2023 Section 319 Nonpoint Source Program Guidelines Revision

Basic Elements Workgroup Final Report

July 6, 2023

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1 Executive Summary

This report summarizes feedback that the Basic Grant Elements workgroup, comprised of members from EPA and state agencies, advanced to the broader 319 Guidelines Revision workgroup. The workgroup focused on a range of topic areas/guidelines sections including: 319 statutory background; the process and schedule for awarding 319 grants; funding information; management and oversight of 319 grants; and satisfactory progress determinations. Through a combination of independent reviews, EPA and state workgroup meetings/discussions, and consultations with subject matter experts and the broader 319 Guidelines Revision workgroup between March and May 2023, the Basic Grant Elements workgroup identified opportunities for revisions, updates, clarifications, streamlining, and new content development. Given that several sections the workgroup reviewed were related to statutory and/or regulatory requirements—and therefore comparably less amenable to revisions—the workgroup primarily focused efforts around certain substantive topics lending themselves to potentially actionable, policy-level re-considerations and revisions. In addition to some general comments/suggestions, these topics were: satisfactory progress determinations (SPD); management and oversight of 319 grants; multi-year awards; performance partnership grants (PPGs); and cap on administrative costs. The workgroup also identified several opportunities to

potentially integrate climate and equity priority considerations into sections of the guidelines. However, the workgroup supports an approach whereby climate and equity priorities are woven into the guidelines at a higher level (e.g., within the introductory language or new "National Priorities" section) rather than developing new language within those specific sections the workgroup was responsible for reviewing. Further, the workgroup identified passages where value could be added by pointing readers towards companion resources (e.g., *Applying for and Administering CWA Section 319 Grants: A Guide for State Nonpoint Source Agencies*). Finally, the workgroup noted guidelines sections to update references/citations/policy issuances to reflect current regulations or EPA policies.

In particular, the group noted opportunities to:

- Clarify roles and expectations surrounding annual SPDs;
- Streamline/simplify the *Appendix E - Guidance and Checklist for Determining Progress of State NPS Management Programs and Performance of CWA Section 319 Grants*;
- Revise oversight language with a mind towards promoting national-level consistency while affording states flexibilities to implement programs based on their unique nonpoint source (NPS) circumstances and priorities;
- Clarify opportunities around and practical nuances of multi-year, incrementally-funded 319 awards;
- Highlight similarities and differences between stand-alone 319 grants and those issued under Performance Partnership Grants (PPGs); and
- Clarify what activities are and are not subject to the cap on administrative costs.

2 Workgroup Description

The Basic Grant Elements workgroup focused on the sections of the guidelines noted below in Table 1. These sections covered a range of topic areas including: 319 statutory background; the process and schedule for awarding 319 grants; funding information; management and oversight of 319 grants; and satisfactory progress determinations. Between March and May 2023, EPA and EPA-state workgroups met together and in parallel to review and discuss content, suggest revisions, and identify opportunities for clarification and streamlining. Certain content that was flagged by the broader 319 Guidelines Revision workgroup as unlikely to be revised (e.g., funding allocation formula) was reviewed by EPA only for accuracy.

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Table 1. Guidelines Sections Reviewed

Guideline chapter/section/subsection	Topic
Chapter II, Section A	Introduction, statutory background
Chapter II, Section B	Introduction, the role of 319 grants
Chapter VII	Annual performance and progress determinations
Chapter VIII., Section F	Funding information, allocation of funds
Chapter VIII, Section G (i.)	Funding information, schedule for awarding 319 grants, state project solicitation and selection process
Chapter VIII, Section G (ii.)	Funding information, schedule for awarding 319 grants, process for awarding 319 grants
Chapter VIII, Section G (iii.)	Funding information, schedule for awarding 319 grants, state expenditure of awarded funds
Chapter VIII, Section H	Funding information, relationship to PPGs
Chapter VIII, Section I	Funding information, multi-year workplans
Chapter IX, Section K (vi.)	Grants guidelines, reporting requirements, STORET
Chapter IX, Section K (vii.)	Grants guidelines, reporting requirements, reporting and record-keeping for subgrantees
Chapter IX, Section L	States must demonstrate satisfactory progress
Chapter IX, Section M	Obligate funds within one year
Chapter IX, Section N	Non-federal share 40 percent or greater
Chapter IX, Section O	Cost sharing for demonstration projects
Chapter IX, Section P	States must maintain level of effort
Chapter IX, Section Q	Cap on administrative costs
Chapter X	Management and oversight of 319 grants
Appendix E	*Guidance and Checklist for Determining Progress of State NPS Management Programs and Performance of CWA Section 319 Grants*

3 Workgroup Members

A total of 11 workgroup members participated and included seven representatives from EPA and four from states (See Table 2).

Table 2. Workgroup Members

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Erik Bedan	CT DEE	erik.bedan@ct.gov
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4 Key Workgroup Observations

The following key points were raised for each of the substantive topic areas noted above and offered for consideration by the broader 319 Guidelines Revision workgroup.

