performance evaluation process and reporting schedule in accordance with § 35.115 of this subpart; and

(v) The roles and responsibilities of the recipient and EPA in carrying out the work plan commitments.

(3) The work plan must be consistent with applicable federal statutes, regulations, circulars, executive orders, and delegation or authorization agreements.

(c) **Performance Partnership Agreement as work plan.** An applicant may use a Performance Partnership Agreement or a portion of a Performance Partnership Agreement as the work plan for an environmental program grant if the portions of the Performance Partnership Agreement that can serve as all or part of the grant work plan:

- (1) Are clearly identified and distinguished from other portions of the Performance Partnership Agreement; and
- (2) Meet the requirements in § 35.107(b).

### § 35.108 Budget period.

The Regional Administrator and applicant may negotiate the length of the budget period for environmental program grants, subject to limitations in appropriations acts.

### § 35.109 Consolidated grants.

(a) Any applicant eligible to receive funds from more than one environmental program may submit an application for a consolidated grant. For consolidated grants, an applicant prepares a single budget and work plan covering all of the environmental programs included in the application. The consolidated budget must identify each environmental program to be included, the amount of each program's funds, and the extent to which each program's funds support each work plan component. Recipients of consolidated grants must account for grant funds in accordance with the funds' environmental program sources; funds included in a consolidated grant from a particular environmental program may be used only for that program.

(b) Insular areas that choose to consolidate environmental program grants may be exempted by the Regional Administrator from requirements of this subpart in accordance with 48 U.S.C. 1469a.

## EPA Action on Application

### § 35.110 Time frame for EPA action.

The Regional Administrator will review a complete application and either approve, conditionally approve, or disapprove it within 60 days of receipt. This period may be extended by



mutual agreement between EPA and the applicant. The Regional Administrator will award the funds for approved or conditionally approved applications when the funds are available.

**§ 35.111 Criteria for approving an application.**

(a) The Regional Administrator may approve an application if he or she determines, that:

(1) The application meets the requirements of this subpart and 40 CFR part 31;

(2) The application meets the requirements of all applicable federal statutes, regulations, circulars, executive orders, and delegation or authorization agreements;

(3) The proposed work plan complies with the requirements of § 35.107; and

(4) The achievement of the proposed work plan is feasible, considering such factors as the applicant's existing circumstances, past performance, program authority, organization, resources, and procedures.

(b) If the Regional Administrator finds the application does not satisfy the criteria in paragraph (a) of this section, the Regional Administrator may either:

(1) Conditionally approve the application if only minor changes are required, with grant conditions necessary to ensure compliance with the criteria, or

(2) Disapprove the application in writing.

**§ 35.112 Factors considered in determining award amount.**

(a) After approving an application under § 35.111, the Regional Administrator will consider such factors as the applicant's allotment, the extent to which the proposed work plan is consistent with EPA guidance and mutually agreed upon priorities, and the anticipated cost of the work plan relative to the proposed work plan components, to determine the amount of funds to be awarded.

(b) If the Regional Administrator finds the requested level of funding is not justified or that the work plan does not comply with the requirements of § 35.107, he or she will attempt to negotiate a resolution of the issues with the applicant before determining the award amount. The Regional Administrator may determine that the award amount will be less than the amount allotted or requested.

**§ 35.113 Reimbursement for pre-award costs.**

(a) Notwithstanding the requirements of 40 CFR 31.23(a) and OMB cost principles, EPA may reimburse recipients for pre-award costs incurred

from the beginning of the budget period established in the grant agreement if such costs would have been allowable if incurred after the award and the recipients submitted complete grant applications before the beginning of the budget period. Such costs must be identified in the grant application EPA approves.

(b) The applicant incurs pre-award costs at its own risk. EPA is under no obligation to reimburse such costs unless they are included in an approved grant award.

**Post-Award Requirements**

**§ 35.114 Amendments and other changes.**

The provisions of 40 CFR 31.30 do not apply to environmental program grants awarded under this subpart. The following provisions govern amendments and other changes to grant work plans and budgets after the work plan is negotiated and a grant awarded.

(a) *Changes requiring prior approval.* Recipients may make significant changes in work plan commitments only after obtaining the Regional Administrator's prior written approval. The regional office, in consultation with the recipient, will document these revisions including budgeted amounts associated with the revisions.

(b) *Changes requiring approval.* Recipients must request, in writing, grant amendments for changes requiring increases in environmental program grant amounts and extensions of the budget period. Recipients may begin implementing a change before the amendment has been approved by EPA, but do so at their own risk. If EPA approves the change, EPA will issue a grant amendment. EPA will notify the recipient in writing if the change is disapproved.

(c) *Changes not requiring approval.* Other than those situations described in paragraphs (a) and (b) of this section, recipients do not need to obtain approval for changes, including changes in grant work plans, budgets, or other components of grant agreements, unless the Regional Administrator determines approval requirements should be imposed on a specific recipient for a specified period of time.

(d) *OMB cost principles.* The Regional Administrator may waive in writing approval requirements for specific recipients and costs contained in OMB cost principles.

(e) *Changes in consolidated grants.* Recipients of consolidated grants under § 35.109 may not transfer funds among environmental programs.

(f) *Subgrants.* Subgrantees must request required approvals in writing

from the recipient and the recipient shall approve or disapprove the request in writing. A recipient will not approve any work plan or budget revision which is inconsistent with the purpose or terms and conditions of the federal grant to the recipient. If the revision requested by the subgrantee would result in a significant change to the recipient's approved grant which requires EPA approval, the recipient will obtain EPA's approval before approving the subgrantee's request.

**§ 35.115 Evaluation of performance.**

(a) *Joint evaluation process.* The applicant and the Regional Administrator will develop a process for jointly evaluating and reporting progress and accomplishments under the work plan. A description of the evaluation process and a reporting schedule must be included in the work plan. The schedule must require the recipient to report at least annually and must satisfy the requirements for progress reporting under 40 CFR 31.40(b).

(b) *Elements of the evaluation process.* The evaluation process must provide for:

(1) A discussion of accomplishments as measured against work plan commitments;

(2) A discussion of the cumulative effectiveness of the work performed under all work plan components;

(3) A discussion of existing and potential problem areas; and

(4) Suggestions for improvement, including, where feasible, schedules for making improvements.

