

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

State Revolving Fund Program Implementation Regulations

AGENCY: Environmental Protection Agency

ACTION: Interim rule with request for comments

SUMMARY: This interim rule implements the State water pollution control revolving fund capitalization grant program. The program, under which the Environmental Protection Agency (EPA) awards grants to States to capitalize funds that will provide assistance for water pollution control purposes, was established in the Water Quality Act of 1987 as a new title VI to the Clean Water Act.

DATES: This interim rule is effective (date of Federal Register publication). Comments must be received on or before (60 days after date of Federal Register publication).

ADDRESS: Comments may be mailed to Geoffrey Cooper, Office of Municipal Pollution Control (WH-546), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Geoffrey Cooper (202/382-2287).

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I. Statutory Authority.

This interim rule implements section 205(m) and title VI of the Federal Water Pollution Control Act (33 U.S.C. § 1285(m) and 33 U.S.C. §§ 1381 - 1387), which is commonly known as the Clean Water Act (the Act). Title VI was established in the Act by the Water Quality Act of 1987 (the Amendments; PL 100-4). Under section 501(a) of the Act, the Administrator of the Environmental Protection Agency (EPA) is authorized to "prescribe such regulations as are necessary to carry out his functions under (the) Act." 33 U.S.C. § 1361(a).

II. Purpose.

Under the newly created title VI of the Clean Water Act, qualifying States will be awarded grants by the EPA to establish and capitalize State water pollution control revolving funds (SRFs). From these funds, the States may provide loans and other forms of assistance, but may not provide grants, for (1) wastewater treatment facility construction, (2) implementation of nonpoint source management programs, and (3) development and implementation of estuary conservation and management plans.

In developing this regulation to implement the provisions of title VI, EPA has attempted to identify all the major program requirements applicable to the SRF program. To that end, this regulation includes items required by the statute and those additional minimum program requirements that EPA considers necessary for effective program management. Administrative requirements applicable to all EPA assistance agreements are contained in EPA's general assistance regulations at 40 CFR Part 31 and debarment and suspension regulations at 40 CFR Part 32.

NOTE: Previous drafts of these regulations, which have been informally reviewed by Agency and State personnel, began at 40 CFR § 35.4000 and ended with 40 CFR

§ 35.4080. Because the § 35.4000 series is already occupied, the numbering scheme has been changed. These regulations now begin at 40 CFR § 35.3100 and end at 40 CFR § 35.3170. Also, the numbering sequence, which in previous draft was divided by 10, is now divided by 5 to eliminate a level of subparagraphs.

III. The SRF Capitalization Grant Program of Title VI

(40 CFR 35, Subpart K).

The new title VI of the Act authorizes EPA to award capitalization grants to States that have established SRFs that comply with the requirements of title VI. The States must also contribute to the capitalization of their SRFs by depositing State monies equaling at least 20 percent of each

grant payment. From these funds the States may provide loans and other types of financial assistance, but may not provide grants, to local communities, intermunicipal, interstate and State agencies for the construction of publicly owned wastewater treatment facilities, and to eligible recipients for implementation of the new nonpoint source pollution control program and for development and implementation of estuary protection plans.

Congress anticipated that most of the financial assistance provided by the SRFs would be in the form of loans. Loan repayments would then provide a continuing source of capital for States to make additional assistance available to localities and other eligible recipients for water pollution control facilities and programs.

The SRF capitalization grants program is fundamentally different from the established construction grants program. In the construction grants program EPA awards grants directly to municipalities for the Federal share of the eligible costs of treatment work construction. The program is Federally administered and most of the program activities are conducted by the States under delegation agreements. The Federal role in the capitalization grants program is limited to program-level grants-making and review. Each SRF is to be administered and operated by the State, with minimal Federal requirements imposed on its structure.

IV. SRF Program Implementation.

At least three major objectives are apparent in the language and the legislative history of title VI. Congress devised the SRF capitalization grant program to enable States to quicken the pace of wastewater treatment facility construction in order to meet the enforceable requirements of the Clean Water Act, to increase the emphasis on nonpoint source pollution control and the protection of estuaries and to facilitate the establishment of permanent institutions in each State that would provide continuing sources of financing needed to maintain water quality. EPA intends to achieve these objectives by implementing the program pursuant to this rule.

Before this rule was promulgated, the SRF capitalization grant program was implemented in accordance with the requirements set forth in the Initial Guidance for State Revolving Funds. The Initial Guidance was signed by the Assistant Administrator for Water on January 28, 1988 and made available to the public by the Agency on February 2, 1988 (53 FR 2887). A supplementary memorandum to the Initial Guidance was signed by the Assistant Administrator for Water on September 30, 1988 and issued to the Agency's Regional offices and appropriate State agencies. Program requirements contained in these two documents are superseded by these regulations.

The Initial Guidance, the SRF Management Manual and other memoranda such as periodic question and answer documents, and model agreements and reports, will provide guidance on SRF program implementation. State specific details regarding the operation of revolving loan fund programs will be developed between the States and EPA Regional Offices during the capitalization grant agreement process.

Shortly after enactment of the 1987 Amendments, the Agency convened a workgroup to prepare a Concept Paper outlining an approach to implementation of the new program. Regional personnel, personnel from other Federal agencies such as the Treasury Department,

representatives of State environmental protection agencies and municipal interests participated on the workgroup preparing the Concept Paper and, later, the draft of the Initial Guidance. The Concept Paper was made available for public comment on April 8, 1987 (52 FR 12249). Through the late spring and early summer of 1987, the workgroup analyzed comments on this document and began preparing the draft Initial Guidance, which was also issued for public comment on September 4, 1987 (52 FR 33643).

The Agency then analyzed the public's response to the implementation approach reflected in the draft Initial Guidance. Nearly half of the responses were from the State agencies that will administer the program. Other respondents included municipalities and municipal interests, financial firms and engineers. Issues raised were resolved and incorporated in the final Initial Guidance, which forms the basis for these interim regulations. Several of the key provisions in the regulations are discussed below.

V. Major Matters in this Rule.

A. Payments and cash draws (40 CFR § 35.3155 and 40 CFR § 35.3160).

The payments issue received the most attention throughout the development of the Initial Guidance. For each capitalization grant, the Agency will make payments by increasing the amount of funds available for cash draw in a letter of credit (LOC). These payments will be made quarterly according to a payment schedule negotiated between the Regional office and the State. The State will draw cash under the letter of credit according to rules applicable to each form of assistance.

