

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Part 110****[Docket No. HM-209, Notice No. 92-3]****RIN 2137-AC09****Interagency Hazardous Materials; Public Sector Training and Planning Grants****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: The Research and Special Programs Administration (RSPA) is proposing a rule to implement a reimbursable grant program to enhance existing State and local hazardous materials emergency preparedness and response programs. This reimbursable grant program is required by section 117A (49 App. U.S.C. 1815) of the Hazardous Materials Transportation Act (HMTA), as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA). Section 117A authorizes the Department to provide assistance to States for emergency response planning and to States and Indian tribes for emergency response training. The purpose of the grant program is to: Increase State, local, and Indian tribal effectiveness in safely and efficiently handling hazardous materials accidents and incidents; enhance implementation of the Emergency Planning and Community Right To Know Act of 1986 (EPCRA); and encourage a comprehensive approach to emergency planning and training by incorporating the unique challenges of response to transportation situations. The proposed rule provides the application requirements specific to this grant program.

Where practicable, the Department proposes to rely on its general grant provisions contained in 49 CFR part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

DATES: Comments are due on or before May 1, 1992.

ADDRESSES: Address comments to Dockets Unit (DHM-30), Hazardous Materials Safety, RSPA, Department of Transportation, Washington, DC 20590-0001. Comments should identify the docket and notice number; five copies, if possible, should be submitted. Receipt of comments will not be confirmed unless a self-addressed stamped postcard is provided. Public dockets

may be reviewed on normal business days between 8:30 a.m. and 5 p.m. in the Dockets Unit, room 8421, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590-0001. Copies of the "Hazardous Materials Transportation Uniform Safety Act of 1990" (HMTUSA), Public Law 101-615, may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9371, (202) 275-2091.

FOR FURTHER INFORMATION CONTACT: Susan Bullard or Charles Rogoff, Office of Hazardous Materials Initiatives and Training, Research and Special Programs Administration (RSPA), Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone: 202-366-4900.

SUPPLEMENTARY INFORMATION: This proposed regulation sets forth the application procedures for the planning and training grant program established by section 117A of the HMTA. The proposed regulation augments the requirements contained in 49 CFR part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

I. Background

The HMTUSA amended HMTA (49 App. U.S.C. 1801 *et seq.*) to assign new responsibilities to the Department of Transportation (DOT) and strengthen interagency coordination and technical assistance with respect to hazardous materials emergency planning and training. Within DOT, RSPA has been delegated the responsibility for overseeing the program authorized in section 117A of the HMTA.

Section 117A, "Public Sector Training and Planning," creates a program for RSPA and other Federal agencies to: Provide financial and technical assistance, national direction, and guidance to enhance State and local hazardous materials emergency planning and training; and enhance overall implementation of EPCRA. The program developed under the leadership of RSPA will increase the emphasis on transportation in ongoing efforts—improving the capability of communities to plan for and respond to the full range of potential risks they face.

The reimbursable grant program is supported by fees collected pursuant to section 117A(h) of HMTA. Section 106 of HMTA establishes a registration program of shippers and carriers of certain hazardous materials. On October 10, 1991, RSPA proposed in the *Federal Register* (56 FR 51294) to assess

and collect from all persons who are required to be registered an annual fee to fund this reimbursable grant program.

Implementing guidance which addresses such issues as allocation criteria, measures against which grant applications will be evaluated, explanation of certifications required, and relationship of the grant program to the national curriculum is in development. This guidance will be included in an application package which will be provided to applicants following publication of the final rule.

A. Overview of the Reimbursable Grant Program

Section 117A of HMTA authorizes financial assistance to States for emergency response planning and to States and Indian tribes for training public sector employees to respond safely and efficiently to accidents and incidents involving hazardous materials, including those involving transportation. The goal of the program is to provide assistance to planners, trainers, and responders at the local level.

As proposed in § 110.30, a planning or training grant application from a State or Tribe must be accompanied by a letter from the Governor or tribal authority designating an entity to receive Federal funds and provide the required written certifications.

In support of the intent and ongoing implementation of EPCRA, RSPA is proposing to accept applications from and award grants to the State or Tribal Emergency Response Commission or an established agency which is an active participant in the Emergency Response Commission. The designated entity should have substantive knowledge of the status of planning and training under EPCRA, familiarity with State and local emergency preparedness and response capabilities and training needs, understanding of the intent and mandate of HMTUSA, and proven capability to administer a Federal grant program. In addition, the designated entity would be asked to certify that appropriate disciplines are represented in the ongoing emergency planning and training process (e.g., senior state fire official, environmental and emergency management, and transportation representatives). A statement that all members of the State or Tribal Emergency Response Commission have been given the opportunity to review the application would also be required.

