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 subcribed, 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 costshare. 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