(c) *Resolution of issues.* If the joint evaluation reveals that the recipient has not made sufficient progress under the work plan, the Regional Administrator and the recipient will negotiate a resolution that addresses the issues. If the issues cannot be resolved through negotiation, the Regional Administrator may take appropriate measures under 40 CFR 31.43. The recipient may request review of the Regional Administrator's decision under the dispute processes in 40 CFR 31.70.

(d) *Evaluation reports.* The Regional Administrator will ensure that the required evaluations are performed according to the negotiated schedule and that copies of evaluation reports are placed in the official files and provided to the recipient.

**§ 35.116 Direct implementation.**

If funds remain in a State's allotment for an environmental program grant either after grants for that environmental program have been made or because no grant was made, the Regional Administrator may, subject to any

limitations contained in appropriation acts, use all or part of the funds to support a federal program required by law in the State in the absence of an acceptable State program.

#### **§ 35.117 Unused funds.**

If funds for an environmental program grant remain in a State's allotment either after an initial environmental program grant has been made or because no grant was made, and the Regional Administrator does not use the funds under § 35.116 of this subpart, the Regional Administrator may award the funds to any eligible recipient in the region, including the same State or an Indian Tribe or Tribal consortium, for the same environmental program or for a Performance Partnership Grant, subject to any limitations in appropriation acts.

#### **§ 35.118 Unexpended balances.**

Subject to any relevant provisions of law, if a recipient's Financial Status Report shows unexpended balances, the Regional Administrator will deobligate the unexpended balances and make them available, to either the same recipient in the same region or other eligible recipients, including Indian Tribes and Tribal Consortia, for environmental program grants.

### **Performance Partnership Grants**

#### **§ 35.130 Purpose of Performance Partnership Grants.**

(a) *Purpose of section.* Sections 35.130 through 35.138 govern Performance Partnership Grants to States and interstate agencies authorized in the Omnibus Consolidated Rescissions and Appropriations Act of 1996, (Pub. L. 104-134, 110 Stat. 1321, 1321-299 (1996)) and the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998, (Pub. L. 105-65, 111 Stat. 1344, 1373 (1997)).

(b) *Purpose of program.* Performance Partnership Grants enable States and interstate agencies to combine funds from more than one environmental program grant into a single grant with a single budget. Recipients do not need to account for Performance Partnership Grant funds in accordance with the funds' original environmental program sources; they need only account for total Performance Partnership Grant expenditures subject to the requirements of this subpart. The Performance Partnership Grant program is designed to:

(1) Strengthen partnerships between EPA and State and interstate agencies through joint planning and priority-

setting and better deployment of resources;

(2) Provide State and interstate agencies with flexibility to direct resources where they are most needed to address environmental and public health priorities;

(3) Link program activities more effectively with environmental and public health goals and program outcomes;

(4) Foster development and implementation of innovative approaches such as pollution prevention, ecosystem management, and community-based environmental protection strategies; and

(5) Provide savings by streamlining administrative requirements.

#### **§ 35.132 Requirements summary.**

Applicants and recipients of Performance Partnership Grants must meet:

(a) The requirements in §§ 35.100 to 35.118, which apply to all environmental program grants, including Performance Partnership Grants; and

(b) The requirements in §§ 35.130 to 35.138, which apply only to Performance Partnership Grants.

#### **§ 35.133 Programs eligible for inclusion.**

(a) *Eligible programs.* Except as provided in paragraph (b) of this section, the environmental programs eligible, in accordance with appropriation acts, for inclusion in a Performance Partnership Grant are listed in § 35.101(a)(2) through (17). (Funds available from the section 205(g) State Administration Grants program (§ 35.100(b)(18)) and the Water Quality Management Planning Grant program (§ 35.100(b)(19)) may not be included in Performance Partnership Grants.)

(b) *Changes in eligible programs.* The Administrator may, in guidance or regulation, describe subsequent additions, deletions, or changes to the list of environmental programs eligible for inclusion in Performance Partnership Grants.

#### **§ 35.134 Eligible recipients.**

(a) *Eligible agencies.* All State agencies (including environmental, health, agriculture, and other agencies) and interstate agencies eligible to receive funds from more than one environmental program may receive Performance Partnership Grants.

(b) *Designated agency.* A State agency must be designated by a Governor, State legislature, or other authorized State process to receive grants under each of the environmental programs to be combined in the Performance

Partnership Grant. If it is not the designated agency for a particular grant program to be included in the Performance Partnership Grant, the State agency must have an agreement with the State agency that does have the designation regarding how the funds will be shared between the agencies.

(c) *Programmatic requirements.* A State or interstate agency must meet the requirements for award of each of the environmental programs from which funds are combined in the agency's Performance Partnership Grant, except the requirements at §§ 35.268(b) and (c), 35.272, and 35.298 (c),(d),(e), and (g). These requirements can be found in this regulation beginning at § 35.140.

#### **§ 35.135 Activities eligible for funding.**

(a) A recipient may use a Performance Partnership Grant, subject to the requirements of paragraph (c) of this section, to fund any activity that is eligible for funding under at least one of the environmental programs from which funds are combined into the grant.

(b) A recipient may also use a Performance Partnership Grant to fund multi-media activities that are eligible in accordance with paragraph (a) of this section and have been agreed to by the Regional Administrator. Such activities may include multi-media permitting and enforcement and pollution prevention, ecosystem management, community-based environmental protection, and other innovative approaches.

(c) A recipient may not use a Performance Partnership Grant to fund activities eligible only under a specific environmental program grant unless some or all of the recipient's allotted funds for that program have been included in the Performance Partnership Grant.

#### **§ 35.136 Cost share requirements.**

(a) An applicant for a Performance Partnership Grant must provide a non-federal cost share that is not less than the sum of the minimum non-federal cost share required under each of the environmental programs that are combined in the Performance Partnership Grant. Cost share requirements for the individual environmental programs are described in §§ 35.140 to 35.418.

(b) When an environmental program included in the Performance Partnership Grant has both a matching and maintenance of effort requirement, the greater of the two amounts will be used to calculate the minimum cost share attributed to that environmental program.