1. The Planning Grant Program

Under Section 117A(a)(1) of HMTA, planning grants may be made to reimburse States for: (1) Developing,

improving, and implementing emergency plans under the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA); (2) determining the flow patterns of hazardous materials within a State and between a State and another State; and (3) determining the need for regional hazardous materials emergency response teams. Section 117A of HMTA builds upon and enhances the existing framework established under EPCRA.

To qualify for a planning grant, a State must: (1) Certify that it is complying with sections 301 and 303 of EPCRA; (2) certify that it will maintain a two fiscal year average of its own aggregate level of expenditures for developing, improving, and implementing emergency plans under EPCRA; and (3) agree to make at least 75 percent of the Federal funds provided available to local emergency planning committees (LEPCs) established pursuant to section 301(c) of the Emergency Planning and Community Right-To-Know Act.

Section 117A of HMTA does not authorize RSPA to provide planning grants to Indian tribes.

2. The Training Grant Program

Under Section 117A(b)(1), training grants may be made to reimburse States and Indian tribes for training public sector employees to respond safely and efficiently to accidents and incidents involving hazardous materials, including those involving transportation.

To qualify for a training grant, a State must: (1) Certify that it is complying with sections 301 and 303 of the EPCRA; (2) certify that it will maintain a two fiscal year average of its own aggregate level of expenditures for training public sector employees to respond to accidents and incidents involving hazardous materials; (3) agree to make at least 75 percent of the Federal funds provided available for the purpose of training such employees either employed or used by political subdivisions; and, (4) agree to use courses consistent with the National Curriculum developed under Section 117A(g).

To qualify for a training grant, an Indian tribe must certify that it will maintain a two fiscal year average of its own aggregate level of expenditures for training public sector employees to respond to accidents and incidents involving hazardous materials.

The HMTA defines Indian tribes by reference to the Indian Self-Determination and Education Act (25 U.S.C. 4506). The Secretary of Interior has issued regulations (25 CFR 272.2) defining "Federally-recognized" Indian tribes under that law. RSPA is proposing

in this regulation to accept applications for training grants from federally-recognized Indian tribes.

B. Relationship to the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA)

Section 117A enhances and strengthens ongoing efforts and relationships established under the Emergency Planning and Community Right-To-Know Act.

EPCRA: (1) Establishes authorities for emergency planning and preparedness, emergency notification, community right-to-know, and toxic chemical release reporting; and, (2) calls for the creation of an infrastructure including State emergency response commissions (SERCs), emergency planning districts and local emergency planning committees (LEPCs). These State and local emergency preparedness and response entities are traditionally relied upon to: (1) Provide a forum for coordinating information; (2) assist in understanding and communicating the associated risks of hazardous materials to the public; and (3) support State-wide and local emergency response planning efforts.

Section 117A(a)(1) of HMTA gives RSPA the opportunity to provide financial assistance to States for emergency response planning called for under EPCRA. States, in turn, are required to make at least 75 percent of the Federal funds provided available to local emergency planning committees. Section 117A(b)(3) requires that 75 percent of the Federal funds for training assistance benefit public sector employees.

A State may not receive a planning or training grant unless it certifies that it is complying with sections 301 and 303 of the EPCRA. After consulting with EPA and FEMA and taking into consideration the dynamic nature of this program, RSPA is proposing to accept self-certification of a State's progress and current status in achieving compliance.

Therefore, RSPA is proposing with respect to section 301 that an applicant certify that a SERC has been established, emergency planning districts have been designated and LEPCs have been appointed by the SERC. The applicant must describe the status of the LEPCs' emergency response plans and their compliance with EPCRA section 303. Section 117A of HMTA does not require Indian tribes to make these assurances.

C. Financial Issues

1. Pass-Through of Planning Funds to Local Emergency Planning Committees (LEPCs)

Section 117A(a)(3) of HMTA requires States to "make available not less than 75 percent of the funds granted to * * * local emergency planning committees established pursuant to section 301(c) of EPCRA by the State emergency response commission." RSPA proposes to require the States to make available 75% of the LEPCs.

2. Funding Political Subdivisions in the Training Grant Program

Section 117A(b)(3) of HMTA requires a State to "make available at least 75 percent of the funds granted * * * for the purpose of training public sector employees employed or used by the political subdivisions." HMTA does not require Indian tribes to make this assurance. Funding could be passed through to a local political subdivision. If a State elects to conduct such training itself, assurances must be provided that the training will in fact benefit public sector employees at the local level.

