

Subpart B—Environmental Program Grants for Tribes

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GENERAL—ALL GRANTS

§35.500 Purpose of the subpart.

This subpart establishes administrative requirements for all grants awarded to Indian Tribes and Intertribal Consortia for the environmental programs listed in §35.501. This subpart supplements requirements in EPA's general grant regulations found at 40 CFR part 31. Sections 35.500-518 contain administrative requirements that apply to all environmental program grants included in this subpart. Sections 35.530 through 35.718 contain requirements that apply to specified environmental program grants. Many of these environmental programs also have programmatic and technical requirements that are published elsewhere in the Code of Federal Regulations.

§35.501 Environmental programs covered by the subpart.

(a) The requirements in this subpart apply to all grants awarded for the following programs:

(1) Performance Partnership Grants (1996 Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104-134; 110 Stat. 1321, 1321-299 (1996) and Departments of Veterans Affairs, Housing and Urban Development, and Independent Agencies Appropriations Act of 1998, Pub. L. 105-65; 111 Stat. 1344, 1373 (1997)).

(2) The Indian Environmental General Assistance Program Act of 1992, 42 U.S.C. 4368b.

(3) Clean Air Act. Air pollution control (section 105).

(4) Clean Water Act.

(i) Water pollution control (section 106 and 518).

(ii) Water quality cooperative agreements (section 104(b)(3)).

(iii) Wetlands development grant program (section 104(b)(3)).

(iv) Nonpoint source management (section 319(h)).

(5) Federal Insecticide, Fungicide, and Rodenticide Act.

(i) Pesticide cooperative enforcement (section 23(a)(1)).

(ii) Pesticide applicator certification and training (section 23(a)(2)).

(iii) Pesticide program implementation (section 23(a)(1)).

(6) Pollution Prevention Act of 1990. Pollution prevention grants for Tribes (section 6605).

(7) Safe Drinking Water Act.

(i) Public water system supervision (section 1443(a)).

(ii) Underground water source protection (section 1443(b)).

(8) Toxic Substances Control Act.

(i) Lead-based paint program (section 404(g)).

(ii) Indoor radon grants (section 306).

(iii) Toxic substances compliance monitoring (section 28).

(9) Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276; 112 Stat. 2461, 2499; 42 U.S.C. 6908a).

(i) Hazardous Waste Management Program Grants (Pub. L. 105-276; 112 Stat. 2461, 2499; 42 U.S.C. 6908a).

(ii) Underground Storage Tanks Program Grants (Pub. L. 105-276; 112 Stat. 2461, 2499; 42 U.S.C. 6908a).

(b) Unless otherwise prohibited by statute or regulation, the requirements in §35.500 through §35.518 of this subpart also apply to grants to Indian Tribes and Intertribal Consortia under environmental programs established after this subpart becomes effective, if specified in Agency guidance for such programs.

(c) In the event a grant is awarded from EPA headquarters for one of the programs listed in paragraph (a) of this section, this subpart shall apply and the term "Regional Administrator" shall mean "Assistant Administrator".

§35.502 Definitions of terms.

Terms are defined as follows when they are used in this regulation:

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Consolidated grant. A single grant made to a recipient consolidating funds from more than one environmental grant program. After the award is made, recipients must account for grant funds in accordance with the funds' original environmental program sources. Consolidated grants are not Performance Partnership Grants.

Environmental program. A program for which EPA awards grants under the authorities listed in §35.501. The grants are subject to the requirements of this subpart.

Federal Indian reservation. All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation.

Funding period. The period of time specified in the grant agreement during which the recipient may expend or obligate funds for the purposes set forth in the agreement.

Intertribal Consortium or Consortia. A partnership between two or more Tribes that is authorized by the governing bodies of those Tribes to apply for and receive assistance under one or more of the programs listed in §35.501.

National program guidance. Guidance issued by EPA's National Program Managers for establishing and maintaining effective environmental programs. This guidance establishes national goals, objectives, and priorities as well as other information to be used in monitoring progress. The guidance may also set out specific environmental strategies, core performance measures, criteria for evaluating programs, and other elements of program implementation.

Outcome. The environmental result, effect, or consequence that will occur from carrying out an environmental program or activity that is related to an environmental or programmatic goal or objective. Outcomes must be quantitative, and they may not necessarily be achievable during a grant funding period. See "output."