By making grant amounts available in keeping with the State's binding commitments and by permitting cash draws from the LOC at the time construction costs or other eligible costs are incurred, the letter of credit mechanism will enable States to effectively operate SRF programs, and to use the fund for any purpose permitted by the Act. while enabling the Federal government to manage outlays efficiently.

With its first capitalization grant, the State must submit a schedule of estimated quarterly disbursements from the grant for the year following the grant award date. At the end of the third quarter of each Federal fiscal year thereafter, the State must submit a schedule of estimated quarterly disbursements for the following Federal fiscal year. If the State anticipates that actual quarterly disbursements may deviate significantly (by more than ten percent) from the estimated amounts, it must notify the Agency.

B. Refinancing (40 CFR § 35.3120(b)).

In addition to loans and other forms of assistance, title VI authorizes an SRF to refinance local "debt obligations incurred after March 7, 1985," the date on which the Water Quality Act was introduced in the Senate. The statutory language does not indicate whether a community must have commenced construction after that date as well. However, the legislative history of this provision indicates that Congress was seeking to spur construction of needed projects while title VI was being considered, and not to encourage communities to refinance construction that

had been completed or that was underway on that date. Therefore, an SRF may refinance debt where that debt was incurred and building began after March 7, 1985.

Projects that began between March 7, 1985 and the issuance of the Initial Guidance on January 28, 1988 must comply with the requirements of title VI in order to be eligible for refinancing. For example, if a State wishes to count the costs of refinancing a project toward satisfaction of title II requirements in section 602(b)(5), that project must have undergone an environmental review that conformed generally with the National Environmental Policy Act. Projects that began after the Initial Guidance was issued but before the effective date of this rule must comply with the statutory requirements and with any additional requirements in the Initial Guidance. Projects that begin after the effective date of this rule must meet all of its requirements.

C. State Match (40 CFR § 35.3135(b)).

The Act requires the State to deposit State monies in the SRF in an amount equaling at least 20 percent of each Federal grant payment. During development of the Initial Guidance, considerable discussion arose over whether the SRF itself could participate in acquiring the State's matching amount, or whether the match must be derived from traditional sources of revenues, such as annual legislative appropriations.

As provided for in the Initial Guidance, this rule permits States to issue bonds to acquire the match, and retire bonds with the interest earned by the Fund. Other proposed mechanisms by which the fund will participate in deriving the match must be reviewed on an individual basis to ensure that they do not impair the SRF's integrity and to demonstrate that the money is not derived from other Federal sources, unless specifically permitted by the Federal law under which it is available.

The rule also permits the State to provide its match in an LOC or other financial arrangement similar to the Federal LOC, provided that the State's proportional share is converted to cash when the Federal letter of credit is drawn upon.

D. "First Use" Requirements (40 CFR § 35.3135(e)).

Congress directed States to address certain projects needing construction to comply with the enforceable requirements of the Act, before SRF funds can be used for other eligible purposes. This requirement applies to the Federal grant, the State match and repayments of principal and payments of interest from the first round of loans issued from the Federal grant. Before these funds may be used for any purpose authorized by the Act, the State's National Municipal Policy major and minor treatment works must be maintaining progress toward compliance with the enforceable goals, deadlines and requirements of the Act.

This interpretation of section 602(b)(5) is consistent with the legislative history of the Act. The Conference Report to the 1987 Amendments explains that "funds as a result of capitalization grants" include the grant, the State match and the repayments of loans issued from the grant. The Act describes the projects that must comply with the enforceable requirements of the Act, including the municipal compliance deadline of July 1, 1988.

E. Environmental Review Requirements (40 CFR § 35.3140).

Under section 602(b)(6), all section 212 publicly owned treatment works projects assisted with funds "directly made available by" capitalization grants, including activities conducted under sections 319 and 320 that are also section 212 publicly owned treatment works, must undergo environmental reviews that are substantially similar to the reviews conducted in the title II program under the National Environmental Policy Act (NEPA). During development of the Initial Guidance, this matter emerged as one for which the Agency felt an additional program requirement was necessary.

This rule extends less detailed environmental review requirements to all section 212 projects funded from sources other than funds "directly made available by" capitalization grants. The statutory basis for imposing this requirement, which is in keeping with the Agency's mission, is section 602(a) of the Act. Section 602(a) authorizes the Administrator to include requirements in the capitalization grant agreement that are not specified in that section. Projects that are statutorily subject to review under section 602(b)(6) must undergo a State environmental review process that reflects the essential elements of NEPA. All other section 212 treatment works projects are subject to less detailed environmental review requirements.

F. Cross-cutting Authorities (40 CFR § 35.3145).

There are a number of other Federal laws and directives that apply by their own terms to all projects or activities receiving Federal financial assistance, regardless of whether the statute authorizing the assistance makes them applicable. The Agency has determined that these "cross-cutting" authorities apply to SRF programs or projects assisted with funds "directly made available by" capitalization grants, which are funds equaling the amount of the Federal grant. The Agency has also determined that all activities of the State capitalization grant recipient (for example, the State's administration of the program) are subject to the Civil Rights Act, pursuant to the Civil Rights Restoration Act of 1988. A list of these cross-cutting authorities is attached as Appendix F of the Initial Guidance. Each capitalization grant agreement will contain a condition ensuring that the projects or activities assisted with funds "directly made available by" capitalization grants will comply with the cross-cutting authorities and that the State will notify the Regional office when consultation or coordination with other Federal agencies is necessary to resolve compliance issues. The rule describes the extent to which cross-cutting authorities apply.

VI. Regulation Development.

A. Executive Order 12291.

This regulation has been reviewed under Executive Order 12291 and does not meet the criteria for a major regulation. This regulation will not result in: an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or U.S. enterprises operating in foreign or domestic markets. Because this regulation is not a major rule, a Regulatory Impact

Analysis is not required. This regulation has been submitted to the Office of Management and Budget for review under the Executive Order.

B. Regulatory Flexibility Act.

EPA did not develop a regulatory flexibility analysis for this rule because grants regulations are not subject to the analytical requirements of sections 603 and 604 of the Regulatory Flexibility Act.

C. Paperwork Reduction Act.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. § 3501 et. seq, and has assigned OMB control number 2040-0118.

