beef cattle growth and feed efficiency, and cattle grazing feed efficiency trials. The program is authorized only in the States of Alabama, California, Colorado, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. The EUP is effective from April 27, 2004 to February 28, 2005. A tolerance has been established for residues of the active ingredient in or on corn.

Two comments were submitted in response to the notice of receipt for this permit application, which was published in the **Federal Register** on March 3, 2004 (69 FR 10040) (FRL–7344–5). Comments were received from private citizens who objected to EUP issuance. They expressed doubt regarding Monsanto's truthfulness, were concerned about unspecified environmental and human health effects, as well as the purity of food. The Agency understands the commenter's concerns and recognizes that some individuals believe that genetically modified crops and food should be banned completely. Pursuant to its authority under the Federal Food, Drug, and Cosmetic Act (FFDCA), EPA has conducted a comprehensive assessment of the Cry1Ab and Cry3Bb1 delta endotoxins and the genetic material necessary for their production in corn. EPA has concluded that there is a reasonable certainty that no harm will result from dietary exposure to these endotoxins as expressed in genetically modified corn. The Cry1Ab and Cry3Bb1 corn tested under this permit are covered by tolerance exemptions under 40 CFR 180.1173 and 40 CFR 180.1214. No adverse effects are anticipated as a result of Cry3Bb1 and/or Cry1Ab expression in transgenic corn.

68467–EUP–7. Extension/Amendment. Mycogen Seeds c/o Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054. This EUP allows the use of 0.94 pounds of the plant-incorporated protectant *Bacillus thuringiensis* Cry34/35Ab1 proteins and the genetic material necessary for their production (from the insert of plasmid PHP17662) in corn on 1,177 acres of field corn for maize breeding and observation nursery, maize agronomic observation, herbicide tolerance, maize efficacy, insect resistance management, and maize demonstration trials. The program is authorized only in the States of Arizona, Colorado, Delaware, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Dakota, Ohio, Pennyslvania, Puerto Rico, South Dakota, Tennessee, Texas, Wisconsin, and Vermont. The EUP is effective from April 29, 2004 to April 30, 2005. A tolerance has been established for residues of the active ingredient in or on corn.

29964–EUP–5. Extension/Amendment. Pioneer Hi-Bred International, P.O. Box 552, Johnston, IA 50131–0552. This EUP allows the use of 3.97 pounds of the plant-incorporated protectant *Bacillus thuringiensis* Cry34/35Ab1 proteins and the genetic material necessary for their production (from the insert of plasmid PHP17662) in corn on 4,690 acres of field corn for insect resistance management, maize agronomic observation, maize breeding and observation, maize demonstration, maize efficacy, maize research seed production, maize inbred seed increase, maize regulatory studies, non-target organism, and herbicide tolerance trials. The program is authorized only in the States of Alabama, Arkansas, California, Colorado, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Washington, and Wisconsin. The EUP is effective from April 29, 2004 to April 30, 2005. A tolerance has been established for residues of the active ingredient in or on corn.

One comment was submitted in response to the notice of receipt for this permit application, which was published in the **Federal Register** on March 10, 2004 (69 FR 11431) (FRL–7346–6). The commenter objected to EUP issuance. The commenter indicated denial should be based on their view of chemical companies' record, unspecified environmental and human health effects, and food purity. The Agency understands the commenter's concerns and recognizes that some individuals believe that genetically modified crops and food should be banned completely. Pursuant to its authority under the FFDCA, EPA has conducted a comprehensive assessment of the Cry34Ab1/Cry35Ab1 delta endotoxins and the genetic material necessary for their production in corn. EPA has concluded that there is a reasonable certainty that no harm will result from dietary exposure to these endotoxins as expressed in genetically modified corn. The Cry34Ab1/Cry35Ab1 tested under these permits are covered by the tolerance exemption under 40 CFR 180.1242. No adverse effects are anticipated as a result of Cry34Ab1/Cry35Ab1 expression in transgenic corn.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: December 8, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 04–27773 Filed 12–21–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7849–3]

