

The FHWA hereby amends chapter I of title 23, Code of Federal Regulations, part 655, as set forth below.

PART 655—TRAFFIC OPERATIONS

1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); 23 CFR 1.32 and 1204.4; and 49 CFR 1.48(b).

Subpart F—[Amended]

2. In § 655.601, paragraph (a) is revised to read as follows:

§ 655.601 Purpose.

* * * * *

(a) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), FHWA, 1988, including Revision No. 1 dated January 17, 1990, Revision No. 2 dated March 17, 1992, Revision No. 3 dated September 3, 1993, and Revision No. 4 dated November 1, 1994. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the Office of the Federal Register in Washington, DC. The 1988 MUTCD Stock No. 050-001-00308-2 and "1988 MUTCD Revision 3," dated September 3, 1993 (Stock No. 050-001-00316-3), may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402. The amendments to the MUTCD, titled "1988 MUTCD Revision 1," dated January 17, 1990, "1988 MUTCD Revision 2," dated March 17, 1992, and "1988 MUTCD Revision 4," dated November 1, 1994," are available from the Federal Highway Administration, Office of Highway Safety, HHS-21, 400 Seventh Street SW., Washington, DC 20590. These documents are available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

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Issued on: December 28, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95-86 Filed 1-3-95; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF EDUCATION

34 CFR Parts 74 and 80

Education Department General Administrative Regulations; Cost Principles for Educational Institutions

AGENCY: Department of Education.

ACTION: Announcement regarding amendments to certain cost principles.

SUMMARY: The Secretary announces revisions to Office of Management and Budget (OMB) Circular A-21, "Cost Principles for Educational Institutions," which is used by the Department of Education in administering grant programs. The preambles to previously published final rulemaking documents specified Circular A-21 as amended through certain dates as the text of the Circular used for Department of Education programs. The Secretary specifies in this document subsequent OMB amendments to Circular A-21 and adopts those amendments for grant programs administered by the Department.

EFFECTIVE DATE: This notice takes effect on February 3, 1995.

FOR FURTHER INFORMATION CONTACT:

Glenn Riley, U.S. Department of Education, 600 Independence Avenue, SW., room 3636, ROB-3, Washington, DC 20202-4700. Telephone: (202) 708-7640. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On July 6, 1994, the Secretary published a revision to Part 74—Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (59 FR 34722). Also, on March 11, 1988, the Secretary published a new Part 80—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (53 FR 8071). These documents established OMB Circular A-21 as the cost principles used by the Department of Education for educational institutions (34 CFR 74.27, 80.22). The preamble to the 1988 document specified all OMB amendments to Circular A-21 as amended through December 2, 1986 and the preamble to the 1994 document all amendments made by OMB to Circular A-21 through October 3, 1991. Each of these preambles adopted for Department of Education programs the text of A-21 as amended through the dates specified in those publications.

On July 26, 1993, OMB published amendments to Circular A-21 at 58 FR 39996. This notice adopts for 34 CFR part 80 the changes made by OMB on October 3, 1991 and July 26, 1993, and adopts for 34 CFR part 74 the changes made by OMB on July 26, 1993. The changes adopted in this announcement bind all recipients of Department grants and cooperative agreements to the requirements of Circular A-21 as amended through July 26, 1993. These

cost principles apply to educational institutions, except to the extent program regulations or the Department's administrative regulations require a different outcome.

OMB Circular A-21 was originally published in the **Federal Register** on March 6, 1979, at 44 FR 12368. It has been amended several times prior to the amendment made on July 26, 1993, as follows: On August 3, 1982, at 47 FR 33658, on June 9, 1986, at 51 FR 20908, on December 2, 1986, at 51 FR 43487, and on October 3, 1991, at 56 FR 50224. The circular, as amended, is adopted by the Department. It is available by calling the Publications Unit for the Executive Office of the President at (202) 395-7332, or by writing the Executive Office of the President, Publications, room 2200, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Waiver of Notice and Comment

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed actions in accordance with the Administrative Procedure Act (5 U.S.C. 553). However, since an opportunity was previously provided by OMB for public comment on the October 1991 changes to the Circular at 56 FR 22618 on May 15, 1991 and at 56 FR 29530 on June 27, 1991 and, regarding the July 1993 amendments, an opportunity was previously provided by OMB for public comment on that amendment to OMB Circular A-21 (57 FR 58394; December 9, 1992), the Secretary finds that soliciting further public comment with respect to adoption of the revised circular is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: December 1, 1994.

Donald R. Wurtz,

Chief Financial Officer.

[FR Doc. 95-122 Filed 1-3-95; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[OAR-94-45; FRL-4921-3]

RIN 2060-AF03

Revisions to the Administrative Requirements and Provisions of the Clean Air Act Section 105 Grant Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule with request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating an interim final rule revising the current regulations which govern the award of program grants under section 105 of the Clean Air Act (the Act). The revisions ensure consistency with and continue implementation of the Clean Air Act Amendments of 1990 (1990 Amendments). This promulgation revises the regulations to incorporate changes governing maintenance of effort (MOE) and cost-sharing requirements, including provisions allowing a temporary waiver of the cost-sharing amounts, and other miscellaneous changes contained in the 1990 Amendments.

