

percent haze after shrinkage. Seams, blisters, wrinkles or other protrusions on shrinkwrap material should not obscure addresses on the top pieces of bundles. We also recommend that any bundle with multiple layers of bundling materials show less than 70 percent haze through all combined layers. We encourage mailers to use USPS Publication 177, Guidelines for Optimizing Readability of Flat-Size Mail.

Summary of the New Standard

Mailers preparing presort bundles must make the delivery address information and any presort label or optional endorsement line visible and readable by the naked eye. The new standard applies to mail processed on APPS equipment. The requirements do not apply to:

- Letter-size mailpieces,
- First-Class Mail flat-size pieces or parcels,
- Mail placed in or on 5-digit or 5-digit scheme sacks or pallets,
- Mail placed in carrier route or 5-digit carrier routes sacks,
- Carrier route mail entered at a destination delivery unit,
- Standard Mail flat-size pieces prepared in letter trays under DMM 345.3.4, and
- Customized MarketMail.

Effective Date

We are revising these standards on October 27, 2005. Recognizing that the mailing industry may have to change some procedures to ensure address visibility, we will allow a six-month grace period for compliance. We will not assess penalties on bundles not meeting the standards until April 30, 2006. Until April 30, 2006, acceptance employees will randomly examine bundles for address visibility. We will provide feedback to mailers at acceptance and via eMIR from destination sites. We also will work closely with mailers to improve address readability on their bundles.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Amend Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM) as listed below:

300 Discount Mail Flats

* * * * *

340 Standard Mail

* * * * *

345 Mail Preparation

* * * * *

2.0 Bundles

* * * * *

[Renumber current 2.2 through 2.13 as new 2.3 through 2.14. Add new 2.2, “Address Visibility,” and revise new 2.11, as explained below. Make these same changes to 445.2.0 (for Standard Mail parcels), 365.2.0 and 465.2.0 (for Bound Printed Matter flats and parcels), 375.2.0 and 475.2.0 (for Media Mail flats and parcels), 385.2.0 and 485.2.0 (for Library Mail flats and parcels), 705.8.5 (for bundles on pallets), and 707.19 (for Periodicals). Exception: Do not repeat items a through e for Media Mail or Library Mail; do not repeat items a and e for Bound Printed Matter and Periodicals.]

2.2 Address Visibility

Mailers preparing presort bundles must ensure that the delivery address information on the top mailpiece in each bundle is visible and readable by the naked eye. Mailers using strapping that might cover the address can avoid obstructing visibility by using clear, smooth strapping tightly secured around the bundle. Mailers using barcoded pressure-sensitive bundle labels, optional endorsement lines, carrier route information lines, or carrier route facing slips also must ensure that the information in these presort designations is visible and readable by the naked eye. This standard does not apply to the following:

- a. Customized MarketMail.
- b. Bundles placed in or on 5-digit or 5-digit scheme (L001) sacks or pallets.
- c. Bundles placed in carrier route and 5-digit carrier routes sacks.
- d. Bundles of mailpieces at carrier route rates entered at a destination delivery unit (DDU).
- e. Bundles of Standard Mail flat-size pieces prepared in letter trays under 345.3.4.

* * * * *

2.11 Labeling Bundles

[Replace the third sentence in 2.11 with the following two sentences to clarify that the bundle label must not obscure the delivery address.]

* * * Barcoded pressure-sensitive bundle labels must not obscure the delivery address block. Banding or

shrinkwrap must not obscure any bundle label. * * *

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 05–20924 Filed 10–19–05; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[FRL–7983–7]

Guidance on Fees Charged by States to Recipients of Clean Water State Revolving Fund Program Assistance

AGENCY: Environmental Protection Agency.

ACTION: Final guidance.