3. Maintenance of Effort Requirements

In order to qualify for a grant, States and Indian tribes must certify that the aggregate expenditure of funds, exclusive of Federal funds, used to support emergency response planning and training, will be maintained at a level which does not fall below the average level for the last two fiscal years.

4. Non-Federal Cost-Share Requirements

States and Indian tribes must contribute a matching share to any grant awarded. The cost-share requirement for both planning and training is set by section 117A(d) of HMTA at 20 percent. RSPA is proposing to require that States and Indian tribes satisfy the cost-sharing requirement with cash. RSPA is also considering whether to accept in-kind contributions. Comments are specifically requested on whether to accept in-kind contributions to meet the matching requirements and on types of in-kind contributions that would meet the requirements.

D. Use of Federal Funds by Recipients

Funds may be used to carry out specific activities identified in section 117A of HMTA. For planning grants, those activities are: (1) Developing, improving, and implementing emergency plans, including determination of flow patterns of hazardous materials within a State and between States; and (2)

determining the need for regional hazardous materials emergency response teams. For training grants, 75 percent of the funds must be used to benefit public sector employees to respond to incidents or accidents involving hazardous materials. Activities conducted could include training efforts designed for public officials who are not responders, but who perform activities associated with emergency response plans developed under EPCRA. Operational equipment to be used in response is excluded from consideration for funding under this grant program. RSPA welcomes comments on the activities that are eligible for funding proposed in § 110.40 of the rule.

E. Allocation of Federal Funds

The funding level for the planning portion of the grant program is set by section 117A(i) of HMTA at \$5 million and for the training portion at \$7.8 million per Federal fiscal year for 1993 through 1998. These funds are "no-year money" which means that RSPA does not have to make grant awards in the same year that funds become available. Therefore, there is no need to set a single deadline for the submission of grant packages. RSPA is proposing as guidance to accept grant applications on a semi-annual basis (January 1 and July 1) or the first business day thereafter.

Section 117A(b)(7) of HMTA specifies criteria RSPA is to consider for allocating training funds, which are based on need. There is no comparable provision in the law for allocating planning funds. RSPA proposes to use these criteria to the extent practicable in allocating planning funds.

RSPA is proposing to consider several factors in distributing grant funds. Some of the factors under consideration include the number of hazardous materials facilities, types and amounts of hazardous materials transported, population at risk, frequency and number of incidents recorded in past years, high mileage transportation corridors, whether the State or tribe assesses and collects fees on the transportation of hazardous materials and whether such assessments or fees are used solely to carry out purposes related to the transportation of hazardous materials, and other factors that are deemed appropriate. RSPA plans to acquire this information from other Federal agencies, industry and States.

RSPA seeks comments on the factors that it should consider in allocating grant funds.

F. Application assistance

RSPA intends to receive and review applications, and make grant awards from its Washington, DC offices. Preapplication support, including assistance from other implementing Federal agencies, will be made available as soon as the rule is made final and details will be provided at that time.

II. Role of Other Federal Agencies in the Implementation of Section 117A of HMTA

Section 117A of HMTA permits the Secretary, DOT, to seek guidance from and consult with the following Federal agencies: Environmental Protection Agency (EPA); Department of Energy (DOE); Occupational Safety and Health Administration (OSHA); the Federal Emergency Management Agency (FEMA); the Nuclear Regulatory Commission (NRC); and the National Institute of Environmental Health Sciences (NIEHS). RSPA is proposing to use representatives from these agencies and other agencies in an advisory role in reviewing and approving planning and training grant applications to: (1) Identify related training and planning programs; (2) resolve implementation and policy issues that overlap between agencies; (3) maximize the benefit of limited resources; and, (4) minimize the duplication of effort.

FEMA, in coordination with DOT, EPA, DOE, and NIEHS, will monitor public sector emergency response training and planning for accidents and incidents involving hazardous materials. Based upon the results of the monitoring, these same agencies will provide technical assistance to States, political subdivisions and Indian tribes.

This group will also assist RSPA in developing and periodically updating a curriculum called for under section 117A(g) of HMTA. Known as the National Curriculum, the guidelines and courses of study identified will provide the basis for the training grants and enable public sector employees to comply with applicable OSHA and EPA regulations related to emergency response training, as well as those non-governmental standards for training issued by the National Fire Protection Association (NFPA).

III. The Proposed Grant Mechanism and Administrative Requirements

A. General Information

The Office of Management and Budget (OMB) revised OMB Circular A-102 by establishing a government-wide "common rule" which prescribes administrative requirements for Federal assistance to States, Indian tribes, and

local governments. DOT implemented the common rule through 49 CFR part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." RSPA is required to use the administrative requirements in all sections of 49 CFR part 18, unless there is a legislative or OMB-approved exception.

