

Point Source Category (40 CFR part 430), EPA ICR No. 1877.02, OMB Control No. 2040-0202;

2. Best Management Practices (BMPs) for Bleached Papergrade Kraft and Soda Subcategory and the Papergrade Kraft Sulfitic Subcategory of the Pulp, Paper, and Paperboard Point Source Category (40 CFR part 430), EPA ICR No. 1829.02, OMB Control No. 2040-0207;

3. Pollution Prevention Compliance Alternative; Transportation Equipment Cleaning (TEC) Point Source Category (40 CFR part 442), EPA ICR No. 2018.01, OMB Control No. 2040-0235;

4. Baseline Standards and Best Management Practices for the Coal Mining Point Source Category (40 CFR part 434)—Coal Remining Subcategory and Western Alkaline Coal Mining Subcategory, EPA ICR No. 1944.02, OMB Control No. 2040-0239;

5. Certification in Lieu of Chloroform Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory of the Pulp, Paper and Paperboard Manufacturing Category (40 CFR part 430), EPA ICR No. 2015.01, OMB Control No. 2040-0242; and

6. Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory and the Papergrade Sulfitic Subcategory of the Pulp, Paper and Paperboard Manufacturing Category (40 CFR part 430), EPA ICR No. 1878.01, OMB Control No. 2040-0243.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Burden Statement:** Based on the information collection requirements contained in the existing ICR, the information collection for compliance assessment and certification activities will involve an estimated 16,500 reporting respondents per year with 2.15 total annual average responses per respondent and 4.15 hours per response for a total of 147,207 hours. In addition, EPA estimates 304,739 recordkeeping respondents per year and 3.86 hours per recordkeeper for a total of 1,166,012 hours. This results in an annual respondent burden of 1,313,219 hours and an annual cost of \$31,025,598. States and U.S. territories are also expected to incur a burden and cost associated with this ICR. Specifically, EPA estimates an average annual burden for these respondents of 51,089 hours at a cost of \$1,472,488. The total annual burden and cost to respondents, recordkeepers, and government (excluding Federal government) is estimated to be 1,375,308 hours and \$32,498,086.

The burden and cost estimate for the additional ICR, namely Best Management Practices Alternatives, Effluent Limitations Guidelines and Standards, Oil and Gas Extraction Point Source Category (40 CFR part 435), EPA ICR No. 1953.02, OMB Control No. 2040-0230 are estimated as follows (as documented in the original rule-related ICR for this regulation): total burden hours for the 67 respondents are 47,168 annually at a cost of \$1,200,138. This includes both reporting and recordkeeping activities.

Burden and costs for the additional six ICRs will be incorporated into this ICR as these six ICRs come up for renewal. The current number of annual responses and approved burden hours are provided below.

OMB Control No.	Annual responses	Annual hours
2040-0202 .....	29	1,418
2040-0207 .....	130	60,909
2040-0235 .....	79	19,144
2040-0239 .....	93	9,261
2040-0242 .....	86	480
2040-0243 .....	104	36,858

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the

existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: December 3, 2003.

**James A. Hanlon,**

*Director, Office of Wastewater Management.*  
[FR Doc. 03-30518 Filed 12-8-03; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7597-7]

### Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 128(a); Notice of Grant Funding Guidance for State and Tribal Response Programs

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) will begin to accept requests, from December 1, 2003, through January 31, 2004, for grants to supplement State and Tribal Response Programs. This notice provides guidance on eligibility for funding, use of funding, grant mechanisms and process for awarding funding, the allocation system for distribution of funding, and terms and reporting under these grants. EPA has consulted with State and tribal officials in developing this guidance.

Since 1997, the EPA Brownfields program has funded State and tribal response programs including Superfund Core funding for State and tribal voluntary cleanup programs and pre-remedial site assessment funding for State- and tribal-conducted Targeted Brownfields Assessments (TBA). Through section 128(a), Congress built upon these activities and provided EPA with expanded authority to fund other activities that establish and enhance capacity for State and tribal response programs as well as authority to grant funds to States and tribes to capitalize revolving loan funds and support insurance mechanisms.