Guidelines on Awarding Section 319 Grants to Indian Tribes in FY 2005; Request for Grant Proposals for Watershed Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is publishing, in this notice, guidelines for awarding Clean Water Act section 319 nonpoint source grants to Indian Tribes in FY 2005. Once again Congress has authorized EPA to award nonpoint source pollution control grants to Indian Tribes under section 319 of the Clean Water Act in FY 2005 in an amount that exceeds the statutory cap (in section 518(f) of the Clean Water Act) of ⅓ of 1% of the total 319 appropriation. These guidelines are intended to assist all Tribes that have approved nonpoint source assessments and management programs and ''treatment-as-a-state'' status to receive section 319 funding to help implement those programs. The guidelines describe the process for awarding base funding to Tribes in FY 2005, including submissions of proposed work plans. The guidelines also describe the process and schedule to award additional FY 2005 funds for selected watershed projects, including submissions of watershed project proposals and the selection criteria for funding watershed-based projects.

DATES: The guidelines are effective December 22, 2004.

ADDRESSES: Persons requesting additional information or a complete copy of the document should contact Stacie Craddock (202) 566–1204; by e-mail at *craddock.stacie@epa.gov;* or by mail at U.S. Environmental Protection

Agency (4503T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The full text of the Guidelines on Awarding Section 319 Grants to Indian Tribes in FY 2005 is also available on the Internet at: *http://www.epa.gov/owow/nps/tribal.html.*

FOR FURTHER INFORMATION CONTACT: Stacie Craddock at (202) 566–1204.

Dated: November 19, 2004.

Diane C. Regas,

Director, Office of Wetlands, Oceans, and Watersheds.

SUPPLEMENTARY INFORMATION: Once again Congress has, for the sixth year in a row, authorized EPA to award nonpoint source pollution control grants to Indian Tribes under section 319 of the Clean Water Act (CWA) in FY 2005 in an amount that exceeds the statutory cap (in section 518(f) of the CWA) of ⅓ of 1% of the total 319 appropriation. This will enable all of the Tribes that have approved nonpoint source assessments and management programs and ''treatment-as-a-state'' (TAS) status (hereinafter referred to as ''approved Tribes'') by January 7, 2005, to be eligible to receive section 319 funding to help implement those programs.

The repeated allowance of increased funding for Tribal nonpoint source (NPS) programs reflects Congress' continuing recognition that Indian Tribes need and deserve increased financial support to implement nonpoint source programs that address critical water quality concerns on Tribal lands. EPA shares this view and will continue to work closely with the Tribes to assist them in developing and implementing effective Tribal nonpoint source pollution programs. To date, EPA has already approved ninety-four (94) Tribal nonpoint source management programs, covering more than 40 million acres of land (representing approximately 75% of all Indian country), and we expect to approve additional programs in FY 2005.

As was the case last year, any new authorization to exceed 1/3 of 1% applies only to the current year (FY 2005). As in the past, EPA will work with the Tribes to continue to demonstrate that increased 319 funds for Tribes can be used effectively to achieve water quality improvement. We were pleased by the quality of the Tribes' work plans that formed the basis of the grants awarded to Tribes in FY 2004, which included base grants awarded to seventy-eight (78) Tribes as well as grants for specific watershed projects awarded to thirty-two (32) Tribes through a competitive process. We believe that the Tribes and EPA succeeded in directing the FY 2004 grants towards high-priority activities that will produce on-the-ground results that provide improved water quality. We believe that this success warrants continued substantial investment of 319 grant dollars in FY 2005 to address the extensive NPS control needs throughout Indian country, as discussed below. In recognition of this fact, we intend to award (pending Congressional authorization) a total of $7,000,000 to Tribes for FY 2005.

Summary of Process for FY 2005 Grants to Tribes

In FY 2005, we will set aside $7,000,000 for Tribal nonpoint source grants. This amount is based on the same three factors as were used last year:

1. We will continue to support all eligible Tribes with base grants.
2. We will award base funding to eligible Tribes as follows:
   a. $30,000 in base funding will be awarded to eligible Tribes whose land area is less than 1,000 square miles (640,000 acres).
   b. $50,000 in base funding will be awarded to eligible Tribes whose land area is equal to or greater than 1,000 square miles (640,000 acres).
3. We will award the remaining funds to eligible Tribes through a competitive process to support the implementation of on-the-ground NPS watershed projects.

