

Guidance on E-Enterprise Workload Tradeoffs Using Performance Partnership Grants (PPGs) and Individual Grants

This guidance is intended to be the first word on this topic – to enable all interested partners to engage constructively and with a basic sense of shared objectives – not the last. It should be regarded as initial guidance on a new area of shared activity, where all participants are venturing for the first time. As we work together on E-Enterprise tradeoffs in the months and years ahead, it is highly likely we will discover unexpected opportunities and challenges. If there is a consensus on the need, we may continue to revise this guidance as we all learn more and develop a stronger sense of how this new flexibility and mode of operating needs to work.

In addition to the discussions below of the U.S. Environmental Protection Agency's (EPA) FY2016 Partnerships Action Plan, this guidance also summarizes certain relevant authorities containing legally binding requirements that govern the use and management of EPA financial assistance. This guidance does not identify all applicable legal requirements and is not intended to expand or limit any legal rights or obligations contained in any applicable legal authorities. In the event of a conflict between the discussion in this summary and any legally binding requirement, this summary document is not controlling.

FY2016 Partnerships Action Plan Tradeoffs Provision

Section 3.A.1(b) of the EPA's FY2016 Partnerships Action Plan provides as follows:

Advancing E-Enterprise for the Environment with state, local, and tribal partners

1) Broadening EPA and State Participation in E-Enterprise:

b) By September 30, 2016, each EPA regional office and interested states in that region will work collaboratively through established or adapted regional processes to consider and facilitate temporary tradeoffs in workload in exchange for participation by such states in E-Enterprise or similar projects or program activities designed to modernize business processes. Such participation can be funded using State and Tribal Assistance Grants (which may be Performance Partnership Grants where appropriate) and provided for in state grant workplans to describe such temporary tradeoffs.¹

Background and Purpose of Tradeoffs Provision

Through policy and action, the EPA-State-Tribal E-Enterprise Leadership Council (EELC) has committed itself and its constituent agencies to promote E-Enterprise for the Environment (E-Enterprise) as a new way of doing business. E-Enterprise is a new model for collaborative leadership among environmental co-regulators (see <https://www.epa.gov/e-enterprise>). Working together, environmental leaders at EPA, the states, territories and tribes, are utilizing the E-Enterprise model to simplify, streamline and modernize the implementation of our environmental programs. By streamlining business processes and leveraging technology under joint governance, E-Enterprise is enabling the nation's environmental protection enterprise to be more informed,

¹ Tribes were not identified as potential tradeoff participants in the Action Plan provision. However, based on the EPA Overview to the FY2016-2017 NPM Guidances, this guidance provides for any interested tribes to request and engage with their region on tradeoffs in the management of EPA-authorized programs.

timely and productive, resulting in better health and environmental outcomes while supporting local jobs and communities.

One way of establishing E-Enterprise as a new way of doing business is to embed E-Enterprise in EPA's formal operational structure, as when many E-Enterprise projects were included in the FY2016-2017 National Program Manager (NPM) Guidances. Building on these actions, the FY16 Partnerships Action Plan takes several key steps to broaden participation in E-Enterprise. (See <https://www.epa.gov/planandbudget/cross-agency-strategies-annual-action-plans>.)

One such step is for states, territories, and tribes to work collaboratively with EPA regional offices to consider and facilitate temporary tradeoffs in traditional workplan activities, to provide space and support for the state, territory, or tribe to be able to put time and effort into early engagement and collaboration with EPA on a business process modernization project or activity. These can be E-Enterprise projects formally endorsed by the EELC, or projects pursued by regional or program offices that are aligned with the E-Enterprise goals: to streamline and, as appropriate, automate shared business processes under joint governance. The tradeoffs idea says that this work is important enough to temporarily decrease some existing work efforts so that the modernization work can be accomplished within existing resources.

These tradeoffs may not always involve the use of federal grant resources, or may be managed wholly within a program covered by a single grant. However, there may be occasions in which the funding demands within a program, or the technical and/or expertise needs of a particular project, or near-term program priorities, won't enable an in-program tradeoff to be practical. Where State Tribal Assistance Grant (STAG) funding is needed to support a tradeoff and the tradeoff crosses lines of programmatic and grant authority, some form of flexibility provided under the PPG program would be required. While some states prefer separate, stand-alone grants, many states combine two or more categorical grants in a PPG for one or more years.

The Action Plan provision quoted above states that tradeoffs are available for "E-Enterprise or similar projects or program activities designed to modernize business processes." Eligible projects or activities are specific E-Enterprise projects included and as encouraged in each of the NPM Guidances, those subsequently selected as new or enhanced E-Enterprise projects, and/or other business process modernization projects or program activities that will be jointly governed at the state, territorial, or tribal level through early engagement and collaboration with EPA. This document is intended for use by EPA regional and program offices, states, territories, and tribes to assist in identifying and implementing tradeoffs that under this guidance are described as "E-Enterprise tradeoffs."