DATES: This interim final rule is effective January 4, 1995.

EPA solicits comments on this interim final rule until February 3, 1995.

ADDRESSES: Supporting information used in the development of this interim final rule and copies of the public documents submitted are contained in Docket No. A-94-45. Comments on this interim final rule should be mailed in duplicate, if possible, to the EPA Air Docket. This docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, except legal holidays. The address of the EPA Air Docket is: Air Docket, Environmental Protection Agency, Mailcode 6102, Room M-1500, Waterside Mall, 401 M St., SW., Washington, DC 20460. A reasonable fee may be charged for copying.

Comments and data may also be submitted electronically by any of three different mechanisms: by sending electronic mail (e-mail) to: Docket-OPPTS@epamail.epa.gov; by sending a "Subscribe" message to listserver@unixmail.rtpnc.epa.gov and once subscribed, send your comments to RIN-2060-AF03; or through the EPA Electronic Bulletin Board by dialing 202-488-3671, enter selection "DMAIL," user name "BB-USER" or

919-541-4642, enter selection "MAIL," user name "BB-USER." Electronic comments must be submitted as an ASCII file avoiding the use of special control characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form should be identified by the docket number A-94-45. Electronic comments on this interim final rule, but not the record, may be viewed or new comments filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in unit V. of this document.

FOR FURTHER INFORMATION CONTACT:

Peggy Anthony or Alexander Wolfe, United States Environmental Protection Agency, Office of Air and Radiation, Office of Program Management Operations (Mailcode 6102), 401 M St., SW., Washington, DC 20460 at (202) 260-7415.

SUPPLEMENTARY INFORMATION: This preamble is organized according to the following outline:

- I. Background and Purpose
- II. Discussion of Regulatory Changes
 - A. Maintenance of Effort Requirements
 - 1. Definition of Recurrent and Nonrecurrent Expenditures
 - 2. Use of Prior Fiscal Year Data to Determine MOE Levels
 - 3. Accounting Relative to Title V Programs
 - B. Cost-sharing Requirements
 - 1. Maximum Federal Share
 - 2. Waiver of Cost-sharing Requirement
 - C. State Allotments and Reserves
- III. Summary of Interim Final Rule
- IV. Public Docket
- V. Regulatory Assessment Requirements
 - A. Office of Management and Budget Clearances
 - B. Regulatory Flexibility Act
 - C. Paperwork Reduction Act
 - D. Unfunded Mandates

The attached interim final rule revises the regulations at 40 CFR part 35 to ensure a common sense approach to implementing the 1990 Amendments. The 1990 Amendments require our key stakeholders--state and authorized local jurisdictions, to implement new operating permit programs under Title V of the Act. The implementation of the new Title V programs involve the transition of many activities previously covered by Section 105 grant programs to the new Title V permit programs. Many state and local agencies expressed serious concern about being able to meet MOE requirements due to the reduction in activities; and may be unable to provide the required 40 percent cost-share. As discussed in unit II.A.3. of this

preamble, EPA has determined that existing regulations permit states to recompute their MOE levels to reflect the transfer of state air quality program activities previously funded through section 105 grants to the Title V permit program. This rule provides state and local stakeholders with the additional regulatory framework necessary to make the transition workable on a common sense scale by allowing state and local government agencies to (1) temporarily waive the cost-share requirement; and, (2) determine recurrent and nonrecurrent expenditure levels with greater flexibility.

The preamble makes frequent use of the term "state," usually meaning the state air pollution control agency authorized to be the recipient agency for the section 105 grant, as defined under section 302 of the Act. The reader should assume that when used here "state" also includes air pollution control agencies of the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and local governments where a local agency is a direct-funded recipient of a section 105 air grant.

The preamble is organized to enable a review of the origins of the part 35 changes being promulgated today. The preamble also describes the impact on the MOE requirements due to the transfer of section 105 program activities to the Title V permit program. Although not the subject of this rulemaking, the impact was identified during the workgroup efforts described below and addressed in an opinion from EPA's Office of General Counsel.

Proposed changes to part 35, subpart A affecting the award of air grant assistance to Indian Tribes are the subject of a separate rulemaking, "Indian Tribes: Air Quality Planning and Management," and will not be discussed in this action. See 59 FR 43955, August 25, 1994. However, EPA intends that this rulemaking and the final Tribal air assistance regulation will be compatible.

I. Background and Purpose

Section 105 of the Act, 42 U. S. C. 7405, authorizes the award of grants to state, local, interstate, intermunicipal, and tribal air pollution control agencies to support programs for the prevention and control of air pollution. The Federal section 105 grant program has been a major force in helping to establish and expand the air pollution control programs of state and local agencies. Since including the program in the 1963 Clean Air Act, Congress has

appropriated, and EPA has awarded, over \$2.0 billion in Federal grant assistance.

