

§ 35.2107

40 CFR Ch. I (7-1-00 Edition)

§ 35.2107 Intermunicipal service agreements.

If the project will serve two or more municipalities, the applicant shall submit the executed intermunicipal agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed treatment works. At a minimum they must include the basis upon which costs are allocated, the formula by which costs are allocated, and the manner in which the cost allocation system will be administered. The Regional Administrator may waive this requirement provided the applicant can demonstrate:

- (a) That such an agreement is already in place; or
- (b) Evidence of historic service relationships for water supply, wastewater or other services between the affected communities regardless of the existence of formal agreements, and
- (c) That the financial strength of the supplier agency is adequate to continue the project, even if one of the proposed customer agencies fails to participate.

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§ 35.2108 Phased or segmented treatment works.

Grant funding may be awarded for a phase or segment of a treatment works, subject to the limitations of § 35.2123, although that phase or segment does not result in compliance with the enforceable requirements of the Act, provided:

- (a) The grant agreement requires the recipient to make the treatment works of which the phase or segment is a part operational and comply with the enforceable requirements of the Act according to a schedule specified in the grant agreement regardless of whether grant funding is available for the remaining phases and segments; and
- (b) Except in the case of a grant solely for the acquisition of eligible real property, one or more of the following conditions exist:
 - (1) The Federal share of the cost of building the treatment works would require a disproportionate share of the State's annual allotment relative to other needs or would require a major

portion of the State's annual allotment;

- (2) The period to complete the building of the treatment works will cover three years or more;
- (3) The treatment works must be phased or segmented to meet the requirements of a Federal or State court order; or
- (4) The treatment works is being phased or segmented to build only the less-than-secondary facility pending a final decision on the applicant's request for a secondary treatment requirement waiver under section 301(h) of the Act.

[49 FR 6234, Feb. 17, 1984, as amended at 50 FR 45895, Nov. 4, 1985]

§ 35.2109 Step 2=3.

The Regional Administrator may award a Step 2=3 grant which will provide the Federal share of an allowance under appendix B and the estimated allowable cost of the project only if:

- (a) The population of the applicant municipality is 25,000 or less according to the most recent U.S. Census;
- (b) The total Step 3 building cost is estimated to be \$8 million or less; and
- (c) The project is not for a treatment works phase or segment.

§ 35.2110 Access to individual systems.

Applicants for privately owned individual systems shall provide assurance of access to the systems at all reasonable times for such purposes as inspection, monitoring, building, operation, rehabilitation and replacement.

§ 35.2111 Revised water quality standards.

After December 29, 1984, no grant can be awarded for projects that discharge into stream segments which have not, at least once since December 29, 1981, had their water quality standards reviewed and revised or new standards adopted, as appropriate, under section 303(c) of the Act, unless:

- (a) The State has in good faith submitted such water quality standards and the Regional Administrator has failed to act on them within 120 days of receipt;
- (b) The grant assistance is for the construction of non-discharging land treatment or containment ponds; or

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(c) The grant assistance is a State program grant awarded under section 205(g) or 205(j) of the Act.

[50 FR 45895, Nov. 4, 1985]

§ 35.2112 Marine discharge waiver applicants.

If the applicant is also an applicant for a secondary treatment requirement waiver under section 301(h) of the Act, a plan must be submitted which contains a modified scope of work, a schedule for completion of the less-than-secondary facility and an estimate of costs providing for building the proposed less-than-secondary facilities, including provisions for possible future additions of treatment processes or techniques to meet secondary treatment requirements.

§ 35.2113 Environmental review.

(a) The environmental review required by part 6 of this chapter must be completed before submission of any application. The potential applicant should work with the State and EPA as early as possible in the facilities planning process to determine if the project qualifies for a categorical exclusion from part 6 requirements, or whether a finding of no significant impact or an environmental impact statement is required.

(b) In conjunction with the facilities planning process as described in § 35.2030(c), a potential applicant may request, in writing, that EPA make a formal determination under part 6 of this chapter.

§ 35.2114 Value engineering.

(a) If the project has not received Step 2 grant assistance the applicant shall conduct value engineering if the total estimated cost of building the treatment works is more than \$10 million.

(b) The value engineering recommendations shall be implemented to the maximum extent feasible.

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§ 35.2116 Collection system.

Except as provided in § 35.2032(c), if the project involves collection system work, such work:

(a) Shall be for the replacement or major rehabilitation of an existing collection system which was not built with Federal funds awarded on or after October 18, 1972, and shall be necessary to the integrity and performance of the complete waste treatment system; or

(b) Shall be for a new cost-effective collection system in a community in existence on October 18, 1972, which has sufficient existing or planned capacity to adequately treat such collected wastewater and where the bulk (generally two-thirds) of the expected flow (flow from existing plus future residential users) will be from the resident population on October 18, 1972. The expected flow will be subject to the limitations for interceptors contained in § 35.2123. If assistance is awarded, the grantee shall provide assurances that the existing population will connect to the collection system within a reasonable time after project completion.

§ 35.2118 Preaward costs.

(a) EPA will not award grant assistance for Step 2=3 and Step 3 work performed before award of grant assistance for that project, except:

(1) In emergencies or instances where delay could result in significant cost increases, the Regional Administrator may approve preliminary building work (such as procurement of major equipment requiring long lead times, field testing of innovative and alternative technologies, minor sewer rehabilitation, acquisition of eligible land or an option for the purchase of eligible land or advance building on minor portions of treatment works) after completion of the environmental review as required by § 35.2113.

(2) If the Regional Administrator approves preliminary Step 3 work, such approval is not an actual or implied commitment of grant assistance and the applicant proceeds at its own risk.

(b) Any procurement is subject to the requirements of 40 CFR part 33, and in the case of acquisition of eligible real property, 40 CFR part 4.

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