The primary goal of this funding is to ensure that State and tribal response programs include, or are taking reasonable steps to include, certain elements and another is to provide funding for other activities that increase the number of response actions

conducted or overseen by a State or tribal response program. This funding is not intended to supplant current State or tribal funding for their response programs. Instead, it is to supplement their funding to increase their response capacity.

For fiscal year 2004, EPA will consider funding requests up to a maximum of \$1.5 million per State or tribe. EPA will target funding of at least \$3 million for tribal response programs to ensure adequate funding for tribal response programs.

Subject to the availability of funds, EPA regional enforcement and program staff will be available to provide technical assistance to States and tribes as they apply for and carry out these grants.

**DATES:** This action is effective as of December 1, 2003. EPA expects to make non-competitive grant awards to States and tribes which apply during fiscal year 2004.

**ADDRESSES:** Mailing addresses for U.S. EPA Regional Offices and U.S. EPA Headquarters can be located at <http://www.epa.gov/brownfields>.

**FOR FURTHER INFORMATION CONTACT:** The U.S. EPA's Office of Solid Waste and Emergency Response, Office of Brownfields Cleanup and Redevelopment, (202) 566-2777.

**SUPPLEMENTARY INFORMATION:** The Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA) was signed into law on January 11, 2002. The Act amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, by adding section 128(a). Section 128(a) authorizes a \$50 million grant program<sup>1</sup> to establish and enhance State<sup>2</sup> and tribal<sup>3</sup> response programs. Generally, these response programs address the assessment, cleanup and redevelopment of brownfields sites and other contaminated sites. Section 128(a) grants will be awarded and administered by U.S. Environmental Protection Agency (EPA) regional offices. This document provides guidance that will enable States and tribes to apply for and use section 128(a) funds in Fiscal Year 2004.

State and tribal response programs oversee assessment and cleanup

activities at the majority of brownfield sites across the country. The depth and breadth of State and tribal response programs vary. Some focus solely on CERCLA related activities, while others are multi-faceted, for example, addressing sites regulated by the Resource Conservation and Recovery Act (RCRA). Many State programs also offer accompanying financial incentive programs to spur cleanup and redevelopment. In passing section 128(a),<sup>4</sup> Congress recognized the accomplishments of State response programs in cleaning up and redeveloping brownfield sites. Section 128(a) also provides EPA with an opportunity to strengthen its partnership with States and tribes.

Since 1997, the EPA Brownfields program has been funding State and tribal response programs including Superfund Core funding for State and tribal voluntary cleanup programs and pre-remedial site assessment funding for State- and tribal-conducted Targeted Brownfields Assessments (TBA). Both activities were financed with Superfund appropriations and funded under CERCLA section 104(d) cooperative agreement authority. Through section 128(a), Congress built upon these activities and provided EPA with expanded authority to fund other activities that build capacity for State and tribal response programs as well as authority to grant funds to States and Indian tribes to capitalize revolving loan funds and support insurance mechanisms. The primary goal of this funding is to ensure that State and tribal response programs include, or are taking reasonable steps to include, certain elements and another is to provide funding for other activities that increase the number of response actions conducted or overseen, by a State or tribal response program. This funding is not intended to supplant current State or tribal funding for their response programs. Instead, it is to supplement their funding to increase their cleanup capacity.

Subject to the availability of funds, EPA regional enforcement and program staff will be available to provide technical assistance to States and Indian tribes as they apply for and carry out section 128(a) grants.

### Eligibility for Funding

To be eligible for funding under CERCLA section 128(a), a State or tribe must:

- Demonstrate that their response program includes, or is taking reasonable steps to include, the four elements of a response program, described below; or be a party to voluntary response program Memorandum of Agreement (MOA)<sup>5</sup> with EPA;

and

- Maintain and make available to the public a record of sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year, see CERCLA section 128(b)(1)(C).