Detailed Discussion of Process for FY 2005 Grants to Tribes

1. Base Funding

Each Tribe that has an approved nonpoint source assessment and management program (and TAS status) as of January 7, 2005, will receive base funding based on the following land area scale:

Square miles (acres)	Base amount
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 last year. EPA is continuing to rely upon land area as the deciding factor for a cutoff because nonpoint source pollution is strongly related to land use; thus land area is a reasonable criterion that generally is highly relevant to identifying Tribes with the greatest needs (recognizing that many Tribes have needs that significantly exceed available resources).

The base funding may be used for a range of activities that implement the Tribe's approved NPS management program, including: hiring a program coordinator; conducting nonpoint source education programs; providing training and authorized travel to attend training; updating the nonpoint source management program; and implementing, alone or in conjunction with other agencies or other funding sources, watershed-based plans and on-the-ground watershed projects. In general, this base funding should not be used for general assessment activities.

Each Tribe that requests base funding must submit to the appropriate EPA Regional office by February 18, 2005, a proposed work plan that is consistent with the Tribe's approved nonpoint source management program and conforms to applicable legal requirements (see immediately below for contents of work plans for base funding). The Region should review the proposed work plan and, where appropriate, recommend improvements to the plan. If a Tribe has not submitted an approvable work plan by February 25, 2005, its allocated amount will be added to the competitive pool, discussed below, which will be used to fund Tribal NPS program and on-the-ground watershed projects.

Regions should work with the Tribes to expeditiously award the base grants. However, if a Tribe will be awarded additional funds to implement a watershed project, as discussed below, the Tribe may prefer combining the formal process for submission of the final application for both the base and competitive funds. Regions should confer with their Tribes and endeavor to proceed in a manner and on a schedule that is most compatible with the Tribes' needs and preferences.

2. Work Plans for Base Funding

A work plan for base funding must be consistent with the Tribe's approved nonpoint source management program and conform to legal requirements that are applicable to all environmental program grants awarded to Tribes (*see* 40 CFR 35.505 and 35.507) as well as the legal requirements that specifically apply to nonpoint source management grants (*see* 40 CFR 35.638). These guidelines summarize particularly applicable components of these legal requirements. However, EPA recommends that Tribes review the applicable regulations as well.

An approvable work plan must specify:

a. The work plan components that will be funded under the grant, briefly describing each significant category of nonpoint source activity;

b. The work plan commitments for each work plan component, and a time frame for their accomplishment;

c. The estimated work years and estimated funding amounts for each work plan component;

d. A performance evaluation process and reporting schedule in accordance with 40 CFR 35.515 (*see* discussion below on the evaluation process under the ''Management and Oversight'' heading);

e. The roles and responsibilities of the recipient and any project partners in carrying out the work plan commitments.

3. Competitive Funding: Request for Proposals to Select Watershed Projects for FY 2005 Funding (Process and Schedule)

The remaining funds will be awarded to Tribes that have approved nonpoint source management programs as of January 7, 2005, on a competitive basis to provide funding for on-the-ground nonpoint source watershed projects that are designed to achieve additional water quality improvement. Each selected project will be eligible to receive up to $150,000, depending on the demonstrated need. An individual Tribe (or intertribal consortium) may not be awarded competitive funding for more than one watershed project in a given year. The funds will be awarded using the process described below.

a. Watershed Project Review Committee

As we did for the FY 2004 grants, EPA will establish a Watershed Project Review Committee comprised of nine EPA staff, including three EPA Regional Nonpoint Source Coordinators, three EPA Regional Tribal Coordinators, two staff members of the Nonpoint Source Control Branch, and one staff member of the American Indian Environmental Office. The committee will then make funding decisions in accordance with the process described below.

b. Watershed Project Proposals

Tribes that have approved nonpoint source assessments and management programs as well as TAS status as of January 7, 2005, may apply for competitive funding by submitting a proposed work plan for the watershed project up to a maximum budget of $150,000. This funding is in addition to the base funding that each approved Tribe will receive, as described above.