Section 105 contains two major administrative requirements to ensure the fiscal commitment and continued eligibility of a recipient agency. The recipient must: (1) contribute a share of the overall costs of its section 105-approved program (cost-share or match); and (2) expend annually an amount equal to or greater than its previous year's commitment (MOE). The amount of funding established under the second requirement is called the recipient's MOE level. These requirements have prompted state, local, and tribal agencies to contribute nearly \$3.5 billion of their own funds over the last 30 years in support of their efforts to prevent and control air pollution and implement national ambient air quality standards.

The 1990 Amendments, Public Law 101-549, amended the section 105 provisions on cost-sharing, MOE, and state grant allotments. In addition, Title V of the 1990 Amendments requires all states to establish operating permit programs. The Title V permit programs must include fee provisions to cover the costs of the permit programs. Many activities previously funded through section 105 grants are now required to be included within and funded through the Title V permits and fees.

This rulemaking amends the section 105 program grant regulations at 40 CFR part 35, subpart A to (1) further implement the 1990 Amendments; (2) ensure consistency between the regulations and the Act as amended; and (3) address the fiscal impact of Title V permit fee provisions on section 105 program grant recipients. The rule promulgated here provides increased flexibility to grant recipients in determining and setting expenditure levels and provides the regulatory linkage necessary for reasonable implementation of statutory provisions under both Titles I and V of the Act.

This interim final rule is consistent with Federal and Agency intent to: enhance the fiscal capacity of state and local governments to enable the effective implementation of their air pollution prevention and control responsibilities; reduce, where possible, any unnecessary administrative burdens associated with the receipt of Federal assistance; and help ensure the financial integrity of the air grant and permit fee programs.

The rule is published as an interim final rule (rather than as a proposed rule) in accordance with the Administrative Procedure Act, 5 U.S.C. 553(a), which exempts grant rules from

the notice and comment requirements for rulemaking. Nevertheless, EPA solicits public comment on this interim final rule. The rule takes effect today in order to allow for the prompt implementation of the provisions affecting the section 105 grant program, including waivers of the cost-sharing requirement.

II. Discussion of Regulatory Changes

This section provides a more detailed explanation of the regulatory changes EPA intends to make to the existing 40 CFR part 35, subpart A.

A. Maintenance of Effort Requirements

1. *Definition of recurrent and nonrecurrent expenditures.* Section 105 (c)(1) of the Act provides that no agency shall receive a section 105 grant during any fiscal year when its "recurrent expenditures" of non-Federal funds for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. The 1990 Amendments require EPA to revise the current regulations which define applicable recurrent and nonrecurrent expenditures, and in so doing, to "give due consideration to exempting an agency from the limitations of this paragraph [MOE requirements] and subsection (a) of this section [cost-sharing requirements] due to periodic increases experienced by that agency from time to time in its annual expenditures for purposes acceptable to the Administrator for that fiscal year." Section 105(c)(1) of the Act, as amended. This rule revises the definition for recurrent expenditures and adds a new definition for nonrecurrent expenditures for the air grant program. As discussed in unit B.2. of this preamble, the regulations also provide for an exemption from the cost-sharing requirements in certain limited circumstances.

The current regulatory definition of "recurrent expenditures" in 40 CFR 35.105 provides that all expenditures, except those for equipment purchases with a unit acquisition cost of \$5,000 or more, are considered recurrent unless justified by the applicant as unique and approved by the Regional Administrator in the grant agreement. The revised definition being promulgated for the air grant program removes the \$5,000 limitation to recognize price changes due to inflation and changes in the nature and design of air pollution control equipment. Such changes have occurred since the last promulgation and are likely to continue. The revised definition will provide greater flexibility to air pollution control agencies in the MOE requirements by not subjecting

them to an artificial dollar ceiling and administratively burdensome justifications for basic purchases. This rule leaves in place the current definition of "recurrent expenditures" at 40 CFR 35.105 which will continue to be used in other continuing environmental programs governed by 40 CFR part 35, subpart A.

2. *Use of prior fiscal year data to determine MOE levels.* While the MOE provision requires that each recipient expend annually at least the same or greater amount of its own resources on its section 105 program as it did in the previous year, it often takes several months beyond the end of a fiscal year for EPA to determine the final expenditure amounts for the grants. In order to permit EPA to award the section 105 grants in a timely manner, even when the required fiscal data is not yet available, the 1990 Amendments revised section 105(c)(1) to allow EPA to compare an agency's prospective expenditure level to that of its second preceding fiscal year. When the preceding year's final fiscal data is received, EPA will then provide an official verification that the MOE requirements have been met. Section 35.210(a) has been revised to permit the use of data from the second preceding fiscal year as provided in the 1990 Amendments.

3. *Accounting relative to Title V programs.* States have expressed concern over how the transfer of resources from their section 105 grant program to their Title V program will affect the MOE requirement and their ability to continue to receive a Federal grant.