Public reporting burden for this collection is estimated to average 290 hours per response, including time for reviewing instructions, searching existing data, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 ; and to the Office of Management and Budget, Paperwork Reduction Project (2040-0118) Washington, D.C. 20503, marked "Attention, Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR 35.

Capitalization grants, State water pollution control revolving funds, Wastewater treatment

William K. Reilly

Administrator

Date

For the reasons set forth in the preamble, the Environmental Protection Agency is amending 40 CFR Part 35 by adding a new subpart K to read as follows:

Part 35--State and Local Assistance

Subpart K--State Water Pollution Control Revolving Funds

Sec.

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Appendix A--Criteria for evaluating a State's proposed NEPA-like process

Subpart K--State Water Pollution Control Revolving Funds

Authority: Sections 205(m), 501(a) and title VI of the Clean Water Act, as amended, 33 U.S.C. § 1285(m), 33 U.S.C. § 1361(a), 33 U.S.C. §§ 1381 - 1387.

§ 35.3100 Policy and Purpose.

(a) The Agency intends to implement the State water pollution control revolving fund program in a manner that preserves for States a high degree of flexibility for operating their revolving funds in accordance with each State's unique needs and circumstances. The purpose of these regulations is to advance the general intent of title VI of the Clean Water Act, which is to ensure that each State's program is designed and operated to continue providing assistance for water pollution control activities in perpetuity.

(b) These regulations reflect statutory and program requirements that have been previously published in the Initial Guidance for State Revolving Funds, which was signed by the Assistant Administrator for Water on January 28, 1988, and the supplementary memorandum to the Initial Guidance for State Revolving Funds, which was signed by the Assistant Administrator for Water on September 30, 1988. Copies of both documents can be obtained by writing the Office of Municipal Pollution Control (WH-546), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

(c) These regulations supplement title VI by codifying all major program requirements, applicable to the SRF program. EPA will not impose additional major program requirements without an opportunity for affected parties to comment. The process for amending this regulation to incorporate these requirements will begin within three months of their issuance.

§ 35.3105 Definitions.

Words and terms that are not defined below and that are used in this rule shall have the same meaning they are given in 40 CFR Part 31 and 40 CFR Part 35, Subpart I.

(a) Act. The Federal Water Pollution Control Act, more commonly known as the Clean Water Act (PL 92-500), as amended by the Water Quality Act of 1987 (PL 100-4). 33 U.S.C. 1251 et. seq.

(b) Binding Commitment. A legal obligation by the State to a local recipient that defines the terms for assistance under the SRF.

(c) Capitalization Grant. The assistance agreement by which the EPA obligates and awards funds allotted to a State for purposes of capitalizing that State's revolving fund.

(d) Cash draw. The transfer of cash under a letter of credit (LOC) from the Federal Treasury into the State's SRF.

(e) Disbursement. The transfer of cash from an SRF to an assistance recipient.

(f) Equivalency projects. Those section 212 wastewater treatment projects constructed in whole or in part before October 1, 1994, with funds "directly made available by" the capitalization grant. These projects must comply with the requirements of section 602(b)(6) of the Act.

(g) Funds "directly made available by" capitalization grants. Funds equaling the amount of the grant.

(h) Payment. An action by the EPA to increase the amount of capitalization grant funds available for cash draw from an LOC.

(i) SRF. State water pollution control revolving fund.

§ 35.3110 Fund establishment.

(a) Generally. Before the Regional Administrator (RA) may award a capitalization grant, the State must establish an SRF that complies with section 603 of the Act and this rule.

(b) SRF accounts. The SRF can be established within a multiple-purpose State financing program. However, the SRF must be a separate account or series of accounts that is dedicated solely to providing loans and other forms of financial assistance, but not grants.

(c) SRF administration. The SRF must be administered by an instrumentality of the State that is empowered to manage the Fund in accordance with the requirements of the Act. Where more than one agency of the State is involved in administering the activities of the State's program, the functions and the relationships of those agencies must be established to the satisfaction of the RA.

(d) Documentation of the establishment of an SRF program.

(1) As part of its initial application for the capitalization grant, the State must furnish the RA with documentation of the establishment of an SRF and designation of the State instrumentality that will administer the SRF in accordance with the Act.

(2) With each capitalization grant application, the State's Attorney General (AG), or someone designated by the AG, must sign or concur in a certification that the State legislation establishing the SRF and the powers it confers are consistent with State law, and that the State may legally bind itself to the terms of the capitalization grant agreement.

(3) Where waiting for the AG's signature or concurrence would by itself significantly delay awarding the first grant (i.e., there are no other issues holding up the award), the head or chief legal officer of the State agency which has direct responsibility for administering the SRF program may sign the certification at the time of the capitalization grant award, provided the capitalization grant agreement contains a special condition requiring the State to submit the AG/designee's concurrence to EPA within a reasonable time, not to exceed 120 days, after the grant is awarded.

(e) Allotment.

(1) Appropriations for fiscal years 1987 through 1990 under both the title II and title VI programs will be allotted in accordance with the formula contained in section 205(c)(3) of the Act.

(2) Title VI funds are available for the Agency to obligate to the State during the fiscal year in which they are allotted and during the following fiscal year. The amount of any title VI allotment not obligated to the State at the end of this period of availability will be reallotted for title VI purposes in accordance with 40 CFR § 35.2010.

(3) A State that does not receive grants that obligate all the funds allotted to it under title VI in the first year of its availability will not receive reallotted funds from that appropriation.

(4) Notwithstanding 40 CFR § 35.910 and 40 CFR § 35.2010(a), deobligations and reallotments of title II funds may be transferred to a title VI capitalization grant regardless of either the year in which the title II funds were originally allotted or the year in which they are deobligated or reallotted.

(f) Transfer of title II allotments. A State may exercise the option to transfer a portion of its title II allotment for deposit, through a capitalization grant, into an established water pollution control revolving fund, under section 205(m) of the Act.

(1) If the State elects this option, the Governor of the State must submit a Notice of Intent to the RA specifying the amount of the title II allotment the State intends to use for title VI purposes during the fiscal year for which it is submitted. The Notice may also identify anticipated, unobligated title II funds from the prior fiscal year, and request transfer of those funds as well.

(2) Each Notice of Intent must be submitted on or before July 3 of the year preceding the Federal fiscal year in which those funds are available. If a State fails to file a Notice of Intent on or before the prescribed date, then the State may not transfer title II allotments into an SRF in the upcoming fiscal year. A timely Notice of Intent may be later withdrawn or amended.

