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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 35

[EPA-HQ-SFUND-2009-0144; FRL-8919-3]

RIN 2050-AG53

### Inclusion of CERCLA Section 128(a) State Response Programs and Tribal Response Programs

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This final rule revises regulations to include State Response Programs and Tribal Response Programs under Section 128(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as among the Environmental Program Grants eligible for inclusion in a Performance Partnership Grant (PPG). The rule also adds State Response Program and Tribal Response Program specific provisions.

**DATES:** This rule is effective on June 16, 2009.

**ADDRESSES:** The mailing address of the Office of Brownfields and Land Revitalization, Office of Solid Waste and Emergency Response, is U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., MC 5105T, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** For general information contact the U.S. EPA's Virginia Fornillo, Office of Solid Waste and Emergency Response, Office of Brownfields and Land Revitalization, at (202) 566-2770 ([fornillo.virginia@epa.gov](mailto:fornillo.virginia@epa.gov)), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0002, Mail Code 5105T.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

State Response Program Grants and Tribal Response Program Grants, authorized under Section 128(a) of CERCLA, are awarded to States and Tribes to establish or enhance the response program of the State or Tribe; capitalize a revolving loan fund for Brownfield remediation under section 104(k)(3); or purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a State or Tribal

response program. Public Law 104-134 authorizes EPA to combine State and Tribal Assistance Grant (STAG) "categorical" program grant funds into PPGs. The CERCLA 128(a) State and Tribal Response program grants are funded from STAG categorical appropriations and are eligible for inclusion under 40 CFR 35.133 and 35.533 in a PPG. On August 20, 2004, EPA implemented a pilot program authorizing EPA Regional Offices to add CERCLA 128(a) State and Tribal Grant program funds into PPGs for one state and one tribe in each region (69 FR 51756).

##### II. This Action

The intent of this action is to include CERCLA 128(a) grants in the list of grants eligible to be included in a Performance Partnership Grant (PPG). Consistent with current Agency guidance on using CERCLA 128 funds, EPA has determined that funds awarded to states and tribes under CERCLA 128(a)(1)(B)(ii) to capitalize a revolving loan fund for Brownfield remediation under section 104(k)(3); or purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a State or Tribal response program are not eligible for inclusion in PPGs. EPA's regulations implementing PPGs are found at 40 CFR 35.101, 40 CFR 35.130-35.138, 40 CFR 35.501 and 40 CFR 35.530-35.538. This rule amends these regulations to include State Response Programs Section CERCLA 128(a) under Title 40 Part 35 Subpart A and Tribal Response Programs Section CERCLA 128(a) under Title 40 Part 35, Subpart B as a PPG eligible grant program. The rule also adds State Response Program and Tribal Response Program specific provisions to 40 CFR Part 35, Subparts A and B.

##### III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments. Although this action does not generally create new binding legal requirements, where it does, such requirements do not substantially and

directly affect Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). Although this grant action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999), EPA consulted with states in the development of these grant guidelines. This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children. This action is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this grant action, when finalized, will contain legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit its final action in its report to Congress under the Act.

##### List of Subjects in 40 CFR Part 35

Environmental protection, Air pollution control, Grant programs—environmental protection, Grant programs—Indians, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 9, 2009.

**Lisa P. Jackson,**  
Administrator.

■ EPA amends 40 CFR Part 35 as follows:

##### PART 35—STATE AND LOCAL ASSISTANCE—[AMENDED]

■ 1. The authority citation for part 35, subpart A continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 300f et seq.; 42 U.S.C. 6901 et seq.; 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 42 U.S.C. 13101 et seq.; Public Law 104-134, 110 Stat. 1321, 1321-299 (1996); Public Law 105-65, 111 Stat. 1344, 1373 (1997); 5. 105-276, 112 Stat. 2461, 2499 (1988).

Subpart A—[Amended]

■ 2. Amend § 35.101 by adding paragraph (a)(20) to read as follows:

§ 35.101 Environmental programs covered by the subpart.