SUMMARY: Title VI of the Clean Water Act (CWA) Amendments of 1987 provides flexibility for States to use four percent of all capitalization grant awards for the reasonable costs of administering their Clean Water State Revolving Fund (CWSRF) programs. Because many States have CWSRF administrative costs which exceed the four percent limit, the U.S. Environmental Protection Agency (EPA) has allowed States to charge fees on CWSRF loans. This guidance addresses the use of fees that are charged on loans and included as principal in loans and the use of fees that are charged on loans but not included as principal in loans. These requirements will be included as terms and conditions in all future grant agreements (or operating agreements).

DATES: This guidance is effective October 20, 2005.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Kit Farber, State Revolving Fund Branch, Municipal Support Division, Office of Wastewater Management (MC–4204M), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The telephone number is (202) 564–0601 and the e-mail address is *farber.kit@epa.gov*.

Copies of this document can be obtained from EPA’s Office of Wastewater Management Web site at <http://www.epa.gov/owm/cwfinance/cwsrf>.

SUPPLEMENTARY INFORMATION:

Background

The CWA authorizes States to charge interest on loans under the CWSRF program. At their discretion, States may provide loans at or below market

interest rates, including interest free loans. Payments of interest on loans together with principal repayments must be credited to the CWSRF.

In addition to collecting principal repayments and interest on loans, some States charge recipients other fees when providing CWSRF assistance. Fees are used for a variety of purposes but most often to supplement funds available for administration of the CWSRF. The manner in which fees are charged to assistance recipients determines the allowable uses for these funds.

Fees can be grouped into one of two categories. Fees either (1) are included as principal in loans or (2) are other charges that are not included in loan principal. This guidance is being issued to address the two categories of CWSRF loan fees since their use is governed by two distinct principles.

Fees included in loan principal are funds originating from the CWSRF, borrowed by the recipient and repaid to the State, most often for loan origination expenses. The use of fees included in CWSRF loan principal is subject to the limitations on eligible uses of CWSRF funds and amounts available for costs of administration found in Title VI of the CWA. The FY 2006 Appropriations Act eased these limitations for fees included in loans made in FY 2006 and in earlier years. Congress may continue extending this provision.

In contrast, other fees charged on loans are paid by the recipient from non-CWSRF funds. These fees are often based on the outstanding balance of the loan in much the same way that interest is charged. These fees may also be charged up-front but are not borrowed from the CWSRF. Examples of these fees are annual loan servicing fees, application fees, loan origination fees, and processing fees.

For this guidance, references to loans are meant to also include any other types of assistance provided by a State to recipients under the CWSRF program. References to the operating agreement are meant to also include the intended use plan where either document is incorporated by reference into the grant agreement.

This guidance was developed with substantial review and comment from EPA Regional staff, national stakeholder organizations, and a State/EPA SRF Work Group comprised of State DWSRF managers, State CWSRF managers, and managers of State financial agencies. Many of the comments received were incorporated into the final guidance.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this guidance

is not a "significant regulatory action" and is therefore not subject to OMB review. Because this grant guidance is not subject to notice-and-comment requirements under the Administrative Procedure 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 1995 (UMRA) (Pub. L. 104-4). In addition, this guidance does not significantly or uniquely affect small governments. This guidance does not have tribal implications, as specified in Executive Order 13175 (63 FR 67249, November 9, 2000). This guidance will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This guidance also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This guidance 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 guidance 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 guidance also does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Because this guidance includes binding legal requirements, it is considered a rule and subject to the Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*). The CRA generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this guidance and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. This guidance is not, however, a "major rule" as defined by 5 U.S.C. 804(2).

Dated: September 26, 2005.

Benjamin H. Grumbles,
Assistant Administrator, Office of Water.

Fees Charged by States to Recipients of Clean Water State Revolving Fund Program Assistance

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I. Fees Included as Principal in Loans

A. Applicability

This section applies where States include fees in a CWSRF loan and the total amount of the loan includes not only the cost of project construction but also the amount of the fee. Particularly, this guidance applies to fees included in loan principal that are charged to borrowers for CWSRF administrative costs. Even though the borrower pays the fee, the amount of the fee originated in the CWSRF and will be repaid to it. For example,

- The State charges the loan recipient an administrative fee based on a percentage of the principal amount of the loan similar to a loan origination fee;
- The recipient borrows funds from the CWSRF to cover the project costs and the fee;
- The loan proceeds are disbursed to the recipient;
- The recipient pays the State the fee; and
- The State deposits the collected amount into an account outside the CWSRF.

