matching and MOE requirements, the Secretary decided that he had more flexibility to permit a State to use these expenditures to meet matching and MOE requirements even though the period for obligation by the Secretary has started and the State does not yet have a substantially approvable State plan. Thus, the Secretary has decided to permit States to use these expenditures to meet matching and MOE requirements before the date a State plan is found substantially approvable. However, a State that chooses to use its funds for these types of expenditures would risk the possibility that they would be found unallowable because they do not comply with the State plan that is finally approved. The Secretary decided to change the pre-award cost policy so that States managing programs that require matching or MOE expenditures would have greater flexibility to keep those programs running with matching and MOE expenditures during a period when costs would otherwise be unallowable due to the late submission of a State plan.

The Secretary notes that the MOE determination under some programs of the Department is not based on State expenditures under the Federal program. For example, under the newly reauthorized Title I program of the Elementary and Secondary Education Act of 1965, the MOE determination is based on whether a State has expended sufficient funds on free public education. Another example is one of the MOE requirements under the LSCA Title I program under which the MOE determination is based on State expenditures under a State program that has a similar purpose to the Federal program. Under requirements such as these, State expenditures used to meet the MOE requirement do not need to be for allowable costs under the Federal program. Thus, for these types of MOE requirements, even without the change in policy regarding pre-award costs, expenditures made by a State after the start of the obligation period but before the State plan is found substantially approvable may be used by the State to meet MOE requirements.

*Change:* No change has been made to the regulations. However, the Secretary has modified the policy regarding preaward costs to permit grantees to use expenditures made after the date funds become available for obligation by the Secretary and before the date a State plan is found substantially approvable to meet matching and MOE requirements.

When must State plans be submitted?

Comment: Fourteen comments were received concerning the due date specified in proposed § 76.703(a)(1) for submission of State plans. One commenter stated that the proposed submission date change for State plans would not impact that State. Four commenters were concerned that the proposed April 1 submission would be too early: (a) to allow planning time; and, (b) because State program requirements for public input prohibited early submission. One commenter was concerned that an April 1 submission date would not allow sufficient time for Departmental review and feedback to States needing to correct their plans, and still allow adequate time for States to make these corrections before the availability date. Two commenters suggested that an already lengthy process would be made still longer. One commenter believed that the time frame for receiving a plan in substantially approvable form should be 60 days before the start of the obligation period rather than 90 days before that date. Two commenters were concerned that States received their final allocations prior to plan submission in order to provide final financial reports. Three comments concerned precedence of statutory deadlines over regulatory deadlines. One commenter suggested that the Department issue a formal notification to the State when a plan is approved.

Discussion: The Secretary set the deadline date in § 76.703(a)(2) for the submission of State plans as a back-up that would be used only if a program office did not establish its own deadline for submission of State plans. The administrators for each Stateadministered program are free to set deadlines that are appropriate for their programs. Most State-administered programs already have deadlines that are set in statute, regulations, or direct communications with States. The Secretary is aware that the establishment of a deadline three months before the start of the obligation period could have caused hardship on some States if it had been imposed last spring, before States had time to adjust their State-plan preparation processes to mesh with the new regulations. As stated in the May 26, 1994 (59 FR 27404) document, this consideration was one of the factors that the Secretary considered in deciding to defer application of the regulations to submissions made during the spring and summer of 1995. Therefore, the Secretary has decided to leave the deadline in §76.703(a)(2) as stated in the proposed regulations. If a State

believes that the submission date for a particular program should be adjusted due to conditions particular to that program, the issue should be addressed with Department officials responsible for that program.

## Change: None.

When should a plan be considered submitted?

*Comment:* Five commenters opposed the proposed change in the test under proposed §76.703(b) that the Department uses to determine when a State plan is considered submitted. The proposed regulations would change the date of submission from the postmark date to the date the State plan is actually received by the Department. The commenters' reasons for opposition included: (1) the acceptance by other Federal agencies of a postmark date; (2) increased burden on States resulting from reduced time frames to complete plans because of having to mail them earlier in order to assure receipt by the Department by the required date; and (3) lack of control over the mail process, which could have negative financial consequences on States. One commenter did not present a reason for opposing the change from postmark to receipt date.

Discussion: In the past, the Department frequently received grant applications from grantees that had mailed applications on the submission date, with receipt by the Department as much as two weeks later. The lag time created by "mail-in-transit" has resulted in the Department having shortened review time frames for grant applicants, thereby hampering the Department's ability to complete grant reviews within its prescribed time frame. Earlier mailing of a State plan or use of an expedited delivery service by grant applicants would assure the Department a uniform application review period for all State plans under each grant program.

*Change:* None.

Should the Department be required to send documents, including a list of any other documents required to prove eligibility under each program, to States by a date certain, and what should be the effect of the Department's failure to do so?

*Comment:* Some commenters expressed the opinion that the Department should be required to send to States all State plan submission instructions and other relevant materials in a timely manner. Commenters stressed the critical importance this issue plays in allowing States sufficient time to develop and submit plans by the established date, particularly when public input is required.