

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