The amount borrowed to finance the fee is rolled into the total amount of the loan. Loan repayments consist of the principal amount borrowed for construction, the amount borrowed to finance the fee, and any interest charged on the loan.

Costs of issuing bonds that are initially paid from bond proceeds are not restricted under this guidance even if those costs are subsequently allocated to the borrower and included in loan principal.

B. Limitation on Using CWSRF To Cover Administrative Costs

Because fees included in loan principal originate in the CWSRF, use of these amounts is governed by the CWA. For fees included in loans issued in FY 2006 or prior years, Congress, through

the FY 2006 Appropriations Act, eased the CWA's four percent limit on administration costs. In the absence of additional legislative relief, fees included in loans issued after FY 2006, i.e., after September 30, 2006, are again subject to the CWA's provisions governing administration costs.

The CWA states that the CWSRF may be used "for the reasonable costs of administering the fund and conducting activities under this title, except that such amounts shall not exceed four percent of all grant awards to such fund under this title." [CWA section 603(d)(7)]. CWSRF regulations define allowable administrative costs to "include all reasonable costs incurred for management of the CWSRF program and for management of projects receiving financial assistance from the CWSRF. Reasonable costs unique to the CWSRF, such as costs of servicing loans and issuing debt, CWSRF program start-up costs, financial management and legal consulting fees, and reimbursement costs for support services from other State agencies are also allowable." [40 CFR 35.3120(g)(2)].

The language of the CWA places a ceiling on the amount of all CWSRF moneys that may be used by the State at no more than four percent of the amount of all capitalization grant awards. Further, the CWSRF regulations state: "Money in the CWSRF may be used for the reasonable costs of administering the CWSRF, provided that the amount does not exceed four percent of all grant awards received by the CWSRF." [40 CFR 35.3120(g)(1)].

The four percent limitation applies to all moneys originating or deposited in the CWSRF. Both the moneys paid by the State directly from the CWSRF for administration and the amounts loaned from the CWSRF to a recipient for repayment to the State for administrative costs are applied against the four percent ceiling. If CWSRF moneys are loaned and repaid to the State for administration costs, the amount disbursed is considered used for administration costs at the time it is disbursed from the fund. A fee charged that is not used for administrative costs (but utilized for other eligible uses of the fund) is not counted toward the four percent limit. Similarly, the four percent does not apply to fees paid by loan recipients that do not originate from CWSRF funds (not included in the loan) and are not deposited into the CWSRF.

C. FY 2006 Appropriations Act Provisions

In the FY 2006 Appropriations Act, Congress gave States temporary relief from the four percent limit on

administration costs. The FY 2006 Act provides:

* * * notwithstanding section 603(d)(7) of the Federal Water Pollution Control Act, as amended, the limitation on the amounts in a State water pollution control revolving fund that may be used by a State to administer the fund shall not apply to amounts included as principal in loans made by such fund in the fiscal year 2006 and prior years where such amounts represent costs of administering the fund to the extent that such amounts are or were deemed reasonable by the Administrator, accounted for separately from other assets in the fund, and used for eligible purposes of the fund, including administration."

The relief provided by the Appropriations Act applies to fees included in CWSRF loans made in FY 2006 and prior years only. Such fees must be used for eligible purposes of the fund, including administration, and are not limited by the CWA's four percent ceiling on administration costs if they are accounted for separately from other CWSRF moneys and are deemed reasonable by EPA. Provided the fee amounts are accounted for separately, States may hold fees originating in CWSRF loans either inside or outside the CWSRF. Absent Congressional extension of this provision, however, after September 30, 2006, the four percent limitation again applies to costs of program administration. If, on the other hand, Congress substantively alters the provision pertaining to the four percent limitation, this guidance will be reviewed to determine if changes are needed to reflect such changes.