**Note:** Failure to meet these requirement will result in a denial of funding for FY04).

With the exception of the section 128(a) funds a State or tribe uses to capitalize a Brownfields Revolving Loan Fund under CERCLA 104(k)(3), States and tribes are not required to provide matching funds for grants awarded under section 128(a).

### The Four Elements—Section 128(a)

Section 128(a) requires States or tribes to demonstrate that their response program includes, or is taking reasonable steps to include, four elements. Section 128(a) also authorizes funding for activities necessary to establish and enhance the four elements and to establish and maintain the public record requirement. Generally, the four elements are:

*Timely survey and inventory of brownfield sites in State or tribal land.* States and tribes must include, or be taking reasonable steps to include, in their response programs a system or process to identify the universe of brownfield sites in their State or tribal land. EPA's goal in funding activities under this element is to enable the State or tribe to establish or enhance a system or process that will provide a reasonable estimate of the number, likely locations, and the general characteristics of brownfield sites in their State or tribal lands. Given funding limitations, EPA will negotiate work plans with States and tribes to achieve this goal efficiently, effectively and within a realistic time frame. For example, many

<sup>1</sup> The Catalogue of Federal Domestic Assistance entry for the section 128(a) State and Tribal Response Programs grant program is 66.817.

<sup>2</sup> The term "State" is defined in this document as defined in CERCLA section 101(27).

<sup>3</sup> The term "Indian tribe" is defined in this document as it is defined in CERCLA section 101(36). Intertribal consortia, as defined in the Federal Register notice at 67 FR 67181, are also eligible for funding under CERCLA 128(a).

<sup>4</sup> The Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA) was signed into law on January 11, 2002. The Act amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, by adding section 128(a).

<sup>5</sup> The legislative history of SBLRBRA indicates that Congress intended to encourage States and tribes to enter into MOAs for their voluntary response programs. States or tribes that are parties to voluntary response program MOAs are automatically eligible for section 128(a) funding. A list of States that have signed CERCLA VCP MOAs with EPA can be found at [www.epa.gov/brownfields/gdc.htm#vc](http://www.epa.gov/brownfields/gdc.htm#vc).

of EPA's Brownfields Assessment grantees conduct inventories of brownfield sites in their communities or jurisdictions. EPA encourages States and tribes to work with these grantees to obtain the information that they have gathered and include it in their survey and inventory.

*Oversight and enforcement authorities or other mechanisms and resources.* State and tribal response programs must include, or be taking reasonable steps to include, oversight and enforcement authorities or other mechanisms, and resources that are adequate to ensure that:

- A response action will protect human health and the environment and be conducted in accordance with applicable Federal and State law; and
- The necessary response activities are completed if the person conducting the response activities fails to complete the necessary response activities (this includes operation and maintenance or long-term monitoring activities).

*Mechanisms and resources to provide meaningful opportunities for public participation.*<sup>6</sup> States and tribes must include, or be taking reasonable steps to include, in their response program mechanisms and resources for public participation, including, at a minimum:

- Public access to documents and related materials that a State, tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;
- Prior notice and opportunity for public comment on cleanup plans and site activity; and
- A mechanism by which a person who is, or may be, affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfields site—located in the community in which the person works or resides—may request that a site assessment be conducted. The appropriate State or tribal official must consider this request and appropriately respond.

*Mechanisms for approval of a cleanup plan and verification and certification that cleanup is complete.* States and tribes must include, or be taking reasonable steps to include, in their response programs mechanisms to approve cleanup plans. In addition States and tribes must include, or be taking reasonable steps to include, in their response programs a requirement for verification by and certification or similar documentation from the State,

<sup>6</sup> States and tribes establishing this element may find useful information on public participation on EPA's community involvement Web site at <http://www.epa.gov/superfund/action/community/index.htm>.

the tribe, or a licensed site professional to the person conducting a response action indicating that the response action is complete. Written approval by a State or tribal response program official of a proposed cleanup plan is an example of an approval mechanism.

