



# Federal Register

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**Friday,  
April 4, 2003**

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**Part VI**

## **Environmental Protection Agency**

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**40 CFR Parts 9 and 46  
Fellowships; Interim Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 9 and 46**

[FRL-7476-2]

RIN 2030-AA77

**Fellowships**

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

**ACTION:** Interim final rule.

**SUMMARY:** This rule revises EPA's current fellowship regulation to provide greater flexibility and clarify requirements in order to aid in the administration and monitoring of the EPA fellowships. EPA's fellowship programs provide financial assistance to individuals to further their education in environmental fields, such as environmental engineering and science. EPA is also amending certain approved information collection requirements.

**DATES:** This regulation is effective May 5, 2003, and applies to fellowship agreements awarded after May 5, 2003. Comments on this interim final rule must be submitted by June 3, 2003.

**ADDRESSES:** Comments must be submitted to W. Scott McMoran, Office of Grants and Debarment (3903R), United States Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** W. Scott McMoran at (202) 564-5376.

**SUPPLEMENTARY INFORMATION:**

**I. Regulated Entities**

Entities eligible to receive the environmental fellowships listed in 40 CFR part 46 are regulated by this rule. Regulated categories and entities include:

Category	Regulated entities
Persons .....	Individuals.
Institutions of Higher Education.	Colleges and Universities.

Only individuals may apply for fellowships under this regulation. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

**II. Comments and Record**

The record of this interim final rule includes a copy of the previous version of this rule. It is available for inspection from 9 a.m. to 4 p.m. (eastern time), Monday through Friday, excluding legal holidays, by contacting the person listed in the **ADDRESSES** section.

Comments on this interim final rule must be submitted by June 3, 2003, to the person listed in the **ADDRESSES** section.

**III. Background**

EPA last updated its fellowship regulation (40 CFR part 46) on October 18, 1984. Since that time, EPA's legal authorities, practices and policies have changed, and, as a result, the regulation is out of date. Also, the General Accounting Office reviewed the EPA fellowship program and found that, in order to award fellowships in compliance with the regulation, the agency was relying on approved exceptions from the regulation. For these reasons, EPA is revising the regulation to update and clarify requirements. In particular, we have:

- Generally eliminated references to EPA's Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations regulation (40 CFR part 30). Fellowships are awards made to individuals and that regulation applies to organizations (*see* 40 CFR 30.1).

- Added new provisions based on part 30 to assure the regulation addresses all appropriate requirements, including: § 46.125 which authorizes EPA to approve exceptions from this regulation, where necessary; § 46.130 which makes clear that fellows are subject to the government-wide suspension and debarment program; § 46.145 which requires fellows to fly on American Carriers when involved in foreign travel under fellowships; § 46.210 and § 46.215 which provide termination and enforcement provisions; and § 46.220 which establishes a dispute process for fellowships. We also added § 46.205 which establishes requirements for handling intangible property such as documents and computer software developed under a fellowship. It incorporates the intangible property provisions of part 30 (40 CFR 30.36) rather than repeating them. That rule is complex and its form would not change if it were included in this rule, so there was no reason to repeat it.

- Eliminated monetary limits on the amount EPA can award for benefits. The amounts that will be awarded for various purposes under fellowships will be determined by the EPA program offices making the awards.

- Revised the list of EPA's statutes (§ 46.105) under which EPA awards fellowships to bring it up to date.

- Deleted the definitions of full time fellow and part time fellow. We will

rely on the policy of the institution involved to make that determination.

- Added a requirement that fellows annually submit copies of transcripts and publications (§ 46.175(b)), when required by the fellowship agreement.

In compliance with the Paperwork Reduction Act, EPA is also amending 40 CFR part 9 to add the list of currently approved information collection request numbers related to information collected under the Fellowships regulation (40 CFR part 46).

*Statutory and Regulatory Reviews*

**Regulatory Flexibility Act**

This interim final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which notice and comment rulemaking is required under the Administrative Procedure Act (APA) or any another statute. Grant award and administration matters, such as this rule, are explicitly exempt from the notice and comment requirements of the APA (5 U.S.C. 553(a)(1)). Nor is this rule required to undergo notice and comment rulemaking under any other statute.

**Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, 2 U.S.C. 1501 *et seq.*, 109 Stat. 48 (1995), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. This regulation contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or tribal governments or the private sector. The UMRA excludes from the definitions of "Federal intergovernmental mandate" and "Federal private sector mandates" duties that arise from conditions of Federal assistance.