Consequently, applicants and recipients for section 117A planning and training grants must comply with 49 CFR part 18, as well as other DOT regulations that are incorporated by reference in 49 CFR part 18 pertaining to grants. These other regulations include: 49 CFR part 20, "Restrictions on Lobbying;" 49 CFR part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation;" 49 CFR part 23, "Participation by Minority Business Enterprise in Department of Transportation Programs;" 49 CFR part 27, "Nondiscrimination on the Basis of Handicap Programs and Activities Receiving or Benefitting from Federal Financial Assistance;" 49 CFR part 29, "Governmentwide Debarment and Suspension (Non-Procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);" and 49 CFR part 90, "Audits of State and Local Governments."

Copies of the laws and regulations referenced in the proposed rule are generally available through Depository Libraries and are on file in RSPA's Dockets Unit.

B. Grant Application

Because assistance provided under this section is intended to support a six-year comprehensive planning and training program, the funds and spending authority are no-year. Therefore, RSPA is encouraging submission of applications for multi-year projects from States and Indian tribes. Alternatively, an applicant may elect to apply for a grant on an annual basis for a specific project.

RSPA seeks to create a performance-based program that builds on and supports the accomplishment of long-term goals and objectives. Under the multi-year approach, activities approved in a scope of work would be funded according to the schedule for activities authorized in the grant. The recipient would be required to provide a performance report at the completion of one phase of activity—before proceeding with the next set of activities.

C. Financial Administration

Planning and training are two parts of a comprehensive national grant program; applicants are encouraged to request funds to conduct one or both in a single application package. RSPA may award funds for both in one grant document. Since both components are funded separately by a special registration fee program, RSPA believes it has a fiduciary responsibility to obligate and account for planning and training funds separately. Therefore, RSPA is proposing separate cost accounting requirements for the grant program in § 110.70. RSPA does not believe such a proposal would impose a burden on any recipient.

D. Grants Administration

1. Procurement

The grant program as proposed does not appear to pose contracting or procurement dilemmas for the States. RSPA is proposing in § 110.80 that recipients rely on their own procurement methods unless they conflict with Federal laws and standards as defined in 49 CFR part 18.

2. Reporting

Section 110.90 proposes to require performance reports at the completion of projects for which reimbursement is being requested. Performance reports are particularly important to RSPA when a recipient has a multi-year project and may request amendments to add funds until a project is completed. RSPA is proposing that recipients report on planning and training separately consistent with the proposal to require separate cost accounting.

3. Financial status reports

RSPA is proposing that recipients supply quarterly financial status reports. A recipient may be permitted to carry unexpended obligations from one year to the next. However, the dollar amount of future grant awards or amendments may be reduced by the amount of carryover funds available. This proposal is intended to maximize the amount of money RSPA has available for the planning and training grant program as a whole. RSPA may reallocate resources if carryover spending authority is not used.

4. Exceptions to the Rule

Applicants and/or recipients may petition RSPA to waive non-statutory requirements that are not applicable to their circumstances as prescribed in § 110.120. Deviations should not be commonplace, however, and commenters are asked to advise RSPA

of potential hardships during the proposed rulemaking process to help improve the rule where necessary.

IV. Rulemaking Analyses and Notices

Executive Order 12291 and DOT Regulatory Policies and Procedures

This proposed regulation has been evaluated in accordance with existing regulatory policies and is considered non-major under Executive Order 12291. The proposed regulation is not considered to be significant under DOT's Regulatory Policies and Procedures ("the Procedures") (44 FR 11034; February 26, 1979). In accordance with the Procedures, RSPA has determined that preparation of a Regulatory Evaluation is not necessary because the costs of the proposed regulation are expected to be minimal.

B. Regulatory Flexibility Act

RSPA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal would have a positive economic impact on a number of small entities, including small units of government. The HMTA planning and training grant program represents a small but statutorily mandated gain to States and localities.

By mandating that at least 75 percent of Federal funds provided for planning be passed through the LEPCs and that at least 75 percent of Federal funds provided for training be used to support public sector employees, the grant program will provide financial assistance to cities, counties, and other political subdivisions.

C. Executive Order 12612

The proposed rule has been reviewed in accordance with Executive Order 12612 ("Federalism"). The HMTA specifies that States may apply for grants if they meet certain statutory criteria. The rule as proposed will implement the statutory requirements at a minimum level. The Federal-State relationship will be enhanced as a result of the grant funding provided. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

D. Paperwork Reduction Act

The information to be collected as part of this rulemaking document is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). The information requirements for this proposed rule are the same as

those set forth for most Federal grant programs and are consistent with OMB Circular A-102. Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Department of Transportation. All comments must reference the title for this notice.