#### Public Record Requirement

States and tribes (including those with MOAs) that received section 128(a) funding in FY03 must have established and maintained a public record system, described below, in order to receive funds in FY04. Failure to comply with this statutory requirement will result in a denial of funding for FY04 (this includes funding through an incremental grant funding mechanism). Recipients receiving section 128(a) funding for the first time in FY04 must demonstrate, to be eligible for funding in FY05, that they established and maintained the public record, as described below.

Specifically, under section 128(b)(1)(C), States and tribes must:

- Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions have been completed during the previous year;
- Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions are planned to be addressed in the next year; and
- Identify in the public record whether or not the site, upon completion of the response action, will be suitable for unrestricted use. If not, the public record must identify the institutional controls relied on in the remedy.

Section 128(a) funds may be used to maintain and make available a public record system that meets the requirements discussed above.

*Distinguishing the "survey and inventory" element from the "public record."* It is important to note that the public record requirement differs from the "timely survey and inventory" element described in the "Four Elements" section above. The public record addresses sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year. In contrast, the "timely survey and inventory" element, described above, refers to a general approach to identifying brownfield sites.

*Making the public record easily accessible.* EPA's goal is to enable States and tribes to make the public record and other information, such as information

from the "survey and inventory" element, easily accessible. For this reason, EPA will allow States and tribes to use section 128(a) funding to make the public record, as well as other information, such as information from the "survey and inventory" element, available to the public via the internet or other means. For example, the Agency would support funding State and tribal efforts to include detailed location information in the public record such as the street address and latitude and longitude information for each site.<sup>7</sup> A State or tribe may also choose to use the section 128(a) funds to make their survey and inventory information available on the Internet as well.

*Long-term maintenance of the public record.* EPA encourages States and tribes to maintain public record information, including data on institutional controls, on a long term basis (more than one year) for sites at which a response action has been completed. Subject to EPA regional office approval, States or tribes may include development and operation of systems that ensure long term maintenance of the public record, including information on institutional controls, in their work plans.<sup>8</sup>

#### Use of Funding

##### Overview

Section 128(a)(1)(B) describes the eligible uses of grants funding by States and tribes. In general, a State or tribe may use a grant to "establish or enhance" their response programs, including elements of the response program that include activities related to responses at brownfield sites with petroleum contamination. States and tribes may use section 128(a) funding to, among other things:

- Develop legislation, regulations, procedures, guidance, *etc.* that would establish or enhance the administrative and legal structure of their response programs;
- Capitalize a revolving loan fund (RLF) for brownfields cleanup under CERCLA section 104(k)(3). These RLFs are subject to the same statutory requirements and grant terms and conditions applicable to RLFs awarded under section 104(k)(3). Requirements include a 20 percent match on the amount of section 128(a) funds used for

<sup>7</sup> For further information on latitude and longitude information, please see EPA's data standards Web site available at [http://oaspub.epa.gov/edr/epastd\\$.startup](http://oaspub.epa.gov/edr/epastd$.startup).

<sup>8</sup> States and tribes may find useful information on institutional controls on EPA's institutional controls Web site at <http://www.epa.gov/superfund/action/ic/index.htm>.

the RLF, a prohibition on using EPA grant funds for administrative costs relating to the RLF, and a prohibition on using RLF loans or subgrants for response costs at a site for which the recipient may be potentially liable under section 107 of CERCLA. Other prohibitions contained in CERCLA section 104(k)(4) also apply;

- Purchase environmental insurance or developing a risk-sharing pool, indemnity pool, or insurance mechanism to provide financing for response actions under a State or tribal response program;
- Establish and maintain the required public record described in section B above. EPA considers activities related to maintaining and monitoring institutional controls to be eligible costs under section 128(a); or
- Conduct limited site-specific activities, such as assessment or cleanup, provided such activities are secondary to the primary use of the funds, *i.e.*, to establish and enhance the response program, and are tied to the four elements.