This concern and other grant and fee program transition issues prompted EPA to initiate, in May 1994, a workgroup to develop clear transition policies and procedures for regions and states to follow. The workgroup effort resulted in the issuance of a June 27, 1994 opinion from the Office of General Counsel on the ability of states to adjust MOE levels once Title V programs are approved. EPA also issued transition guidance on July 21, 1994 and August 28, 1994.

Based on the June 27, 1994 opinion, EPA has determined that a state's MOE level may be reduced to reflect the transfer of activities previously funded through its section 105 program to the Title V program without jeopardizing the state's continued eligibility for a section 105 grant. However, a state must maintain the level of effort associated with recurrent expenditures for activities that continue to be supported with section 105 program grants. This principle applies not only to the year in which the Title V program is initially

approved but in subsequent years as well.

Section 105(c)(1) of the Act provides that "No agency shall receive any grant under this section during any fiscal year when its expenditures of nonfederal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year." The MOE regulations implementing this provision state that: "To receive funds under section 105, an agency must expend annually for recurrent section 105 program expenditures an amount of nonfederal funds at least equal to such expenditures during the preceding fiscal year." 40 CFR 35.120.

Because the regulations describe the term "recurrent expenditures for air pollution control programs," as "recurrent section 105 program expenditures," EPA believes a reasonable interpretation of the MOE provisions is that they require states to maintain only their effort associated with activities that are included within the section 105 grant program.

Because many of the activities previously funded through section 105 program grants are now included within the Title V permit fee program and permit program activity costs are no longer allowable costs under the section 105 program, expenditures for permit activities are no longer "recurrent section 105 program expenditures" for which the MOE level must be maintained. A new MOE level should be calculated that reflects the expenditures associated with the remaining section 105 activities.

B. Cost-sharing Requirements

1. *Maximum Federal share.* Prior to the 1990 Amendments, EPA was authorized to award Section 105 program grants that, depending upon the purposes of the grants and recipients' identities, provided up to one-half to three-quarters of the approved program costs. Distinctions were made among types of recipients and between cost-sharing requirements for planning, developing, establishing, and improving programs and maintaining programs. The 1990 Amendments eliminated the distinctions between the types of recipients and activities along with the varying Federal funding percentages associated with each. Instead all funded activity is now termed as 'implementation' which is now defined in this rulemaking to encompass virtually every type of program activity.

The Amendments revised section 105(a) to authorize grant awards up to

three-fifths (60 percent) of the costs of "implementing" the air programs.

Section 105 (a)(1)(A) defines "implementing" as "any activity related to the planning, developing, establishing, carrying-out, improving, or maintaining of such programs."

The 1990 Amendments further provided that air pollution control agencies contributing less than two-fifths (40 percent) of the approved program costs had 3 years from the date of enactment (November 15, 1990) to meet the required nonfederal minimum or face a reduction in their EPA funding. Section 105 (a)(1)(B) of the Act. The change in the cost-share requirement was phased-in to prevent the disruption of affected grantee's current air program operations.

This rulemaking revises the current regulations by deleting the existing regulations at 40 CFR 35.205 and inserting new provisions for a uniform cost-sharing requirement for all program activities and a 3-year phase-in period. The statutory definition of the term "implementing" has been included in the new definitions section at 40 CFR 35.201.

2. *Waiver of cost-sharing requirement.* In accordance with section 105(c)(1) EPA has determined that an exemption from the cost-sharing requirement is appropriate in certain very limited circumstances because of increased expenditures experienced by states as a result of the transfer of resources to the Title V permit program.

In the 1980's, many states enacted operating permit programs as part of their air pollution control programs. The costs of these state permit programs were allowable under section 105 grants and many states used the permit fees they collected to satisfy the cost-sharing requirement of the section 105 grant program. The 1990 Amendments, however, added Title V to the Act. Title V requires all states to establish operating permit programs supported by permit fees. Many activities previously funded through section 105 grants are now required to be included and funded through the Title V permit fee programs. In order to obtain a permit, sources of pollution must pay to the state an annual fee that is sufficient to cover all the costs of the permitting program. (Section 502(b)(3)(A)). Title V and EPA regulations require that any such permit fees collected be utilized solely to cover the costs of the permit programs. (Section 502(b)(3)(C)(iii) and 40 CFR 70.9(d)).

Some states assumed the fees collected under Title V could be used to pay a portion or all of the 40 percent cost-share for their section 105 grant,

like the fees under previous state permit programs. Other states without previously existing permit programs also planned to use Title V fees in lieu of state general revenues and other sources to meet the cost-share requirement. Relying on the assumption that Title V fees could be used for cost-sharing, some state legislatures did not authorize and appropriate funds sufficient to meet the cost-share requirements beyond the funds anticipated from the fees.

However, Title V permit fees cannot be used to meet the cost-sharing requirements of section 105 program grants. In order to qualify for cost-sharing, costs incurred by a grantee must be allowable under its grant with EPA. (40 CFR 31.24(a)). A grantee may not count costs that are not part of its grant program. Because Title V requires that the permit program be funded solely from the fees collected, and that the fees collected be used only for that purpose, Title V permit program costs cannot be funded from a section 105 grant. As a result, the permit program cost are not allowable section 105 grant costs and, therefore, the costs and the fees used to pay them cannot be used to meet the section 105 cost-sharing requirements.