E. Regulation Identification Number (RIN)

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

F. National Environmental Policy Act

RSPA has evaluated this proposed regulation in accordance with its procedures for ensuring full consideration of the environmental impacts of DOT actions as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, executive orders, and DOT Order 5610.1c. This proposed regulation meets the criteria that establish it is a non-major action for environmental purposes.

List of Subjects in 49 CFR Part 110

Disaster assistance, Education, Emergency preparedness, Grant programs—Environmental protection, Grant programs—Indians, Hazardous materials transportation, Hazardous substances, Indians, Reporting and recordkeeping requirements.

In 49 CFR, part 110 is proposed to be added, to read as follows:

PART 110—HAZARDOUS MATERIALS PUBLIC SECTOR TRAINING AND PLANNING GRANTS

| Sec. | Purpose. |
|---------|---|
| 110.1 | Purpose. |
| 110.5 | Scope. |
| 110.10 | Eligibility. |
| 110.20 | Definitions. |
| 110.30 | Grant application. |
| 110.40 | Activities eligible for funding. |
| 110.50 | Disbursement of Federal funds. |
| 110.60 | Cost sharing for planning and training. |
| 110.70 | Financial administration. |
| 110.80 | Procurement. |
| 110.90 | Grant monitoring, reports, and records retention. |
| 110.100 | Enforcement. |
| 110.110 | After grant requirements. |

Sec.

110.120 Deviation from this part.

110.130 Disputes.

Authority: 49 App. U.S.C. 1815; 49 CFR part 1.

§ 110.1 Purpose.

This part sets forth procedures for reimbursable grants for public sector planning and training in support of the emergency planning and training efforts of States, Indian tribes, and local communities to deal with hazardous materials emergencies, including those involving transportation. These grants will enhance the implementation of the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. 11001).

§ 110.5 Scope.

(a) This part applies to States and Indian tribes and contains the program requirements for public sector training and planning grants to support hazardous materials emergency planning and training efforts.

(b) The requirements of this part augment the requirements contained in 49 CFR part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," which apply to grants issued under this part.

(c) Copies of standard forms and OMB circulars referenced in this part are available from the Research and Special Programs Administration Dockets Unit (DHM-30), Hazardous Materials Safety, RSPA, U.S. Department of Transportation, Washington, DC 20590-0001. The Dockets Unit is located in Room 8421 of the NASSIF Building, 400 Seventh Street, SW.

§ 110.10 Eligibility.

This part applies to States and Indian tribes. States may apply for planning and training grants. Federally-recognized Indian tribes may apply only for training grants.

§ 110.20 Definitions.

Unless defined in this part, all terms defined in section 103 of the Hazardous Materials Transportation Act (HMTA) (49 App. U.S.C. 1802) are used in their statutory meaning and all terms defined in 49 CFR part 18 and OMB Circular A-102, with respect to administrative requirements for grants, are used as defined therein. Other terms used in this part are defined as follows:

Allowable costs means those costs that are: Eligible, reasonable, necessary, and allocable to the project permitted by the appropriate Federal cost principles, and approved in the grant.

Cost analysis means the review and evaluation of costs to determine

reasonableness, allocability, and allowability.

Funding period means the period of time when Federal funds are available in a grant.

Indian country means Indian country as defined in 18 U.S.C. 1151. That section defines Indian country as all land within the limits of any reservation under the jurisdiction of the U.S. government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; all independent Indian communities within U.S. borders whether within the original or subsequently acquired territory thereof; all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian tribe means those tribes "Federally-recognized" by the Secretary of the Interior under 25 CFR 272.2.

Local Emergency Planning Committee (LEPC) means a committee appointed by the State Emergency Response Commission under section 301(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001(c)), that includes at a minimum, representatives from each of the following groups or organizations: Elected State and local officials; law enforcement, firefighting, civil defense, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the emergency planning requirements.

National curriculum means the curriculum required to be developed under section 117A of HMTA and necessary to train public sector emergency response and preparedness teams, enabling them to comply with performance standards as stated in section 117A(g)(4).

Political subdivision means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937 (42 U.S.C. 1401 et seq.)), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Project means the activities and tasks identified in a grant.

Project manager means the State or Indian tribal official designated in a grant as the program contact with the Federal government.

Project officer means the Federal official designated in a grant as the program contact with the recipient. Project officers are responsible for monitoring the project.

