



Best Practices Guide for Performance Partnership Grants with Tribes



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Purpose

This best practices guide is designed to help EPA and tribal officials understand and take full advantage of the features and benefits of Performance Partnership Grants (PPGs), in which states and tribes may combine multiple environmental program grants into a single grant. PPGs are one of the cornerstones in the National Environmental Performance Partnership System (NEPPS) that serves as the framework for EPA-state-tribal relations. Through answers to frequently asked questions, the guide:

- Explains how PPGs can help in achieving agreed-upon environmental and program goals and objectives;
- Highlights key regulations, policies and procedures for developing and managing PPGs; and
- Provides examples showing how PPGs have been used to achieve administrative efficiencies to direct resources where they are needed most.

Important Note

While the best practices guide provides information about developing and implementing PPGs, EPA project officers must complete required training and follow all EPA grants policies, directives and procedures.

Acknowledgements

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Section 1: Introduction to Performance Partnership Grants

Frequently Asked Questions and Best Practices	Crosswalk to 40CFR 35.500-538 (Subpart B)
1-1 What are Performance Partnership Grants (PPGs) and what advantages do they offer? EPA provides financial assistance to Tribes and Intertribal Consortia to help them plan, develop, and implement environmental programs. A tribe may receive these funds in individual environmental program categorical grants or choose to combine up to 19 grants in a Performance Partnership Grant (PPG). PPGs streamline administrative requirements, give tribes greater flexibility to direct resources to their most pressing environmental problems, and make it easier to fund efforts that cut across program boundaries. All tribal grants, including PPGs, are governed by 40 CFR 35, Subpart B—Environmental Program Grants for Tribes (commonly referred to as Part 35). PPGs can help tribes fund the priorities and strategies they have developed through joint planning efforts with EPA. With PPGs, tribes can: • Reduce administrative costs through streamlined paperwork and accounting procedures; e.g., single performance/progress reports, Federal Financial Reports (Standard Form 425); • Focus EPA grant funds on priority environmental problems or program needs, more effectively link program activities with environmental and health goals and program outcomes (see Question 1-9), while maintaining core environmental programs (see Question 1-10); and • Fund efforts that involve multiple programs and activities that are eligible under the environmental programs listed in section 35.501 (see Question 1-4), such as pollution prevention, ecosystem management and community-based environmental protection strategies, geographic initiatives or data management projects, as approved by the EPA Regional Administrator.	§ 35.001 Applicability. This part codifies policies and procedures for financial assistance awarded by the Environmental Protection Agency (EPA) to State, interstate, and local agencies, Indian Tribes and Intertribal Consortia for pollution abatement and control programs. These provisions supplement the EPA general assistance regulations in 40 CFR part 31. § 35.500 Purpose of the subpart. This subpart establishes administrative requirements for all grants awarded to Indian Tribes and Intertribal Consortia for the environmental programs listed in § 35.501. This subpart supplements requirements in EPA’s general grant regulations found at 40 CFR part 31. Sections 35.500–518 contain administrative requirements that apply to all environmental program grants included in this subpart. Sections 35.530 through 35.718 contain requirements that apply to specified environmental program grants. Many of these environmental programs also have programmatic and technical requirements that are published elsewhere in the Code of Federal Regulations.