(3) When the capitalization grant is awarded, funds requested under section 205(m) of the Act will be obligated under title VI for the activities of the SRF. If a Notice of Intent anticipates transfer of funds under the authority of section 205(m), but those funds are not so obligated by the end of the two year period of availability, they will be subject to reallotment as construction grant funds.

(g) Reserves and transferred allotments.

(1) Funds reserved under section 205(g) of the Act can be used to develop SRF programs. However, before any of these funds may be used for purposes of the SRF, the State must establish to the satisfaction of the RA that adequate funds, up to the section 205(g) maximum, will be available from any source to administer the construction grants program.

(2) Funds reserved under sections 205(j)(1) and 205(j)(5) of the Act must be calculated based on the State's full title II allotment, and cannot be transferred to the SRF.

(3) Funds reserved under sections 201(l)(2), 205(h), and 205(i) of the Act must also be calculated based upon the State's full title II allotment. However, these reserves may be transferred into an SRF.

(4) The State must reserve from each fiscal year's title VI allotment the greater of one percent of its allotment or \$100,000 to carry out planning under sections 205(j) and 303(e) of the Act.

(Approved by the Office of Management and Budget under control number 2040-0118)

§ 35.3115 Eligible activities of the SRF.

Funds in the SRF shall not be used to provide grants. SRF balances must be available in perpetuity and must be used solely to provide loans and other authorized forms of financial assistance:

(a) to municipalities, intermunicipal, interstate, or State agencies for the construction of publicly owned wastewater treatment works as these are defined in section 212 of the Act and that appear on the State's priority list developed pursuant to section 216 of the Act; and

(b) for implementation of a nonpoint source pollution control management program under section 319 of the Act; and

(c) for development and implementation of an estuary conservation and management plan under section 320 of the Act.

§ 35.3120 Authorized types of assistance.

The SRF may provide seven general types of financial assistance.

(a) Loans. The SRF may award loans at or below market interest rates, or for zero interest.

(1) Loans may be awarded only if:

(i) all principal and interest payments on loans are credited directly to the SRF;

(ii) the annual repayment of principal and payment of interest begins not later than one year after project completion;

(iii) the loan is fully amortized not later than twenty years after project completion; and

(iv) each loan recipient establishes one or more dedicated sources of revenue for repayment of the loan.

(2) Where construction of a treatment works has been phased or segmented, loan repayment requirements apply to the completion of individual phases or segments.

(b) Refinancing existing debt obligations. The SRF may buy or refinance local debt obligations at or below market rates, where the initial debt was incurred after March 7, 1985, and building began after that date.

(1) Projects otherwise eligible for refinancing under this section on which building began:

(i) before January 28, 1988 (the effective date of the Initial Guidance for State Revolving Funds) must meet the requirements of title VI to be fully eligible.

(ii) after January 28, 1988, but before the effective date of this rule, must meet the requirements of title VI and of the Initial Guidance for State Revolving Funds to be fully eligible.

(iii) after (effective date of the rule) must meet the requirements of this rule to be fully eligible.

(2) Where the original debt for a project was in the form of a multi-purpose bond incurred for purposes in addition to wastewater treatment facility construction, an SRF may provide refinancing only for eligible purposes, and not for the entire debt.

(c) Guarantee or purchase insurance for local debt obligations. The SRF may guarantee local debt obligations where such action would improve credit market access or reduce interest rates. The SRF may also purchase or provide bond insurance to guarantee debt service payment.

(d) Guarantee SRF debt obligations. The SRF may be used as security or as a source of revenue for the payment of principal and interest on revenue or general obligation bonds issued by the State provided that the net proceeds of the sale of such bonds are deposited in the SRF.

(e) Loan guarantees for "sub-State revolving funds." The SRF may provide loan guarantees for similar revolving funds established by municipal or intermunicipal agencies, to finance activities eligible under title VI.

(f) Earn interest on fund accounts. The SRF may earn interest on Fund accounts.

(g) SRF administrative expenses.

(1) Money in the SRF may be used for the reasonable costs of administering the SRF, provided that the amount does not exceed 4 percent of all grant awards received by the SRF. Expenses of the SRF in excess of the amount permitted under this section must be paid for from sources outside the SRF.

(2) Allowable administrative costs include all reasonable costs incurred for management of the SRF program and for management of projects receiving financial assistance from the SRF. Reasonable costs unique to the SRF, such as costs of servicing loans and issuing debt, SRF program start-up costs, financial, management, and legal consulting fees, and reimbursement costs for support services from other State agencies are also allowable.

(3) Unallowable administrative costs include the costs of administering the construction grant program under section 205(g), permit programs under sections 402 and 404 and Statewide wastewater management planning programs under section 208(b)(4).

(4) Expenses incurred issuing bonds guaranteed by the SRF, including the costs of insuring the issue, may be absorbed by the proceeds of the bonds, and need not be charged against the 4 percent administrative costs ceiling. The net proceeds of those issues must be deposited in the Fund.

§ 35.3125 Limitations on SRF assistance.

(a) Prevention of double benefit. If the SRF makes a loan in part to finance the cost of facility planning and preparation of plans, specifications, and estimates for the building of treatment works and the recipient subsequently receives a grant under section 201(g) for the building of treatment works and an allowance under section 201(l)(1), the SRF shall ensure that the recipient will promptly repay the loan to the extent of the allowance.

(b) Assistance for the non-Federal share.

(1) The SRF shall not provide a loan for the non-Federal share of the cost of a treatment works project for which the recipient is receiving assistance from the EPA under any other authority.

(2) The SRF may provide authorized financial assistance other than a loan for the non-Federal share of a treatment works project receiving EPA assistance if the Governor or the Governor's designee determines that such assistance is necessary to allow the project to proceed.

(3) The SRF may provide loans for subsequent phases, segments, or stages of wastewater treatment works that previously received grant assistance for earlier phases, segments, or stages of the same treatment works.

(4) A community that receives a title II construction grant after the community has begun building with its own financing, may receive SRF assistance to refinance the pre-grant work, in accordance with the requirements for refinancing set forth under § 35.3120(b) of this part.

(c) Publicly owned portions. The SRF may provide assistance for only the publicly owned portion of the treatment works.

(d) Private operation. Contractual arrangements for the private operation of a publicly owned treatment works will not affect the eligibility of the treatment works for SRF financing.