#### *Uses Related to "Establishing" a State or Tribal Response Program*

Under CERCLA section 128(a), "establish" includes activities necessary to build the foundation for the four elements of a State or tribal response program and the public record requirement. For example, a State or tribal response program may use section 128(a) funds to develop regulations, procedures, or guidance. For more developed State or tribal response programs, establish may also include activities that keep their program at a level that meets the four elements and maintains a public record required as a condition of funding under CERCLA section 128(b)(1)(C).

#### *Uses Related to "Enhancing" a State or Tribal Response Program*

Under CERCLA section 128(a), "enhance" is related to activities that add to or improve a State or tribal response program or increase the number of sites at which response actions are conducted under a State or tribal response program. The legislative history of the provision also makes this clear:

The vast majority of contaminated sites across the nation will not be cleaned up by the Superfund program. Instead, most sites will be cleaned up under State authority. \* \* \* In recognition of this fact, and the need to create and improve State cleanup capacity, new [Section 128(a)] provides financial assistance to states and tribes to establish or enhance voluntary response programs.

Senate Report 107-2, March 12, 2001, p. 15.

The exact "enhancement" uses that may be allowable depend upon the work plan negotiated between the EPA regional office and the State or tribe. For example, regional offices and States or tribes may agree that section 128(a) funds may be used for outreach and training directly related to increasing awareness of its response program, and improving the skills of program staff. It may also include developing better coordination and understanding of other State response programs, *e.g.*, RCRA or USTs. Other "enhancement" uses may be allowable as well.

#### *Uses Related to Site-Specific Activities*

States and tribes may use section 128(a) funds for activities that improve State or tribal capacity to increase the number of sites at which response actions are conducted under the State or tribal response program. Eligible uses of funds include limited site-specific related activities such as conducting assessments or cleanups at *brownfields* sites. Site-specific activities should be secondary to the primary use of the funds, *i.e.*, to establish and enhance the response program, and tied to the elements.

Site-specific assessments and cleanups must comply with all applicable Federal and State laws and are subject to the following restrictions:

- No more than \$200,000 per site can be funded for assessments, and no more than \$200,000 per site can be funded for cleanups.
- Absent EPA approval, the recipient may not use funds awarded under this agreement to assess and clean up sites owned by the recipient.
- Assessments and cleanups cannot be conducted at sites where the recipient itself is a potentially responsible party pursuant to CERCLA section 107, except for at brownfields sites contaminated by a controlled substance as defined in CERCLA section 101(39)(D)(ii)(I).
- Subgrants cannot be provided to entities that may be potentially responsible parties (pursuant to CERCLA section 107) at the site for which the assessment or cleanup activities are proposed to be conducted.
- Section 128(a) funds cannot be used for assessments or cleanups at sites that do not meet the definition of a brownfield site at CERCLA 101(39).

However, costs incurred for oversight of cleanups at other than brownfields sites may be eligible and allowable costs if such activities are included in the State's or tribe's work plan. For example, auditing of completed site

cleanups in States or tribes that use licensed site professionals to verify that sites have been properly cleaned up may be an eligible cost under section 128(a). These costs need not be incurred in connection with a brownfields site to be eligible, but must be authorized under the State's or tribe's work plan to be allowable. Other uses may be eligible and allowable as well, depending upon the work plan negotiated between the EPA regional office and the State or tribe.

#### *Uses Related to Site-Specific Activities at Petroleum Brownfields Sites*

States and tribes may use section 128(a) funds for activities that establish and enhance their response programs, even if their response programs address petroleum contamination. Also, the costs of limited site-specific activities, such as site assessments or cleanup at petroleum contaminated brownfields sites, defined at CERCLA section 101(39)(D)(ii)(II), are eligible and are allowable if the activity is included in the work plan negotiated between the EPA regional office and the State or tribe. Section 128(a) funds used to capitalize a Brownfields RLF may be used at brownfields sites contaminated by petroleum to the extent allowed under CERCLA section 104(k)(3) RLF program.