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1-2 Why were PPGs created? Under traditional categorical environmental program grants, Tribes and Intertribal Consortia receive funds to administer and implement air, water, waste, pesticides, and toxics programs. Each categorical grant can only be used for the specific purposes set out in the authority for that particular grant. For many years, Tribes and Intertribal Consortia wanted greater flexibility in how they use and manage the grant funds they receive from EPA. In 1995, EPA asked Congress for new authority to provide this flexibility. Congress responded by authorizing EPA to award Performance Partnership Grants (PPGs) in the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104-134) and in EPA's 1998 Appropriations Act (Public Law 105-65).	§ 35.530 Purpose of Performance Partnership Grants. (a) <i>Purpose of section.</i> Sections 35.530 through 35.538 govern Performance Partnership Grants to Tribes and Intertribal Consortia authorized in the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104-134; 110 Stat. 1321, 1321-299 (1996)) and Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 105-65; 111 Stat. 1344, 1373 (1997)). (b) <i>Purpose of program.</i> Performance Partnership Grants enable Tribes and Intertribal Consortia to combine funds from more than one environmental program grant into a single grant with a single budget. Recipients do not need to account for Performance Partnership Grant funds in accordance with the funds' original environmental program sources; they need only account for total Performance Partnership Grant expenditures. Subject to the requirements of this subpart, the Performance Partnership Grant program is designed to: (1) Strengthen partnerships between EPA and Tribes and Intertribal Consortia through joint planning and priority setting and better deployment of resources; (2) Provide Tribes and Intertribal Consortia with flexibility to direct resources where they are most needed to address environmental and public health priorities; (3) Link program activities more effectively with environmental and public health goals and program outcomes; (4) Foster development and implementation of innovative approaches, such as pollution prevention, ecosystem management, and community-based environmental protection strategies; and (5) Provide savings by streamlining administrative requirements.
1-3 Which regulations govern Performance Partnership Grants (PPGs) for tribes? <u>40 CFR 35, Subpart B – Environmental Program Grants for Tribes</u> (commonly referred to as Part 35) govern all tribal environmental program grants, including PPGs. Sections 35.500 to 35.518 contain requirements that apply to all tribal environmental program grants, including PPGs. The requirements address such topics as components of a grant application, grant work plans, funding periods, criteria for approving grant applications, time frame for EPA action, amendments and other changes, evaluation of performance, and unused funds and unexpended balances. Sections 35.530 to 35.538 contain the requirements that are unique to PPGs. The requirements address topics including the purpose of PPGs, grants eligible for inclusion in PPGs, eligible recipients, activities eligible for funding, cost share requirements, and application requirements. These PPG requirements are in addition to	

Frequently Asked Questions and Best Practices	Crosswalk to 40CFR 35.500-538 (Subpart B)
the grant requirements in Sections 35.500 to 35.518 that apply to all tribal grants. The remaining sections of Part 35, Subpart B contain the requirements that apply to each of the individual categorical environmental program grants to tribes. For each grant program, the rules cover topics such as the purpose, eligible activities, basis for funding allotment, and maximum federal share; some include a competitive grant process. These program-specific rules are relevant to PPGs because they affect the composite cost share amount as well as the activities that can be funded with the PPG. <u>40 CFR 31 – Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments</u> In addition to Part 35, all grants, including PPGs, are subject to requirements in EPA’s general grant regulations found at 40 CFR 31. Part 31 establishes uniform administrative rules for federal grants and cooperative agreements and subawards to state, local and tribal governments, and addresses such topics as financial management, allowable costs, real property, procurement, cost sharing, non-federal audits, monitoring and reporting program performance, financial reporting, and records.	
1-4 Which grants are eligible for inclusion in PPGs? Congress determined the individual environmental program grants that were initially eligible for the PPG program when it authorized the program in 1996. In 2004, the Administrator added three grants to the list of PPG-eligible grants. Below is a list of grants eligible for inclusion in PPGs. • General Assistance Program (GAP) – The Indian Environmental General Assistance Program Act of 1992 • Air Pollution Control – CAA Sec. 105 • Indoor Radon Grants – TSCA Sec. 306 • Water Pollution Control – CWA Sec. 106 • Nonpoint Source Management – CWA Sec. 319(h) • Wetlands Development Grants Program – CWA Sec. 104(b)(3) • Water Quality Cooperative Agreements – CWA Sec. 104(b)(3) • Public Water System Supervision – SDWA Sec. 1443(a) • Underground Water Source Protection – SDWA Sec. 1443(b) • Hazardous Waste Management – SWDA Sec. 3011(a) • State and Tribal Response (Brownfields) – CERCLA Sec. 128(a) • State Underground Storage Tanks – SWDA Sec. 2007(f)(2) • Pesticides Cooperative Enforcement – FIFRA Sec. 23(a)(1) • Pesticide Applicator Certification and Training – FIFRA Sec. 23(a)(2)	§ 35.501 Environmental programs covered by the subpart. (a) The requirements in this subpart apply to all grants awarded for the following programs: (1) Performance Partnership Grants (1996 Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104-134; 110 Stat. 1321, 1321-299 (1996) and Departments of Veterans Affairs, Housing and Urban Development, and Independent Agencies Appropriations Act of 1998, Pub. L. 105-65; 111 Stat. 1344, 1373 (1997)). (2) The Indian Environmental General Assistance Program Act of 1992, 42 U.S.C. 4368b. (3) Clean Air Act. Air pollution control (section 105). (4) Clean Water Act. (i) Water pollution control (section 106 and 518). (ii) Water quality cooperative agreements (section 104(b)(3)). (iii) Wetlands development grant program (section 104(b)(3)). (iv) Nonpoint source management (section 319(h)). (5) Federal Insecticide, Fungicide, and Rodenticide Act. (i) Pesticide cooperative enforcement (section 23(a)(1)). (ii) Pesticide applicator certification and training (section 23(a)(2)). (iii) Pesticide program implementation (section 23(a)(1)). (6) Pollution Prevention Act of 1990. Pollution prevention grants for Tribes (section 6605). (7) Safe Drinking Water Act.