(e) Water quality management planning. The SRF may provide assistance only to projects that are consistent with any plans developed under sections 205(j), 208, 303(e), 319 and 320 of the Act.

§ 35.3130 The capitalization grant agreement.

(a) Contents. The capitalization grant agreement must contain or incorporate by reference the State's application, Intended Use Plan, agreed upon payment schedule, State environmental review process and certifications or demonstrations of other agreement requirements and, where used, the SRF Operating Agreement.

(b) Operating agreement. At the option of the State, the organizational and administrative framework and those procedures of the SRF program that are not expected to change annually may be described in an Operating Agreement (OA). The OA must be incorporated by reference in the grant agreement.

(c) Application requirements. The State must certify in its application that it has the legal, managerial, technical, and operational capabilities to administer the program.

(Approved by the Office of Management and Budget under control number 2040-0118)

§ 35.3135 Specific capitalization grant agreement requirements.

(a) Agreement to accept payments. The State must agree to accept grant payments in accordance with the negotiated payment schedule.

(b) Provide a State match. The State must agree to deposit into its SRF an amount equaling at least 20 percent of the amount of each grant payment.

(1) The State match must be deposited on or before the date on which the State receives each payment from the grant award. The State may maintain its match in an LOC or other financial arrangement similar to the Federal LOC, provided that the State's proportional share is converted to cash when the Federal LOC is drawn upon.

(2) Bonds issued by the State for the match may be retired from the interest earned by the SRF (including interest on SRF loans) if the net proceeds from the State issued bonds are deposited in the fund. Loan principal must be repaid to the SRF and cannot be used to retire State issued bonds.

(3) The State must identify the source of the matching amount in the capitalization grant application and must establish to the RA's satisfaction that the source is not Federal money, unless specifically authorized to be used for such purposes under the statute making the funds available.

(4) If the State provides a match in excess of the required amount, the excess balance may be banked toward subsequent match requirements.

(5) If the State has deposited State monies in a dedicated revolving fund after March 7, 1985 and prior to receiving a capitalization grant, the State may credit these monies toward the match requirement:

(i) if the monies were deposited in an SRF that subsequently received a capitalization grant and, if the deposit was expended, it was expended in accordance with title VI;

(ii) if the monies were deposited in a separate fund that has not received a capitalization grant, they were expended in accordance with title VI and an amount equal to all repayments of principal and payments of interest from these loans will be deposited in the Federally capitalized fund; or

(iii) if the monies were deposited in a separate fund and used as a reserve consistent with title VI, and an amount equal to the reserve is transferred to the Federally capitalized fund as its function is satisfied.

(c) Binding commitments. The State must make binding commitments in an amount equal to 120 percent of each quarterly grant payment within one year after the receipt of each quarterly grant payment.

(1) Binding commitments may be for any of the types of assistance provided for in sections 40 CFR §§ 35.3120(a), (b), (c), (e) or (f) and for Fund administration under 40 CFR § 35.3120(g).

(2) If the State commits more than the required 120 percent, EPA will recognize the cumulative value of the binding commitments, and the excess balance may be banked towards the binding commitment requirements of subsequent quarters.

(3) If the State does not make binding commitments equaling 120 percent of the quarterly grant payment within one year after it receives the payment, the RA may withhold future quarterly grant payments, and require adjustments to the payment schedule before releasing further payments.

(d) Expeditious and timely expenditure. The State must agree to expend all funds in the SRF in an expeditious and timely manner.

(e) First use of funds.

(1) The State must agree to first use funds in the SRF equaling the amount of the grant, all repayments of principal and payments of interest on the initial loans from the grant, and the state match to address any major and minor publicly owned treatment works (POTW) that the Region and the State have previously identified as part of the National Municipal Policy list for the State.

(2) These funds may be used to fund the cost-effective reserve capacity of these projects.

(3) In order for a State to use these funds for other section 212 POTWs or for nonpoint source (section 319) or estuary (section 320) activities, the State must certify that the POTWs identified in § 35.3135(e)(1) of this sub-part are either:

(i) in compliance; or

(ii) on an enforceable schedule; or

(iii) have an enforcement action filed; or

(iv) have a funding commitment during or prior to the first year covered by the Intended Use Plan.

(4) Other funds in the SRF may be used at any time for the construction of any treatment works on the State's priority list or for activities under sections 319 and 320 of the Act.

(f) Compliance with title II requirements.

(1) The State must agree that equivalency projects will comply with sections 201(b), 201(g)(1), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), 201(n)(1), 201(o), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 211, 218, 511(c)(1), and 513 of the Act.

(2) The State must comply only with the statutory requirements. The State may develop its own procedures for implementing the statutory provisions. The RA will accept State procedures provided that the procedures will adequately assure compliance with the statutory requirements, considered in the context of the SRF program.

(3) Where the State funds equivalency projects for more than the capitalization grant amount, EPA will recognize the cumulative value of the eligible costs of the equivalency projects, and the excess balance may be banked towards subsequent year equivalency requirements.

(4) Only those eligible costs actually funded with loans or other authorized assistance from the SRF may be credited toward satisfaction of the equivalency requirement, and only in the amount of that assistance.

(g) State laws and procedures. The State must agree to commit or expend each quarterly capitalization grant payment in accordance with the State's own laws and procedures regarding the commitment or expenditure of revenues.

(h) State accounting and auditing procedures.

(1) The State must agree to establish fiscal controls and accounting procedures that are sufficient to assure proper accounting for payments received by the SRF, disbursements made by the SRF, and SRF balances at the beginning and end of the accounting period.

(2) The State must also agree to use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards as these are promulgated by the Governmental Accounting Standards Board. Generally accepted government auditing standards are usually defined as, but not limited to, those contained in the U.S. General Accounting Office (GAO) publication "Government Auditing Standards" (1988 revision).

(i) Recipient accounting and auditing procedures. The State must agree to require recipients of SRF assistance to maintain project accounts in accordance with generally accepted government accounting standards as these are promulgated by the Governmental Accounting Standards Board. These accounts must be maintained as separate accounts.

(j) Annual report. The State must agree to make an Annual Report to the RA on the actual use of the funds, in accordance with section 606(d) of the Act.

§ 35.3140 Environmental review requirements.