#### **Grant Mechanism and Process for Awarding Funding**

Funding authorized under CERCLA section 128(a) will be awarded through a cooperative agreement<sup>9</sup> with a State or tribe. The program will be administered under the general EPA grant and cooperative agreement regulations for States, tribes, and local governments found in the Code of Federal Regulations at 40 CFR part 31. Under these regulations, the grantee for section 128(a) grant program is:

The government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

#### **40 CFR 31.3 Grantee**

*One application per State or tribe.* Subject to the availability of funds, EPA regional offices will negotiate and enter into section 128(a) cooperative agreements with eligible and interested States or tribes. EPA will accept only

<sup>9</sup> A cooperative agreement is a grant to a State or a tribe that includes substantial involvement of EPA regional enforcement and program staff during performance of activities described in the cooperative agreement work plan. Examples of this involvement include technical assistance and collaboration on program development and site-specific activities.

one application from each eligible State or tribe. States and tribes must define the "section 128(a) response program," and may designate a component of the State or tribe that will be EPA's primary point of contact for negotiations on their proposed work plan. When EPA funds the section 128(a) cooperative agreement, States and tribes may distribute these funds among the appropriate State and tribal agencies that are part of the section 128(a) response program. This distribution must be clearly outlined in their annual work plan.

*Separate cooperative agreements for the capitalization of RLFs using section 128(a) funds.* If a portion of the 128(a) grant funds requested will be used to capitalize a revolving loan fund for cleanup, pursuant to 104(k)(3), two separate cooperative agreements must be awarded, *i.e.*, one for the RLF and one for non-RLF uses. States and tribes may, however, submit one initial request for funding, delineating the RLF as a proposed use.

*Authority to Manage a Revolving Loan Fund Program.* If a State or tribes chooses to use its 128(a) funds to capitalize a revolving loan fund program, the State or tribe must have the authority to manage the program, *e.g.*, issue loans. If the agency/department listed as the point of contact for the 128(a) grant does not have this authority, it must be able to demonstrate that another State or tribal agency does have the authority to manage the RLF and is willing to do so.

*Section 128(a) grants are eligible for inclusion in the Performance Partnership Grant (PPG).* EPA is considering a pilot project that will allow an appropriate number of States and tribes to include section 128(a) grants in the PPG in FY 2004. For FY 2004, no more than one State and one tribe or Intertribal Consortium per Region, absent approval from the Assistant Administrator, Office of Solid Waste and Emergency Response (OSWER) and the Associate Administrator, Office of Congressional and Intergovernmental Relations (OCIR), will be permitted to include their 128(a) grant funds in the PPG. EPA will establish a process and criteria for determining, in consultation with the States and tribes, whether PPGs are an efficient and effective means of carrying out the section 128(a) program on a long-term national basis. Section 128(a) funds used to capitalize an RLF will not be eligible for inclusion in the PPG.

*Project Period.* EPA regional offices will determine the project period for each cooperative agreement. These may be for multiple years depending on the

regional office's grants policies. Each cooperative agreement must have an annual budget period tied to an annual work plan.

*Demonstrating the Four Elements.* As part of the annual work plan negotiation process, States or tribes that do not have MOAs must demonstrate that their program includes, or is taking reasonable steps to include, the four elements described above. EPA will not fund, in future years, State or tribal response program annual work plans if EPA determines that these requirements are not met or reasonable progress is not being made. EPA may base this determination on the information the State or tribe provides to support its work plan, or on EPA's review of the State or tribal response program.

*Establishing and Maintaining the Public Record.* Prior to funding a State's or tribe's annual work plan, EPA regional offices will verify that a public record as described above exists, and is being maintained. Recipients receiving funds for the first time in FY04 will have one year to meet this requirement and may utilize the 128(a) grant funds to do so.