Frequently Asked Questions and Best Practices	Crosswalk to 40CFR 35.500-538 (Subpart B)
• Pesticide Program Implementation – FIFRA Sec. 23(a)(1) • Lead-Based Paint Program – TSCA Sec. 404(g) • Toxic Substances Compliance Monitoring – TSCA Sec. 28 • Environmental Information Exchange Network – EPA Appropriations Acts • Pollution Prevention State Grants – PPA Sec. 6605 See Question 2-19 for a discussion of EPA's policy and process for adding new grants to the list of PPG-eligible grants.	(i) Public water system supervision (section 1443(a)). (ii) Underground water source protection (section 1443(b)). (8) Toxic Substances Control Act. (i) Lead-based paint program (section 404(g)). (ii) Indoor radon grants (section 306). (iii) Toxic substances compliance monitoring (section 28). (9) Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276; 112 Stat. 2461, 2499; 42 U.S.C. 6908a). (i) Hazardous Waste Management Program Grants (Pub. L. 105–276; 112 Stat. 2461, 2499; 42 U.S.C. 6908a). (ii) Underground Storage Tanks Program Grants (Pub. L. 105–276; 112 Stat. 2461, 2499; 42 U.S.C. 6908a). (10) Tribal Response Program Grants (section 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)). (b) Unless otherwise prohibited by statute or regulation, the requirements in §35.500 through §35.518 of this subpart also apply to grants to Indian Tribes and Intertribal Consortia under environmental programs established after this subpart becomes effective, if specified in Agency guidance for such programs. (c) In the event a grant is awarded from EPA headquarters for one of the programs listed in paragraph (a) of this section, this subpart shall apply and the term “Regional Administrator” shall mean “Assistant Administrator.”
1-5 What entities are eligible to receive PPGs? Tribes and Intertribal Consortia are eligible for PPGs as long as they are eligible to receive two or more grants that can be combined in the PPG.	§ 35.534 Eligible recipients. (a) A Tribe or Intertribal Consortium is eligible for a Performance Partnership Grant if the Tribe or each member of the Intertribal Consortium is eligible for, and the Tribe or Intertribal Consortium receives funding from, more than one of the environmental program grants listed in §35.501(a) in accordance with the requirements for those environmental programs. (b) For grants to Tribes, a Tribal agency must be designated by a Tribal government or other authorized Tribal process to receive grants under each of the environmental programs to be combined in the Performance Partnership Grant. § 35.502 Definitions of terms. Intertribal Consortium or Consortia. A partnership between two or more Tribes that is authorized by the governing bodies of those Tribes to apply for and receive assistance under one or more of the programs listed in §35.501.
1-6 What activities are eligible for funding under PPGs? The ability to fund a broad range of activities is one of the most flexible features of PPGs. A PPG can be used for any activity that is	§ 35.535 Activities eligible for funding. (a) <i>Delegated, approved, or authorized activities.</i> A Tribe or Intertribal Consortium may use Performance Partnership Grant funds to carry out EPA-delegated, EPA-approved, or EPA-authorized activities, such as permitting and primary enforcement responsibility

