

and Management (3), defines which activities are not allowable under TLIP. It states that inclusion of activities required to comply with a Biological Opinion or activities required to comply with a permit (e.g., mitigation activities) is not allowable. However, a proposal can include activities that implement conservation recommendations. Two comments expressed concern that no TLIP funds should be diverted to any nontribal mandates, court directives, or Federal activities required to uphold the trust responsibility. One comment asked that "Biological Opinion" be further defined. Two comments advocated for allowing for mitigation costs associated with compliance activities related to the Endangered Species Act.

*Response:* All TLIP funds will be awarded to Tribes and will not be diverted to any nontribal mandates, court directives, or Federal activities required to uphold the trust responsibility. The Service appreciates the proposed language but disagrees with the inclusion of "court directive and Federal agency mandate or directive" to excluded activities because it would place additional restrictions on tribal proposals. "Biological Opinion" refers to Biological Opinions with regard to the Endangered Species Act and this is clarified in the "Definitions" section.

*Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (4),* defines what species are considered endangered, threatened, candidate or, at risk. Seven respondents asked that "species at risk" be further defined. One of these suggested that the Service define "species at risk" as any federally listed, proposed, candidate animal or plant species or other species of concern as determined by a tribe or a State and, further, that species classified as such should be identified in the proposal. One respondent asked that it should be made clear whether plant species are included.

*Response:* For the purposes of TLIP, the Service defines "species at risk" as any federally listed, proposed, candidate animal or plant species or other species of concern as determined by a tribe or a State and, further, that species classified as such should be identified in the proposal.

*Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (5),* indicates that tribal trust lands are not public lands and that federally recognized tribes are, for the purposes of participation in TLIP, considered the "landowners." Two comments stated that all tribal (land) interests be eligible for projects.

*Response:* TLIP project funds may be expended on all "Tribal Lands" as defined in Section II. Of this Notice.

*Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (6),* states that TLIP is not a continuous revenue source. Two comments advocated for making the TLIP program a continuing source for funding.

*Response:* Because TLIP is an annual Congressional allocation, it is subject to further actions by Congress and cannot be considered a continuing source for funding.

*Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (7),* states that TLIP funds cannot be held in an interest-bearing account. Two comments suggested otherwise.

*Response:* Federal law allows funds to be held in an interest-bearing account, although any interest earned on such funds in excess of \$100 must be returned to the fiscally responsible Federal agency (43 CFR 12.64).

*Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (1),* defines what additional information must be included by the grantees once awards are announced. One comment supported the proposed language.

*Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (2),* states that the lead contact after award announcements should be the Native American Liaison in the grantee's respective Region. One comment advocated for a contact in the Service's Division of Federal Aid to be identified as the initial contact, and one comment agreed with the proposed language.

*Response:* The Native American Liaison will be the lead contact for technical implementation assistance, and the Division of Federal Aid will serve as the principal financial contact.

*Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (3),* states that the Service will award grants within 30 days of the recommendations provided by the national review panel. One comment suggested that a timeline be provided for acceptance and selection of awards, and one comment simply agreed with the stipulated language.

*Response:* A timeline for acceptance and selection of awards is included in the Grant Application Package.

*Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (4),* states that funds will be disbursed, subsequent to funding approval, through the Department of Health and Human Services'

SMARTLINK electronic funds transfer (EFT) system. And, that in the instance of demonstrated hardship or need, grantees may request up to 25 percent of the grant award.

One comment said that the Service's Division of Federal Aid be contacted for guidance on compliance with Cash Management Act regarding "Reimbursable" as stated in the complete text. Six comments stated that if the Service has the ability to allocate 25 percent of the project funds up front, given demonstrated hardship or need, then all grantees should be eligible without demonstrating hardship or need. Two comments advocated for increasing the initial draw down, one suggested 40 percent, and the other was nonspecific.

*Response:* The Service will advance up to 25 percent of the total award upon request by the grantee.

Three disagreed with the proposed reimbursable mechanism, saying it presents an undue burden on tribes, and asked to have access to funds quarterly or as a lump sum transfer at the onset of a project. Two comments asked if all tribes are EFT compliant, and one suggested that the Service explore a similar process for allocating funds through contracting as in Pub. L. 93-638.

*Response:* Further clarification of the proposed EFT is necessary to explain that funds will be "reimbursed" as needed, rather than upon receipt of proof of expenditure. We feel that this does not place a financial burden on the tribes. All Tribes are capable of EFT. Pub. L. 93-638 is a unique mechanism that transfers funds to a tribe for programs that are specifically established for a tribe because of its status as a tribe and enables the recipient tribe to allocate such funds to address other relevant needs and is therefore not consistent with Congressional intent to use such a device.

*Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (5),* addresses the reporting requirements tribes must meet once funds are obligated under a TLIP grant agreement. One comment suggested that language be included to indicate that tribes will be obligated to comply with NEPA, ESA, National Historic Preservation Act, and other relevant Acts. Another comment suggested that the benefits and outcomes of the TWG program be reported to Congress.

*Response:* TLIP projects are subject to legal requirements of Federal regulatory Acts in the context of established Federal/Tribal protocol.