*Demonstration of Need to Receive Funds above the FY03 Funding Distribution.* Due to the limited amount of funding available, recipients must demonstrate a specific need when requesting an amount above the FY03 allocation. Regions also will review the recipient's utilization rates from the previous fiscal years to determine need in FY04.

#### **Allocation System for Distribution of Funding**

EPA regional offices will work with interested States and tribes to develop their annual work plans and funding requests. For Fiscal Year 2004, EPA will consider funding requests up to a maximum of \$1.5 million per State or tribe. This limit may be changed in future years based on appropriation amounts and demand for funding. The EPA regional offices will forward each of the funding request amounts and a short summary of the work plan activities to EPA Headquarters. Based on the availability of funds, EPA Headquarters will compile the requested amounts and develop the annual allocation based on State and tribal response program needs described in the work plan summaries.

When EPA Regions negotiate individual State and tribal work plans, it is anticipated that funding will be prioritized as follows:

- Funding for program development activities to establish or enhance the four elements of a State or tribal

response program and to enable States and tribes to comply with the public record requirement, including activities related to institutional controls. (States and tribes that have established one or more of the four elements will not be prejudiced in funding distributions if their work plan includes activities that enhance the four elements. States with MOA's will not be prejudiced in funding distributions if their work plan does not include tasks related to establishing or enhancing the four elements.)

- Funding for program development activities to enhance the response program or the cleanup capacity of a State or tribal response program.

- Funding for limited site-specific activities at eligible brownfields sites.

- Funding for environmental insurance mechanisms.

- Funding to capitalize brownfields cleanup revolving loan funds.

States and tribes must break their work plans down into these prioritization categories.

EPA will target funding of at least \$3 million per year for tribal response programs. If this funding is not used, it will be carried over and added to at least \$3 million in the next fiscal year. It is expected that the funding demand from tribes will increase through the life of this grant program (authorized by Congress through FY2006), and this funding allocation system should ensure that adequate funding for tribal response programs is available in future years.

#### **Terms and Reporting**

Cooperative agreements for State and tribal response programs will include programmatic and administrative terms and conditions. These terms and conditions will describe EPA's substantial involvement including technical assistance and collaboration on program development and site-specific activities.

*Progress Reports.* States and tribes will provide progress reports under 40 CFR 31.40, in accordance with terms and conditions of the cooperative agreement negotiated with EPA regional offices. State and tribal costs for complying with reporting requirements are an eligible expense under the section 128(a) grant. As a minimum, State or tribal progress reports must include both a narrative discussion and performance data relating to the State's or tribe's accomplishments with section 128(a) funding. If applicable, the State or tribe must include information on activities related to establishing or enhancing the four elements of the State's or tribe's response program. All recipients must provide information

relating to establishing and maintaining the public record.

**Reporting Requirements.** Depending upon the activities included in the State's or tribe's work plan, an EPA regional office may request that a progress report include:

**Information related to the public record.** All recipients must report information related to establishing and maintaining the public record, described above. States and tribes can refer to already existing public record, *e.g.*, Web site or other public database to meet this requirement. For the purposes of grant funding only, and depending upon the activities included in the State or tribe's work plan, this may include:

- A list of sites at which response actions have been completed including:
- Date the response action was completed;
- Site name, the name of owner at time of cleanup, and the type of brownfields site (*e.g.*, petroleum, methamphetamine laboratory, mine scarred lands);

- Location of the site (street address, and latitude and longitude);
- Whether an institutional control is in place;
- Explain the type of the institutional control in place (*e.g.*, deed restriction);
- Nature of the contamination at the site (*e.g.*, hazardous substances, contaminants, or pollutants, petroleum contamination, etc.);
- Size of the site in acres.