Output. An environmental activity or effort and associated work products related to an environmental goal or objective that will be produced or provided over a period of time or by a

specified date. Outputs may be quantitative or qualitative but must be measurable during a grant funding period. See "outcome."

Performance Partnership Grant. A single grant combining funds from more than one environmental program. A Performance Partnership Grant may provide for administrative savings or programmatic flexibility to direct grant resources where they are most needed to address public health and environmental priorities (see also §35.530). Each Performance Partnership Grant has a single, integrated budget and recipients do not need to account for grant funds in accordance with the funds' original environmental program sources.

Planning target. The amount of funds that the Regional Administrator suggests a grant applicant consider in developing its application, including the work plan, for an environmental program.

Regional supplemental guidance. Guidance to environmental program grant applicants prepared by the Regional Administrator, based on the national program guidance and specific regional and applicant circumstances, for use in preparing a grant application.

Tribal Environmental Agreement (TEA). A dynamic, strategic planning document negotiated by the Regional Administrator and an appropriate Tribal official. A Tribal Environmental Agreement may include: Long-term and short-term environmental goals, objectives, and desired outcomes based on Tribal priorities and available funding. A Tribal Environmental Agreement can be a very general or specific document that contains budgets, performance measures, outputs and outcomes that could be used as part or all of a Performance Partnership Grant work plan, if it meets the requirements of section 35.507(b).

Tribe. Except as otherwise defined in statute or this subpart, Indian Tribal Government (Tribe) means: Any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village, which is recognized as eligible by the United States Department of the Interior for the special services provided by the United

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States to Indians because of their status as Indians.

Work plan. The document which identifies how and when the applicant will use funds from environmental program grants and is the basis for management and evaluation of performance under the grant agreement to produce specific outputs and outcomes (see 35.507). The work plan must be consistent with applicable federal statutes; regulations; circulars; executive orders; and EPA delegations, approvals, or authorizations.

Work plan commitments. The outputs and outcomes associated with each work plan component, as established in the grant agreement.

Work plan component. A negotiated set or group of work plan commitments established in the grant agreement. A work plan may have one or more work plan components.

§ 35.503 Deviation from this subpart.

EPA will consider and may approve requests for an official deviation from non-statutory provisions of this regulation in accordance with 40 CFR 31.6.

§ 35.504 Eligibility of an Intertribal Consortium.

(a) An Intertribal Consortium is eligible to receive grants under the authorities listed in § 35.501 only if the Consortium demonstrates that all members of the Consortium meet the eligibility requirements for the grant and authorize the Consortium to apply for and receive assistance in accordance with paragraph (c) of this section, except as provided in paragraph (b) of this section.

(b) An Intertribal Consortium is eligible to receive a grant under the Indian Environmental General Assistance Program Act, in accordance with § 35.540, if the Consortium demonstrates that:

(1) A majority of its members meets the eligibility requirements for the grant;

(2) All members that meet the eligibility requirements authorize the Consortium to apply for and receive assistance; and

(3) It has adequate accounting controls to ensure that only members that meet the eligibility requirements will

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benefit directly from the grant project and will receive and manage grant funds, and the Consortium agrees to a grant condition to that effect.

(c) An Intertribal Consortium must submit to EPA adequate documentation of:

(1) The existence of the partnership between Indian Tribal governments, and

(2) Authorization of the Consortium by all its members (or in the case of the General Assistance Program, all members that meet the eligibility requirements for a General Assistance Program grant) to apply for and receive the grant(s) for which the Consortium has applied.

PREPARING AN APPLICATION

§ 35.505 Components of a complete application.

A complete application for an environmental program grant must:

(a) Meet the requirements in 40 CFR part 31, subpart B;

(b) Include a proposed work plan (§ 35.507 of this subpart); and

(c) Specify the environmental program and the amount of funds requested.

§ 35.506 Time frame for submitting an application.

An applicant should submit a complete application to EPA at least 60 days before the beginning of the proposed funding period.

§ 35.507 Work plans.

(a) *Bases for negotiating work plans.* The work plan is negotiated between the applicant and the Regional Administrator and reflects consideration of national, regional, and Tribal environmental and programmatic needs and priorities.

(1) *Negotiation considerations.* In negotiating the work plan, the Regional Administrator and applicant will consider such factors as national program guidance; any regional supplemental guidance; goals, objectives, and priorities proposed by the applicant; other jointly identified needs or priorities; and the planning target.

(2) *National program guidance.* If an applicant proposes a work plan that