Whereas base funding may be used to implement the full range of activities in approved nonpoint source management programs (*e.g.*, protection activities, education and training, etc.), competitive funding will be awarded to implement on-the-ground water quality improvement projects that are expected to achieve actual water quality benefits in waters impaired by nonpoint source pollution. Tribes are encouraged to submit on-the-ground projects that implement watershed-based plans. Competitive funds can be used for more detailed development of the watershed-based plan, such as additional monitoring or modeling that will assist Tribes in targeting implementation activities and enable Tribes to develop more detailed information or improved assessments relating to the specific components of the watershed-based plan to be implemented. Competitive funding should generally be limited to 20% for development of the watershed-based plans to assure that these funds are primarily focused on implementation of the plan. Tribes should refer to EPA's FY 2004 *Nonpoint Source Program and Grants Guidelines for States and Territories* (available at EPA's Nonpoint Source Web site at: *http://www.epa.gov/owow/nps/cwact.html*) which outline the specific information to be included in watershed-based plans to restore waters impaired by nonpoint source pollution. In such cases, the watershed project can be designed to reduce nonpoint source pollutant loadings that are contributing to non-attainment of water quality standards.

Where relevant, the watershed project may be designed to implement measures and practices that are intended to achieve load reductions or to help restore an impaired waterbody for which an approved nonpoint source total maximum daily load (NPS TMDL) has been developed (or the NPS components of mixed-source TMDLs). NPS TMDLs, together with watershed-based plans designed to implement the NPS TMDLs, provide the necessary analytic link between actions on the ground and the water quality results to be achieved. Where an NPS TMDL has not yet been developed and approved or is not yet being developed for the waters, the Tribe may use these funds to implement a watershed-based plan in the absence of a TMDL.

Tribes that apply for competitive funding for watershed projects should submit a proposed work plan for the watershed project by February 18, 2005, to the appropriate EPA Regional office for initial screening for compliance with criteria in this notice. The Regional office will, by February 25, 2005, forward the work plans that meet the required criteria to EPA Headquarters for distribution to the Watershed Project Review Committee. (E-mail versions sent as an attachment to the e-mail are appreciated where possible because they can be shared among the reviewers most rapidly and easily.)

Watershed projects that are awarded competitive funding must be consistent with the Tribe's approved nonpoint source management program and conform to legal requirements that are applicable to all environmental program grants awarded to Tribes (*see* 40 CFR 35.505 and 35.507) and the legal requirements applicable to nonpoint source management grants (*see* 40 CFR 35.638). These guidelines summarize particularly applicable components of these legal requirements, also incorporating the specific objectives for which watershed project grants are awarded.

c. Work Plan Elements for a Watershed Project Proposal

The following five elements must be included in the work plan for a proposed watershed project. These elements reflect specific regulatory requirements, as mentioned above, without which a work plan cannot be approved. Tribes may refer to the ''Competitive Proposal Review Sheet'' in Appendix A for a model of the checklist that EPA's Watershed Project Review Committee will use to rank proposed work plans for watershed projects.

The work plan for competitive funding must include all five of the following elements in order to be considered for ranking and potential funding:

1. The work plan components to be funded under the grant, briefly describing each significant category and subcategory of nonpoint source pollution that will be addressed and the causes and sources of that pollution, targeting the on-the-ground improvements to be addressed;

2. The work plan commitments for each work plan component, focusing on the types of best management practices or measures that will be implemented to address the identified causes and sources of nonpoint source pollution for each significant source of nonpoint source pollution, the expected pollutant load reduction and/or water quality benefits to the receiving waterbody, and a time frame for their accomplishment;

3. The estimated work years and estimated funding amounts for each work plan component;

4. A performance evaluation process and reporting schedule in accordance with 40 CFR 35.515 (*see* discussion below on the evaluation process under the ''Management and Oversight'' heading); and

5. The roles and responsibilities of the recipient and any project partners in carrying out the work plan commitments.

d. Selection Criteria for Funding Watershed Projects

As discussed above, watershed project proposals must include all of the work plan elements listed above in section 3.c in order to be considered for approval. After a determination is made that the project includes these minimum elements, EPA's Watershed Project Review Committee will consider the extent to which other criteria, listed below, are represented in each project. The extent to which each criteria is present will increase the total score for which the project receives. Tribes may refer to the ''Competitive Proposal Review Sheet'' in Appendix A for a model of the checklist that EPA's Watershed Project Review Committee will use to rank proposed work plans for watershed projects.

1. The project is listed as a priority implementation project or is located in a priority watershed identified in the Tribal NPS management program.