Of course, States may use fees collected for any of the uses specified as eligible under the CWA, not just administration. Pursuant to section 603(d) of the CWA, the only permissible uses of the CWSRF are loans, certain refinancings, guarantees of and purchasing insurance for certain local financings, as a source of revenue or security for repayment of CWSRF bonds, to guarantee loans of sub-state revolving funds, to earn interest, and for costs of administration. These activities must be undertaken for eligible purposes: "for providing assistance (1) for construction of treatment works (as defined in section 212 of this Act) which are publicly owned, (2) for implementing a management program under section 319, and (3) for developing and implementing a conservation and management plan under section 320." [CWA section 601(a)].

To summarize:

Under the Appropriations Act provisions, States may use fees included in loans in excess of the CWA's four

percent ceiling on CWSRF moneys used for fund administration if:

- The fees were included as principal in CWSRF loans made during FY 2006 or prior years; and
- EPA determines the fees were reasonable in amount; and
- The fees were accounted for separately from other fund assets.

D. Implementation Under the FY 2006 Appropriations Act

EPA Regional Offices should identify which States have included fees in loans and determine the reasonableness of the fees included in loans made in FY 2006 and prior years. If used for eligible purposes, fee amounts collected that were previously described in a State's Intended Use Plan or other document approved by EPA may be deemed reasonable.

For fees already collected, States must identify (1) the amount collected that was included in loan principal; (2) the amount expended; (3) the purposes for which the fees were used; and (4) the amount still remaining. The Regional Offices and Headquarters will work together with each State to ensure compliance with the FY 2006 Appropriations Act and to determine what actions are necessary where State actions are not in conformance with the Appropriations Act.

States must ensure that fee amounts unused and uncollected fees (and interest earnings thereon) included in loans made prior to the end of FY 2006 will also be used only for eligible CWSRF purposes and will be accounted for separately.

E. Implementation for Fees Collected on Loans Made After FY 2006

In the absence of future legislative provisions to the contrary, fees included in CWSRF loans made after September 30, 2006, are subject to the four percent ceiling on administration costs. Fees assessed in this manner will be deemed reasonable provided they do not cause the effective rate of the loan (which includes both interest and fees) to exceed the market rate. Fees and earnings thereon must be used for eligible CWSRF purposes whether held inside or outside the fund.

States that include fees in loan principal may need to modify their operating agreements and other program implementation documents pursuant to this guidance. Each grant agreement or operating agreement entered into after September 30, 2006, must contain provisions to identify the fees included in CWSRF loans and specify the uses of those fees consistent with this guidance. Each grant agreement or operating

agreement incorporated therein by reference must also provide that, for loans made after FY 2006, amounts paid from the CWSRF for fund administration will be limited to an amount equal to four percent of capitalization grant awards. This limit applies to administration amounts paid directly by the State and to amounts disbursed from the CWSRF to a loan recipient and repaid to the State for payment of administration costs. The grant agreement must also require the State to maintain records which account separately for fees collected and also account for CWSRF funds used for CWSRF administrative purposes. The next intended use plan prepared by the State after the effective date of this guidance must identify the type of fees charged on loans, the fee rate, and the amount of fees available for future use. Finally, the annual report must identify the fees included in CWSRF loans, the amount of fees collected, and their use.

II. Fees Charged on CWSRF Assistance But Not Included as Principal in Loans

A. Applicability

This section addresses the use of fees that are charged on CWSRF loans but not included as principal in loans; and discusses the application of the CWA and the program income provisions of EPA's regulations at 40 CFR part 31 to these fees. For this guidance, the term "fees that are charged on CWSRF loans" is meant also to include any other CWSRF loan charges and the income thereon. Costs of issuing bonds that are initially paid from bond proceeds are not restricted under this guidance even if those costs are subsequently allocated to the borrower and included in loan principal.