**§ 35.137 Application requirements.**

(a) An application for a Performance Partnership Grant must contain:

(1) A list of the environmental programs and the amount of funds from each program to be combined in the Performance Partnership Grant;

(2) A consolidated budget;

(3) A consolidated work plan that addresses each program being combined in the grant and that meets the requirements of § 35.107; and,

(4) A rationale, commensurate with the extent of any programmatic flexibility (i.e., increased effort in some programs and decreased effort in others) indicated in the work plan, that explains the basis for the applicant's priorities, the expected environmental or other benefits to be achieved, and the anticipated impact on any environmental programs or program areas proposed for reduced effort.

(b) The applicant and the Regional Administrator will negotiate regarding the information necessary to support the rationale for programmatic flexibility required in paragraph (a)(4) of this section. The rationale may be supported by information from a variety of sources, including a Performance Partnership Agreement or comparable negotiated document, the evaluation report required in § 35.125, and other environmental and programmatic data sources.

(c) A State agency seeking programmatic flexibility is encouraged to include a description of efforts to involve the public in developing the State agency's priorities.

**§ 35.138 Competitive grants.**

(a) Some environmental program grants are awarded through a competitive process. An applicant and the Regional Administrator may agree to add funds available for a competitive grant to a Performance Partnership Grant. If this is done, the work plan commitments that would have been included in the competitive grant must be included in the Performance Partnership Grant work plan. After the funds have been added to the Performance Partnership Grant, the recipient does not need to account for these funds in accordance with the funds' original environmental program source.

(b) If the projected completion date for competitive grant work plan commitments added to a Performance Partnership Grant is after the end of the Performance Partnership Grant budget period, the Regional Administrator and the applicant will agree in writing as to how the work plan commitments will be carried over into future work plans.

**Air Pollution Control (Section 105)****§ 35.140 Purpose.**

(a) *Purpose of section.* Sections 35.140 through 35.148 govern Air Pollution Control Grants to State, local, interstate, or intermunicipal air pollution control agencies (as defined in section 302(b) of the Clean Air Act) authorized under section 105 of the Act.

(b) *Purpose of program.* Air Pollution Control Grants are awarded to administer programs that prevent and control air pollution or implement national ambient air quality standards.

(c) *Program regulations.* Refer to 40 CFR parts 49, 50, 51, 52, 58, 60, 61, 62, and 81 for associated program regulations.

**§ 35.141 Definitions.**

In addition to the definitions in § 35.102, the following definitions apply to the Clean Air Act's section 105 grant program:

*Implementing* means any activity related to planning, developing, establishing, carrying-out, improving, or maintaining programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards.

*Nonrecurrent expenditures* are those expenditures which are shown by the recipient to be of a nonrepetitive, unusual, or singular nature such as would not reasonably be expected to recur in the foreseeable future. Costs categorized as nonrecurrent must be approved in the grant agreement or an amendment thereto.

*Recurrent expenditures* are those expenses associated with the activities of a continuing environmental program. All expenditures are considered recurrent unless justified by the applicant as nonrecurrent and approved as such in the grant award or an amendment thereto.

**§ 35.143 Allotment.**

(a) The Administrator allots air pollution control funds under section 105 of the Clean Air Act based on a number of factors, including:

(1) Population;

(2) The extent of actual or potential air pollution problems; and

(3) The financial need of each agency.

(b) The Regional Administrator shall allot to a State not less than one-half of one percent nor more than 10 percent of the annual section 105 grant appropriation.

(c) The Administrator may award funds on a competitive basis.

**§ 35.145 Maximum Federal share.**

(a) The Regional Administrator may provide air pollution control agencies,

as defined in section 302(b) of the Clean Air Act, up to three-fifths of the approved costs of implementing programs for the prevention and control of air pollution or implementing national primary and secondary ambient air quality standards.

(b) Subject to the conditions set forth below, the Regional Administrator may, at the request of the Governor of a State or the Governor's designee, or in the case of a local jurisdiction, the authorized local official, waive, for a one year period, all or a portion of the cost-sharing requirement of paragraph (a) of this section. The Regional Administrator may renew the waiver for no more than two years so long as the total waiver period does not exceed three years from the approval date of a State's permit program required under section 502 of the Clean Air Act.

(1) The waiver may be approved on a case-by-case basis and only when a State or local government's non-federal contribution is reduced below the required two-fifths minimum as a result of the redirection of its non-federal air resources to meet the requirements of section 502(b) of the Act.

(2) In applying for a waiver, the Governor or the Governor's designee, or in the case of a local jurisdiction, the authorized local official, must:

(i) Describe the extent of fiscal and programmatic impact on the agency's section 105 program as a result of the transfer of non-federal resources to support the program approved by EPA under section 502(b) of the Clean Air Act;

(ii) Provide documentation of the amount of the cost-sharing shortfall and the programmatic activities that would not be able to be carried out if the section 105 grant is reduced or not awarded as a result of a State or local air pollution control agency's inability to meet the cost-sharing requirements;

(iii) Assure that there is no source of funding that may reasonably be used to meet the cost-sharing requirement for the affected grant budget period; and

(iv) Assure that during the section 105 grant period the non-federal share of the program costs will not be reduced in an amount greater than that authorized by the waiver.

**§ 35.146 Maintenance of effort.**

(a) To receive funds under section 105, an agency must expend annually, for recurrent section 105 program expenditures, an amount of non-federal funds at least equal to such expenditures during the preceding fiscal year.

(b) In order to award grants in a timely manner each fiscal year, the

Regional Administrator shall compare an agency's proposed expenditure level, as detailed in the agency's grant application, to that agency's expenditure level in the second preceding fiscal year.

(c) The Regional Administrator may grant an exception to 40 CFR 35.146(a) if, after notice and opportunity for a public hearing, the Regional Administrator determines that the reduction is attributable to a non-selective reduction of the programs of all executive branch agencies of the applicable unit of government.

(d) The Regional Administrator will not award section 105 funds unless the applicant provides assurance that the grant will not supplant non-federal funds that would otherwise be available for maintaining the section 105 program.

#### **§ 35.147 Minimum cost share for a Performance Partnership Grant.**

(a)(1) To calculate the cost share for a Performance Partnership Grant (see §§ 35.130 through 35.138) that includes section 105 funds, the minimum cost share contribution for the section 105 program will be the match requirement set forth in § 35.145 or the maintenance of effort established under § 35.146, whichever is greater.