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eligible under the environmental program grants listed in section 35.501(a). If an applicant proposes a PPG work plan that is significantly different from any work plans already approved for funding that the applicant wants to move into a PPG, the Regional Administrator must consult with the appropriate National Program Manager (NPM) before agreeing to the PPG work plan. NPMs may provide instructions in their NPM Guidance that either waives or modifies the consultation requirement. NPMs have the authority to define “significant difference” (see Question 2-5).	only if the Tribe or each member of the Intertribal Consortium receives from the Regional Administrator the delegations, approvals, or authorizations to conduct such activities. (b) <i>Other program activities.</i> Except for the limitation in paragraph (a) of this section, a Tribe or Intertribal Consortium may use Performance Partnership Grant funds for any activity that is eligible under the environmental programs listed in § 35.501(a) of this subpart, as determined by the Regional Administrator. If an applicant proposes a Performance Partnership Grant work plan that differs significantly from any of the proposed work plans approved for funding that the applicant now proposes to move into a Performance Partnership Grant, the Regional Administrator must consult with the appropriate National Program Managers before agreeing to the Performance Partnership Grant work plan. National Program Managers may expressly waive or modify this requirement for consultation in national program guidance. National Program Managers also may define in national program guidance “significant” differences from a work plan submitted with a Tribe’s or a Consortium’s application for funds.
1-7 Is a tribe required to apply for treatment in a manner similar to a state (TAS) for each grant it wants to include in a PPG? TAS is not a pre-condition for tribes that choose to participate in PPGs, although tribes still must meet the requirements for award for each environmental program in order to include those funds in a PPG.	§ 35.532 Requirements summary. (a) Applicants and recipients of Performance Partnership Grants must meet: (1) The requirements in §§35.500 to 35.518 of this subpart which apply to all environmental program grants, including Performance Partnership Grants; and (2) The requirements in §§35.530 to 35.538 of this subpart which apply only to Performance Partnership Grants. (b) In order to include funds from an environmental program grant listed in §35.501(a) of this subpart in a Performance Partnership Grant, applicants must meet the requirements for award of each environmental program from which funds are included in the Performance Partnership Grant, except the requirements at §§35.548(c), 35.638(b) and (c), 35.691, and 35.708 (c), (d), (e), and (g). These requirements can be found in this regulation beginning at §35.540. If the applicant is an Intertribal Consortium, each Tribe that is a member of the Consortium must meet the requirements. (3) Apply for the environmental program grant. (4) Obtain the Regional Administrator’s approval of the application for that grant. (c) If funds from an environmental program are not included in a Performance Partnership Grant, an applicant is not required to meet the eligibility requirements for that environmental program grant in order to carry out activities eligible under that program as provided in §35.535.
1-8 What is the relationship between PPGs and Tribal Environmental Agreements (TEAs)? Many tribes now use the process of negotiating Tribal Environmental Agreements (TEAs) with EPA regions as a mechanism for reaching mutual agreement on priorities and plans. While the scope and content of TEAs varies, TEAs are intended to set out goals and	§ 35.507 Work plans. (b) Work plan requirements. (1) The work plan is the basis for the management and evaluation of performance under the grant agreement. (2) An approvable work plan must specify: (i) The work plan components to be funded under the grant; (ii) The estimated work years and estimated funding