Because the Title V fees cannot be used for cost-sharing, some state and local agencies have indicated that they will not be able to meet the 40 percent cost-sharing obligation once their Title V programs are approved. As a result, some states need additional time to identify other sources of funds or obtain additional funds from their legislatures. If a state cannot meet its cost-share it would either be ineligible for a section 105 award or would have its grant award reduced as a result. Section 105 grants fund a large portion of state air pollution control programs. Without grant support some states have indicated an inability to fulfill responsibilities under the Act and would not be able to meet all of the statutory deadlines. Consequently, states would risk the imposition of severe growth sanctions.

To prevent significant shortfalls in near-term funding, states requested relief from the cost-sharing requirements. The EPA has noted three regulatory and administrative remedies that would help provide states relief and additional time to secure the necessary funding support: deferral of cost-sharing to the end of the budget period; use of revenue generated from fees during program development for cost-sharing; and promulgation of this rule to provide a temporary waiver of the cost-sharing requirement.

Deferral of cost-sharing. States can request deferral of the cost-sharing requirements until later in the annual grant budget period in order to provide additional time to obtain cost-sharing resources. Regulations governing cost-sharing require only that the costs be incurred under the assistance agreement, i.e., during the budget period identified in the assistance agreement (40 CFR 31.24). This is consistent with the decisions of the Comptroller General. *See e.g.*, 60 Comp. Gen. 208 (1981) (Cost-share requirements are met when nonfederal share is provided by the end of the grant budget period).

Use of fees generated prior to Title V implementation. As part of approved section 105 grant workplans, states have used section 105 grant funds in the development ("ramp-up") of their Title V programs. Fees generated to help develop these Title V programs prior to their approval by EPA, unless otherwise specifically directed by the state to support its Title V program once it is approved, can be used for cost-sharing.

Waiver of cost-sharing requirements. The promulgation of this rulemaking will provide temporary relief in the form of waivers from the cost-sharing requirement in certain very limited circumstances under the authority provided in section 105(c)(1) of the Act. That section authorizes EPA to provide an exemption from both the section 105(c)(1) MOE requirements and the cost-sharing requirements of section 105(a) due to periodic increases experienced by states in their annual expenditures for purposes acceptable to EPA. Because some states assumed they could use the Title V fees for cost-sharing, they are now confronted with unanticipated increases in their expenditures in order to meet the cost-sharing requirements. EPA believes these increases fall within the scope of section 105 waiver authority.

The rule provides that a waiver may be permitted only when the reduction of a state or local agency's nonfederal grant contribution of the required cost-share is due to the redirection of its grant matching resources to the Title V operating permit program.

The waiver will be temporary and available on a case-by-case basis for a 1-year period. The waiver may be renewed for no more than 2 additional years so long as the total waiver period does not expire later than 3 years from the date of initial approval of a state's Title V program. EPA believes the 3-year timeframe is reasonable because it will provide the state legislatures with both annual and biennial sessions the opportunity to take corrective fiscal action. In addition, EPA believes it

could take 3 years for a state to refocus its programs and resources.

The Governor of the state or the Governor's designee, (or in the case of a local air pollution control agency, the accountable authorizing official) must request a waiver from the Regional Administrator on an annual basis. A relevant showing of financial need, which meets the criteria set forth by EPA in §35.205(b), and any criteria in companion guidance to be issued by the Agency, must be provided by the state to the responsible EPA region. The waiver request should describe the nature and timing of the corrective fiscal action the state intends to take to restore its contribution to at least a 40 percent level.

The Governor of the state or the Governor's designee, (or in the case of a local air pollution control agency, the accountable authorizing official) must also provide an assurance that the state will not further reduce its nonfederal contribution below the level authorized by the waiver. The waiver will only be for that portion of the cost-sharing attributable to redirection of resources to Title V.

In addition to the information contained in this rule, EPA will provide supplemental guidance on the waiver and other aspects of this rule.

C. State Allotments and Reserves

The 1990 Amendments revised section 105(b)(2) to clarify that EPA must make available to each state for application, but not necessarily for award, one-half of 1 percent of the total national section 105 grant appropriation. While EPA must allot this amount per state for planning purposes, a state's application must demonstrate that it merits and can effectively utilize the funds it requests for purposes acceptable to the Administrator. EPA is not obligated to provide the full one-half of 1 percent amount. This rule revises 40 CFR 35.115 to reflect this statutory change.

III. Summary of Interim Final Rule

The following is a summary of the changes the EPA intends to make to the existing regulations at 40 CFR part 35, subpart A:

1. Section 35.105 Definitions. Modify the definition of "recurrent expenditures" to show that it does not apply to agreements made pursuant to section 105.