(2) The maintenance of effort established under § 35.146 of this subpart in the first year that the section 105 grant is included in a Performance Partnership Grant will be the maintenance of effort amount used to calculate the cost share in subsequent years in which the section 105 funds are included in a Performance Partnership Grant.

(b) If an air pollution control agency includes section 105 air program funding in a Performance Partnership Grant and subsequently withdraws that program from the grant, the maintenance of effort amount for the section 105 grant in the first year after the grant is withdrawn will be equal to the amount required in the year before the agency included the section 105 program in the Performance Partnership Grant.

(c) The Regional Administrator may approve an exception from paragraph (b) of this section if the Regional Administrator determines that exceptional circumstances justify a reduction in the maintenance of effort, including when an air pollution control agency reduces section 105 funding as part of a non-selective reduction of the programs of all executive branch agencies of the applicable unit of government.

#### **§ 35.148 Award limitations.**

(a) The Regional Administrator will not award section 105 funds to an interstate or intermunicipal agency:

(1) That does not provide assurance that it can develop a comprehensive plan for the air quality control region which includes representation of appropriate State, interstate, local, Tribal, and international interests; and

(2) Without consulting with the appropriate official designated by the Governor or Governors of the State or States affected or the appropriate official of any affected Indian Tribe or Tribes.

(b) The Regional Administrator will not disapprove an application for or terminate or annul a section 105 grant without prior notice and opportunity for a public hearing in the affected State or States.

#### **Water Pollution Control (Section 106)**

##### **§ 35.160 Purpose.**

(a) *Purpose of section.* Sections 35.160 through 35.168 govern Water Pollution Control Grants to State and interstate agencies (as defined in section 502 of the Clean Water Act) authorized under section 106 of the Clean Water Act.

(b) *Purpose of program.* Water Pollution Control Grants are awarded to assist in administering programs for the prevention, reduction, and elimination of water pollution, including programs for the development and implementation of ground-water protection strategies. Some of these activities may also be eligible for funding under sections 104(b)(3) (Water Quality Cooperative Agreements and Wetlands Development Grants), 205(j)(2) (Water Quality Management Planning), and section 205(g) (State Administration Grants) of the Clean Water Act. (See §§ 35.160, 35.360, 35.380, 35.400, and 35.410.)

(c) *Associated program requirements.* Program requirements for water quality planning and management activities are provided in 40 CFR part 130.

##### **§ 35.161 Definition.**

*Recurrent expenditures* are those expenditures associated with the activities of a continuing environmental program. All expenditures, except those for equipment purchases of \$5,000 or more, are considered recurrent unless justified by the applicant as nonrecurrent and approved as such in the grant award or an amendment thereto.

##### **§ 35.162 Basis for allotment.**

The Administrator allots funds for Water Pollution Control Grants to States and interstate agencies based on the

extent of the pollution problems in the respective States.

##### **§ 35.165 Maintenance of effort.**

To receive section 106 funds, a State or interstate agency must expend annually for recurrent section 106 program expenditures an amount of non-federal funds at least equal to expenditures during the fiscal year ending June 30, 1971.

##### **§ 35.168 Award limitations.**

(a) The Regional Administrator may award section 106 funds to a State only if:

(1) The State monitors and compiles, analyzes, and reports water quality data as described in section 106(e)(1) of the Clean Water Act;

(2) The State has authority comparable to that in section 504 of the Clean Water Act and adequate contingency plans to implement such authority;

(3) There is no federally assumed enforcement as defined in section 309(a)(2) of the Clean Water Act in effect with respect to the State agency; and

(4) The State's work plan shows that the activities to be funded are coordinated, as appropriate, with activities proposed for funding under sections 205 (g) and (j) of the Clean Water Act.

(5) The State filed with the Administrator within one hundred and twenty days after October 18, 1972, a summary report of the current status of the State pollution control program, including the criteria used by the State in determining priority of treatment works.

(b) The Regional Administrator may award section 106 funds to an interstate agency only if:

(1) The interstate agency filed with the Administrator within one hundred and twenty days after October 18, 1972, a summary report of the current status of the State pollution control program, including the criteria used by the State in determining priority of treatment works.

(2) There is no federally assumed enforcement as defined in section 309(a)(2) of the Clean Water Act in effect with respect to the interstate agency.

#### **Public Water System Supervision (Section 1443(a))**

##### **§ 35.170 Purpose.**

(a) *Purpose of section.* Sections 35.170 through 35.178 govern Public Water System Supervision Grants to States (as defined in section 1401(13)(A) of the

Safe Drinking Water Act) authorized under section 1443(a) of the Act.

(b) *Purpose of program.* Public Water System Supervision Grants are awarded to carry out public water system supervision programs including implementation and enforcement of the requirements of the Act that apply to public water systems.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR parts 141, 142, and 143.

#### **§ 35.172 Allotment.**

(a) *Basis for allotment.* The Administrator allots funds for grants to support States' Public Water System Supervision programs based on each State's population, geographic area, numbers of community and non-community water systems, and other relevant factors.

(b) *Allotment limitation.* No State, except American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, shall be allotted less than \$334,500 (which is one percent of the FY 1989 appropriation).

#### **§ 35.175 Maximum Federal share.**

The Regional Administrator may provide a maximum of 75 percent of the State's approved work plan costs.

#### **§ 35.178 Award limitations.**

(a) *Initial Grants:* The Regional Administrator will not make an initial award unless the applicant has an approved Public Water System Supervision program or agrees to establish an approvable program within one year of the initial award.

(b) *Subsequent Grants:* The Regional Administrator will not award a grant to a State after the initial award unless the applicant has assumed and maintained primary enforcement responsibility for the State's Public Water System Supervision program.

#### **Underground Water Source Protection (Section 1443(b))**

#### **§ 35.190 Purpose.**

(a) *Purpose of section.* Sections 35.190 through 35.198 govern Underground Water Source Protection Grants to States (as defined in section 1401(13)(A) of the Safe Drinking Water Act) authorized under section 1443(b) of the Act.

(b) *Purpose of program.* The Underground Water Source Protection Grants are awarded to carry out underground water source protection programs.