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objectives, priorities and plans, the roles and responsibilities of each partner, and the measures they will use to assess progress. The best TEAs should be based on an assessment of environmental conditions and program implementation needs as well as analysis of what approaches and tools are most likely to bring about the greatest environmental results. <i>Using TEA as the grant work plan.</i> The TEA or portions of the TEA may also serve as the work plan for a PPG. All tribal grant work plans, including PPGs, must meet the requirements of section 35.507(b), and the portions of the TEA that serve as a grant work plan must meet all of these requirements. In addition, the portions of the TEA that are used as the work plan must be clearly identified to distinguish them from other parts of the TEA that are voluntary. <i>A TEA is not a prerequisite for a PPG.</i> Tribes are not required to negotiate TEAs (or comparable agreements) with EPA in order to combine grants in a PPG. However, TEAs can provide the strategic underpinning for PPGs. This is especially important if a tribe wants to take advantage of the flexibility available through PPGs that allows it to shift resources among programs or to fund projects that cut across program boundaries.	amounts for each work plan component; (iii) The work plan commitments for each work plan component, and a time frame for their accomplishment; (iv) A performance evaluation process and reporting schedule in accordance with § 35.515 of this subpart; and (v) The roles and responsibilities of the recipient and EPA in carrying out the work plan commitments. (3) The work plan must be consistent with applicable federal statutes; regulations; circulars; executive orders; and delegations, approvals, or authorizations. (c) Tribal Environmental Agreement as work plan. An applicant may use a Tribal Environmental Agreement or a portion of the Tribal Environmental Agreement as the work plan or part of the work plan for an environmental program grant if the portion of the Tribal Environmental Agreement that is to serve as the grant work plan: (1) Is clearly identified as the grant work plan and distinguished from other portions of the Tribal Environmental Agreement; and (2) Meets the requirements in § 35.507(b).
1-9 How can PPGs help EPA and tribes reach environmental goals? <i>When developing a PPG work plan, EPA and tribes have a unique opportunity to plan their work across multiple environmental programs.</i> Traditional grant work plans are negotiated within individual programs. PPGs are often developed in a process that involves not only EPA and tribal program managers but also more senior leaders who bring a broader perspective about priorities and needs to the table. This can lead to PPG work plans that better reflect the relative priorities and needs of the tribes. Another advantage of a coordinated work plan development process is that when program managers see and understand the work their counterparts in other programs are planning, they may be able to leverage resources by joining forces on efforts of mutual interest. <i>PPGs provide a mechanism through which EPA can help tribes fund the priorities and strategies that EPA and the tribes have agreed on through their joint planning efforts.</i> Under Part 35, tribes have some flexibility to address tribal priorities and needs if they fall within the boundaries of an individual grant	

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program. However, tribes that receive their funds in PPGs have the greatest flexibility to shift resources among program areas. PPGs have streamlined administrative requirements that can reduce administrative costs. <i>PPGs can help tribes implement innovative strategies that cross traditional program boundaries.</i> Several promising innovative approaches address environmental problems more holistically, such as on a geographic basis. Some tribes may conduct multimedia inspections, compliance assistance programs, or enforcement initiatives. Community-based environmental protection projects and pollution prevention programs also cut cross program boundaries. With PPGs, such cross-cutting or multimedia projects are easier to fund and manage. <i>PPGs can help link program activities with environmental and public health goals and outcomes.</i> EPA and tribes had been working to improve measures and indicators for many years, but the advent of Performance Partnerships moved these efforts to the forefront. These efforts were further boosted by implementation of the Government Performance and Results Act (GPRA).	
1-10 Must tribes with PPGs continue to implement all core environmental program requirements? Tribes must continue to implement each of the programs combined in a PPG. PPGs (and TEAs) do not supersede any laws, regulations, or delegation agreements. In their negotiations with each tribe, EPA regional program managers are responsible for making sure that the PPG work plan contains sufficient commitments to carry out the work needed to adequately implement the core environmental program requirements for their respective programs. Regional program managers are also responsible for making sure the tribe completes these commitments and reports information to EPA as required. While tribes must continue to implement the core program requirements combined in the PPG, they do have flexibility in how they deploy the PPG funds to support them. If the tribe shows it can meet its commitments for a given program with tribal resources, funds in the PPG from that program may be used to support work in other areas.	§ 35.535 Activities eligible for funding. (a) <i>Delegated, approved, or authorized activities.</i> A Tribe or Intertribal Consortium may use Performance Partnership Grant funds to carry out EPA-delegated, EPA-approved, or EPA-authorized activities, such as permitting and primary enforcement responsibility only if the Tribe or each member of the Intertribal Consortium receives from the Regional Administrator the delegations, approvals, or authorizations to conduct such activities. (b) <i>Other program activities.</i> Except for the limitation in paragraph (a) of this section, a Tribe or Intertribal Consortium may use Performance Partnership Grant funds for any activity that is eligible under the environmental programs listed in § 35.501(a) of this subpart, as determined by the Regional Administrator. If an applicant proposes a Performance Partnership Grant work plan that differs significantly from any of the proposed work plans approved for funding that the applicant now proposes to move into a Performance Partnership Grant, the Regional Administrator must consult with the appropriate National Program Managers before agreeing to the Performance Partnership Grant work plan. National Program Managers may expressly waive or modify this requirement for consultation in national program guidance. National Program Managers also may define in national program guidance “significant” differences from a work plan submitted with a Tribe’s or a Consortium’s application for funds.