E-Enterprise Tradeoffs using PPGs

Authority and Background

A PPG is a grant delivery tool that allows states, territories or tribes to combine at least two and up to 19 categorical environmental program grants into a single multi-program grant with a single grant workplan, budget and performance report. Funds managed in PPGs are not tracked by their original program source. PPGs were authorized by Congress in the Appropriations Acts

of 1996 and 1998 and codified at 40 CFR 35 in 2001. All categorical environmental grants, including PPGs, are also subject to 2 CFR Parts 200 and 1500. PPGs allow for enhanced joint priority setting and enable states and tribes to leverage resources in a strategic and flexible manner.

Features to Support E-Enterprise

PPGs can provide states, territories and tribes with programmatic flexibility to direct resources based on environmental and public health priorities. They make it easier to fund cross-cutting work involving multiple programs, and provide administrative flexibility, reduced costs, streamlined paperwork, and accounting procedures. With a PPG, EPA and states, territories or tribes can decide to strategically increase or decrease efforts in program areas depending on priorities and initiatives in order to meet a program's environmental goals and measures. Given their built-in flexibility, PPGs can, where needed and as intended in the Partnerships Action Plan, provide a mechanism to consider and facilitate temporary tradeoffs of conventional performance targets in exchange for participation by those states on E-Enterprise projects.

More information may be found in "Best Practices Guide for Performance Partnership Grants with States," June 2014, (https://www.epa.gov/sites/production/files/2015-12/documents/best_practices_guide_for_ppgs_with_states.pdf) and in the "Best Practices for Performance Partnership Grants with Tribes, March 2011 (https://www.epa.gov/sites/production/files/2015-12/documents/ppg_guide_for_tribes-final.pdf).

Flexibility and Approval

The PPG regulations at 40 CFR 35, Subparts A and B provide flexibility for states, territories and tribes to shift resources within a PPG to accommodate an E-Enterprise trade-off. In those cases, a state, territory or tribe must include in its workplan a rationale that describes the basis for its priorities and expected environmental benefits. The Regional Administrator is the decision-official regarding such requests for flexibility (see 40 CFR 35.137).

In addition, the regulations authorize a state, territory, or tribe, to propose PPG grant workplans that differ from the goals, objectives and measures in NPM Guidances. If a state, territory, or tribe proposes a workplan that is significantly different from the NPM Guidance, the Regional Administrator must consult with the affected NPM before agreeing to the workplan. For PPGs involving proposed significant differences that would affect more than one program, the Regional Administrator must consult with each affected NPM (see 40 CFR 35.107).

However, under PPGs, there should generally be room to accommodate tradeoffs within the FY2016-2017 NPM Guidances for the five media NPMs and the Office of Environmental Information. Each of the NPM Guidances includes a listing of E-Enterprise projects that the respective NPM is leading, supporting, or evaluating, and the introduction to each guidance "encourages states, tribes and other offices to coordinate with or participate in these projects where they see complementary priorities, processes or objectives." The tradeoffs provision in the FY2016 Partnerships Action Plan was anticipated in the EPA-wide Overview to the NPM Guidances, which stated that "NPMs and Regions are also encouraged to provide flexibility to

states and tribes, including any tradeoffs in workload in exchange for potential lasting improvements that make business processes more efficient.”

Accountability

PPGs that contain E-Enterprise tradeoffs must comply with joint evaluation requirements which are used to inform planning and priority setting for the next grant cycle (see 40 CFR 35.115 and 35.515). Additionally, while PPG recipients do not have to track funds by program source, they are accountable for achieving workplan commitments, including any E-Enterprise tradeoff commitments.

E-Enterprise Tradeoffs Involving Separate, Stand-alone Grants

E-Enterprise tradeoffs may also be negotiated under non-competitive, individual, continuing environmental program grants. For tradeoffs to be grant eligible, they must be within the scope of the authorizing grants statute. As with PPGs, to the extent that negotiated E-Enterprise commitments differ significantly from the priorities in NPM Guidance, the Regional Administrator must consult with the appropriate NPM prior to approving the workplan. However, as discussed above with regard to PPGs, generally, there should be room to accommodate tradeoffs within the NPM Guidances without triggering the consultation requirement.

Moreover, once E-Enterprise tradeoff commitments have been negotiated and included in the approved workplan, recipients are accountable for meeting the commitments and discussing performance progress during the joint evaluation process. They are also responsible for tracking their expenditure of funds for E-Enterprise activities by program source.

The table below outlines several potential E-Enterprise tradeoff scenarios.

Potential E-Enterprise Tradeoff Scenarios and Responses

| Scenario | Response |
|---|--|
| Tradeoff proposal involves a reprioritization of work which is not funded by STAG or other resources provided by EPA. | States and regions should discuss potential effects on performance measures and reporting under applicable NPM Guidance. |
| Tradeoff proposal involves a reprioritization of work within a stand-alone program grant. | Tradeoffs within a stand-alone program grant are authorized provided they are within the scope of eligibility of the authorizing grant statute. States and the regions should work together to negotiate and document the tradeoff in the grant workplan. The applicable NPM Guidance should be referenced when negotiating tradeoffs. |
| Tradeoff proposal across two or more categorical grants included within a PPG. | Cross-program tradeoffs within a PPG are authorized. The region and state, territory or tribe should work together to determine whether agreed-upon performance measures, outputs and reporting under the existing PPG are impacted or in need of modification. If modification is necessary, the changes should be clearly documented in the workplan. A nexus between the work that will be reduced temporarily and the program or outputs that will be streamlined is not required. Each situation will be evaluated on its own merits. |
| Tradeoff proposal across two or more categorical grants where one or more grants are not included in the PPG. | If a tradeoff is desired, but any of the affected grants are not included in the existing PPG, a formal amendment adding funding for those grants to the PPG is necessary. ² |
| Tradeoff proposal across two or more categorical grants with no existing PPG. | If such a tradeoff is desired, the region and state, territory or tribe must negotiate a new PPG that would incorporate all of the affected categorical grants. |

² Note that tradeoffs must occur within a PPG and not between PPGs.

When an E-Enterprise project/activity is integrated into a PPG or individual grant workplan, any tradeoffs should be accomplished and documented appropriately. The following steps are provided as guidance for the parties (regional offices, states, territories and tribes) responsible for negotiating PPGs or individual grant workplans. In keeping with the central, joint governance goal of E-Enterprise, all of these steps should be carried out collaboratively between regional offices and states, territories, or tribes as appropriate. If a tradeoff proposal within or across different programs differs significantly from the NPM Guidance in one or more affected programs, the Regional Administrator must consult with the affected NPM(s) prior to approving the tradeoff proposal. Once a tradeoff proposal has been approved, the region will inform the Office of E-Enterprise for the Environment and the affected NPM(s) of the decision.

Review the following steps for integrating E-Enterprise projects into existing PPGs or into stand-alone grant workplans:

- Discuss any potential E-Enterprise activities/projects to be accomplished through the use of tradeoffs early during PPG or individual grant workplan negotiations to ensure effective planning, priority setting and appropriate identification of outputs and milestones.
- PPG or individual grant workplans already in progress should be reviewed to evaluate the potential for E-Enterprise project opportunities. For PPGs or individual grant workplans already negotiated or in progress, tradeoffs once agreed upon can be formalized in and incorporated through a workplan revision. The regional offices and states, territories, or tribes are encouraged to identify opportunities for E-Enterprise activities/projects for individual grants or for as many grant programs contained in a PPG as is practicable by considering their value, benefits and potential for future efficiencies or savings.
- Before including a proposed tradeoff in a PPG workplan, identify whether there is a connection between the E-Enterprise activity to be implemented and an eligible activity under one of the grant programs contained in the PPG. For example, an NPDES permit processing/system improvement project would not be eligible for an E-Enterprise tradeoff if funding for the CWA Sec. 106 grant program were not included in the PPG, but would be if CWA Sec. 106 funding had been included in the PPG. If there is no such connection, the situation can be addressed by adding the necessary program to the PPG.
- Before including a proposed tradeoff in an individual grant workplan, ensure that the E-Enterprise activity is within the scope of eligibility of the grant authorizing statute. For example, an NPDES permit processing/system improvement project would be eligible for an E-Enterprise tradeoff under an individual CWA Section 106 grant. Conversely, an NPDES permit processing/system improvement project would not be eligible for an E-Enterprise tradeoff under an individual RCRA 3011 Hazardous Waste Management grant.
- Jointly evaluate PPG or individual grant workplan commitments to determine where there may be more flexibility for achieving tradeoffs since certain commitments are mandated by the underlying statutes and/or grant conditions.

- Consider the timing of the grant, and whether a grant activity or commitment can be deferred until later during the grant budget period. GPI 12-06 encourages states to apply for multi-year awards and align them with the 2-year NPM and program-specific grant guidances.
- Clearly define what major/minor milestones can be negotiated and/or deferred. Ensure that any work commitment which is exchanged in a trade-off is not required statutorily for addressing an Annual Commitment System (ACS) measure or metric, and note whether the regional contribution to the measure will need to be renegotiated.
- Jointly identify the financial and human capital resources needed for the state's, territory's or tribe's expected level of participation in the E-Enterprise activity/project, and how the tradeoff will support the state's, territory's, or tribe's use of those resources.