(a) \* \* \*

(20) State Response Program Grants (section 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)).

\* \* \* \* \*

■ 3. Section 35.133 is amended by revising paragraph (a) to read as follows:

§ 35.133 Programs eligible for inclusion.

(a) Eligible programs. Except as provided in paragraph (b) of this section, the environmental programs eligible, in accordance with appropriation acts, for inclusion in a Performance Partnership Grant are listed in § 35.101(a)(2) through (17) and (20). (Funds available from the section 205(g) State Administration Grants program (§ 35.100(b)(18)) and the Water Quality Management Planning Grant program (§ 35.100(b)(19)) and funds awarded to states under State Response Program Grants (§ 35.100(b)(20)) to capitalize a revolving loan fund for Brownfield remediation or purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions may not be included in Performance Partnership Grants.)

\* \* \* \* \*

■ 4. Subpart A is amended by adding an undesignated center heading and §§ 35.419, 35.420 and 35.421 to read as follows:

Subpart A—[Amended]

State Response Program Grants (CERCLA Section 128(A))

§ 35.419 Purpose.

(a) Purpose of section. Sections 35.419 through 35.421 govern State Response Program Grants (as defined in section 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)).

(b) Purpose of program. State Response Program Grants are awarded to States to establish or enhance the

response program of the State; capitalize a revolving loan fund for Brownfield remediation under section 104(k)(3) of CERCLA; or purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a State response program.

§ 35.420 Basis for allotment.

The Administrator allots response program funds to each EPA regional office. Regional Administrators award funds to States based on their programmatic needs and applicable EPA guidance.

§ 35.421 Maximum federal share.

The Regional Administrator may provide up to 100 percent of the approved work plan costs with the exception of the cost shares required by CERCLA 104(k)(9)(B)(iii) for capitalization of revolving loan funds under CERCLA 104(k)(3).

■ 5. Amend § 35.501 by adding paragraph (a)(10) to read as follows:

§ 35.501 Environmental programs covered by the subpart.

(a) \* \* \*

(10) Tribal Response Program Grants (section 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)).

\* \* \* \* \*

■ 6. Section 35.533 is amended by revising paragraph (a) to read as follows:

§ 35.533 Programs eligible for inclusion.

(a) Eligible programs. Except as provided in paragraph (b) of this section, the environmental programs eligible for inclusion in a Performance Partnership Grant are listed in § 35.101(a)(2) through (10) of this subpart. Funds awarded to tribes under Tribal Response Program Grants (§ 35.101(a)(10)) to capitalize a revolving loan fund for Brownfield remediation or purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions may not be included in Performance Partnership Grants.

\* \* \* \* \*

■ 7. Subpart B is amended by adding a new undesignated center heading and §§ 35.736, 35.737 and 35.738 to read as follows:

Subpart B—[Amended]

Tribal Response Program Grants (CERCLA Section 128(A))

§ 35.736 Purpose.

(a) Purpose of section. Sections 35.736 through 35.738 govern Tribal Response Program Grants (as defined in section 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)).

(b) Purpose of program. Tribal Response Program Grants are awarded to Tribes to establish or enhance the response program of the Tribe; capitalize a revolving loan fund for brownfield remediation under section 104(k)(3) of CERCLA; or purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a Tribal response program.

§ 35.737 Basis for allotment.

The Administrator allots response program funds to each EPA regional office. Regional Administrators award funds to Tribes based on their programmatic needs and applicable EPA guidance.

§ 35.738 Maximum federal share.

The Regional Administrator may provide up to 100 percent of the approved work plan costs with the exception of the cost shares required by CERCLA 104(k)(9)(B)(iii) for capitalization of revolving loan funds under CERCLA 104(k)(3).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2007-0287; FRL-8918-2]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Northern Virginia Reasonably Available Control Technology Under the 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This SIP revision consists of a demonstration that the Virginia portion (Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park;