2. The project includes cooperation and/or a combination of resources with other programs, parties, and agencies to provide additional technical and/or financial assistance to the project (*e.g.*, using section 106 funding for water quality monitoring, Farm Bill Environmental Quality Incentives Program funds, or funds from state agency sources).

3. The project is designed to achieve load allocations for which an approved NPS TMDL has been developed (or the NPS components of mixed-source TMDLs).

4. The project is designed to implement a watershed-based plan that is designed to restore nonpoint source-impaired waters (including components identified in EPA's FY 2004 Nonpoint Source Program and Grants Guidelines for States and Territories, available at EPA's Nonpoint Source Web site at: *http://www.epa.gov/owow/nps/cwact.html*).

e. Award of Grants for Tribal Watershed Projects

(1) Award Decisions

The Watershed Project Review Committee will hold a conference call by March 10, 2005, to ensure that all Committee members fully understand and agree on how to objectively apply the criteria discussed above. Rankings will be developed by considering all of the factors as a whole, in accordance with a weighting system as indicated in the ''Competitive Proposal Review Sheet'' in Appendix A.

By April 7, 2005, the Committee will compile the rankings of the proposed watershed projects based on the selection criteria and then forward their rankings to the Nonpoint Source Control Branch at EPA Headquarters. Headquarters will tally the Committee's rankings and then hold a conference call by April 12, 2005, to provide a final opportunity for members of the Review Committee to discuss the rankings. By April 14, 2005, EPA will select the highest ranked proposals and announce to the Regions which Tribes' watershed projects have been selected for funding. These Tribes will be notified immediately by phone or e-mail, with a written letter to follow.

(2) Final Work Plans/Full Grant Applications

Once a Region and Tribe have been notified of the amount that will be awarded to the Tribe, they will negotiate a final work plan consistent with 40 CFR 35.507. Final work plans may include minor changes or clarifications agreed upon by the Region and Tribe, but shall not vary significantly in substance from the initial watershed project proposal. After making appropriate changes, the Tribe must submit a final work plan to the Region by May 6, 2005. If a Tribe fails to or is unable to submit an approvable work plan by May 6, 2005, the 319 grant will instead be awarded to the next highest ranking unfunded application. Regions should endeavor to finalize the grant awards no later than 60 days after receipt of a complete grant application with an approvable work plan.

(3) Match Requirements

The match requirement for section 319 base grants is 40 percent unless included as part of an approved Performance Partnership Grant (PPG) which sets the match requirement at 5 percent of the allowable cost of the work plan budget for base funding only. The match requirement for section 319 competitive grants is 40 percent of the approved work plan costs. Any competitive grant awarded under this solicitation will not be included in a PPG. In general, consistent with 40 CFR 31.24, the match requirement may be satisfied by 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% 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 should include a brief finding that the Tribe has demonstrated that it does not have adequate funds to meet the required match.

4. Grant Eligibility and Criteria

Intertribal Consortia

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 an intertribal consortia that is awarded a section 319 grant may not also be awarded a section 319 grant to the individual Tribe. 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 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.)

Technical Assistance to Tribes

In addition to providing nonpoint source funding to Tribes, EPA remains committed to providing continued technical assistance to Tribes in their efforts to control nonpoint source pollution. During the past eight years, EPA has presented many workshops to Tribes throughout the United States to assist them in developing: (1) nonpoint source assessments to further their understanding of nonpoint source pollution and its impact on water quality; (2) nonpoint source management programs to apply solutions to address their nonpoint source problems; and (3) specific projects to effect on-the-ground solutions. The workshops also have provided information on related EPA and other programs that can help Tribes address nonpoint source 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 nonpoint source workshops to interested Tribes around the United States in FY 2005 and to provide other appropriate technical assistance as needed.

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.

Milestones Summary for FY 2005

Date for Tribes to be Eligible for 319 Grants.	January 7, 2005.
Tribes Submit Base Grant Work Plans to Region.	February 18, 2005.
Tribes Submit Competitive Grant Work Plans to Region.	February 18, 2005.
Region Comments on Tribe's Base Grant Work Plan.	February 25, 2005.
Region Forwards Competitive Work Plans to Headquarters.	February 25, 2005.
Review Committee Discusses Competitive Work Plans	March 10, 2005.
Review Committee Forwards Ranking Scores to HQ.	April 7, 2005.
Review Committee Discusses Rankings.	April 12, 2005.
Headquarters Notifies Regions/Tribes of Selections.	April 14, 2005.
Tribes Submit Final Grant Application to Region.	May 6, 2005.