(c) *Associated program regulations.* Associated program regulations are

found in 40 CFR parts 124, 144, 145, 146, and 147.

#### **§ 35.192 Basis for allotment.**

The Administrator allots funds for grants to support States' underground water source protection programs based on such factors as population, geographic area, extent of underground injection practices, and other relevant factors.

#### **§ 35.195 Maximum Federal share.**

The Regional Administrator may provide a maximum of seventy-five percent of a State's approved work plan costs.

#### **§ 35.198 Award limitation.**

The Regional Administrator will only award section 1443(b) funds to States that have primary enforcement responsibility for the underground water source protection program.

#### **Hazardous Waste Management (Section 3011(a))**

#### **§ 35.210 Purpose.**

(a) *Purpose of section.* Sections 35.210 through 35.218 govern Hazardous Waste Management Grants to States (as defined in section 1004 of the Solid Waste Disposal Act) under section 3011(a) of the Act.

(b) *Purpose of program.* Hazardous Waste Management Grants are awarded to assist States in the development and implementation of authorized State hazardous waste management programs.

(c) *Associated program regulations.* Associated program regulations are at 40 CFR part 124, subparts B, E, and F; 40 CFR parts 260 through 266; 40 CFR parts 268 through 273; and 40 CFR part 279.

#### **§ 35.212 Basis for allotment.**

The Administrator allots funds for Hazardous Waste Management Grants under section 3011(b) of the Solid Waste Disposal Act based on factors including:

- (a) The extent to which hazardous waste is generated, transported, treated, stored, and disposed of in the State;
- (b) The extent to which human beings and the environment in the State are exposed to such waste, and;
- (c) Other factors the Administrator deems appropriate.

#### **§ 35.215 Maximum Federal share.**

The Regional Administrator may provide up to 75 percent of the approved work plan costs.

#### **§ 35.218 Award limitation.**

The Regional Administrator will not award Hazardous Waste Management Grants to a State with interim or final hazardous waste authorization unless

the applicant is the lead agency designated in the authorization agreement.

#### **Pesticide Cooperative Enforcement (Section 23(a)(1))**

#### **§ 35.230 Purpose.**

(a) *Purpose of section.* Sections 35.230 through 35.235 govern Pesticide Enforcement Cooperative Agreements to States (as defined in section 2 of Federal Insecticide, Fungicide, and Rodenticide Act) under section 23(a)(1) of the Act.

(b) *Purpose of program.* Pesticides Enforcement Cooperative Agreements are awarded to assist States to implement pesticide enforcement programs.

(c) *Program regulations.* Associated program regulations are at 40 CFR parts 150 through 189 and 19 CFR part 12.

#### **§ 35.232 Basis for allotment.**

(a) *Factors for FIFRA enforcement program funding.* The factors considered in allotment of funds for enforcement of FIFRA are:

- (1) The State's population,
- (2) The number of pesticide-producing establishments,
- (3) The numbers of certified private and commercial pesticide applicators,
- (4) The number of farms and their acreage, and
- (5) As appropriate, the State's potential farm worker protection concerns.

(b) *Final allotments.* Final allotments are negotiated between each State and the appropriate Regional Administrator.

#### **§ 35.235 Maximum Federal share.**

The Regional Administrator may provide up to 100 percent of the approved work plan costs.

#### **Pesticide Applicator Certification and Training (Section 23(a)(2))**

#### **§ 35.240 Purpose.**

(a) *Purpose of section.* Sections 35.240 through 35.245 govern Pesticide Applicator Certification and Training Grants to States (as defined in section 2 of Federal Insecticide, Fungicide, and Rodenticide Act) under section 23(a)(2) of the Act.

(b) *Purpose of program.* Pesticide Applicator Certification and Training Grants are awarded to train and certify restricted use pesticide applicators.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR parts 162, 170, and 171.

#### **§ 35.242 Basis for allotment.**

The Regional Administrator considers two factors in allotting pesticides

applicator certification and training funds:

(a) The number of farms in each State; and

(b) The numbers of private and commercial applicators requiring certification and recertification in each State.

#### **§ 35.245 Maximum Federal share.**

The Regional Administrator may provide up to 50 percent of the approved work plan costs.

#### **Pesticide Program Implementation (Section 23(a)(1))**

##### **§ 35.250 Purpose.**

(a) *Purpose of section.* Sections 35.250 through 35.259 govern Pesticide Program Implementation Cooperative Agreements to States (as defined in section 2 of Federal Insecticide, Fungicide, and Rodenticide Act) under section 23(a)(1) of the Act.

(b) *Purpose of program.* Pesticide Program Implementation Cooperative Agreements are awarded to assist States to develop and implement pesticide programs, including programs that protect farm workers, groundwater, and endangered species from pesticide risks and for other pesticide management programs designated by the Administrator.

(c) *Program regulations.* Associated program regulations are at 40 CFR parts 150 through 189 and 19 CFR part 12.

##### **§ 35.251 Basis for allotment.**

(a) *Factors for pesticide program implementation funding.* The factors considered in allotment of funds for pesticide program implementation are based upon potential ground water, endangered species, and worker protection concerns in each State relative to other States and on other factors the Administrator deems appropriate for these or other pesticide program implementation activities.

(b) *Final allotments.* Final allotments are negotiated between each State and the appropriate Regional Administrator.

##### **§ 35.252 Maximum Federal share.**

The Regional Administrator may provide up to 100 percent of the approved work plan costs.

#### **Nonpoint Source Management (Section 319(h))**

##### **§ 35.260 Purpose.**

(a) *Purpose of section.* Sections 35.260 through 35.268 govern Nonpoint Source Management Grants to States (as defined in section 502 of the Clean Water Act) authorized under section 319 of the Act.

(b) *Purpose of program.* Nonpoint Source Management Grants may be

awarded for the implementation of EPA-approved nonpoint source management programs, including ground-water quality protection activities, that will advance the implementation of a comprehensive approved nonpoint source management program.

##### **§ 35.265 Maximum Federal share.**

The Regional Administrator may provide up to 60 percent of the approved work plan costs in any fiscal year. The non-federal share of costs must be provided from non-federal sources.

##### **§ 35.266 Maintenance of effort.**

To receive section 319 funds in any fiscal year, a State must agree to maintain its aggregate expenditures from all other sources for programs for controlling nonpoint pollution and improving the quality of the State's waters at or above the average level of such expenditures in Fiscal Years 1985 and 1986.