B. Purpose

There are several purposes for this guidance. First, this guidance clarifies how the program income regulation at 40 CFR 31.25 applies to the CWSRF program. Second, this guidance establishes the parameters for uses of certain program income where additional flexibility is allowed under § 31.25. Third, this guidance establishes the allowable uses of earnings from fees not covered by the program income provisions of § 31.25. This guidance is intended to protect the long-term health of the fund.

Many States charge fees on CWSRF loans issued. Most of these fees are used for supplementing CWSRF moneys available to pay administration costs. However, there has been a wide spectrum of use beside fund administration; some related to water-

quality purposes and others not related even to environmental purposes.

Further, the States and EPA recognize that there is often a direct trade off between the interest rate charged on loans and the fee rate charged on loans. In general, there is a limit to the amount States can charge borrowers before they turn elsewhere for financing. When the fee rate goes up, the interest rate must go down in order to keep the loan affordable and competitive. While loan interest earnings add to the assets of the program, fees are often held outside the fund and used for ancillary purposes. Unlike loan interest earnings, therefore, fees do not add to the assets available to the program or support its growth. The practice of lowering the interest rate on a loan in order to charge a fee reduces the future funding capacity of the program when the fee is not used directly for program purposes.

C. Program Income

1. Definition of Program Income

Program income is defined at 40 CFR 31.25(b) as "gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period." Fees collected or loan charges in addition to principal and interest that are not deposited as loan repayments are "income received by the grantee * * * directly generated by a grant supported activity". The State is receiving income as a result of an activity that is established and operated with the support of a Federal capitalization grant.

According to part 31, income "directly generated by a grant supported activity" is considered program income. Under the CWSRF program, grant supported activities are those activities funded in an amount equal to the dollar amount of the Federal capitalization grant, *i.e.*, funds directly made available by the capitalization grant. Income earned from fees charged on CWSRF loans made from funds directly made available by the capitalization grant is program income and subject to the requirements of the general grant regulations.

The regulations make a distinction between program income earned during the grant period and program income earned after the grant period. "During the grant period" is defined as "the time between the effective date of the award and the ending date of the award reflected in the final financial report" [40 CFR 31.25(b)]. For the CWSRF program, the "ending date of the award" is the date reported in the final

Financial Status Report (FSR) as the end of the period covered by that FSR. Once a State has submitted a final FSR for a particular capitalization grant, fees collected after the end of the period covered by that FSR from loans awarded with that capitalization grant are considered to be earned after the grant period.

Section 31.25 further illustrates what is, and what is not, program income. Program income is described as "fees for services performed" [40 CFR 31.25(a)], but it does not include "(T)axes, special assessments, levies, fines, and other such (governmental) revenues * * * §" [40 CFR 31.25(d)]. The "government revenues" exception was intended to exclude from the program income rules those revenues collected under the general taxing power of the government grant recipient. The fees collected in the CWSRF program are income for services performed, similar to fees charged by banks on private loans.

States and EPA will negotiate specific options for calculating the amount of program income earned. It is important that States are able to account for program income and the amount of fees collected that are not program income as outlined below. Following are three examples that might serve as models in determining the amount of program income earned. Each method could be further refined to account for income earned during the grant period and amounts earned after the grant period:

(1) Program income may be calculated on a project-by-project basis by identifying those projects funded with capitalization grants and determining the amount of fees collected from these projects.

(2) Program income may be calculated based on the amount of capitalization grants awarded by multiplying the amount of capitalization grants by the fee rate charged.

(3) Program income may be calculated by pro-rating the total fees collected between the Federal loan assistance and the non-Federal loan assistance provided. The calculation for program income would be to multiply total fees collected by the ratio of capitalization grants to total loan assistance provided. The remaining fees would not be considered program income.