Management and Oversight

The Clean Water Act and EPA regulations require that all section 319 grants to States, Territories, and Tribes include a set of reporting requirements for all section 319 grants. In addition, the Clean Water Act includes a special provision for section 319 grants that specifically requires that ''no grant may be made'' under section 319 unless EPA's Administrator determines that the grant recipient (in this case the Tribe) made ''satisfactory progress'' during the preceding year in meeting the schedule of activities specified in its approved nonpoint source management program. In previous Tribal 319 guidelines, EPA has not included any discussion to supplement the law and regulations regarding Tribal reporting and EPA review of Tribal progress. Given the fact that Tribes have now been receiving significant section 319 funds for several years, and have had some time to develop more mature programs, EPA believes that it is important to take note of the significant mechanisms in the Clean Water Act and regulations that are designed to assure that the funds are used wisely and effectively.

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 nonpoint source management programs.

1. Evaluation Process

A description of the evaluation process and reporting schedule must be included in the work plan that is required for Tribes receiving section 319 funding. (*See* 40 CFR 35.507). To fulfill this requirement, the Tribe and the Region will develop a process for jointly evaluating and reporting progress and accomplishments under the work plan. (*See* 40 CFR 35.515).

The evaluation process must provide for:

a. A discussion of accomplishments as measured against work plan commitments;

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.

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

2. Satisfactory Progress

For a Tribe (or intertribal consortium) that received section 319 funds in the preceding fiscal year, section 319(h)(8) of the Clean Water Act requires that the

Region determine whether the Tribe's progress for the previous fiscal year in meeting the schedule set forth in its nonpoint source management program was satisfactory. (*See* Clean Water Act section 319(h)(8) and 40 CFR 35.638(d)(3)). 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 grant (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 nonpoint source management program. The Regions must include brief explanations that support their determinations.

Statutory and Regulatory Requirements

All section 319 grants will be awarded and administered consistent with the statutory requirements in sections 319(h) and 518(e) of the Clean Water Act and applicable regulations in 40 CFR parts 31 and 35.

Revised Schedule for FY 2006

Beginning in FY 2006, the schedule for submitting work plans and awarding section 319 grants to Tribes will be modified to expedite the grant awards process. The revised schedule also impacts the date for determining eligibility for Tribes' participation in the section 319 grants process. These modifications are necessary to ensure that award decisions are made earlier in the fiscal year to provide adequate time for Tribes to implement projects within the applicable fiscal year.

Milestones Summary for FY 2006

Date for Tribes to be Eligible for 319 Grants.	October 14, 2005
Tribes Submit Base Grant Work Plans to Region.	December 2, 2005
Tribes Submit Competitive Grant Work Plans to Region.	December 2, 2005
Region Comments on Tribe's Base Grant Work Plan.	December 9, 2005
Region Forwards Competitive Work Plans to Headquarters.	December 9, 2005
Review Committee Discusses Competitive Work Plans	January 11, 2006
Review Committee Forwards Ranking Scores to HQ.	February 8, 2006
Review Committee Discusses Rankings.	February 14, 2006
Headquarters Notifies Regions/Tribes of Selections.	February 16, 2006
Tribes Submit Final Grant Application to Region.	March 9, 2006

Conclusion

By once again lifting the 1/3 of 1% statutory cap in FY 2005, Congress continues to provide the Tribes and EPA with an excellent opportunity to further Tribal efforts to reduce nonpoint source pollution and enhance water quality on Tribal lands. EPA looks forward to working closely with the Tribes to assist them in implementing effective nonpoint source programs in FY 2005 and creating a sound basis to assure that adequate funds will continue to be provided in the future.

Appendix A

Tribal 319 Competitive Proposal Review Sheet

The following review sheet will be used by EPA's Watershed Project Review Committee to rank proposed work plans for watershed projects.