##### **§ 35.268 Award limitations.**

The following limitations apply to funds appropriated and awarded under section 319(h) of the Act in any fiscal year.

(a) *Award amount.* The Regional Administrator will award no more than 15 percent of the amount appropriated to carry out section 319(h) of the Act to any one State. This amount includes any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of the State.

(b) *Financial assistance to persons.* States may use funds for financial assistance to persons only to the extent that such assistance is related to the cost of demonstration projects.

(c) *Administrative costs.* Administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with these funds shall not exceed 10 percent of the funds the State receives in any fiscal year. The cost of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs are not subject to this limitation.

(d) *Requirements.* The Regional Administrator will not award section 319(h) funds to a State unless:

(1) *Approved assessment report.* EPA has approved the State's assessment report on nonpoint sources, prepared in accordance with section 319(a) of the Act;

(2) *Approved State management program.* EPA has approved the State's

management program for nonpoint sources, prepared in accordance with section 319(b) of the Act;

(3) *Progress on reducing pollutant loadings.* The Regional Administrator determines that the State made satisfactory progress in the preceding fiscal year in meeting its schedule for achieving implementation of best management practices to reduce pollutant loadings from categories of nonpoint sources, or particular nonpoint sources, designated in the State's management program. The State must have developed this schedule in accordance with section 319(b)(2)(C) of the Act;

(4) *Activity and output descriptions.* The work plan briefly describes each significant category of nonpoint source activity and the work plan commitments to be produced for each category; and

(5) *Significant watershed projects.* For watershed projects whose costs exceed \$50,000, the work plan also contains:

(i) A brief synopsis of the watershed implementation plan outlining the problem(s) to be addressed;

(ii) The project's goals and objectives; and

(iii) The performance measures or environmental indicators that will be used to evaluate the results of the project.

#### **Lead-Based Paint Program (Section 404(g))**

##### **§ 35.270 Purpose.**

(a) *Purpose of section.* Sections 35.270 through 35.278 govern Lead-Based Paint Program Grants to States (as defined in section 3 of the Toxic Substances Control Act), under section 404(g) of the Act.

(b) *Purpose of program.* Lead-Based Paint Program Grants are awarded to develop and carry out authorized programs to ensure that individuals employed in lead-based paint activities are properly trained; that training programs are accredited; and that contractors employed in such activities are certified.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR part 745.

##### **§ 35.272 Funding coordination.**

Recipients must use the lead-based paint program funding in a way that complements any related assistance they receive from other federal sources for lead-based paint activities.

#### **State Indoor Radon Grants (Section 306)**

##### **§ 35.290 Purpose.**

(a) *Purpose of section.* Sections 35.290 through 35.298 govern Indoor Radon

Grants to States (as defined in section 3 of the Toxic Substances Control Act, which include territories and the District of Columbia) under section 306 of the Toxic Substances Control Act.

(b) *Purpose of program.* (1) State Indoor Radon Grants are awarded to assist States with the development and implementation of programs that assess and mitigate radon and that aim at reducing radon health risks. State Indoor Radon Grant funds may be used for the following eligible activities:

(i) Survey of radon levels, including special surveys of geographic areas or classes of buildings (such as public buildings, school buildings, high-risk residential construction types);

(ii) Development of public information and education materials concerning radon assessment, mitigation, and control programs;

(iii) Implementation of programs to control radon on existing and new structures;

(iv) Purchase by the State of radon measurement equipment and devices;

(v) Purchase and maintenance of analytical equipment connected to radon measurement and analysis, including costs of calibration of such equipment;

(vi) Payment of costs of Environmental Protection Agency-approved training programs related to radon for permanent State or local employees;

(vii) Payment of general overhead and program administration costs in accordance with § 35.298(d);

(viii) Development of a data storage and management system for information concerning radon occurrence, levels, and programs;

(ix) Payment of costs of demonstration of radon mitigation methods and technologies as approved by EPA, including State participation in the Environmental Protection Agency Home Evaluation Program; and

(x) A toll-free radon hotline to provide information and technical assistance.

(2) States may use grant funds to assist local governments in implementation of activities eligible for assistance under paragraphs (b)(1)(ii), (iii), and (vi) of this section.

(3) In implementing paragraphs (b)(1)(iv) and (ix) of this section, a State should make every effort, consistent with the goals and successful operation of the State radon program, to give preference to low-income persons.

(4) Recipients may not use State Radon Program Grant funds to cover the costs of proficiency rating programs under section 305(a)(2) of the Act.

#### § 35.292 Basis for allotment.

(a) The Regional Administrator will allot State Indoor Radon Grant funds based on the criteria in EPA Guidance in accordance with section 306(d) and (e) of the Toxic Substances Control Act.

(b) No State may receive a State Indoor Radon Grant in excess of 10 percent of the total appropriated amount made available each fiscal year.

#### § 35.295 Maximum Federal share.

The Regional Administrator may provide State agencies up to 50 percent of the approved costs for the development and implementation of radon program activities.

#### § 35.298 Award limitations.

(a) The Regional Administrator shall not include State Indoor Radon funds in a Performance Partnership Grant awarded to another State Agency without consulting with the State Agency which has the primary responsibility for radon programs as designated by the Governor of the affected State.

(b) No grant may be made in any fiscal year to a State which in the preceding fiscal year did not satisfactorily implement the activities funded by the grant in the preceding fiscal year.

(c) The costs of radon measurement equipment or devices (see § 35.290(b)(1)(iv)) and demonstration of radon mitigation, methods, and technologies (see § 35.290(b)(1)(ix)) shall not, in the aggregate, exceed 50 percent of a State's radon grant award in a fiscal year.

(d) The costs of general overhead and program administration (see § 35.290(b)(1)(vii)) of a State Indoor Radon grant shall not exceed 25 percent of the amount of a State's Indoor Radon Grant in a fiscal year.

(e) A State may use funds for financial assistance to persons only to the extent such assistance is related to demonstration projects or the purchase and analysis of radon measurement devices.

(f) Recipients must provide the Regional Administrator all radon-related information generated in its grant supported activities, including the results of radon surveys, mitigation demonstration projects, and risk communication studies.