2. Amend §35.115 (a) (State allotments and reserves) so that it is consistent with section 105 (b)(2), as amended, which requires that each state have made available to it for application no less than one-half of 1 percent nor

more than 10 percent of the annual section 105 appropriations.

3. Establish §35.201 (Definitions under section 105) to provide definitions for implementing, and recurrent and nonrecurrent expenditures applicable to the section 105 assistance awards:

a. Add a definition for "implementing". Prior to the 1990 Amendments the Act provided for differing levels of Federal share for grants for "planning, developing, establishing, or improving" air programs and for grants for maintaining air programs. The amendments provide for only one level of Federal share for "implementing" a program.

b. Add a definition for "nonrecurrent expenditures". Use of the definition of "recurrent expenditures" in the existing regulation often resulted in the MOE amount being inequitably raised.

c. Add a revised definition for "recurrent expenditures" for section 105 assistance agreements. The 1990 Amendments require that the current language be revised.

4. Amend §35.205 (Maximum Federal Share) by deleting the existing language and replacing it with one paragraph which reflects the new statutory maximum Federal grant share of 60 percent. A second paragraph provides a method by which grantees negatively-impacted by the transfer of resources to the Title V program may request the EPA to waive the cost-sharing requirement at §35.205(a).

5. Amend §35.210 (Maintenance of Effort) by revising subparagraph (a) to reflect the statutory provision allowing the Regional Administrator to base the initial determination of MOE level on the second preceding fiscal year rather than the preceding fiscal year.

IV. Public Docket

The docket for this regulatory action is A-94-45. The docket is an organized and complete file of all the information submitted to, or otherwise considered by EPA in the development of this interim final rulemaking. The principal purposes of the docket are:

- (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and
- (2) To serve as the record in case of judicial review.

The public docket is located in M1500, 401 M Street SW., Washington, DC 20460. The information contained in this public docket, including printed, paper versions of electronic comments is available for inspection from 8:00 a.m. to 5:30 p.m., Monday thru Friday, excluding legal holidays.

As part of an interagency "streamlining" initiative, EPA is experimenting with submission of public comments on selected rulemaking actions electronically through the Internet in addition to accepting comments in traditional written form. This interim final rule is one of the rulemaking actions selected by EPA for this experiment. From the experiment, EPA will learn how electronic commenting works, and any problems that arise can be addressed before EPA adopts electronic commenting more broadly in its rulemaking activities. Electronic commenting through posting to the EPA Bulletin Board or through the Internet using the ListServe function raises some novel issues that are discussed below in this Section.

To submit electronic comments, persons can either "subscribe" to the Internet ListServe application or "post" comments to the EPA Bulletin Board. To "Subscribe" to the Internet ListServe application for this interim final rule, send an e-mail message to: listserv@unixmail.rtpnc.epa.gov that says "Subscribe RIN-2060-AF03 <first name> <last name>." Once you are subscribed to the ListServe, comments should be sent to: RIN-2060-AF03@unixmail.rtpnc.epa.gov.

For online viewing of submissions and posting of comments, the public-access EPA Bulletin Board is also available by dialing 202-488-3671, enter selection "DMAIL," user name "BB—USER" or 919-541-4642, enter selection "MAIL," user name "BB—USER." When dialing the EPA Bulletin Board type <Return> at the opening message. When the "Notes>" prompt appears, type "open RIN-2060-AF03" to access the posted messages for this document. To get a listing of all files, type "dir/all" at the prompt line. Electronic comments can also be sent directly to EPA at:

Docket-OPPTS@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special control characters and any form of encryption.

To obtain further information on the electronic comment process, or on submitting comments on this interim final rule electronically through the EPA Bulletin Board or the Internet ListServe, please contact John A. Richards (Telephone: 202-260-2253; FAX: 202-260-3884; Internet: richards.john@epamail.epa.gov).

Persons who comment, and those who view comments electronically, should be aware that this experimental electronic commenting is administered

on a completely public system. Therefore, any personal information included in comments and the electronic mail addresses of those who make comments electronically are automatically available to anyone else who views the comments.

Commenters and others outside EPA may choose to comment on the comments submitted by others using the RIN-2060-AF03 ListServe or the EPA Bulletin Board. If they do so, those comments as well will become part of EPA's record and included in the public docket for this rulemaking. Persons outside EPA wishing to discuss comments with commenters or otherwise communicate with commenters but not have those discussions or communications sent to EPA and included in the EPA rulemaking record and public docket should conduct those discussions and communications outside the RIN-2060-AF03 ListServe or the EPA Bulletin Board.

EPA will transfer all comments received electronically in the RIN-2060-AF03 ListServe or the EPA Bulletin Board, in accordance with the instructions for electronic submission, into printed, paper form as they are received and will place the paper copies in the official rulemaking docket which will also include all comments submitted directly in writing. All the electronic comments will be available to everyone who obtains access to the RIN-2060-AF03 ListServe or the EPA Bulletin Board; however, the official rulemaking docket is the paper docket maintained at the address in "ADDRESSES" at the beginning of this document. (Comments submitted only in written form will not be transferred into electronic form and thus may be accessed only by reviewing them in the EPA Docket as described above.)