4.1 General

- When appropriate, **emphasize that NPS Management Programs Plans should be current**.
- Where possible, consider clarifying **terms like "as quickly as possible".** For example, in Step 3 of the Process for Awarding § 319 Grants section, the group suggested adding an exact timeframe for how long Regions would take to review states' draft workplans (e.g., 30 days). However, **other workgroup members suggested that language could be added to the effect of "states and Regions should agree upon a mutually acceptable timeframe"**.
- **Consider adding detailed explanation of what constitutes a "project"**.

4.2 Satisfactory Progress Determinations (Chapter VII; IX, Section L; Appendix E)

- Section 319(h)(8) of the Clean Water Act provides little information about how rigorously (or loosely) the requirements at § 319(b)(2) may/must be considered by EPA when determining whether a state has made satisfactory progress. Put otherwise, the Appendix E checklist appears to reflect a relatively narrow interpretation of the statute.
- The Appendix E checklist is primarily an EPA Regional tool; however, states are interested in the framing of the questions and what aspects are subsequently communicated to them.
- The Appendix E checklist can inform workload planning and serve valuable for communicating between EPA and states and internally.
    - For example, SPD can be used to communicate to management about the need for program resources, especially in a climate where understaffing is a persistent issue.
- State workgroup members noted the importance of clear communication from the Region to both 1) notify states unambiguously that SPD was favorable (or not) and 2) identify strengths and opportunities in state NPS programs.
- What happens if SPD is not favorable?
    - The guidelines could benefit from language speaking to **regional flexibility/discretion to make partial, conditional 319 awards** in cases where a state has not met all elements of SPD (even if only to be used in rare cases).

- **EPA should consider clarifying whether states *must* use the Appendix E checklist and revise Appendix E text as appropriate.**
- States and Regions should agree upon the general expectations related to SPD and addressing any issues that arise. Regular state-EPA communication is key.
- Opportunities exist to streamline the Appendix E checklist, as well as to add nuance to reflect situations where 319 grant programs are implemented in markedly different or atypical manners (e.g., territories funding NPS enforcement programs with 319 funds).
    - **Where possible, limit the need for explanations/justifications to "No" or "N/A" responses.**
    - **Reduce the number of questions in Section 1 of the checklist.**
    - **Combine Grants Reporting and Tracking System (GRTS) elements from Section 1 into Section 2.**
    - **Note in Section 4 that not all states make subawards.**
    - **Make it more obvious that for PPGs, states must ensure that those elements of the broader PPG to be funded by 319 funds specifically are clearly delineated.**
    - **Consider whether Section 5 is truly unique to PPGs or whether it applies to SPD in all cases.**
    - **Coordinate with the territories subgroup and revise checklist as appropriate to accommodate unique territorial 319 programs.**
- Given sometimes frequent turnover at both state agencies and EPA, interpretation of key elements of SPD may not be interpreted and/or applied consistently.
- State workgroup members voiced a desire to see EPA HQ set a national tone with respect to SPD, while also acknowledging state-level differences in program structure and implementation. **Add language as such.**
    - **For example, add language to the guidelines like "SPD memos are typically brief (X number pages)."**
- **State workgroup members expressed an interest in seeing examples of different ways SPD is undertaken across the Regions, either in the guidelines or companion resource(s).**
- Are there other measures/metrics (including qualitative) beyond what's in the statute/regs/Appendix E that could allow states to communicate progress? (note: this would not change fundamental, statutory SPD requirements).
    - For example, matching/leveraged funds; request for proposal/subaward-related indicators like "number of applications received" and "dollars sub-awarded".

4.3 Management and Oversight of 319 Grants

- **EPA HQ should set a national tone for oversight to promotes consistency across the Regions while also acknowledging states' unique circumstances and NPS priorities.**
- **Consider removing EPA assistance from this section; potentially move this information or adding "technical assistance" to title.**
- Will oversight also include Regional actions to ensure that climate- and equity-related activities and other national priorities are appropriately integrated into programs?

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4.4 Multi-Year Awards

- More explanation/nuance would be helpful, as some states may not be aware of the advantages/efficiencies associated with multi-year, incrementally funded awards, or the practical implications (e.g., funds awarded in later years of multi-year awards need to be spent quicker, given the general 5-year limit on periods of performance for 319 grants). **Add language as such.**

4.5 Performance Partnership Grants

- **Information should be added to highlight how reporting requirements differ between PPGs and standalone 319 grants.**
- State workgroup members voiced an interest in a crosswalk of 319 in the context of PPGs vs. standalone grants. **Consider adding this, either in the guidelines or companion resource(s).**
- **This section should be revised to reflect situations (rare) where state match dollars are used for projects.**

4.6 Cap on Administrative Costs

- **Language should be edited to reflect that generally, any activity undertaken by states to develop, implement, and report on progress in NPS Management Plans do not count as administrative costs.**

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