(g) Recipients must maintain and make available to the public, a list of firms and individuals in the State that have received a passing rating under the EPA proficiency rating program under section 305(a)(2) of the Act.

### Toxic Substances Compliance Monitoring (Section 28)

#### § 35.310 Purpose.

(a) *Purpose of section.* Sections 35.310 through 35.315 govern Toxic Substances Compliance Monitoring Grants to States (as defined in section 3(13) of the Toxic Substances Control Act) under section 28(a) of the Act.

(b) *Purpose of program.* Toxic Substances Compliance Monitoring Grants are awarded to establish and operate compliance monitoring programs to prevent or eliminate unreasonable risks to health or the environment associated with chemical substances or mixtures within the States with respect to which the Administrator is unable or not likely to take action for their prevention or elimination.

(c) *Associated program regulations.* Associated program regulations are at 40 CFR parts 700 through 799.

#### § 35.312 Competitive process.

EPA will award Toxic Substances Control Act Compliance Monitoring grant funds to States through a competitive process in accordance with national program guidance.

#### § 35.315 Maximum Federal share.

The Regional Administrator may provide up to 75 percent of the approved work plan costs.

#### § 35.318 Award limitation.

If the toxic substances compliance monitoring grant funds are included in a Performance Partnership Grant, the toxic substances compliance monitoring work plan commitments must be included in the Performance Partnership Grant work plan.

### State Underground Storage Tanks (Section 2007(f)(2))

#### § 35.330 Purpose.

(a) *Purpose of section.* Sections 35.330 through 35.335 govern Underground Storage Tank Grants to States (as defined in section 1004 of the Solid Waste Disposal Act) under section 2007(f)(2) of the Act.

(b) *Purpose of program.* State Underground Storage Tank Grants are awarded to States to develop and implement a State underground storage tank release detection, prevention, and corrective action program under Subtitle I of the Resource Conservation and Recovery Act.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR parts 280 through 282.

#### § 35.332 Basis for allotment.

The Administrator allots State Underground Storage Tank Grant funds



to each regional office. Regional offices award funds to States based on their programmatic needs and applicable EPA guidance.

**§ 35.335 Maximum Federal share.**

The Regional Administrator may provide up to 75 percent of the approved work plan costs.

**Pollution Prevention Incentives for States (Section 6605)**

**§ 35.340 Purpose.**

(a) *Purpose of section.* Sections 35.340 through 35.349 govern Pollution Prevention Incentive for States Grants under section 6605 of the Pollution Prevention Act.

(b) *Purpose of program.* Pollution Prevention Incentives for States Grants are awarded to promote the use of source reduction techniques by businesses.

**§ 35.342 Competitive Process.**

EPA regions award Pollution Prevention Incentives for States Grants to State programs through a competitive process in accordance with EPA guidance. When evaluating State applications, EPA must consider, among other criteria, whether the proposed State program would:

(a) Make specific technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide onsite technical advice to businesses seeking assistance in the development of source reduction plans;

(b) Target assistance to businesses for whom lack of information is an impediment to source reduction; and

(c) Provide training in source reduction techniques. Such training may be provided through local engineering schools or other appropriate means.

**§ 35.343 Definitions.**

In addition to the definitions in § 35.102, the following definition, Pollution prevention/Source reduction, applies to the Pollution Prevention Incentives for States Grants program and to §§ 35.340 through 35.349:

(a) Pollution prevention/source reduction is any practice that:

(1) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal;

(2) Reduces the hazards to public health and the environment associated

with the release of such substances, pollutants, or contaminants; or

(3) Reduces or eliminates the creation of pollutants through

(i) Increased efficiency in the use of raw materials, energy, water, or other resources; or

(ii) Protection of natural resources by conservation.

(b) Pollution prevention/source reduction does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

**§ 35.345 Eligible applicants.**

Applicants eligible for funding under this grant program include any agency or instrumentality, including State universities, of the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

**§ 35.348 Award limitation.**

If the Pollution Prevention Incentives for States Grants are included in a Performance Partnership Grant, the work plan commitments must be included in the Performance Partnership Grant work plan (see § 35.138).

**§ 35.349 Maximum Federal share.**

The Federal share for Pollution Prevention Incentives for States Grants will not exceed 50 percent of the allowable pollution prevention incentives to States project cost.

**Water Quality Cooperative Agreements (Section 104(b)(3))**

**§ 35.360 Purpose.**

(a) *Purpose of section.* Sections 35.360 through 35.364 govern Water Quality Cooperative Agreements to State water pollution control agencies and interstate agencies (as defined in section 502 of the Clean Water Act) and local government agencies under section 104(b)(3) of the Act. These sections do not govern Water Quality Cooperative Agreements to other entities eligible under sections 104(b)(3); those cooperative agreements generally are subject to the uniform administrative requirements of 40 CFR part 30.

(b) *Purpose of program.* EPA awards Water Quality Cooperative Agreements for investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of water pollution. EPA issues guidance

each year advising EPA regions and headquarters regarding appropriate priorities for funding for this program. This guidance may include such focus areas as National Pollutant Discharge Elimination System watershed permitting, urban wet weather programs, or innovative pretreatment program or biosolids projects.

**§ 35.362 Competitive process.**

EPA will award Water Quality Cooperative Agreement funds through a competitive process in accordance with national program guidance.

**§ 35.364 Maximum Federal share.**

The Regional Administrator may provide up to 100 percent of approved work plan costs.

**State Wetlands Development Grants (Section 104(b)(3))**

**§ 35.380 Purpose.**

(a) *Purpose of section.* Sections 35.380 through 35.385 govern State Wetlands Development Grants for State and interstate agencies (as defined in section 502 of the Clean Water Act) and local government agencies under section 104(b)(3) of the Act. These sections do not govern wetlands development grants to other entities eligible under section 104(b)(3); those grants generally are subject to the uniform administrative requirements of 40 CFR part 30.

(b) *Purpose of program.* EPA awards State Wetlands Development Grants to assist in the development of new, or refinement of existing, wetlands protection and management programs.