- A list of sites planned to be addressed by the state or tribal response program including:
- Site name, the name of owner at time of cleanup, and the type of brownfields site (*e.g.*, petroleum, methamphetamine laboratory, mine scarred lands);
- Location of the site (street address, and latitude and longitude);
- To the extent known, whether an institutional control is in place;
- Explain the type of the institutional control in place (*e.g.*, deed restriction);
- To the extent known, the nature of the contamination at the site (*e.g.*, hazardous substances, contaminants, or pollutants, petroleum contamination, etc.);
- Size of the site in acres.

**Reporting environmental insurance.** Recipients with work plans that include funding for environmental insurance must report:

- Number and description of insurance policies purchased (*e.g.*, type of coverage provided; dollar limits of coverage; category and identity of insured persons; premium; first dollar

or umbrella; site specific or blanket; occurrence or claims made, etc.);

- The number of sites covered by the insurance;
- The amount of funds spent on environmental insurance (*e.g.*, amount dedicated to insurance program, or to insurance premiums) and the amount of claims paid by insurers to policy holders.

**Reporting for site-specific assessment or cleanup activities.** Recipients with work plans that include funding for brownfields site assessments or cleanup must report a list of sites at which site assessments or cleanup have been completed that includes:

- Site name;
- Location of the site (street address and latitude and longitude);
- Size of the site in acres;
- Date the assessment or cleanup was completed;
- Nature of contamination at the site (*e.g.*, hazardous substances, contaminants, or pollutants, petroleum contamination, etc.).

**Reporting for other site-specific activities.** Recipients with work plans that include funding for other site-specific related activities must include a description of the site-specific activities and the number of sites at which the activity was conducted. For example:

- Number and frequency of oversight audits of licensed site professional certified cleanups;
- Number and frequency of State/tribal oversight audits conducted;
- Number of sites where staff conducted audits, provided technical assistance, or conducted other oversight activities;
- Number of staff conducting oversight audits, providing technical assistance, or conducting other oversight activities.

**Reporting for RLF uses.** Recipients with work plans that include funding for Revolving Loan Fund (RLF) must include the information required by the terms and conditions for progress reporting under CERCLA section 104(k)(3) RLF grants.

**Reporting for Non-MOA States and tribes.** All recipients *without* a Voluntary Response Program MOA must report activities related to establishing or enhancing the four elements of the State's or tribe's response program. For each element State/tribes must report how they are maintaining the element or how they are taking reasonable steps to establish or enhance the element as negotiated in individual State/tribal work plans. For example, pursuant to CERCLA section 128(a)(2)(B), reports on the oversight and enforcement

authorities/mechanisms element may include:

- A narrative description and copies of applicable documents developed or under development to enable the response program to conduct enforcement and oversight at brownfield sites. For example:

- Legal authorities and mechanisms (*e.g.*, statutes, regulations, orders, agreements);

- Policies and procedures to implement legal authorities; and

- Other mechanisms;

- A description of the resources and staff allocated/to be allocated to the response program to conduct oversight and enforcement at brownfield sites as a result of the grant;

- A narrative description of how these authorities or other mechanisms, and resources, are adequate to ensure that:

- A response action will:

- Protect human health and the environment; and

- Be conducted in accordance with applicable Federal and State law; and

- If the person conducting the response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed; and

- A narrative description and copy of appropriate documents demonstrating the exercise of oversight and enforcement authorities by the response program at a brownfield site.

Where applicable, EPA may require States/tribes to report specific performance measures related to the four elements which can be aggregated for national reporting to Congress.

The regional offices may also request other information be added to the progress reports, as appropriate, to properly document activities described by the cooperative agreement work plan.

EPA regions may allow States or tribes to provide performance data in appropriate electronic format.

The regional offices will forward progress reports to EPA Headquarters, if requested. This information may be used to develop national reports on the outcomes of CERCLA section 128(a) funding to States and tribes.

Dated: November 25, 2003.

**Linda Garczynski,**

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[FR Doc. 03-30519 Filed 12-8-03; 8:45 am]

**BILLING CODE 6560-50-P**