

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.