(a) Generally. The State must agree to conduct reviews of the potential environmental impacts of all section 212 construction projects receiving assistance from the SRF, including nonpoint source pollution control (section 319) and estuary protection (section 320) projects that are also section 212 projects.

(b) NEPA-like State environmental review process. Equivalency projects must undergo a State environmental review process (SERP) that conforms generally to the National Environmental Policy Act (NEPA). The State may elect to apply the procedures at 40 CRF Part 6, Subpart E and related subparts, or apply its own "NEPA-like" SERP for conducting environmental reviews, provided that the following elements are met.

(1) Legal foundation. The State must have the legal authority to conduct environmental reviews of section 212 construction projects receiving SRF assistance. Such authority and supporting documentation must specify:

(i) the mechanisms to implement mitigation measures to ensure that a project is environmentally sound;

(ii) the legal remedies available to the public to challenge environmental review determinations and enforcement actions;

(iii) the State agency primarily responsible for conducting environmental reviews;

(iv) the extent to which environmental review responsibilities will be delegated to local recipients and will be subject to oversight by the primary State agency.

(2) Interdisciplinary approach. The State must employ an interdisciplinary approach for identifying and mitigating adverse environmental effects including, but not limited to, those associated with other applicable Federal environmental authorities.

(3) Decision documentation. The State must fully document the information, processes and premises that influence decisions to:

(i) proceed with a project contained in a finding of no significant impact (FNSI) following documentation in an environmental assessment (EA);

(ii) proceed or not proceed with a project contained in a record of decision (ROD) following preparation of a full environmental impact statement (EIS);

(iii) reaffirm or modify a decision contained in a previously issued categorical exclusion (CE), EA/FNSI or EIS/ROD following a mandatory 5 year environmental reevaluation of a proposed project; and

(iv) if a State elects to implement processes for either partitioning an environmental review or CE from environmental review, the State must similarly document these processes in its proposed SERP.

(4) Public notice and participation.

(i) The State must provide public notice when a CE is issued or rescinded, a FNSI is issued but before it becomes effective, a decision issued 5 years earlier is reaffirmed or revised, and prior to initiating an EIS.

(ii) Except with respect to a public notice of a categorical exclusion or reaffirmation of a previous decision, a formal public comment period must be provided during which no action on a project will be allowed.

(iii) A public hearing or meeting must be held for all projects except for those having little or no environmental effect.

(5) **Alternatives Consideration.** The State must have evaluation criteria and processes which allow for:

(i) comparative evaluation among alternatives including the beneficial and adverse consequences on the existing environment, the future environment and individual sensitive environmental issues that are identified by project management or through public participation; and

(ii) devising appropriate near-term and long-range measures to avoid, minimize or mitigate adverse impacts.

(c) Alternative State environmental review process. The State may elect to apply an alternative SERP to non-equivalency section 212 construction projects assisted by the SRF, provided that such process:

(1) is supported by a legal foundation which establishes the State's authority to review section 212 construction projects;

(2) responds to other environmental objectives of the State;

(3) provides for comparative evaluations among alternatives and account for beneficial and adverse consequences to the existing and future environment;

(4) adequately documents the information, processes and premises that influence an environmental determination; and

(5) provides for notice to the public of proposed projects and for the opportunity to comment on alternatives and to examine environmental review documents. For projects determined by the State to be controversial, a public hearing must be held.

(d) EPA approval process. The RA must review and approve any State "NEPA-like" and alternative procedures to ensure that the requirements for both have been met. The RA will conduct these reviews on the basis of the criteria for evaluating NEPA-like reviews contained in Appendix A to this part.

(e) Modifications to approved SERPs. Significant changes to State environmental review procedures must be approved by the RA.

§ 35.3145 Application of other Federal authorities.

(a) Generally. The State must agree to comply and to require all recipients of funds ``directly made available by" capitalization grants to comply with applicable Federal authorities.

(b) Informing EPA. The State must inform EPA when consultation or coordination by EPA with other Federal agencies is necessary to resolve issues regarding compliance with those requirements.

(c) Civil Rights laws. All programs, projects and activities of the State capitalization grant recipient must be in compliance with the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 and section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500..

(d) MBE/WBE requirements. Requirements for the participation of minority and women owned businesses (MBE/WBEs) will apply to assistance in an amount equaling the grant. To attain compliance with MBE/WBE requirements, the RA will negotiate an overall "fair share" objective with the State for MBE/WBE participation on these SRF funded activities. A fair share objective should be based on the amount of the capitalization grant award or other State established goals. The State may accomplish its fair share objective by requiring certain equivalency projects to undertake affirmative steps that will include the following:

- (1) including small, minority and women's businesses on solicitation lists;
- (2) assuring that small, minority and women's businesses are solicited whenever they are potential sources;
- (3) dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by small, minority and women's businesses;
- (4) establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small, minority and women's businesses;
- (5) using the services of the Small Business Administration and the Office of Minority Business Enterprise of the U.S. Department of Commerce, as appropriate; and
- (6) if the contractor awards subagreements, requiring the contractor to take the affirmative steps in paragraphs (d)(1) through (d)(5) of this section.

(e) MBE/WBE Reporting requirements The State must submit an MBE/WBE Utilization Report (EPA Form SF 334) within 30 days after the end of each Federal fiscal quarter during which the State or its subrecipients award any subagreements.

§ 35.3150 Intended Use Plan (IUP).

(a) Purpose. The State must prepare a plan identifying the intended uses of the funds in the SRF and describing how those uses support the goals of the SRF. This Intended Use Plan (IUP) must be prepared annually and must be subjected to public comment and review before being submitted to EPA. EPA must receive the IUP prior to the award of the capitalization grant.

(b) Contents.

(1) List of Projects.

(i) The IUP must contain a list of publicly owned treatment works projects on the State's project priority list developed pursuant to section 216 of the Act, to be constructed with SRF assistance. This list must include: the name of the community; permit number or other

applicable enforceable requirement, if available; the type of financial assistance; and the projected amount of eligible assistance.

(ii) The IUP must also contain a list of the nonpoint source and national estuary protection activities under sections 319 and 320 of the Act that the State expects to fund from its SRF.

(iii) The IUP must provide information in a format and manner that is consistent with the needs of the Regional Offices.

(2) Short and long term goals. The IUP must describe the long and short term goals and objectives of the State's water pollution control revolving fund.

(3) Information on the SRF activities to be supported. The IUP must include information on the types of activities including eligible categories of costs to receive assistance, types of assistance to be provided, and SRF policies on setting the terms for the various types of assistance provided by the fund.