Project period means the length of time specified in a grant for completion of all work associated with that project.

State Emergency Response Commission (SERC) means the State Emergency Response Commission appointed by the Governor of each State and Territory under the Emergency Planning and Community Right-to-Know Act of 1986.

Statement of Work means that portion of a grant that describes the purpose and scope of activities and tasks to be carried out as part of the proposed project.

§ 110.30 Grant application.

(a) *General.* An applicant for a planning or training grant shall use only the standard application forms approved by the Office of Management and Budget (OMB) (SF-424 and SF 424A) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3502). Applicants are required to submit an original and two copies of the application package. Amendment applications must include an original and two copies of the affected pages; previously submitted pages with information that is still current do not have to be resubmitted. The application must include the following:

(1) Application for Federal Assistance for non-construction programs (SF-424) and Budget sheets (SF-424A). A single application may be used for both planning and training if the budgets for each are entered separately on all budget sheets.

(2) For States, a letter from the Governor designating the State agency that is authorized to apply for a grant and to provide the written certifications required to receive a grant.

(3) For Indian tribes, a letter from the tribal government, governing body, or tribal council to the effect that the applicant is authorized to apply for a grant and to provide the written certifications required to receive a grant.

(4) A written statement explaining whether the State or tribe assesses and collects fees on the transportation of hazardous materials and whether such assessments or fees are used solely to carry out purposes related to the transportation of hazardous materials.

(5) A statement designating a project manager and providing the name, position, address and phone number of that individual who will be responsible

for coordinating the funded activities with other agencies/organizations.

(6) A project narrative statement of the goals and objectives of the proposed project, project design and long range plans. The proposed grant project and funding periods may be one or more years.

(7) A statement of work in support of the proposed project, that describes and sets priorities for the activities and tasks to be conducted, the costs associated with each activity, the number and types of deliverables and products to be completed, and a schedule for implementation.

(8) A description of supplies and equipment needed to implement the statement of work, a justification, and a copy of the cost analysis performed for these needs to determine reasonableness, allocability, and allowability to the proposed project.

(9) *Drug-Free Workplace*

Certification. The applicant must certify as specified in appendix C of 49 CFR part 29 that it will comply with the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, title V, subtitle D; 51 U.S.C. 701 *et seq.*).

(10) *Anti-Lobbying Certification.* The applicant must certify as specified in appendix A of 49 CFR part 20 that no Federal funds will be expended to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress (Section 319 of Pub. L. 101-121, 31 U.S.C. 1352).

(11) *Debarment and Suspension Certification.* The applicant must certify as specified in subpart G of 49 CFR part 29 that it will not make an award or permit any award to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs.

(b) *Planning.* In addition to the requirements specified in paragraph (a) of this section, eligible State applicants must include the following in their application package:

(1) A written certification indicating that the State is complying with sections 301 and 303 of the Emergency Planning and Community Right-to-Know Act of 1986, including a brief explanation of how compliance has been achieved.

(2) A written statement specifying the aggregate expenditure of funds of the State, exclusive of Federal funds, for each of its last two fiscal years for developing, improving, and implementing emergency plans under the Emergency Planning and Community Right-to-Know Act of 1986, including an

explanation specifying the sources of these funds. A written certification that the State's aggregate expenditures of funds for this purpose, exclusive of Federal funds, will not fall below the average level of its expenditures for its last two fiscal years. The applicant may not claim any of these expenditures for cost-sharing.

(3) A written statement agreeing to make at least 75 percent of the Federal funds awarded available to LEPCs and an explanation of how the applicant intends to make such funds available to them for developing, improving, or implementing emergency plans.

(4) Designation of a project manager to serve as contact for coordinating planning funds under this program.

(5) A project narrative statement of the goals and objectives of each proposed project, including the following—

(i) A background statement describing the applicant's long-term goals and objectives with respect to:

(A) The current abilities and authorities of the applicant's program for preparedness planning;

(B) The need to sustain or increase program capability;

(C) Current degree of participation in or intention to assess the need for a regional hazardous materials emergency response team; and

(D) The impact that the grant will have on the program.

(ii) A discussion of whether the applicant's program currently knows, or intends to assess transportation flow patterns of hazardous materials within the State and between that State and another State.

(iii) A schedule for implementing the proposed grant activities.

(iv) A statement describing the ways in which planning will be monitored by the recipient.

(v) A statement indicating that all members of the State Emergency Response Commission were provided the opportunity to review the grant application.

(c) *Training.* In addition to the requirements specified in paragraph (a) of this section, eligible State and Tribal applicants must include the following in their application package:

(1) For a State applicant, a written certification explaining how the State is complying with sections 301 and 303 of the Emergency Planning and Community Right-to-Know Act.