**National Technology Transfer and Advancement Act**

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), EPA is required to use voluntary consensus standards in its

regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used, the Act requires EPA to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

This rule does not involve any technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that is determined to be: (1) “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

#### Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Order defines “significant regulatory action” as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a “significant regulatory action” under the terms of Executive Order 12866 because the fellowship award authority does not meet any of the criteria. As such, this action will not require submission to the Office of Management and Budget (OMB) for review.

#### Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use.

#### Paperwork Reduction Act

In keeping with the requirements of the Paperwork Reduction Act (PRA), as amended, 44 U.S.C. 3501 *et seq.*, the information collection requirements contained in this rule have been approved by OMB under information collection request number 0938.06 (OMB Control Number 2030–0020) and Quality Assurance Specifications and Requirements information request number 0866.05 (OMB Control Number 2080–0033). This rule does not contain any collection of information requirements beyond those already approved. Since this action imposes no new or additional information collection, reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, no information request has been or will be submitted to the Office of Management and Budget for review. We are revising 40 CFR part 9 to reflect these requirements.

#### Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of

regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

This interim final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule applies to individuals and any individual may apply for an EPA fellowship. Thus, Executive Order 13175 does not apply to this rule.

#### Executive Order 13132—Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.”

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This interim final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the

requirements of section 6 of the Executive Order do not apply to this rule. Further, because this rule regulates the use of Federal financial assistance, it will not impose substantial direct compliance costs on States.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 rule 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 of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective May 5, 2003.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 46

Environmental protection, Grant programs-education, Grant programs-environmental protection, Reporting and recordkeeping requirements, Scholarships and fellowships.

Dated: March 27, 2003.

Christine Todd Whitman,  
Administrator.

■ For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

**PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT**

■ 1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1 the table is amended by adding a new heading and new entries in numerical order to read as follows:

**§ 9.1 OMB approvals under the Paperwork Reduction Act.**

	40 CFR citation	OMB control no.
	* * * * *	
Fellowships		
46.155 .....		2030–0004
46.170(a) .....		2030–0020
46.185(a) .....		2030–0020
46.190(a) and (b) .....		2030–0020
46.200(a) .....		2030–0020
46.230(a) .....		2030–0020
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■ 3. For the reasons set forth in the preamble, 40 CFR part 46 is revised to read as follows:

**PART 46—FELLOWSHIPS**

Sec.

**Subpart A—General**

- 46.100 Purpose.
- 46.105 Authority.
- 46.110 Objectives.
- 46.115 Types of fellowships.
- 46.120 Definition.
- 46.125 Exceptions.
- 46.130 Debarment and suspension.

**Subpart B—Applying for Fellowships**

- 46.135 Eligibility.
- 46.140 Benefits.
- 46.145 International travel and work.
- 46.150 Request for applications.
- 46.155 Submission of applications.
- 46.160 Evaluation of applications.
- 46.165 Notification.

**Subpart C—Award**

- 46.170 Fellowship agreement.
- 46.175 Terms and conditions.
- 46.180 Acceptance of fellowship award.

**Subpart D—During the Fellowship**

- 46.185 Activation notice.
- 46.190 Fellowship agreement amendments.
- 46.195 Project period.
- 46.200 Payment.
- 46.205 Intangible property.
- 46.210 Termination.
- 46.215 Enforcement.
- 46.220 Disputes.

**Subpart E—After the Fellowship**

- 46.225 Equipment.
- 46.230 Closeout procedures.

**Authority:** Section 103(b)(5) of the Clean Air Act, as amended (42 U.S.C. 7403(b)(5)); sections 104(b)(5) and (g)(3)(B) of the Clean Water Act, as amended (33 U.S.C. 1254(b)(5) and (g)(3)(B)); section 1442 of the Safe Drinking Water Act, as amended (42 U.S.C. 300j–1); section 8001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6981); section 10 of the Toxic Substances Control Act, as amended (15 U.S.C. 2609); section 20 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136r);

sections 104(k)(6) and 311 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604(k)(6) and 42 U.S.C. 9660).

**PART 46—FELLOWSHIPS**

**Subpart A—General**

**§ 46.100 Purpose.**

This part establishes the requirements for all Environmental Protection Agency (EPA) fellowship awards.