Because the electronic comment process is still experimental, EPA cannot guarantee that all electronic comments will be accurately converted to printed, paper form. If EPA becomes aware, in transferring an electronic comment to printed, paper form, of a problem or error that results in an obviously garbled comment, EPA will attempt to contact the commenter and advise the commenter to resubmit the comment either in electronic or written form. Some commenters may choose to submit identical comments in both electronic and written form to ensure accuracy. In that case, EPA requests that commenters clearly note in both the electronic and written submissions that the comments are duplicated in the other medium. This will assist EPA in

processing and filing the comments in the rulemaking docket.

As with ordinary written comments, at the time of receipt, EPA will not attempt to verify the identities of electronic commenters nor to review the accuracy of electronic comments. Electronic and written comments will be placed in the rulemaking docket without any editing or change by EPA except to the extent changes occur in the process of converting electronic comments to printed, paper form.

EPA will address significant electronic comments either in a notice in the **Federal Register** or in a response to comments document placed in the rulemaking docket for this Interim Final Rule. EPA will not respond to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or conversion to printed paper form as discussed above. Any communications from EPA employees to electronic commenters, other than those described in this paragraph, either through Internet or otherwise are not official responses from EPA.

V. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866, [58 FR 51735, October 4, 1993] the Agency must determine whether the regulatory action is "significant" and therefore 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 not a significant regulatory action under the terms of Executive Order 12866 and is therefore not subject to formal OMB review.

B. Regulatory Flexibility Act

EPA did not develop a Regulatory Flexibility Analysis for this grant-

related rule because it is exempt from notice and comment rulemaking under section 553(a)(2) of the Administrative Procedure Act (5 U.S.C. 553(a)(2)), and therefore is not subject to the analytical requirements of sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604).

C. Paperwork Reduction Act

The information collection activities associated with the administrative requirements of assistance programs have already been approved under the provisions of the Paperwork Reduction Act at 44 U.S.C. 3501 *et seq* and have been assigned OMB control number 2030-0020.

The collection of information associated with the administrative requirements of assistance programs to state and local government agencies is estimated to have a public reporting burden averaging 25 hours annually. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The interim final regulation will cause a modest increase in information collection activity for some respondents above that associated with the normal administrative requirements of assistance programs. This is primarily attributable to the financial demonstration of need required for the approval of a waiver. Approximately 11 to 15 State and local agencies are anticipated to request a waiver.

D. Unfunded Federal Mandates: Enhancing the Intergovernmental Partnership, Executive Order 12875

We believe this regulation will provide relief to State and local governments negatively impacted by the transfer of program activities and resources in compliance with section 502(b) of the Act. While additional funds are not being provided, this rule allows state and local agencies to request waivers of the Act's cost-sharing requirements. The Office of Management and Budget was provided information and documents concerning consultations with state and local governments made directly, and indirectly through state and local groups. Affected state and local officials were also provided the means to participate in the development of this rulemaking through surveys, conference discussions, information papers, formal and informal comments, and communications with a variety of state and local associations.

We also believe, by including provisions for the cost-sharing

requirements to be waived (as discussed above), the rulemaking increases the "flexibility for state and local waivers." Furthermore, in accordance with the Act's requirements, the term "implementing" is being defined to encompass all grant activities in lieu of separately-based cost-share percentages for planning, developing, establishing, or improving programs and program maintenance.

We do not anticipate that these regulations will impose any burdensome effects on the national economy. Indeed, this rule is intended to provide administrative and fiscal relief to affected state and local agencies.

List of Subjects in 40 CFR Part 35

Accounting, Administrative practice and procedures, Environmental protection, Grant programs, Grants administration, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 23, 1994.

Carol M. Browner,
Administrator.

For the reasons set forth in the preamble, 40 CFR part 35, subpart A is amended as follows:

PART 35— STATE AND LOCAL ASSISTANCE

1. The authority citation for part 35, subpart A, continues to read as follows:

Authority: Secs. 105 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7405 and 7601(a)); secs. 106, 205(g), 205(j), 208, 319, 501(a), and 518 of the Clean Water Act, as amended (33 U.S.C. 1256, 1285(g), 1285(j), 1288, 1361(a) and 1377); secs. 1443, 1450, and 1451 of the Safe Drinking Water Act (42 U.S.C. 300j-2, 300j-9 and 300j-11); secs. 2002(a) and 3011 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6912(a), 6931, 6947, and 6949); and secs. 4, 23, and 25(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 136(b), 136(u), and 136w(a)).

2. Section 35.105 is amended by revising the definition of "Recurrent expenditures" to read as follows:

§35.105 Definitions.

* * * * *

Recurrent expenditures, except for the purposes of section 105 of the Clean Air Act (See §35.201), means those expenditures associated with the activities of a continuing environmental program. All expenditures, except those for equipment purchases with a unit acquisition cost of \$5,000 or more, are considered recurrent unless justified by

the applicant as unique and approved as such by the Regional Administrator in the assistance award.