Tribe Name _____Reviewer_____

(Weight × Value = Score) (Value: 1 is Lowest; 5 is Highest) (Maximum Score is 700)

Weight	Elements 1–5 (Maximum Score for Elements 1–5 = 500)	Value	Score
25	(1) *Provides work plan components to be funded under the grant.* FACTORS: —Identifies goals and objectives of the project, targeting on-the-ground improvements. —Identifies each significant category and subcategory of NPS pollution and water quality problem to be addressed. —Identifies causes and sources of NPS pollution. —Identifies where the NPS project will take place and the waterbody affected by the NPS pollutants—provides map. COMMENTS:		
25	(2) *Describes work plan commitments for each work plan component.* FACTORS: —Describes the on-the-ground project to be constructed or installed. —Identifies BMPs to be implemented. —Identifies expected water quality benefits to receiving water. COMMENTS:		
20	(3) *Provides estimated work years and estimated funding amounts for each work plan component.* FACTORS: —Identifies a specific "Start" and "End" date for each work plan component. —Provides interim milestone dates for achieving each work plan component. —Identifies specific budget for each work plan component—outlines total operational and construction cost of the project (including match). —Indicates readiness to proceed. COMMENTS:		

Weight	Elements 1–5 (Maximum Score for Elements 1–5 = 500)	Value	Score
15	(4) *Describes a performance evaluation process and reporting schedule.* FACTORS: —Includes specific factors by which performance can be evaluated. —Includes submission of a final report. COMMENTS:		
15	(5) *Identifies roles and responsibilities of the recipient and any project partners in carrying out work plan commitments.* FACTORS: —Identifies specific level of effort for responsible parties for each work plan component. —Identifies parties who will take the lead in carrying out the work plan commitments for each work plan component. COMMENTS:		
	Criteria 6–9 (Maximum Score for Criteria 6–9 = 200)		
20	(6) The project is listed as a priority implementation project or is located in a priority watershed identified in the Tribal NPS management program. If Yes, Value = 5 If No, Value = 0		
10	(7) The project includes cooperation and/or a combination of resources with other programs, parties, and agencies to provide additional technical and/or financial assistance. If Yes, Value = 5 If No, Value = 0		
5	(8) The project is designed to achieve load allocations for which an approved NPS TMDL has been developed (or the NPS components of mixed-source TMDLs). If Yes, Value = 5 If No, Value = 0		
5	(9) The project is designed to implement a watershed-based plan that is designed to restore NPS-impaired waters. FACTORS: —The extent to which the plan includes each component of a watershed-based plan as identified in EPA's FY 2004 Nonpoint Source Program and Grants Guidelines for States and Territories. COMMENTS:		
	TOTAL SCORE		

Any Additional Comments:

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7851–7]

Revised Guidance on Procedures for Submission and Review of CERCLA Section 106(b) Reimbursement Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of revised guidance document.

SUMMARY: Section 106(b)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9606(b)(2), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), allows any person who has complied with an administrative order issued under section 106(a) of CERCLA to petition for reimbursement of the reasonable costs incurred in complying with the order, plus interest. To establish a claim for reimbursement, a petitioner must demonstrate that it was not liable for response costs under CERCLA section 107(a), or that EPA's selection of the ordered response action was arbitrary and capricious or was otherwise not in accordance with law. The authority to decide whether to grant such petitions has been delegated by the President to the EPA Administrator, and redelegated to EPA's Environmental Appeals Board (EAB) under EPA Delegation of Authority CERCLA 14–27 (June 1994).

The EAB issued procedural guidance (CERCLA Guidance) regarding the procedures for submission and review of petitions for reimbursement in June 1994. Based on its experience with reimbursement petitions after June 1994, the EAB issued revised CERCLA Guidance on October 9, 1996. The EAB issued a further revised version of its CERCLA Guidance on November 10, 2004. This Notice informs the general public of the availability of the November 10, 2004 revised CERCLA Guidance. The full text of the revised CERCLA Guidance is available on the EAB's Web site, *http://www.epa.gov/eab,* by clicking on ''EAB Guidance Documents.'' Copies of the document can also be obtained by calling Eurika Durr, Clerk of the Board, at the telephone number and e-mail address noted below.

FOR FURTHER INFORMATION CONTACT: For further information or for copies of the November 10, 2004 revised CERCLA Guidance, contact Eurika Durr, Clerk of the Board. Telephone number: (202) 233–0122. E-mail: *Durr.Eurika@epa.gov.*

Dated: December 14, 2004.

Kathie A. Stein,

Environmental Appeals Judge.

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