

## Subparts C–D [Reserved]

## Subpart E—Grants for Construction of Treatment Works—Clean Water Act

AUTHORITY: Secs. 109(b), 201 through 205, 207, 208(d), 210 through 212, 215 through 217, 304(d)(3), 313, 501, 502, 511, and 516(b) of the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*

SOURCE: 43 FR 44049, Sept. 27, 1978, unless otherwise noted.

**§ 35.900 Purpose.**

(a) This subpart supplements the EPA general grant regulations and procedures (part 30 of this chapter) and establishes policies and procedures for grants to assist in the construction of waste treatment works in compliance with the Clean Water Act.

(b) A number of provisions of this subpart which contained transition dates preceding October 1, 1978, have been modified to delete those dates. However, the earlier requirements remain applicable to grants awarded when those provisions were in effect. The transition provisions in former §§ 35.905–4, 35.917, and 35.925–18 remain applicable to certain grants awarded through March 31, 1981.

(c) Technical and guidance publications (MCD series) concerning this program which are issued by EPA may be ordered from: General Services Administration (8FFS), Centralized Mailing List Services, Building 41, Denver Federal Center, Denver, Colo. 80225. In order to expedite processing of requests, persons desiring to obtain these publications should request a copy of EPA form 7500–21 (the order form listing all available publications), from EPA Headquarters, Municipal Construction Division (WH–547) or from any regional office of EPA.

**§ 35.901 Program policy.**

The primary purpose of Federal grant assistance available under this subpart is to assist municipalities in meeting enforceable requirements of the Act, particularly, applicable national pollution discharge elimination system (NPDES) permit requirements. The Regional Administrator and States are

authorized and encouraged to administer this grant program in a manner which will most effectively achieve the enforceable requirements of the Act.

**§ 35.903 Summary of construction grant program.**

(a) The construction of federally financed waste treatment works is generally accomplished in three steps: Step 1, facilities plans and related elements; step 2, preparation of construction drawings and specifications; and step 3, building of a treatment works.

(b) The Regional Administrator may award grant assistance for a step 1, step 2, or step 3 project, or, as authorized by § 35.909, for a project involving a combination of step 2 and step 3 (step 2=3 grant). For a step 1, step 2, or step 3 grant award, a “project” may consist of an entire step or any “treatment works segment” (see § 35.905) of construction within a step. In the case of step 2=3 grant awards, a project must consist of all associated step 2 and step 3 work; segmenting is not permitted.

(c) Grants are awarded from State allocations (see § 35.910 *et seq.*) under the Act. No grant assistance may be awarded unless priority for a project has been determined in accordance with an approved State priority system under § 35.915. The State is responsible for determining the amount and timing of Federal assistance to each municipality for which treatment works funding is needed.

(d) An applicant will initially define the scope of a project. The State may revise this initial project scope when priority for the project is established. The Regional Administrator will make the final determination of project scope when grant assistance is awarded (see § 35.930–4).

(e) For each proposed grant, an applicant must first submit his application to the State agency. The basic grant application must meet the requirements for the project in § 35.920–3. If grant assistance for subsequent related projects is necessary, the grantee shall make submissions in the form of amendments to the basic application. The State agency will forward to the appropriate EPA Regional Administrator complete project applications or amendments to them for which the

State agency has determined priority. The grant will consist of the grant agreement resulting from the basic application and grant amendments awarded for subsequent related projects.

(f) Generally, grant assistance for projects involving step 2 or 3 will not be awarded unless the Regional Administrator first determines that the facilities planning requirements of §§ 35.917 to 35.917-9 of this subpart have been met. Facilities planning may not be initiated prior to approval of a step 1 grant or written approval of a “plan of study” accompanied by a reservation of funds (see §§ 35.925-18 and definition of “construction” in § 35.905).

(g) If initiation of step 1, 2, or 3 construction (see definition of “construction” in § 35.905) occurs before grant award, costs incurred before the approved date of initiation of construction will not be paid and award will not be made except under the circumstances in § 35.925-18.

(h) The Regional Administrator may not award grant assistance unless the application meets the requirements of § 35.920-3 and he has made the determinations required by § 35.925 *et seq.*

(i) A grant or grant amendment awarded for a project under this subpart shall constitute a contractual obligation of the United States to pay the Federal share of allowable project costs up to the amount approved in the grant agreement (including amendments) in accordance with § 35.930-6. However, this obligation is subject to the grantee’s compliance with the conditions of the grant (see § 35.935 *et seq.*) and other applicable requirements of this subpart.

(j) Sections 35.937-10, 35.938-6 and 35.945 authorize prompt payment for project costs which have been incurred. The initial request for payment may cover the Federal share of allowable costs incurred before the award except as otherwise provided in § 35.925-18. Before the award of such assistance, the applicant must claim in the application for grant assistance for that project all allowable costs incurred before initiation of project construction. An applicant may make no subsequent claim for payment for such costs. The estimated amount of any grant or

grant amendment, including any prior costs, must be established in conjunction with determination of priority for the project. The Regional Administrator must determine that the project costs are allowable under § 35.940 *et seq.*

(k) Under section 204(b) of the Act, the grantee must comply with applicable user charge and industrial cost recovery requirements; see §§ 35.925-11, 35.928 *et seq.*, 35.929 *et seq.*, 35.935-13, 35.935-15, and appendix B to this subpart.

(l) The costs of sewage collection systems for new communities, new subdivisions, or newly developed urban areas should be included as part of the development costs of the new construction in these areas. Under section 211 of the Act, such costs will not be allowed under the construction grant program; see § 35.925-13.

(m) The approval of a plan of study for step 1, a facilities plan, or award of grant assistance for step 1, step 2, or step 3, or any segment thereof, will not constitute a Federal commitment for grant assistance for any subsequent project.

(n) Where justified, a deviation from any substatutory requirement of this subpart may be granted under § 30.1000 of this chapter.

(o) The Act requires EPA and the States to provide for, encourage and assist public participation in the Construction Grants Program. This requirement for public participation applies to the development of the State water pollution control strategy, the State project priority system, and the State project priority list, under § 35.915; to the development of user charge and industrial cost recovery systems, under §§ 35.925.11, 35.928, and 35.929; and to the delegation of administrative responsibilities for the Construction Grants Program under subpart F of this chapter.

(p) Requirements regarding the award and administration of subagreements are set forth in §§ 35.935 through 35.939.

[43 FR 44049, Sept. 27, 1978, as amended at 44 FR 10302, Feb. 16, 1979]

#### § 35.905 Definitions.

As used in this subpart, the following words and terms mean: