

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

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Guidelines for Awarding Clean Water Act Section 319 Base Grants to Indian Tribes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This final rule provides national guidelines for the award of base grants under the Clean Water Act (CWA) section 319(h) nonpoint source (NPS) grants program to Indian tribes in FY 2011 (and subsequent years). In addition, the rule includes a few new administrative changes to clarify the guidelines and make them more user-friendly. The new administrative changes for base grant submissions are (1) that each EPA Region will now establish its own individual timeframe for tribes to submit application materials for section 319 base grants, (2) the inclusion of information on how to calculate the cost-share/match, and (3) the availability of facsimile submission for section 319 base grant application materials when the tribe coordinates with the appropriate EPA Regional coordinator in advance of the section 319 base grant application deadline.

DATES: This final rule is effective on January 6, 2011.

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I. General Information

Affected entities: Tribes that are eligible to receive grants under Section 319 and 518 of the

Clean Water Act (CWA).

II. Background

In FY2010 EPA awarded approximately \$4.7 million in base grants to 148 tribes to address high-priority activities aimed at producing improved water quality. We look forward to working with tribes again in FY 2011 and beyond to implement successful projects addressing the extensive nonpoint source (NPS) control needs throughout Indian country. There is continuing recognition that Indian tribes need financial support to implement NPS programs that address critical water quality concerns on tribal lands. EPA will continue to work closely with the tribes to assist them in developing and implementing effective tribal NPS pollution programs.

EPA anticipates that Congress will, for the twelfth year in a row, authorize EPA to award NPS control grants to Indian tribes in FY 2011 in an amount that exceeds the statutory cap (in section 518(f) of the CWA) of 1/3 of 1 percent of the total section 319 appropriation. For FY 2011, EPA anticipates awarding section 319 base grants to eligible tribes in the amount of \$30,000 or \$50,000 of Federal section 319 funding (depending on land area; see Section B, Allocation Formula, for additional information).

Section 319 of the CWA authorizes EPA to award grants to eligible tribes for the purpose of assisting them in implementing approved NPS management programs developed pursuant to section 319(b). The primary goal of the NPS management program is to control NPS pollution through implementation of management measures and practices to reduce pollutant loadings resulting from each category or subcategory of NPSs identified in the tribe's NPS assessment

report developed pursuant to section 319(a). Section 319 base funds may be used for a range of activities that implement the tribe's approved NPS management program, including, but not limited to the following: hiring a program coordinator; conducting NPS education programs; providing training and authorized travel to attend training; updating the NPS management program; developing watershed-based plans; NPS ordinance development; springs protection; low impact development projects/stormwater management; livestock exclusion fencing; septic system rehabilitation; public outreach; and coordination with other environmental programs (tribal, EPA, other federal agency programs, etc). EPA strongly encourages tribes to use section 319 funding for the development and/or implementation of watershed-based plans to protect unimpaired waters and restore NPS-impaired waters.

EPA awards section 319 base grants non-competitively, and allocates funding using a formula based on land area. Tribes with less than 1,000 sq. mi. (less than 640,000 acres) of land receive a base amount of \$30,000, and tribes with over 1,000 sq. mi. (over 640,000 acres) receive a base amount of \$50,000. EPA awards additional section 319 funds through a separate competitive process that is aimed at implementation of watershed-based projects and watershed plan development. EPA posts a separate Request for Proposals (RFP) for its competitive grants program under section 319 on an annual basis at www.grants.gov. Additional information on the competitive grants program under section 319 can be found on EPA's website at www.epa.gov/nps/tribal.

III. Overview of Clean Water Act Section 319 Base Grants to Indian Tribes

A. Environmental Results

EPA has developed guidelines for awarding CWA Section 319 base grants to Indian tribes. These guidelines apply to section 319 base grants awarded from funds appropriated by Congress in FY 2011 and in subsequent years.

Grants awarded under these guidelines will advance the protection and improvement of the Agency's Strategic Plan (see <http://www.epa.gov/ocfo/plan/plan.htm>). In support of Goal 2, Objective 2.2 of the Strategic Plan, and consistent with EPA Order 5700.7, *Environmental Results under EPA Assistance Agreements* (see www.epa.gov/ogd/grants/award/5700.7.pdf), it is anticipated that grants awarded under these guidelines will be expected to accomplish various environmental outputs and outcomes as described below. All proposed work plans must include specific statements describing the environmental results of the proposed project in terms of well-defined outputs, and, to the maximum extent practicable, well-defined outcomes that demonstrate how the project will contribute to the overall protection and improvement of water quality. Eligible tribes should contact their EPA Regional Tribal NPS Coordinator for further information about the appropriate Strategic Plan references (see section XIII for Agency contact information and also EPA's website under "EPA Tribal NPS Coordinators" at www.epa.gov/nps/tribal).

Environmental outputs (or deliverables) refer to an environmental activity, effort, and/or associated work product 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 an assistance agreement funding period. Examples of environmental outputs anticipated as a result of section 319 grant awards may include but are not

limited to: a watershed-based plan, progress reports, or a particular number of on-the-ground management measures or practices installed or implemented during the project period.

Environmental outcomes mean the 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 may be environmental, behavioral, health-related or programmatic in nature, must be quantitative, and may not necessarily be achieved within an assistance agreement funding period. Examples of environmental outcomes anticipated as a result of section 319 grants to be awarded may include but are not limited to: an increased number of NPS-impaired waterbodies that have been partially or fully restored to meet water quality standards or other water quality-based goals established by the tribes; and/or an increased number of waterbodies that have been protected from NPS pollution.

B. Allocation Formula

Each eligible tribe will receive Federal section 319 base funding in accordance with the following land area scale:

<u>Square miles (acres)</u>	<u>Base amount</u>
Less than 1,000 sq. mi. (less than 640,000 acres)	\$30,000
Over 1,000 sq. mi. (over 640,000 acres)	\$50,000

The land area scale is the same as used in previous years. EPA continues to rely upon land area as the deciding factor for allocation of funds because NPS pollution is strongly related to land use; thus land area is a reasonable factor that generally is highly relevant to identifying tribes with the greatest needs (recognizing that many tribes have needs that significantly exceed available resources).

C. Eligible Activities

Section 319 base funds may be used for a range of activities that implement the tribe's approved NPS management program, including: hiring a program coordinator; conducting NPS education programs; providing training and authorized travel to attend training; updating the NPS management program; developing watershed-based plans; and implementing, alone or in conjunction with other agencies or other funding sources, watershed-based plans and on-the-ground watershed projects. In general, base funding should not be used for general assessment activities (e.g., monitoring the general status of reservation waters, which may be supported with CWA section 106 funding). EPA encourages tribes to use section 319 funding, and explore the use of other funding such as CWA section 106 funding, to support project-specific water quality monitoring, data management, data analysis, assessment activities, and the development of watershed-based plans.

IV. Eligibility and Match Requirements

A. Eligible Applicants

To be eligible for NPS base grants, a tribe or intertribal consortium must: (1) be Federally recognized; (2) have an approved NPS assessment report in accordance with CWA section 319(a); (3) have an approved NPS management program in accordance with CWA section 319(b); and (4) have treatment in a similar manner as a state (TAS) status in accordance with CWA section 518(e). To be eligible for base and competitive NPS grants tribes must meet these eligibility requirements as of the second Friday in October for the applicable fiscal year unless otherwise notified, as announced in the FY 2007 guidelines on October 25, 2006, at 71 FR

62441. Tribes should contact their EPA Regional Tribal NPS Coordinator for further information about the eligibility process (see section XIII for Agency contact information and also EPA's website under "EPA Tribal NPS Coordinators" at www.epa.gov/nps/tribal).

Some tribes have formed intertribal consortia to promote cooperative work. An intertribal consortium is a partnership between two or more tribes that is authorized by the governing bodies of those tribes to apply for and receive assistance under this program. (See 40 CFR 35.502.) Individual tribes who are a part of intertribal consortia that is awarded a section 319 base grant may not also be awarded an individual section 319 base grant. (Note that individual tribes may still be eligible to apply for competitive funds if they do not also submit a proposal for competitive funds as part of an intertribal consortium.)

The intertribal consortium is eligible only if the consortium demonstrates that all its members meet the eligibility requirements for the section 319 program and authorize the consortium to apply for and receive assistance in accordance with 40 CFR 35.504. An intertribal consortium must submit with their proposed work plan to EPA adequate documentation of the existence of the partnership and the authorization of the consortium by its members to apply for and receive the grant. (See 40 CFR 35.504.) In making grant awards to tribes who are part of intertribal consortia, Regions must include a brief finding in the funding package that the tribes have demonstrated the existence of the partnership and the authorization of the consortium by its members to apply for and receive the grant.

B. Cost Share/Match

Section 319(h)(3) of the CWA requires that the cost share/match for NPS grants is 40 percent of the total project cost. In general, as required in 40 CFR 31.24, the cost share/match

requirement can be satisfied by any of the following: allowable costs incurred by the grantee, subgrantee, or a cost-type contractor, including those allowable costs borne by non-Federal grants; by cash donations from non-Federal third parties; or by the value of third party in-kind contributions.

EPA's regulations also provide that EPA may decrease the match requirement to as low as 10 percent if the tribe can demonstrate in writing to the Regional Administrator that fiscal circumstances within the tribe or within each tribe that is a member of the intertribal consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship (*see* 40 CFR 35.635.) In making grant awards to tribes that provide for a reduced match requirement, Regions must include a brief finding in the funding package that the tribe has demonstrated that it does not have adequate funds to meet the required match.

Performance Partnership Grants (PPG) enable tribes to combine funds from more than one environmental program grant into a single grant award. Tribes seeking to incorporate their section 319 base grant funds into a PPG must first apply for section 319 base funding following the program's specific requirements (separate work plan and complete budget) in order to qualify to put grants into a PPG. If the tribe includes the section 319 grant as a part of an approved PPG, the cost share/match requirement may be reduced to 5 percent of the total cost of the work plan budget for the first 2 years in which the tribe receives a PPG; after 2 years, the cost share/match may be increased up to 10 percent of the work plan budget (as determined by the Regional Administrator). (See 40 CFR 35.536.)

Where the stated purpose is to include the section 319 base grant in a PPG, a tribe may prepare a budget and proposed work plan based upon the assumption that EPA will approve the

waiver amount for PPGs under 40 CFR 35.536. If a proposed PPG work plan differs significantly from the section 319 work plan approved for funding, the Regional Administrator must consult with the National Program Manager. (See 40 CFR 35.535.) The purpose of this consultation requirement is to address the issue of ensuring that a project which is awarded section 319 base funding is implemented once included with other grant programs in a PPG.

If the tribe does not or cannot include the section 319 base grant as part of an approved PPG, or chooses to withdraw the section 319 grant from their PPG, the tribe must then meet the match requirements identified in section IV.B above and, as applicable, negotiate a revised work plan with the EPA Regional Tribal NPS Coordinator.

The following table demonstrates a 40% (section 319 required cost share/match), 10% (if undue hardship requested), or 5% (if work plan combined in a PPG) cost share/match on a section 319 base grant Federal request of either \$30,000 or \$50,000. If applicants have additional questions regarding cost share/match calculations, please contact the EPA Regional Contact identified in section XIII.

Match calculation table for tribes eligible for \$50,000 of base funding (> 1,000 mi ²)				
Total project cost	Nonfederal match	Federal share	Nonfederal Match	Federal share
\$83,333	40%	60%	\$33,333	\$50,000
\$55,556	10%	90%	\$5,556	\$50,000
\$52,632	5%	95%	\$2,632	\$50,000

Match calculation table for tribes eligible for \$30,000 of base funding (< 1,000 mi²)

Total project cost	Nonfederal match	Federal share	Nonfederal match	Federal share
\$50,000	40%	60%	\$20,000	\$30,000
\$33,333	10%	90%	\$3,333	\$30,000
\$31,579	5%	95%	\$1,579	\$30,000

Example Calculation:

a. If you know the total project costs:

- (1) Multiply the total project costs by the cost-share/ match percentage needed.
- (2) The total is your cost-share/match amount.

For example:

If you are requesting \$30,000 of base funding, and your total project cost = \$50,000, and you need 40 percent cost-share/match, so $\$50,000 \times .40 = \$20,000$ (cost-share/match).

OR

b. If you know the total federal funds requested (\$30,000 for this example):

- (1) Divide the total federal funds requested by the maximum federal share allowed.
- (2) Subtract the federal funds requested from the amount derived in step 1.
- (3) The amount derived from step 2 is the nonfederal match.

For example:

(1) If the federal funds requested = \$30,000 and the recipient cost-share/match is 10 percent, the federal share = 90% or 0.90. $\$30,000 \div 0.90 = \$33,333$ (total project cost).

(2) $\$33,333 - \$30,000 = \$3,333$

(3) The nonfederal match = \$3,333

V. Application Requirements for Base Grants

A. Address to Request Application Package for Base Grants

Grant application forms, including Standard Form (SF) 424, are available at www.epa.gov/ogd/grants/how_to_apply.htm and by mail upon request by calling the EPA Grants and Interagency Agreement Management Division (GIAMD) at (202) 564-5320. Tribes may also contact their EPA Regional Tribal NPS Coordinator for further information about the application process (see section XIII for Agency contact information and also EPA's website under "EPA Tribal NPS Coordinators" at www.epa.gov/nps/tribal).

B. Content and Form of Application Submission for Base Grants

Please note that only the proposed work plan and budget, including all of the components outlined in the section immediately below, need to be included in the initial application for base grants (see section VI for submission dates and times)..

To apply for section 319 base grants, you must submit a proposed work plan and budget to the appropriate EPA Regional Tribal NPS Coordinator (see section XIII for Agency contact information and also EPA's website under "EPA Tribal NPS Coordinators" at www.epa.gov/nps/tribal). You may submit the proposed work plan and budget as either a hard copy or an electronic submission. If you submit a hard copy proposed work plan and budget, you have the option to submit it by U.S. Postal Mail, express delivery service, hand delivery, or courier service only. If you choose to submit the work plan and budget via fax, you must coordinate this with your EPA Regional Tribal NPS coordinator one week in advance of the section 319 base grant application deadline. The EPA Regional Tribal NPS coordinator must acknowledge the tribe's intention to submit via fax. If you submit a hard copy proposed work

plan and budget, you are encouraged (not required) to include a compact disc (CD) with the electronic version of the proposed work plan. If you submit your proposed work plan electronically, it should be sent to the appropriate EPA Regional Tribal NPS Coordinator at the e-mail address listed in section XIII of this announcement and also on EPA's website under "EPA Tribal NPS Coordinators" at www.epa.gov/nps/tribal.

The specific content and form of the proposed work plan for the award of section 319 base grants is as follows:

1. Proposed Work Plan

Tribes must submit a work plan to receive base funding. All work plans must be consistent with the tribe's approved NPS management program and conform to legal requirements that are applicable to all environmental program grants awarded to tribes (see 40 CFR 35.507 and 35.515) as well as the grant requirements which specifically apply to NPS management grants (see 40 CFR 35.638). As provided in those regulations, and in accordance with EPA Order 5700.7, *Environmental Results under EPA Assistance Agreements*, all work plans must include:

- a. Description of each significant category of NPS activity to be addressed;
- b. Work plan components including cost estimate for each work plan component;
- c. Work plan commitments for each work plan component, including anticipated environmental outputs and outcomes (as required by EPA Order 5700.7) and the applicant's plan for tracking and measuring its progress towards achieving the expected outputs and outcomes;
- d. Total grant budget breakdown;
- e. Estimated work years for each work plan component;

f. Roles and responsibilities of the recipient and EPA in carrying out the work plan commitments; and

g. Reporting schedule and a description of the performance evaluation process that will be used that accounts for: (a) a discussion of accomplishments as measured against work plan commitments and anticipated environmental outputs and outcomes; (b) a discussion of the cumulative effectiveness of the work performed under all work plan components; (c) a discussion of existing and potential problem areas; and (d) suggestions for improvement, including, where feasible, schedules for making improvements.

2. Work Plan to Develop a Watershed-Based Plan

If a tribe submits a work plan to develop a watershed-based plan, it must include a commitment to incorporate the nine components of a watershed-based plan identified in section VII.B below.

3. Work Plan to Implement a Watershed-Based Plan

If a tribe submits a work plan to implement a watershed-based plan, it must be accompanied by a statement that the Region finds that the watershed-based plan to be implemented includes the nine components of a watershed-based plan identified in section VII.B below.

VI. Submission Dates and Times for Proposed Work Plans for Base Grants

Beginning in FY 2011, eligible tribes must submit to the appropriate EPA Regional Tribal NPS Coordinator proposed work plans for base funding by a date established by the Regional office (see section XIII for Agency contact information; Agency contact information is

also posted on EPA's website under "EPA Tribal NPS Coordinators" at www.epa.gov/nps/tribal). Application submission due dates and times for each of the Regions will be posted on the tribal NPS website: www.epa.gov/nps/tribal. The EPA Regional Tribal NPS Program Coordinator or the assigned CWA Section 319 Grants Project Officer will review the proposed work plan and budget for base funding and, where appropriate, recommend improvements to the plan by a specified date determined by the Region. The tribe must submit a final work plan and budget by a specified date determined by the Region. The Regions will determine the due date for final grant applications. Regions must set their base grant proposed work plan submission deadlines no later than March 1st, and need to notify EPA Headquarters of base grant award recipients by March 31st.

Submission dates and times for proposed work plans for NPS base grant funding for years beyond FY 2011 are described in section XI below.

VII. Watershed-Based Plans

A. Overview of Watershed-Based Plans

EPA strongly encourages tribes to use section 319 funding for the development and/or implementation of watershed-based plans to protect unimpaired waters and restore NPS-impaired waters. EPA also encourages tribes to explore the use of other funding such as CWA section 106 funding to support the development of watershed-based plans. EPA believes that watershed-based plans provide the best means for preventing and resolving NPS problems and threats. Watershed-based plans provide a coordinating framework for solving water quality problems by providing a specific geographic focus, integrating strong partnerships, integrating strong science

and data, and coordinating priority setting and integrated solutions. This section outlines the specific information that should be included in all watershed-based plans that are developed or implemented using section 319 funding. This information correlates with the elements of a watershed-based plan outlined in the NPS grants guidelines for States (see *FY 2004 Nonpoint Source Program and Grants Guidelines for States and Territories*, available at www.epa.gov/owow/nps/cwact.html). One significant difference from the State guidelines is that a watershed-based plan for tribes provides for the integration of “water quality-based goals” (see element (3) below), whereas the State guidelines call for specific estimates of load reductions that are expected to be achieved by implementing the plan. EPA has incorporated this flexibility for tribes in recognition that not all tribes have yet developed water quality standards and many tribes may need additional time and/or technical assistance in order to develop more sophisticated estimates of the NPS pollutants that need to be addressed. Where such information does exist, or is later developed, EPA expects that it will be incorporated as appropriate into the watershed-based plan.

To the extent that information already exists in other documents (e.g., NPS assessment reports or NPS management programs), the information may be incorporated by reference into the watershed-based plan. Thus, the tribe need not duplicate any existing process or document that already provides needed information.

B. Components of a Watershed-Based Plan

1. An identification of the causes and sources or groups of similar sources that will need to be controlled to achieve the goal identified in element (3) below. Sources that need to be controlled should be identified at the significant subcategory level with estimates of the extent to which they

are present in the watershed (e.g., X number of dairy cattle feedlots needing upgrading, including a rough estimate of the number of cattle per facility; Y acres of row crops needing improved nutrient management or sediment control; or Z linear miles of eroded streambank needing remediation).

2. A description of the NPS management measures that will need to be implemented to achieve a water quality-based goal described in element (3) below, as well as to achieve other watershed goals identified in the watershed-based plan, and an identification (using a map or a description) of the critical areas for which those measures will be needed to implement the plan.

3. An estimate of the water quality-based goals expected to be achieved by implementing the measures described in element (2) above. To the extent possible, estimates should identify specific water quality-based goals, which may incorporate, for example: load reductions; water quality standards for one or more pollutants/uses; NPS total maximum daily load allocations; measurable, in-stream reductions in a pollutant; or improvements in a parameter that indicates stream health (e.g., increases in fish or macroinvertebrate counts). If information is not available to make specific estimates, water quality-based goals may include narrative descriptions and best professional judgment based on existing information.

4. An estimate of the amounts of technical and financial assistance needed, associated costs, and/or the sources and authorities that will be relied upon to implement the plan. As sources of funding, tribes should consider other relevant Federal, State, local and private funds that may be available to assist in implementing the plan.

5. An information and education component that will be used to enhance public understanding and encourage early and continued participation in selecting, designing, and implementing the

NPS management measures that will be implemented.

6. A schedule for implementing the NPS management measures identified in the plan that is reasonably expeditious.

7. A description of interim, measurable milestones for determining whether NPS management measures or other control actions are being implemented.

8. A set of criteria that can be used to determine whether the water quality-based goals are being achieved over time and substantial progress is being made towards attaining water quality-based goals and, if not, the criteria for determining whether the watershed-based plan needs to be revised.

9. A monitoring component to evaluate the effectiveness of the implementation efforts over time, measured against the criteria established under element (8) above.

EPA recognizes the difficulty of developing the information described above with precision and, as these guidelines reflect, believes that there must be a balanced approach to address this concern. On one hand, it is absolutely critical that tribes make, at the subcategory level, a reasonable effort to identify the significant sources; identify the management measures that will most effectively address those sources; and broadly estimate the expected water quality-based goals that will be achieved. Without such information to provide focus and direction, it is much less likely that a project that implements the plan can efficiently and effectively address the NPSs of water quality impairments. On the other hand, EPA recognizes that even with reasonable steps to obtain and analyze relevant data, the available information at the planning stage (within reasonable time and cost constraints) may be limited; preliminary information and estimates may need to be modified over time, accompanied by mid-course corrections in the watershed plan;

and it often will require a number of years of effective implementation to achieve the goals. EPA fully intends that the watershed planning process described above should be implemented in a dynamic and iterative manner to assure that projects implementing the plan may proceed even though some of the information in the watershed plan is imperfect and may need to be modified over time as information improves.

C. Scale and Scope of Watershed-Based Plans

The watershed-based plan should address a large enough geographic area so that its implementation addresses all of the significant sources and causes of impairments and threats to the waterbody in question. EPA recognizes that many tribes may face jurisdictional limitations outside reservation boundaries. To the extent possible, EPA encourages tribes to engage other partners and include mixed ownership watersheds when appropriate to solve the water quality problems (e.g., tribal, Federal, State, local and private lands). While there is no rigorous definition or delineation for this concept, the general intent is to avoid single segments or other narrowly defined areas that do not provide an opportunity for addressing a watershed's stressors in a rational and economical manner. At the same time, the scale should not be so large as to minimize the probability of successful implementation.

Once a watershed-based plan that contains the information identified above has been established, it can be used as the foundation for preparing annual work plans. Like the NPS management program approved under section 319(b), a watershed-based plan may be a multi-year planning document. Whereas the NPS management program provides overall program guidance to address NPS pollution on tribal lands, a watershed-based plan focuses NPS planning on a particular watershed identified as a priority in the NPS management program. Due to the

greater specificity of a watershed-based plan, it will generally have considerably more detail than a NPS management program, and identified portions may be implemented through highly specific annual work plans. While the watershed-based plan can be considered a subset of the NPS management program, the annual work plan can be considered a subset of the watershed-based plan.

A tribe may choose to implement the watershed-based plan in prioritized portions (e.g., based on particular segments, other geographic subdivisions, NPS categories in the watershed, or specific pollutants or impairments), consistent with the schedule established pursuant to item (f) above. In doing so, tribes may submit annual work plans for section 319 grant funding that implement specific portions of the watershed-based plan. A watershed-based plan is a strategic plan for long-term success; annual work plans are the specific “to-do lists” to achieve that long-term success.

VIII. General Grant Requirements

A. Grant Requirements

A listing and description of general EPA regulations applicable to the award of assistance agreements may be viewed at www.epa.gov/ogd/AppKit/applicable_epa_regulations_and_description.htm.

All applicable legal requirements including, but not limited to, EPA’s regulations on environmental program grants for tribes (see 40 CFR 35.500 to 35.735) and regulations specific to NPS grants for tribes (see 40 CFR 35.630 to 35.638), apply to all section 319 grants.

B. Non-Tribal Lands

The following discussion explains the extent to which section 319 grants may be awarded to tribes for use outside the reservation. We discuss two types of off-reservation activities: (1) activities that are related to waters within a reservation, such as those relating to sources upstream of a waterway entering the reservation; and (2) activities that are unrelated to waters of a reservation. As discussed below, the first type of these activities may be eligible; the second is not.

1. Activities That Are Related to Waters Within a Reservation

Section 518(e) of the CWA provides that EPA may treat an Indian Tribe as a State for purposes of section 319 of the CWA if, among other things, "the functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are . . . within the borders of an Indian reservation" (see 33 U.S.C. 1377(e)(2)). EPA already awards grants to tribes under section 106 of the CWA for activities performed outside of a reservation (on condition that the tribe obtains any necessary access agreements and coordinates with the State, as appropriate) that pertain to reservation waters, such as evaluating impacts of upstream waters on water resources within a reservation. Similarly, EPA has awarded section 106 grants to States to conduct monitoring outside of State borders. EPA has concluded that grants awarded to an Indian tribe pursuant to section 319 may similarly be used to perform eligible section 319 activities outside of a reservation if: (1) the activity pertains to the management and protection of waters within a reservation; and (2) just as for on-reservation activities, the tribe meets all other applicable requirements.

2. Activities That Are Unrelated to Waters of a Reservation

As discussed above, EPA is authorized to award section 319 grants to tribes to perform

eligible section 319 activities if the activities pertain to the management and protection of waters within a reservation and the tribe meets all other applicable requirements. In contrast, EPA is not authorized to award section 319 grants for activities that do not pertain to waters of a reservation. For off-reservation areas, including “usual and accustomed” hunting, fishing, and gathering places, EPA must determine whether the activities pertain to waters of a reservation prior to awarding a grant.

C. Administrative Costs

Pursuant to CWA section 319(h)(12), administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with the grant shall not exceed 10 percent of the grant award. The costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer are not subject to this limitation. It is common for work plans to include many of the above-stated exceptions to administrative costs. For example, most BMPs implemented by tribes are considered demonstration projects and would fall under the administrative cost exemption. Note that indirect cost *rates* are set by Department of Interior for the tribe and are independent of indirect costs mentioned in CWA.

D. Satisfactory Progress

For a tribe that received section 319 funds in the preceding fiscal year, section 319(h)(8) of the CWA requires that the Region determine whether the tribe made “satisfactory progress” during the previous fiscal year in meeting the schedule of activities specified in its approved NPS management program. The Region will base this determination on an examination of tribal activities, reports, reviews, and other documents and discussions with the tribe in the previous

year. Regions must include in each section 319 base grant award package (or in a separate document, such as the grant-issuance cover letter, that is signed by the same EPA official who signs the grant), a written determination that the tribe has made satisfactory progress during the previous fiscal year in meeting the schedule of milestones specified in its NPS management program. The Regions must include brief explanations that support their determinations.

E. Operation and Maintenance

Each section 319 grant must contain a condition requiring that the tribe assure that any management practices implemented for the project be properly operated and maintained for the intended purposes during its life span. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail. Management practices and projects that are damaged or destroyed due to a natural disaster (e.g., earthquakes, storm events, floods, etc.) or events beyond the control of the grantee are exempt from this condition.

The condition must require the tribe to assure that any subrecipient of section 319 funds similarly include the same condition in the subaward. Additionally, such condition must reserve the right of EPA and the tribe, respectively, to conduct periodic inspections during the life span of the project to ensure that operation and maintenance are occurring, and shall state that, if it is determined that participants are not operating and maintaining practices in an appropriate manner, EPA or the tribe, respectively, will request a refund for the project supported by the grant.

The life span of a project will be determined on a case-by-case basis, tailored to the types of practices expected to be funded in a particular project, and should be specified in the grant condition. For assistance in determining the appropriate life span of the project, tribes may wish to examine other programs implementing similar practices, such as the U.S. Department of Agriculture's conservation programs. For example, for conservation practices, it may be appropriate to construct the life span consistent with the life span for similar conservation practices as determined by the Commodity Credit Corporation (pursuant to the implementation of the Environmental Quality Incentives Program). Following the approach used in many Federal funding programs, practices will generally be operated and maintained for a period of at least 5 to 10 years.

F. Reporting

As provided in 40 CFR 31.40, 31.41, 35.507, 35.515, and 35.638, all section 319 grants must include a set of reporting requirements and a process for evaluating performance. Some of these requirements have been explicitly incorporated into the required work plan components that all tribes must include in order to receive section 319 grant funding.

The work plan components required for section 319 funding, specifically those relating to work plan commitments and timeframes for their accomplishment, facilitate the management and oversight of tribal grants by providing specific activities and outputs by which progress can be monitored. The performance evaluation process and reporting schedule (both work plan components) also establish a formal process by which accomplishments can be measured. Additionally, the satisfactory progress determination (for tribes that received section 319 funding in the preceding fiscal year) helps ensure that tribes are making progress in achieving the goals in

their NPS management programs.

Regions will ensure that the required evaluations are performed according to the negotiated schedule (at least annually) and that copies of the performance evaluation reports are placed in the official files and provided to the recipient.

IX. Technical Assistance to Tribes

In addition to providing NPS grant funding to tribes, EPA remains committed to providing continued technical assistance to tribes in their efforts to control NPS pollution. During the past fifteen years, EPA has presented many workshops to tribes nationwide to assist them in developing: (1) NPS assessments to further their understanding of NPS pollution and its impact on water quality; (2) NPS management programs to apply solutions to address their NPS problems; and (3) specific projects with effective on-the-ground solutions. The workshops have provided information on related EPA and other programs that can help tribes address NPS pollution, including the provision of technical and funding assistance. Other areas of technical assistance include watershed-based planning, water quality monitoring, section 305(b) reports on water quality, and section 303(d) lists of impaired waters. EPA intends to continue providing NPS webcasts and workshops to interested tribes in FY 2011 (and beyond) and to provide other appropriate technical assistance as needed. EPA also intends to include special emphasis in the trainings on the development and implementation of watershed-based plans that are designed to address on-the-ground water quality improvements. The National Partnership for Environmental Technology Education (PETE) has entered into a multi-year contract with the U.S. Environmental Protection Agency (EPA) to develop a nationwide tribal training program for the

Office of Grants and Debarment (OGD) and the Office of Small Business Programs (OSBP).

This cutting-edge program will involve a multi-faceted approach to provide tribes, U.S.

Territories and Insular Areas with training in the proper management of EPA funds through

assistance awards, and OSBP's Disadvantaged Business Enterprise Rule (DBE) rule. The online

training can be found at: <http://www.petetribal.org>

X. Anticipated Deadlines and Milestones for FY 2011 Base Grants

Deadline for tribes to be eligible for 319 grants.	October 8, 2010
Tribes submit base grant proposed work plan to Region.	Determined by Region (no later than March 1 st , 2011)
Region comments on tribe's base grant proposed work plan.	Determined by Region
Tribes submit final base grant work plan to Region.	Determined by Region

Other than the date EPA will use to determine eligibility to receive 319 grants, the dates above are the anticipated dates for those actions.

XI. Anticipated Deadlines and Milestones for Base Grants Beyond FY 2011

Listed below are the anticipated deadlines and milestones for NPS base grants for years beyond FY 2011 unless otherwise announced. Beyond FY11, Regions must set their base grant

proposed work plan submission deadlines no later than the first Friday in March, and need to notify EPA Headquarters of base grant award recipients no later than the last Friday in March.

The deadlines and milestones below refer to the dates within the particular fiscal year for which the tribe is applying for NPS base grants. Each year, the specific dates will be posted on EPA’s website at www.epa.gov/nps/tribal. Tribes should also contact their EPA Regional Tribal NPS Coordinator for further information about deadlines and milestones for years beyond FY 2011 (see EPA’s website under “EPA Tribal NPS Coordinators” at www.epa.gov/nps/tribal for Agency contact information).

Deadline for tribes to be eligible for 319 grants.	Second Friday in October
Tribes submit base grant proposed work plan to Region.	Determined by Region (but no later than the first Friday in March)
Region comments on tribe’s base grant proposed work plan.	Determined by Region
Tribes submit final base grant work plan to Region.	Determined by Region

XII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and is therefore not subject to OMB review. Because this grant

action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. Section 601 et.) or Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub.L. 104-4). In addition, this action does not significantly or uniquely affect small governments. Although this action does not generally create new binding legal requirements, where it does, such requirements do not substantially and directly affect tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999) because it does not generally create new binding legal requirements, where it does, such requirements do not substantially and directly affect state, local or tribal governments. These revisions clarify the current requirements and provide flexibility. This action is not subject to Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. Section 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Section 3501 et seq.). The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before certain actions may take effect, the Agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this grant action contains legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit its final action in its report to Congress under the Act.

XIII. Agency Contacts: EPA Headquarters and Regional Tribal NPS Coordinators

EPA Headquarters – Nancy Arazan, Office of Wetlands, Oceans, and Watersheds, Assessment and Watershed Protection Division, telephone: 202-566-0815; e-mail: arazan.nancy@epa.gov.

Region I - Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Beth Edwards; mailing address: U.S. EPA Region I, 5 Post Office Square, Suite 100 Boston, MA 02109; telephone: 617-918-1840; e-mail: Edwards.beth@epa.gov

Region II - New Jersey, New York, Puerto Rico, U.S. Virgin Islands

Rick Balla; mailing address: U.S. EPA Region II, 290 Broadway - 24th Floor (MC DEPP:WPB), New York, New York 10007; telephone: 212-637-3788; e-mail: balla.richard@epa.gov.

Region III - Delaware, Maryland, Pennsylvania, Virginia, West Virginia, Washington, DC

Fred Suffian; mailing address: U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103; telephone: 215-814-5753; e-mail: suffian.fred@epa.gov.

Region IV - Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Yolanda Brown; mailing address: U.S. EPA Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303; telephone: 404-562-9451; e-mail: brown.yolanda@epa.gov.

Region V - Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Daniel Cozza; mailing address: U.S. EPA Region V, 77 West Jackson Blvd. (MC: WS-15J), Chicago, IL 60604; telephone: 312-886-7252; e-mail: cozza.daniel@epa.gov.

Region VI - Arkansas, Louisiana, New Mexico, Oklahoma, Texas

George Craft; mailing address: U.S. EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202;
telephone: 214-665-6684; e-mail: craft.george@epa.gov.

Region VII - Iowa, Kansas, Missouri, Nebraska

Jennifer Ousley; mailing address: U.S. EPA Region VII, 901 N 5th Street, (MC:WWPDWWSP)
Kansas City, KS 66101; telephone: 913-551-7498; e-mail: ousley.jennifer@epa.gov.

Region VIII - Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Mitra Jha; mailing address: U.S. EPA Region VIII, 1595 Wynkoop St. (MC: 8EPR-EP), Denver,
CO 80202; telephone: 303-312-6895; e-mail: jha.mitra@epa.gov.

Region IX - Arizona, California, Hawaii, Nevada, American Samoa, Mariana Islands, Guam

Tiffany Eastman; mailing address: U.S. EPA Region IX, 75 Hawthorne Street (MC: WTR-10),
San Francisco, CA 94105; telephone: 415-972-3404; e-mail: eastman.tiffany@epa.gov.

Region X - Alaska, Idaho, Oregon, Washington

Krista Mendelman; mailing address: U.S. EPA Region X, 1200 6th Avenue, Suite 900 (MC:
OWW-137), Seattle, WA 98101; telephone: 206-553-1571; e-mail: mendelman.krista@epa.gov.

Dated: _____

Signed: _____

Michael H. Shapiro, Acting Assistant Administrator,
Office of Water.