(4) Assurances and specific proposals. The IUP must provide assurances and specific proposals on the manner by which the State intends to meet the requirements of the following sections of this part: § 35.3135(c); § 35.3135(d); § 35.3135(e); § 35.3135(f); and § 35.3140.

(5) Criteria and method for distribution of funds.

(i) The IUP must describe the criteria and method established for the distribution of the SRF funds and the distribution of the funds available to the SRF among the various types of assistance the State will offer.

(ii) The IUP must describe the criteria and method the State will use to select section 212 treatment work project priority list and projects or programs to be funded as eligible activities for nonpoint sources and estuary protection management programs.

(c) Amending the IUP. The IUP project list may be changed during the year under provisions established in the IUP as long as the projects have been previously identified through the public participation process.

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§ 35.3155 Payments.

(a) Payment schedule. The State must include with each application for a capitalization grant a draft payment schedule based on the State's projection of binding commitments in its IUP. The payment schedule and the specific criteria establishing the conditions under which the State may draw cash from its LOC shall be jointly established by the Agency and the State and included in the capitalization grant agreement. Changes to the payment schedule, which may be negotiated during the year, will be effected through an amendment to the grant agreement.

(b) Estimated disbursements. With the first application for a capitalization grant, the State shall submit a schedule that reflects, by quarters, the estimated disbursements from that grant for the year following the grant award date. At the end of the third quarter of each Federal fiscal year

thereafter, the State must provide the Agency with a schedule of estimated disbursements for the following Federal fiscal year. The State must advise the Agency when significant changes from the schedule of estimated disbursements are anticipated. This schedule must be developed in conformity with the procedures applicable to cash draws in § 35.3160 and must be at a level of detail sufficient to allow the Agency and the State to jointly develop and maintain a forecast of cash draws.

(c) Timing of payments. Payments to the LOC from a particular grant will begin in the quarter in which the grant is awarded and will end no later than the earlier of eight quarters after the capitalization grant is awarded or twelve quarters after advices of allowances are issued to the Regions.

(d) General payment and cash draw rules.

(1) Except as described in § 35.3160(e) and § 35.3160(g), payments will be based on the State's schedule of binding commitments.

(2) The SRF or assistance recipient must first incur a cost, but not necessarily disburse funds for that cost, on an activity for which the State has entered into a binding commitment, in order to draw cash.

(3) Cash draws will be available only up to the amount of payments made.

(4) For loans or for refinancing or purchasing of municipal debt, planning, design and associated pre-building costs that are within the scope of a project built after March 7, 1985, may be included in the assistance agreement regardless of when they were incurred, provided these costs are in conformity with title VI of the Act. The State may draw cash for these incurred pre-building costs immediately upon executing an assistance agreement.

(5) A State may draw cash from the LOC equal to the proportional Federal share at which time the State will provide its proportional share. The Federal proportional share will be 83 1/3 percent of incurred costs and the State's proportional share will be 16 2/3 percent of the incurred costs, except as described below.

(i) Where the State provides funds in excess of the required 20 percent match, the proportional Federal share drawn from the LOC will be the ratio of Federal funds in the capitalization grant to the sum of the capitalization grant and the State funds. Alternatively, the State may identify a group of activities approximately equal to 120 percent of the grant amount, and draw cash from the LOC for 83 1/3 percent of the incurred costs of the identified activities.

(ii) The Federal proportional share may exceed 83 1/3 percent where a State is given credit for its match amount as a result of funding activities in prior years (but after March 7, 1985), or for banking excess match in the SRF in prior years and disbursing these amounts prior to drawing cash. If the entire amount of the State's required match has been disbursed in advance, the Federal proportional share would be 100 percent.

§ 35.3160 Cash draw rules.

(a) Loans. The State may draw cash from the LOC when the SRF receives a request from a loan recipient, based on incurred costs, including prebuilding and building costs.

(b) Refinance or purchase of municipal debt.

(1) Cash draw for completed construction Except as indicated in paragraph (b)(2) of this section, Cash draws shall be made at a rate no greater than equal amounts over the maximum number of quarters that payments can be made, pursuant to § 35.3155(c) of this subpart, and up to the portion of the LOC committed to the refinancing or purchase of the local debt. Cash draws for incurred building costs will generally be treated as refinanced costs.

(2) The State may immediately draw cash for up to five percent of each fiscal year's capitalization grant or two million dollars, whichever is greater, to refinance or purchase local debt.

(3) Projects or portions of projects not constructed. The State may draw cash based on incurred construction costs, as set forth in § 35.3160(a).

(4) Incremental disbursement bonds. For the purchase of incremental disbursement bonds from local governments, cash draws will be based on a schedule that coincides with the rate at which construction related costs are expected to be incurred for the project.

(c) Purchase of insurance. The State may draw cash to purchase insurance as premiums are due.

(d) Guarantees and security for bonds.

(1) Cash draw in the event of default. In the event of an imminent default in debt service payments on the guaranteed/ secured debt, the State can draw cash immediately up to the total amount of the LOC committed to the guarantee/security. If a balance remains in the guarantee portion of the LOC reserve after the default is covered, the State must negotiate a revised schedule for the remaining amount of the guarantee/security.

(2) Cash draw in the absence of default.

(i) The State can draw cash up to the amount of the LOC dedicated for the guarantee or security in accordance with a schedule based on the national title II annual outlay rate (Yr 1: 7%; Yr 2: 35%; Yr 3: 26%; Yr 4:20%; Yr 5: 12%), or actual construction cost. In the latter case, the amount of the cash draw would be the actual construction costs multiplied by the Federal share of the reserve multiplied by the ratio of the reserve to either the amount guaranteed or the proceeds of the bond issue.

(ii) In addition, in the case of a security the State can identify a group of projects whose value equals approximately the total of that portion of the LOC and the State match dedicated as a security. The State can then draw cash based on the incurred construction costs of the selected projects only, multiplied by the ratio of the Federal portion of the security to the entire security.

(3) Aggressive leveraging exception. Where the cash draw rules discussed in § 35.3160(d) would significantly frustrate a State's program, the Agency may permit an exception to these cash draw rules and provide for a more accelerated cash draw, where the State can demonstrate that:

(i) there are eligible projects ready to proceed in the immediate future with enough costs to justify the amount of the secured bond issue;

(ii) the absence of cash on an accelerated basis will substantially delay these projects;

(iii) if accelerated cash draws are allowed, the SRF will provide substantially more assistance; and

(iv) the long term viability of the State program to meet water quality needs will be protected.