**§ 46.105 Authority.**

EPA is authorized to award fellowships under the statutes listed in this section. EPA is not required to award fellowships under all of the listed authorities, but does so at its discretion.

(a) Section 103(b)(5) of the Clean Air Act, as amended (42 U.S.C. 7403(b)(5));

(b) Section 104(b)(5) and (g)(3)(B) of the Clean Water Act, as amended (33 U.S.C. 1254(b)(5) and (g)(3)(B));

(c) Section 1442 of the Safe Drinking Water Act, as amended (42 U.S.C. 300j–1);

(d) Section 8001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6981);

(e) Section 10 of the Toxic Substances Control Act, as amended (15 U.S.C. 2609);

(f) Section 20 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136r); and

(g) Sections 104(k)(6) and 311 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604(k)(6) and 42 U.S.C. 9660).

**§ 46.110 Objectives.**

EPA awards fellowships to help individuals participate in academic and professional educational opportunities in fields related to pollution control and environmental protection. Fellowships provide support for undergraduate and graduate students, including staff of state, local or Tribal agencies responsible for environmental pollution control and environmental protection.

**§ 46.115 Types of fellowships.**

In general, EPA may award you one of two kinds of fellowships.

(a) The first are fellowships to students who are selected on the basis of EPA requests for applications and program announcements. These fellowships may assist you with the costs of academic and professional career studies in pollution control and environmental protection in fields such as science, engineering, technology, social science, and specialty areas supporting environmental protection efforts.

(b) The second are fellowships awarded to current or prospective employees of state, local and Tribal environmental pollution control or regulatory agencies who are nominated to receive fellowships by their agency. These fellowships may assist you with the costs of academic and professional career studies in pollution control and environmental protection in fields such as science, engineering, technology, social science, and specialty areas supporting environmental protection efforts.

#### **§ 46.120 Definition.**

*Fellow:* You are a fellow if you receive an EPA fellowship award.

#### **§ 46.125 Exceptions.**

The Director, Grants Administration Division, may approve exceptions from this part on a case-by-case or class basis.

#### **§ 46.130 Debarment and suspension.**

EPA will not award you a fellowship if you are debarred, suspended or otherwise excluded from participation in federal programs. Names of individuals who are excluded are included on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained and distributed by the General Services Administration.

### **Subpart B—Applying for Fellowships**

#### **§ 46.135 Eligibility.**

If you wish to apply for an EPA fellowship, you must be:

(a) A citizen of the United States, its territories, or possessions, or lawfully admitted to the United States for permanent residence;

(b) Accepted by or an applicant to an accredited educational institution for academic credit in an educational program directly related to pollution control or environmental protection; and

(c) If you are applying for a fellowship offered specifically to employees or prospective employees of state, local and Tribal organizations, you must be nominated by the head of the state, local or Tribal agency, or designee, based on the need for academic and professional career study to enhance your skills related to the needs of the organization.

#### **§ 46.140 Benefits.**

EPA fellowships may include funds to help you pay such things as:

(a) A part, or all, of your tuition and fees, as determined appropriate by EPA.

(b) An expense allowance for books, supplies, and equipment (equipment is an item with a unit acquisition cost of more than \$5,000) as determined

appropriate by EPA. You may use this allowance for expenses that are necessary for your education, such as the cost of health insurance, supplies, and travel to conduct research and attend technical meetings relating to the fellowship. You may acquire equipment only with EPA's written approval and there will be very few instances where the purchase of equipment is authorized (see § 46.225.)

(c) A stipend determined by the EPA program office based on EPA's resources and your course load.

#### **§ 46.145 International travel and work.**

(a) You may use fellowship funds for travel to or work in a foreign country only if the travel or work is approved by the EPA Office of International Activities (OIA). You will be notified of OIA approval in the fellowship award or in a letter from the EPA project officer or the award official.

(b) If you travel to or from a foreign country and the travel cost is paid under the fellowship agreement, you must comply with the Fly America Act. In accordance with that Act, you must travel on U.S. air carriers certificated under 49 U.S.C. 1371, to the extent that such carriers provide service, even if the foreign air carrier costs less than the American air carrier.

#### **§ 46.150 Request for applications.**

EPA generally requests fellowship applications through electronic and printed announcements or other means designed to inform potential applicants.