2. Allowable Uses of Program Income

Pursuant to 40 CFR 31.25(g)(1) program income must be used to "reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project" unless used for one or both of the following alternatives as provided by the grant agreement:

(1) "added to the funds committed to the grant agreement by the Federal agency and the grantee * * * [and] be used for the purposes and under the conditions of the grant agreement" [40 CFR 31.25(g)(2)] or

(2) "used to meet the cost sharing or matching requirement of the grant agreement" [40 CFR 31.25(g)(3)].

Pursuant to section 603(d) of the CWA, the permissible uses of the CWSRF are loans, certain refinancings, guarantees of and purchasing insurance for certain local financings, as a source of revenue or security for repayment of CWSRF bonds, to guarantee loans of sub-state revolving funds, to earn interest, and for costs of administering the CWSRF. These activities must be undertaken for eligible purposes: "for providing assistance (1) for construction of treatment works (as defined in section 212 of this Act) which are publicly owned, (2) for implementing a management program under section 319, and (3) for developing and implementing a conservation and management plan under section 320." [CWA section 601(a)]. Therefore, under the CWSRF, the alternative uses of program income are for these purposes and to provide the required State match. If program income earnings are held outside the CWSRF, their use for administration costs is not counted against the CWA's four percent ceiling on administration costs.

EPA has the express authority to limit the use of program income earned after the grant period [40 CFR 31.25(h)]:

"There are no Federal requirements governing the disposition of program income earned after the end of the award period (*i.e.*, until the ending date of the final financial report * * *), unless the terms of the agreement or the Federal agency regulations provide otherwise."

EPA guidance will allow program income earned after the grant period to be used for a broad range of water quality-related purposes. This guidance requires the inclusion of a grant condition in all capitalization grants awarded or a provision in the operating agreement after the effective date of this guidance so that in addition to the purposes allowed for program income earned during the grant period, amounts collected after the grant period may be used for various water quality activities. Such activities include, but are not limited to: Water quality monitoring; developing total maximum daily loads (TMDLs); permits under the National Pollutant Discharge Elimination System (NPDES) program; unified watershed plans; water quality restoration plans; source water assessments; wastewater treatment operator training programs [CWA section 104(g)(1)]; grants and

loans for planning, designing, and building water quality projects; and management of other State financial assistance programs for water quality-related purposes. States may also use program income earned after the grant period for the combined financial administration of the CWSRF and DWSRF Funds where the programs are administered by the same State agency.

D. Fees Other Than Program Income That Are Not Included as Principal in Loans

Fees collected, that are not included as principal in loans, from activities financed with CWSRF funds other than those directly made available by the capitalization grant are not program income. Under section 602(a) of the CWA, EPA may include conditions in grant agreements in addition to those required to be included by Title VI of the CWA. In keeping with the Agency's mission, EPA has determined that water quality activities should be the beneficiary of any funds generated by the CWSRF program. EPA will treat funds deriving from CWSRF fees that are not program income the same as moneys from program income earned after the grant period, both types of funds being eligible for use in water quality activities. States may also use these fees for the combined financial administration of the CWSRF and DWSRF Funds where the programs are administered by the same State agency.

Further, interest earnings on program income collected during or after the grant period and interest earnings on other fees that are not program income under this section must be used only for water quality activities or for the combined financial administration of the CWSRF and DWSRF Funds where the programs are administered by the same State agency.

E. Implementation of Guidance

Each grant agreement (or operating agreement, if the operating agreement is incorporated by reference into the grant agreement) must contain a provision that allows the use of program income earned during the grant period for the specific purposes identified in 40 CFR 31.25(g)(2) and (3). Failure to specify the permitted uses of program income in the grant agreement or operating agreement, will cause such earnings to be deducted from the grant amount pursuant to § 31.25(g)(1). The grant agreement or operating agreement should also state that if program income is deposited into an account outside the fund, it may be used to supplement fund administration costs above the CWA's four percent ceiling on administration costs.