**§ 35.382 Competitive process.**

State Wetlands Development Grants are awarded on a competitive basis. EPA annually establishes a deadline for receipt of proposed grant project applications. EPA reviews applications and decides which grant projects to fund in a given year based on criteria established by EPA. After the competitive process is complete, the recipient can, at its discretion, accept the award as a State Wetlands Development Grant or add the funds to a Performance Partnership Grant. If the recipient chooses to add the funds to a Performance Partnership Grant, the wetlands development program work plan commitments must be included in the Performance Partnership Grant work plan.

**§ 35.385 Maximum Federal share.**

EPA may provide up to 75 percent of the approved work plan costs for the development or refinement of a wetlands protection and management program.

**State Administration (Section 205(g))****§ 35.400 Purpose.**

(a) *Purpose of section.* Sections 35.400 through 35.408 govern State Administration Grants to States (as defined in section 502 of the Clean Water Act) authorized under section 205(g) of the Act.

(b) *Purpose of program.* EPA awards these grants for the following two purposes:

(1) *Construction management grants.* A State may use section 205(g) funds for administering elements of the construction grant program under sections 201, 203, 204, and 212 of the Clean Water Act and for managing waste treatment construction grants for small communities. A State may also use construction management assistance funds for administering elements of a State's construction grant program which are implemented without federal grants, if the Regional Administrator determines that those elements are consistent with 40 CFR part 35, subpart I.

(2) *Permit and planning grants.* A State may use section 205(g) funds for administering permit programs under sections 402 and 404, including Municipal Wastewater Pollution Prevention activities under an approved section 402 program and State operator training programs, and for administering statewide waste treatment management planning programs, including the development of State biosolids management programs, under section 208(b)(4). Some of these activities may also be eligible for funding under sections 106 (Water Pollution Control), 205(j)(2) (Water Quality Management Planning), and 104(b)(3) (Water Quality Cooperative Agreements and Wetlands Development Grants) of the Clean Water Act. (See §§ 35.160, 35.410, 35.360, and 35.380.)

(c) *Associated program requirements.* Program requirements for State construction management activities under delegation are provided in 40 CFR part 35, subparts I and J. Program requirements for water quality management activities are provided in 40 CFR part 130.

**§ 35.402 Allotment.**

Each State may reserve up to four percent of the State's authorized construction grant allotment as determined by Congress or \$400,000, whichever is greater for section 205(g) grants.

**§ 35.405 Maintenance of effort.**

To receive funds under section 205(g), a State agency must expend annually for

recurrent section 106 program expenditures an amount of non-federal funds at least equal to such expenditures during fiscal year 1977, unless the Regional Administrator determines that the reduction is attributable to a non-selective reduction of expenditures in State executive branch agencies (see § 35.165).

**§ 35.408 Award limitations.**

The Regional Administrator will not award section 205(g) funds:

(a) For construction management grants unless there is a signed agreement delegating responsibility for administration of those activities to the State.

(b) For permit and planning grants before awarding funds providing for the management of a substantial portion of the State's construction grants program. The maximum amount of permit and planning grants a State may receive is limited to the amount remaining in its reserve after the Regional Administrator allows for full funding of the management of the construction grant program under full delegation.

(c) For permit and planning grants unless the work plan submitted with the application shows that the activities to be funded are coordinated, as appropriate, with activities proposed for funding under sections 106 (Water Pollution Control) and 205(j) (Water Quality Management Planning) of the Clean Water Act.

**Water Quality Management Planning Grants (Section 205(j)(2))****§ 35.410 Purpose.**

(a) *Purpose of section.* Sections 35.410 through 35.418 govern Water Quality Management Planning Grants to States (as defined in section 502 of the Clean Water Act) authorized under section 205(j)(2) of the Act.

(b) *Purpose of program.* EPA awards Water Quality Management Planning Grants to carry out water quality management planning activities. Some of these activities may also be eligible for funding under sections 106 (Water Pollution Control), 104(b)(3) (Water Quality Cooperative Agreements and Wetlands Development Grants) and section 205(g) (State Administration Grants) of the Clean Water Act. (See §§ 35.160, 35.360, 35.380, and 35.400.) EPA awards these grants for purposes such as:

(1) Identification of the most cost-effective and locally acceptable facility and nonpoint measures to meet and maintain water quality standards.

(2) Development of an implementation plan to obtain State and local financial and regulatory

commitments to implement measures developed under paragraph (b)(1) of this section.

(3) Determination of the nature, extent, and causes of water quality problems in various areas of the State and interstate region.

(4) Determination of those publicly owned treatment works which should be constructed with State Revolving Fund assistance. This determination should take into account the relative degree of effluent reduction attained, the relative contributions to water quality of other point or nonpoint sources, and the consideration of alternatives to such construction.

(5) Implementation of section 303(e) of the Clean Water Act.

(c) Program requirements for water quality management planning activities are provided in 40 CFR part 130.

**§ 35.412 Allotment.**

States must reserve, each fiscal year, not less than \$100,000 nor more than one percent of the State's construction grant allotment as determined by Congress for Water Quality Management Planning Grants under section 205(j)(2). However, Guam, the Virgin Islands, American Samoa and the Commonwealth of the Northern Mariana Islands must reserve a reasonable amount for this purpose. (See 40 CFR 35.3110(g)(4) regarding reserves from State allotments under Title VI of the Clean Water Act for section 205(j) grants.)

**§ 35.415 Maximum Federal share.**

The Regional Administrator may provide up to 100 percent of the approved work plan costs.

**§ 35.418 Award limitations.**

The following limitations apply to funds awarded under section 205(j)(2) of the Clean Water Act. The Regional Administrator will not award these grants to a State agency:

(a) Unless the agency develops its work plan jointly with local, regional and interstate agencies and gives funding priority to such agencies and designated or undesignated public comprehensive planning organizations to carry out portions of that work plan.

(b) Unless the agency reports annually on the nature, extent, and causes of water quality problems in various areas of the State and interstate region.

(c) Unless the work plan submitted with the application shows that the activities to be funded are coordinated, as appropriate, with activities proposed for funding under section 106 (Water Pollution Control) of the Clean Water Act.

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**PART 745—[AMENDED]**

4. The authority citation for Part 745 continues to read as follows:

**Authority:** 15 U.S.C. 2605, 2607, 2681–2692, and 42 U.S.C. 4852d.

5. EPA is proposing to remove 40 CFR 745.330.

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