#### **§ 46.155 Submission of applications.**

The request for applications or program announcement will advise you how to file an application and what information you must include. You must submit applications for fellowships on EPA's "Fellowship Application" (EPA Form 5770-2) or in any other form EPA designates. EPA will provide instructions for completing the application. You must submit the original and two copies of the application unless the instructions require otherwise. Alternatively, EPA may allow you to submit applications electronically. It is also likely that EPA will require you to submit undergraduate and graduate transcripts to the office identified in the request for applications or program announcement.

#### **§ 46.160 Evaluation of applications.**

EPA will evaluate your application based on criteria identified in the request for applications or program announcement. Evaluation criteria may include:

(a) The relevance of your proposed studies to EPA's mission.

(b) Your potential for success, as reflected by your academic record, letters of reference, and any other available information.

(c) The availability of EPA funds.

#### **§ 46.165 Notification.**

If EPA does not select you to receive a fellowship, we generally will notify you within 60 days after final selections are made. If you are a successful applicant, EPA will send you a fellowship agreement in accordance with § 46.170.

### **Subpart C—Award**

#### **§ 46.170 Fellowship agreement.**

(a) The "Fellowship Agreement" (EPA Form 5770-8) is the written agreement, including amendments, between EPA and you. The fellowship agreement will state the amount of Federal funds awarded and the terms and conditions governing the fellowship.

(b) The EPA award official may approve any pre-award costs you incurred, if determined appropriate by the award official. You incur pre-award costs at your own risk (see also § 46.195).

#### **§ 46.175 Terms and conditions.**

(a) If EPA awards you a fellowship on the basis of a nomination by your current or prospective state, local or Tribal government employer, by accepting the fellowship agreement you agree to remain in the employment of the state, local, or Tribal employer for twice the period of the fellowship. If you fail to meet this obligation, EPA may, after consultation with your employer or prospective employer, require you to repay the amount of the fellowship.

(b) You must submit a copy of your transcript to the EPA project officer after the completion of each year of the fellowship, if required by the fellowship agreement. You must also submit copies of any publications and other products from the research, if required.

(c) EPA may require you to provide various performance reports under your fellowship, but we will not require reports more frequently than quarterly. At the end of the fellowship, you must submit a final report and other documentation, if required in the fellowship agreement.

#### **§ 46.180 Acceptance of fellowship award.**

You must accept your fellowship by signing and returning the EPA award form (EPA Form 5770-8) to the EPA award official within three weeks after receipt, or within an extension of time approved by the award official. If you do not sign and return the Fellowship

agreement to the award official or request an extension of the acceptance time within three calendar weeks after receiving the agreement, the award official may void the agreement. EPA will not pay for costs incurred under voided agreements.

#### Subpart D—During the Fellowship

##### § 46.185 Activation notice.

(a) Each fellowship includes a "Fellowship Activation Notice" (EPA Form 5770-7). You must complete, sign, and obtain other appropriate signatures on the Activation Notice when the program supported by the fellowship agreement begins. In certain instances, e.g., if your program of study is at an EPA facility, the EPA project officer may sign as sponsor on the Activation Notice. You must submit the Activation Notice to the award official.

(b) If you do not submit the Activation Notice (EPA Form 5770-7) within 90 days after the date of the award, the award official may initiate action to terminate the fellowship agreement in accordance with § 46.210.

##### § 46.190 Fellowship agreement amendments.

(a) If you need to make any of the changes listed in paragraphs (a)(1) through (3) of this section, you must notify the project officer and receive a formal amendment (EPA Form 5770-8) approving the changes. You must sign and return one copy of each amendment to the award official. If you make the change before you receive the amendment, you do so at your own risk. Changes that require formal amendments are:

- (1) A change in the amount of the fellowship;
- (2) A change in the academic institution you attend; or
- (3) A change in the duration of your fellowship.

(b) You must obtain the EPA project officer's written approval of changes in the field of study or approved research project.

(c) You do not need EPA approval of minor changes that are consistent with the objective of the fellowship agreement. Minor changes do not, however, obligate EPA to provide additional funds for any costs you incur in excess of the fellowship agreement amount.

##### § 46.195 Project period.

Based on the "Date Fellow Will Enter on Duty" which you enter on the Activation Notice (see § 46.185(a)), EPA will establish the project period for the fellowship. If you incur costs before the date of the fellowship award, the date

on the Activation Notice must reflect that fact (see also § 46.170(b)).

