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months of receipt of the original notice, any withheld payments shall be deobligated and reallocated 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 TO SUBPART K—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 exists.

(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.

Subpart L [Reserved]

Subpart M—Grants for Technical Assistance

AUTHORITY: 42 U.S.C. 9617(e); sec. 9(g), E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. P. 193.

SOURCE: 57 FR 45316, Oct. 1, 1992, unless otherwise noted.

§ 35.4000 Authority.

This subpart is issued under section 117(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9617(e).

§ 35.4005 Purpose and availability of referenced material.

(a) This subpart codifies policies and procedures for Technical Assistance Grants (TAGs) awarded by EPA to groups of individuals. This subpart establishes the procedures for accepting and evaluating applications, and for awarding and managing TAGs. These provisions supplement the EPA general assistance regulations 40 CFR part 30 and 40 CFR part 33 and are applicable to all applicants/recipients of TAGs.

(b) Any reference to documents made in this subpart necessary to apply for a TAG (i.e., OMB Circulars and EPA forms SF-424, 269, 270) are available through EPA Headquarters and Regional Offices listed in 40 CFR 1.7.

§ 35.4010 Definitions.

As used in this subpart, the following words and terms shall have the meaning set forth below:

Affected means subject to an actual or potential health, economic or environmental threat arising from a release or a threatened release at a facility listed on the National Priorities List (NPL) or proposed for listing under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) where a response action under CERCLA has begun. Examples of affected parties include individuals who live in areas adjacent to NPL facilities whose health is or may be endangered by releases of hazardous substances at the facility, or whose economic interests are directly threatened or harmed.

Applicant means any group of individuals that files an application for a TAG.

Application means a completed formal written request for a TAG that is submitted to a State or the EPA on EPA form SF-424, Application for Federal Assistance (Non-construction Programs).

Award means the TAG agreement signed by both EPA and the recipient.

Award Official means the EPA official delegated the authority to sign grant agreements.

Budget means the financial plan for the spending of all Federal and matching funds (including in-kind contributions) for a TAG project as proposed by the applicant, and negotiated with and approved by the Award Official.

Budget period means the length of time specified in a grant agreement during which the recipient may spend or obligate Federal funds. The budget period may not exceed three (3) years. A TAG project period may be comprised of several budget periods.

Cash contribution means actual non-Federal dollars, or Federal dollars if expressly authorized by statute to do so, that a recipient spends for goods and services and real or personal property used to satisfy the matching funds requirement.

Contract means a written agreement between the recipient and another party (other than a public agency) for services or supplies necessary to complete the TAG project. Contracts include contracts and subcontracts for personal and professional services or supplies necessary to complete the TAG project, and agreements with consultants, and purchase orders.

Contractor means any party (e.g., Technical Advisor) to whom a recipient awards a contract.

EPA means the Environmental Protection Agency. Where a State administers the TAG Program, the term "EPA" may mean a State agency.

Federal facility means a facility that is owned or operated by a department, agency, or instrumentality of the United States.

Grant agreement means the legal document that transfers money, or anything of value, to a recipient to accomplish the purpose of the TAG project. It

specifies budget and project periods, the Federal budget share of eligible project costs, a description of the work to be accomplished, and any terms and conditions.

In-kind contribution means the value of a non-cash contribution used to meet a recipient's matching funds requirement in accordance with 40 CFR 30.307(b). An in-kind contribution may consist of charges for equipment or the value of goods and services necessary to and directly benefiting the EPA-funded project.

Matching funds means the portion of allowable project costs that a recipient contributes toward completing the TAG project using non-Federal funds or Federal funds if expressly authorized by statute. The match may include in-kind as well as cash contributions.

Operable unit means a discrete action that comprises an incremental step toward comprehensively addressing site problems.

Potentially Responsible Party (PRP) means any individual(s) or company(ies) (such as owners, operators, transporters or generators) potentially responsible under sections 106 or 107 of CERCLA for the contamination problems at a Superfund site.

Recipient means any group of individuals that has been awarded a TAG.

Recipient's project manager means the person legally authorized to obligate the organization to the terms and conditions of EPA's regulations and the grant agreement, and designated by the recipient to serve as its principal contact with EPA.

Response action means all activities undertaken to address the problems created by hazardous substances at a National Priorities List site.

Start of response action means the point in time when there is a guarantee or set-aside of funding either by EPA, other Federal agencies, States, or PRPs in order to begin response activities at a site.

Waiver means excusing recipients from following certain anticipated regulatory or administrative requirements if; the authority to issue a waiver is provided in the regulation itself; and

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the Agency believes sufficient justification exists to approve such action. The Award Official has the authority to issue a waiver. Deviation means an exemption from certain provisions of existing regulations, which may be necessary in some unforeseen instances. The Director, Grants Administration Division, is authorized under 40 CFR 30.1001(b) to approve deviations from the requirements of regulations (except for those that implement statutory or executive order requirements) when such situations warrant special consideration.

§ 35.4013 Cost principles.

(a) Recipients and non-profit contractors must comply with the cost principles in OMB Circular A-122.

(b) Profit-making contractors and subcontractors must comply with the cost principles in the Federal Acquisition Regulation (48 CFR part 31).

§ 35.4015 State administration of the program.

(a) Effective October 1, 1992, the Agency will accept applications for and award TAGs in consultation with the States.

(b) The TAG Program will be available at an NPL site where a State response action is scheduled to begin or is underway and a CERCLA-funded cooperative or other written agreement exists between the Agency and the State.

(c) States wishing to administer the TAG Program must inform the appropriate EPA Regional administrator. If a State elects to administer the program, it must do so in conformity with this subpart. Where States administer the program, EPA will have an oversight role.

(d) A State that chooses to administer the TAG Program will receive technical assistance funds plus administrative costs from the Agency under a cooperative agreement. A State will receive \$10,000 for administrative costs for the first TAG. For each subsequent TAG, the State will receive an amount equal to eight (8) percent of the TAG. Using the criteria established under this subpart, the State may select a qualified recipient and provide assistance in either of two ways:

(1) A State will pass through technical assistance funds to a recipient group by way of a subgrant, and reimburse the recipient group for its expenditures as provided at § 35.4080. A State that elects this option is also responsible for monitoring the subgrant to ensure that recipients comply with its terms and with 40 CFR parts 30 and 33; or

(2) If a recipient group agrees, a State will use TAG funds to obtain the services of a Technical Advisor, and provide those services to a grant recipient in lieu of cash. The recipient group may work closely with the State in advertising, reviewing bids and recommending a Technical Advisor, and managing the Technical Advisor. The State will make the final selection of the technical advisor. A State that elects this option becomes directly responsible for awarding the technical assistance contracts, submitting financial and progress reports, and for disbursing all TAG funds in compliance with applicable EPA regulations and requirements.

§ 35.4020 Responsibility requirements.

(a) An applicant must meet the minimum administrative and management capability requirements 40 CFR 30.301. Thus each applicant must demonstrate that it has established reliable procedures or has plans for establishing reliable procedures for record-keeping and financial accountability related to the management of the TAG. These procedures must be in effect before the recipient incurs any costs. If EPA concludes that the applicant is not capable of meeting the responsibility requirements, the application will be rejected.

(b) Each recipient of a TAG must be incorporated as a non-profit organization for the purpose of addressing the Superfund site for which the grant is provided in order to receive a grant, except as provided in paragraph (c) of this section. At the time of award, a recipient must either be incorporated or must demonstrate to EPA that the group has filed the necessary documents for incorporation with the appropriate State agency. No later than the time of the first request for reimbursement for costs incurred, a recipient must submit proof to EPA that the