* * * * *

3. In §35.115 paragraph (a) is amended by revising the last sentence to read as follows:

§35.115 State allotments and reserves.

* * * * *

(a) * * * However, no state shall have made available to it for application an allotment of less than one-half of 1 percent nor more than 10 percent of the annual appropriation for section 105 grants.

* * * * *

4. A new §35.201 is added to read as follows:

§35.201 Definitions applicable to Section 105.

For purposes of section 105 of the Clean Air Act the following definitions are to be used in addition to the definitions in §35.105; except that the definition of "Recurrent expenditures" has the meaning set forth below:

Implementing means, within the context of section 105 of the Clean Air Act, as amended, 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 means 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 assistance agreement or an amendment thereto. All other approved project costs are deemed to be recurrent.

Recurrent expenditures means 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 in the assistance award or an amendment thereto.

5. Section 35.205 is revised to read as follows:

§35.205 Maximum Federal share.

(a) The Regional Administrator may provide state, local, interstate, or intermunicipal agencies 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. Air pollution control agencies currently

receiving grants and contributing less than the required minimum of two-fifths of the approved program costs shall have until November 15, 1993 to increase their contribution to the required level.

(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 1-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 2 years so long as the total waiver period does not exceed 3 years from the approval date of a state's permit program required under section 502 of the Clean Air Act (Act).

(1) The waiver may be approved on a case-by-case basis and only when a state or local government's nonfederal contribution is reduced below the required two-fifths minimum as a result of the redirection of its nonfederal 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 nonfederal resources to support the program approved by EPA under section 502(b) of the 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.

6. Section 35.210 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§35.210 Maintenance of effort.

(a) * * * In order for the Regional Administrator 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 application for grant assistance, to that agency's

expenditure level in the second preceding fiscal year.

* * * * *

[FR Doc. 95-150 Filed 1-3-95; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 52

[NE-6-1-6445a; FRL-5115-3]

Approval and Promulgation of Implementation Plans and Delegation of 112(l) Authority; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This final action approves the State Implementation Plan (SIP) submitted by the state of Nebraska. The state's revision includes the creation of a Class II operating permit program, part D (nonattainment) new source review (NSR) rule changes, SO₂ rule corrections, and the use of enhanced monitoring. The creation of a Class II operating permit program enables Nebraska to have a Federally enforceable program for sources not covered by the requirements for major title V sources under the Clean Air Act Amendments (CAAA) of 1990 and part 70 of the Code of Federal Regulations.

DATES: This final rule is effective March 6, 1995 unless by February 3, 1995 adverse or critical comments are received. If the effective date is delayed EPA will publish timely notice in the **Federal Register**.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551-7213.

SUPPLEMENTARY INFORMATION: The state of Nebraska has operated a Federally approved SIP that has implemented the various requirements of the Clean Air Act (Act) since 1972. During the past two decades, numerous revisions and updates have been made to the SIP in response to new applicable requirements, including those requirements generated by the Act's 1990 Amendments. Title 129, Nebraska's Air Quality Regulations, has been the chief regulatory component of the currently approved SIP framework although it is supported by other state rules.

Due to the Act's title V requirements, title 129 has been revised to include permitting requirements for both title V sources and other sources regulated by the SIP. Those sources that will be regulated by the SIP will be part of a Class II operating permit program, while those sources subject to title V will be part of a Class I operating permit program. Both programs will be governed by title 129, December 17, 1993.

After submitting its title V program in November 1993, and those aspects of title 129 that support that program, the state subsequently submitted a proposed revision to the SIP on February 16, 1994. This revision specifically deals with the Class II, SIP-based operating permit program and those aspects of title 129 that support it.

Nebraska's request for a revision to the SIP also includes Part D (nonattainment) NSR changes, SO₂ rule corrections, use of enhanced monitoring, and other miscellaneous changes. The state has also requested approval of the Class II operating permit program pursuant to section 112(l) of the Act, which governs state programs for regulation of hazardous air pollutants.

For a complete and thorough understanding of the state's submission and EPA's analysis, the reader should consult the "Technical Support Document (TSD) for a Revision to the Nebraska State Implementation Plan (SIP) and Request for Approval under Section 112(l)" dated August 12, 1994.

Significant Features of the SIP Revision

A. Definitions

There are approximately 30 new definitions in the revised title 129. Not all of these new definitions affect the SIP, however, as some have been added for title V purposes. Nevertheless, all of the definitions are being incorporated into the SIP to ensure consistent use of terms by the state and EPA.

New definitions or significant topical changes include:

1. The definition of "Federally Enforceable" now includes applicable SIPs, permits, and any requirements in title 129 which are enforceable by the Administrator.

2. The definition of "Primary standard" and "Secondary standard" no longer directly reference section 109 of the Act, but chapter 4 of title 129 instead. This is acceptable since chapter 4 incorporates the primary and secondary standards outlined in 40 CFR 50.4-50.12.

3. The definition of "Significant" has deleted four pollutants: Asbestos,