All grant agreements or operating agreements subsequent to the effective date of this guidance must contain a provision that identifies the ways in which the State will use program income collected after the grant period or other fees collected that are not considered program income. The uses specified must be consistent with this guidance. Fees collected from any loans awarded after the grant agreement or operating agreement become effective must be used only for the specified purposes.

The grant agreement must also require the State to maintain records which account separately for fees collected and specify how those amounts were used. States must account separately for program income earned during the grant period, program income earned after the grant period, and amounts collected that are not program income under this section if the uses of these amounts is different. Conversely, if the State is using all fees collected only for the purposes prescribed for program income earned during the grant period, then it need not account separately for the different types of fees collected. Similarly, if the State is using program income earned after the grant period and non-program income only for purposes related to water quality, it need not account separately for these types of fees collected. For example, if the State is using all fees collected for the cost of administering the CWSRF, the State need only report the total amount of fees collected and used for this purpose. If the State is using program income earned during the grant period for CWSRF administration and is using all other fees for water quality purposes, the State need only report the amount of fees collected and used for each of these two purposes. If fees collected are deposited in the CWSRF then their use is limited to those purposes identified in Title VI of the CWA. Further, the use of such fees for administering the fund would be subject to the CWA's four percent ceiling on administration costs. Fees collected that the State intends to use as State match must be so designated before being deposited in the CWSRF.

The next intended use plan prepared by the State after the effective date of this guidance must identify all types of fees charged on loans, including the fee rate, and the amount of fees available. The State's annual report (submitted under section 606(d) of the CWA) must identify the types of fees charged on loans, the amount of fees collected, and how those amounts were used. Several examples of how to measure program

income are provided above under Definition of Program Income.

States must ensure that the future use of program income collected during the grant period but not yet used is in accordance with the Agency's regulations and this guidance. EPA will work with States individually to determine what actions are necessary to address situations where fee amounts were used inconsistently with the applicability of the program income regulations to the CWSRF program.

F. Records Retention

CWSRF programs also must comply with requirements of 40 CFR 31.42(c)(3) pertaining to the retention of records for program income earned after the grant period. According to the regulation, "the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned." The length of the retention period is ordinarily three years, as set forth in § 31.42(b).

[FR Doc. 05-21014 Filed 10-19-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R01-OAR-2005-MA-0003; FRL-7986-6]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Massachusetts; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the Sections 111(d) and 129 negative declaration submitted by the Massachusetts Department of Environmental Protection (MADEP) on August 23, 2005. This negative declaration adequately certifies that there are no existing commercial and industrial solid waste incineration units (CISWIs) located within the boundaries of the Commonwealth of Massachusetts. EPA publishes regulations under Sections 111(d) and 129 of the Clean Air Act requiring states to submit control plans to EPA. These state control plans show how states intend to control the emissions of designated pollutants from designated facilities e.g., CISWIs). The Commonwealth of Massachusetts submitted this negative declaration in lieu of a state control plan.

DATES: This direct final rule is effective on December 19, 2005, without further

notice unless EPA receives significant adverse comment by November 21, 2005. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01-OAR-2005-MA-0003 by one of the following methods:

A. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. Agency Web site: <http://docket.epa.gov/rmepub/> Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

C. E-mail: brown.dan@epa.gov

D. Fax: (617) 918-0048

E. Mail: "RME ID Number R01-OAR-2005-MA-0003", Daniel Brown, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114-2023.

F. Hand Delivery or Courier. Deliver your comments to: Daniel Brown, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114-2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID Number R01-OAR-2005-MA-0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through Regional Material in EDocket (RME), regulations.gov, or e-mail. The EPA RME website and the federal regulations.gov website are "anonymous access" systems, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below to schedule your review. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: John J. Courcier, Office of Ecosystem Protection (CAP), EPA-New England, Region 1, Boston, Massachusetts 02203, telephone number (617) 918-1659, fax number (617) 918-0659, e-mail courcier.john@epa.gov.

SUPPLEMENTARY INFORMATION:

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