(2) A written statement specifying the aggregate expenditure of funds of the State or Indian tribe, exclusive of Federal funds, for each of its last two fiscal years for training public sector employees to respond to accidents and

incidents involving hazardous materials, including an explanation specifying the sources of these funds. A written certification that the applicant's aggregate expenditure of funds for this purpose, exclusive of federal funds, will not fall below the average level of its expenditures for its last two fiscal years. The applicant may not claim any of these expenditures for cost-sharing purposes.

(3) For a State applicant, a written statement agreeing to make at least 75 percent of the Federal funds awarded available for the purpose of training public sector employees employed or used by political subdivisions. A State applicant may elect to pass all or some portion of the 75 percent on to political subdivisions for this purpose. The applicant must include a specific explanation of how it intends to accomplish either one or both of these goals.

(4) Designation of a primary point of contact for coordinating training funded under this program (e.g., fire training director, fire colleges, training centers, etc.). Identification of a single repository for copies of course materials delivered under the grant as specified in § 110.90.

(5) A project narrative statement of the long-range goals and objectives of each proposed project, including the following:

(i) A background statement describing:

(A) The current training program(s);
(B) Training audience including numbers and levels of training and accreditation program for each level or criteria required to advance to the next level;

(C) Estimated total number to be trained under this grant program;

(D) The ways in which training grants will support the decentralized delivery of training to meet the needs of individualized geographic and resource needs and time considerations of local responders. Where necessary, a statement describing how the grant program will accommodate the different training needs for rural versus urban environments; and

(E) The impact that the grant and the National Curriculum will have on the program.

(ii) A statement describing how the National Curriculum will be used or modified to train public sector employees at the local level to respond to accidents and incidents involving hazardous materials.

(iii) A statement describing the ways in which training will be monitored by the recipient, including but not limited to

random examinations, inspections, and audits of training.

(iv) A schedule for implementing the proposed training grant activities.

(v) A statement indicating that all members of the State or Tribal Emergency Response Commission were provided the opportunity to review the grant application.

§ 110.40 Activities eligible for funding.

(a) *Planning.* Eligible State applicants may receive funding for the following activities:

(1) Development, improvement, and implementation of emergency plans required under the Emergency Planning and Community Right-to-Know Act of 1986, as well as exercises which test the emergency plan. Enhancement of emergency plans to include response procedures for emergencies involving transportation of hazardous materials, including radioactive materials.

(2) An assessment to determine flow patterns of hazardous materials within a State, between a State and another State or Indian country, and development and maintenance of a system to keep such information current.

(3) An assessment of the need for regional hazardous materials emergency response teams.

(4) An assessment of local response capabilities to determine the distribution of Federal funds under the grant.

(5) Development of information materials to educate the public about the transportation of hazardous materials, including radioactive materials.

(6) Conduct of emergency response drills and exercises associated with emergency preparedness plans.

(7) Technical staff to support the planning effort. Staff funded under planning grants cannot be diverted to support other requirements of the Emergency Planning and Community Right-to-Know Act.

(8) Additional activities RSPA deems appropriate to implement the scope of work for the proposed project plan and approved in the grant.

(b) *Training.* Eligible State and Indian tribe applicants may receive funding for the following activities:

(1) An assessment to determine the number of public sector employees employed or used by a political subdivision who need training and to select courses consistent with the National Curriculum.

(2) Delivery of comprehensive preparedness and response training to public sector employees. Design and delivery of such training to meet specialized needs. Travel assistance for trainees, such as tuition, travel expenses

to and from a training facility, and room and board while at the training facility, and for the trainers, if appropriate.

(3) Emergency response drills and exercises associated with training, a course of study, and emergency preparedness plans.

(4) Expenses associated with training by a person (including a department, agency, or instrumentality of a State or political subdivision thereof or an Indian tribe) and activities necessary to monitor such training including, but not limited to, random examinations, inspections, and audits of training.

(5) Staff to manage the training effort resulting in increased benefits, proficiency, and rapid deployment of local and regional responders.

(6) Additional activities RSPA deems appropriate to implement the scope of work for the proposed project and approved in the grant.

§ 110.50 Disbursement of Federal funds.

(a) The applicant may not be reimbursed for the costs of activities to be conducted under a grant prior to the award of such grant.

(b) Reimbursement may not be made for a project plan until approved in the grant award.

(c) If a recipient seeks additional funds, the amendment request will be evaluated on a needs and performance basis against the availability of funds to determine whether the amendment request is appropriate. An existing grant does not commit future Federal funding.