##### § 46.200 Payment.

EPA will not make payments under a fellowship agreement until the award official receives the signed "Fellowship Activation Notice" (EPA Form 5770-7) as required by § 46.185. Unless the fellowship provides another payment process, EPA makes payments as follows:

(a) EPA pays tuition and fees directly to the educational institution.

(b) EPA pays any stipend directly to you on a monthly or other basis approved by the project officer and included in the fellowship agreement.

(c) EPA pays any book or other expense allowance to you or to the educational institution, as specified in the fellowship agreement. If EPA pays your expense allowance to the educational institution, the institution may deduct not more than two percent of the expense allowance as a handling fee.

##### § 46.205 Intangible property.

In general, if you develop intangible property under a fellowship agreement (e.g., copyrighted software), EPA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. EPA's requirements for dealing with such intangible property are found at 40 CFR 30.36 of EPA's Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.

##### § 46.210 Termination.

(a) EPA may terminate your fellowship agreement in whole or in part in accordance with the following:

(1) If you fail to submit the "Fellowship Activation Notice" as required by § 46.185.

(2) If you fail to comply with the terms and conditions of the fellowship agreement.

(b) You may voluntarily terminate your fellowship by sending the award official written notification setting forth the reasons for termination and the effective date. In that case, the EPA project officer may discuss the terms of the termination with you, and EPA may send you a letter or other document which states any termination conditions.

(c) Costs resulting from obligations you incur after termination of an award are not allowable unless EPA expressly authorizes them in the notice of

termination or subsequently approves them. Costs after termination which are necessary and not reasonably avoidable are allowable if:

(1) The cost results from obligations which you properly incurred before the effective date of termination, were not in anticipation of the termination, and are noncancellable; and

(2) The cost would be allowable if the award expired normally.

##### § 46.215 Enforcement.

(a) You must use fellowship funds for the purposes stated in the fellowship agreement. If you fail to comply with the terms and conditions of an award, EPA may take one or more of the following actions, as appropriate:

(1) Temporarily withhold or suspend payments pending your correction of the deficiency or pending other enforcement by EPA;

(2) Disallow all or part of the cost of the activity or action not in compliance;

(3) Wholly or partly terminate the fellowship agreement in accordance with § 46.210(a);

(4) Withhold the award of additional funds under the fellowship; or

(5) Take other remedies that may be legally available.

(b) In taking an enforcement action, EPA will provide you an opportunity for hearing, appeal, or other administrative proceeding to which you are entitled under any statute or regulation applicable to the action involved, including § 46.220.

(c) The enforcement remedies identified in this section, including withholding of payment and termination, do not preclude debarment and suspension action under Executive Orders 12549 and 12689 and EPA's implementing regulations (40 CFR part 32).

##### § 46.220 Disputes.

(a) If you and the EPA award official or project officer have a disagreement, you should make reasonable efforts to resolve it at that level.

(b) If you cannot reach agreement, an EPA disputes decision official will provide a written final decision. The EPA disputes decision official is the individual designated by the award official to resolve disputes concerning assistance agreements. The dispute procedures outlined at 40 CFR part 31, subpart F, will apply.

#### Subpart E—After the Fellowship

##### § 46.225 Equipment.

(a) If EPA authorizes you to purchase equipment (see § 46.140(b)) and the equipment retains a fair market value of

more than \$5,000, you must request disposition instructions from the EPA project officer when you no longer need it for the work under the fellowship.

(b) If you purchase an item with an acquisition cost of \$5,000 or less, the item belongs to you.

**§ 46.230 Closeout procedures.**

(a) You must submit the "EPA Fellowship Completion of Studies Notice" (EPA Form 5770-9) signed by your sponsor or department head of the educational institution when the project

period ends. In certain instances, *e.g.*, your program of study is at an EPA facility, the EPA project officer may sign as sponsor on the Completion of Studies Notice. You may request an extension to submit the form if you need it.

(b) You must retain all records related to your fellowship agreement for three years after the completion date you insert on the "Completion of Studies Notice" (EPA Form 5770-9).

(c) EPA, the Inspector General, Comptroller General of the United

States, or any of their duly authorized representatives, has the right of timely and unrestricted access to your documents, papers, or other records related to your fellowship, in order to make audits, examinations, excerpts, transcripts and copies of such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

[FR Doc. 03-8153 Filed 4-3-03; 8:45 am]

**BILLING CODE 6560-50-P**