(4) Cash draw limitation. When the LOC is used for securing State issued bonds, cash draws cannot be made at a rate greater than equal amounts over the maximum number of quarters that payments can be made, pursuant to section 35.3155(c). Exceptions to this limitation are in cases of default (see § 35.3160(d)(1)) and where cash draws are based on construction costs for all projects, as in § 35.3160(d)(2)(i).

(e) Administrative expenses.

(1) Payments. One payment will be made at the time of the grant, based on the portion of the LOC estimated to be used for administrative expenses.

(2) Cash draw. The State can draw cash based on a schedule that coincides with the rate at which administrative expenses will be incurred, up to that portion of the LOC dedicated to administrative expenses.

(f) Withholding payments. If a State fails to take corrective action in accordance with section 605 of the Act, the Agency shall withhold payments to the SRF. Once a payment has been made by the Agency, that payment and cash draws from that payment will not be subject to withholding because of a State's failure to take corrective action.

§ 35.3165 Reports and audits.

(a) Annual report. The State must provide an Annual Report to the RA beginning the first fiscal year after it receives payments under title VI. The State should submit this report to the RA according to the schedule established in the grant agreement.

(b) Matters to establish in the annual report. In addition to the requirements in section 606(d) of the Act, in its annual report the State must establish that it has:

(1) reviewed all SRF funded section 212 projects in accordance with the approved environmental review procedures;

(2) deposited its match on or before the date on which each quarterly grant payment was made;

- (3) assured compliance with the requirements of § 35.3135(f);
- (4) made binding commitments to provide assistance equal to 120 percent of the amount of each grant payment within one year after receiving the grant payment pursuant to § 35.3135(c);
- (5) expended all funds in an expeditious and timely manner pursuant to § 35.3135(d); and
- (6) first used all funds as a result of capitalization grants to assure maintenance of progress toward compliance with the enforceable requirements of the Act pursuant to § 35.3135(e) of this subpart.

(c) Annual review.

(1) Purpose. The purpose of the annual review is to assess the success of the State's performance of activities identified in the IUP and Annual Report, and to determine compliance with the terms of the capitalization grant agreement. The RA will complete the annual review according to the schedule established in the grant agreement

(2) Records access. After reasonable notice by the RA, the State or assistance recipient must make available to the EPA such records as the RA reasonably requires to review and determine State compliance with the requirements of title VI. The RA may conduct onsite visits as needed to provide adequate programmatic review.

(d) Annual audit.

(1) At least once a year the RA (through the Office of the Inspector General) will conduct, or require the State to have independently conducted, a financial and compliance audit of the SRF and the operations of the SRF. If the State is required to have an independently conducted audit performed, the State may designate an independent auditor of the State to carry out the audit or may contractually procure the service.

(2) The auditor can be a certified public accountant, a public accountant licensed on or before December 31, 1970, or a governmental auditor who meets the qualification standards (Government Auditing Standards). In addition, the auditor must meet the independence standard as enumerated by the General Accounting Office and American Institute of Certified Public Accountants. The Office of the Inspector General may arrange for an EPA audit if the State fails to conduct the audit or if the State's review is otherwise unsatisfactory.

(3) The audit report required under section 606(b) must contain an opinion on the financial statements of the SRF and its internal controls, and a report on compliance with title VI. (4) The audit report must be completed within one year of the end of the appropriate accounting period and submitted to the Office of the Inspector General within 30 days of completion. In cases of State conducted audits, the State will be notified within 90 days as to the acceptability of the audit report and its findings. Audits may be done in conjunction with the Single Audit Act of 1984.

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§ 35.3170 Corrective action.

(a) Causes. If the RA determines that the State has not complied with requirements under title VI, the RA will notify the State of such noncompliance and prescribe the necessary corrective action. Failure to satisfy the terms of the capitalization grant agreement, including unmet conditions or assurances or invalid certifications, is grounds for a finding of non-compliance. In addition, if the State does not manage the SRF in a financially sound manner (e.g. allows consistent and substantial failures of loan repayments), the RA may take corrective action as provided under this section.

(b) RA's course of action. In making a determination of noncompliance with the capitalization grant agreement and devising the corrective action, the RA will identify the nature and cause of the problems. The State's corrective action must remedy the specific instance of noncompliance and adjust program management to avoid noncompliance in the future.

(c) Consequences for failure to take corrective action. If within 60 days of receipt of the non-compliance notice, a State fails to take the necessary actions to obtain the results required by the RA, or to provide an acceptable plan to achieve the results required, the RA shall withhold payments to the SRF until the State has taken acceptable actions. If the State fails to take the necessary corrective action deemed adequate by the RA within twelve months of receipt of the original notice, any withheld payments shall be deobligated and reallotted to other States.

(d) Releasing payments. Once the State has taken the corrective action deemed necessary and adequate by the RA, the withheld payments will be released and scheduled payments will recommence.

APPENDIX A -- Criteria for evaluating a State's proposed NEPA like process.

The following criteria will be used by the RA to evaluate a proposed SERP.

(A) Legal foundation. Adequate documentation of the legal authority, including legislation, regulations or executive orders and/or Attorney General certification that authority exist.

(B) Interdisciplinary approach. The availability of expertise either in-house or otherwise accessible to the State Agency.

(C) Decision documentation. A description of a documentation process adequate to explain the basis for decisions to the public.

(D) Public notice and participation. A description of the process, including routes of publication (e.g., local newspapers and project mailing list), and use of established State legal notification systems for notices of intent, and criteria for determining whether a public hearing is required. The adequacy of a rationale where the comment period differs from that under NEPA and is inconsistent with other State review periods.

(E) Consider alternatives. The extent to which the SERP will adequately consider:

(1) designation of a study area comparable to the final system;

- (2) a range of feasible alternatives, including the no action alternative;
- (3) direct and indirect impacts;
- (4) present and future conditions;
- (5) land use and other social parameters including recreation and open-space considerations;
- (6) consistency with population projections used to develop State implementation plans under the Clean Air Act;
- (7) cumulative impacts including anticipated community growth (residential, commercial, institutional and industrial) within the project study area; and
- (8) other anticipated public works projects including coordination with such projects.