§ 110.60 Cost sharing for planning and training.

The recipient must provide 20 percent of the direct and indirect costs of all activities covered under the grant award with non-Federal funds. Funds used for matching purposes under any other Federal grant or cooperative agreement may not be used for matching purposes. The funds expended by a recipient to qualify for the grant may not be used for cost-sharing purposes.

§ 110.70 Financial administration.

(a) A State must expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit the preparation of reports required by 49 CFR part 18 and this part, including the tracing of funds provided for planning to a level of expenditure adequate to establish that at least 75 percent of the funds provided were made available to LEPCs for developing,

improving, and implementing emergency plans; and the tracing of funds provided for training to a level of expenditure adequate to establish that at least 75 percent of the funds provided were made available for the purposes of training public sector employees employed or used by political subdivisions.

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of Indian tribes and any subgrantees shall meet the standards of 49 CFR 18.20, including the ability to trace funds provided for training to a level of expenditure adequate to establish that at least 75 percent of the funds provided were made available for the purposes of training public sector employees employed or used by political subdivisions.

(c) To be allowable, costs must be eligible, reasonable, necessary, and allocable to the approved project in accordance with OMB Circular A-87 and included in the grant award before Federal funds may be used by the grantee. Costs incurred prior to the award of any grant are not allowable. Recipients are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501), 49 CFR part 90, and OMB Circular A-128. Audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits. RSPA may audit a recipient at any time.

§ 110.80 Procurement.

Recipients shall use procurement procedures and practices which reflect applicable State laws and regulations and Federal requirements as specified in 49 CFR part 18. RSPA may review a recipient's procurement procedures and practices of LEPCs, political subdivisions, subgrantees and contractors, as appropriate.

§ 110.90 Grant monitoring, reports, and records retention.

(a) *Grant monitoring.* Recipients are responsible for managing the day-to-day operations of grant, subgrant and contract-supported activities. Recipients must monitor performance of supported activities to assure compliance with applicable Federal requirements and achievement of performance goals. Monitoring must cover each program, function, activity, or task covered by the grant. Monitoring and reporting

requirements for planning and training are contained in this part; general grant reporting requirements are specified in 49 CFR 18.40.

(b) *Reports.* (1) The recipient shall submit a performance report at the completion of a project for which reimbursement is being requested or with a request to amend the grant. The final performance report is due 90 days after the expiration or termination of the grant.

(2) Recipients shall submit an original and two copies of all performance reports. Performance reports for planning and training must contain brief information on the following: a comparison of actual accomplishments to the objectives established for the performance period and the reasons for slippage.

(3) Recipients shall report developments or events that occur between the required performance reporting dates which have significant impact upon the planning and training activity such as—

(i) Problems, delays, or adverse conditions which will impair the ability to meet the objective of the grant; and

(ii) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(4) Financial reporting, except as provided in § 110.70 and 49 CFR 18.41, shall be supplied quarterly using Standard Form 270, Financial Status Report, to report the status of funds.

Each recipient shall report separately on planning and training.

(c) *Records retention.* In accordance with 49 CFR 18.42, all financial and programmatic records, supporting documents, statistical records, training materials, and other documents generated under a grant shall be maintained by the recipient for three years from the date the recipient submits its last expenditure report. The recipient shall designate a repository and single-point of contact for planning and for training or both for these purposes. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

§ 110.100 Enforcement.

If a recipient fails to comply with any term of an award (whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere) an enforcement action may be taken as specified in 49 CFR 18.43. The recipient may appeal any such actions as specified in 49 CFR part 18. Costs incurred by the recipient during a suspension or after termination of an award are not allowable unless RSPA authorizes it in writing. Grant awards may be terminated in whole or in part with the consent of the recipient at an

agreed upon effective date, or by the recipient upon written notification.

§ 110.110 After grant requirements.

The awarding agency will close out the award when it determines that all applicable administrative actions and all required work of the grant is complete in accordance with subpart D of 49 CFR part 18. The recipient must submit all financial, performance, and other reports required as a condition of the grant, within 90 days after the expiration or termination of the grant. This time frame may be extended by RSPA for cause.

§ 110.120 Deviation from this part.

Applicants or recipients may request a deviation from the non-statutory provisions of this part. RSPA will respond to such requests in writing. If appropriate, the decision will be included in the grant award.

§ 110.130 Disputes.

Disagreements should be resolved at the lowest level possible, beginning with the project manager and the project officer. If an agreement cannot be reached, the Administrator, RSPA, will serve as the dispute resolution official, whose decision will be final.

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Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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