Frequently Asked Questions and Best Practices	Crosswalk to 40CFR 35.500-538 (Subpart B)
1-11 Do tribes with PPGs have the same accountability requirements as other tribal grants? All tribal grants – categorical grants and PPGs – are subject to the same reporting, joint evaluation, and other accountability requirements of Part 35. Just as for any other grant, tribes are held accountable for achieving the commitments set out in PPG work plans. Tribes with PPGs continue to report information into national data systems and submit any other reports required by law or regulation. Part 35 requires tribes and EPA to conduct joint evaluations of tribal grants, including PPGs. The results are used – along with other information about environmental conditions and program implementation needs – to support joint planning and priority setting. In many programs, progress and accomplishments are reported in national and regional program databases and reports. Reporting, in whatever form, must include results. EPA Order 5700.7, Environmental Results Under EPA Assistance Agreements, which is available on EPA’s internet site (see http://www.epa.gov/ogd/grants/award/5700.7.pdf) or from EPA’s Office of Grants and Debarment, requires that each grant EPA awards be consistent with EPA's Strategic Plan and include appropriate output and outcome measures. EPA regional offices are required to ensure that PPG and other tribal program grants comply with this order.	§ 35.515 Evaluation of performance. (a) <i>Joint evaluation process.</i> The applicant and the Regional Administrator will develop a process for jointly evaluating and reporting progress and accomplishments under the work plan (see section 35.507(b)(2)(iv)). A description of the evaluation process and reporting schedule must be included in the work plan. The schedule must require the recipient to report at least annually and must satisfy the requirements for progress reporting under 40 CFR 31.40(b). (b) <i>Elements of the evaluation process.</i> The evaluation process must provide for: (1) A discussion of accomplishments as measured against work plan commitments; (2) A discussion of the cumulative effectiveness of the work performed under all work plan components; (3) A discussion of existing and potential problem areas; and (4) Suggestions for improvement, including, where feasible, schedules for making improvements. (c) <i>Resolution of issues.</i> If the joint evaluation reveals that the recipient has not made sufficient progress under the work plan, the Regional Administrator and the recipient will negotiate a resolution that addresses the issues. If the issues cannot be resolved through negotiation, the Regional Administrator may take appropriate measures under 40 CFR 31.43. The recipient may request review of the Regional Administrator’s decision under the dispute processes in 40 CFR 31.70. (d) <i>Evaluation reports.</i> The Regional Administrator will ensure that the required evaluations are performed according to the negotiated schedule and that copies of evaluation reports are placed in the official files and provided to the recipient.

Section 2: Implementing Performance Partnership Grants

Frequently Asked Questions and Best Practices	Crosswalk to 40CFR 35.500-538 (Subpart B)
2-1 How do the regulations governing PPGs support flexible approaches to achieving environmental results? The Part 35 rule, which governs all state and tribal grants – including PPGs – was revised in 2001. The updated rule is designed to help promote performance-based partnerships and provide greater opportunities to focus grant resources on tribally-identified needs and priorities. Working with EPA, tribes can take advantage of a range of flexibility under Part 35. All tribal categorical grants provide some flexibility to direct resources to tribal priorities within a program grant (e.g., GAP, CAA Sec. 105, CWA Sec. 106). PPGs have several flexible features that tribes can tailor to their particular needs and circumstances. All PPGs provide administrative flexibility by enabling tribes to meet cost share requirements as a whole rather than by individual program, streamline paperwork and accounting requirements, focus efforts on the tribes’ most pressing priorities, and allow funding of cross-cutting projects. Application requirements for all PPGs are the same as for categorical grants. <i>Tribes can focus resources on their most pressing needs.</i> All tribes can take advantage of a range of flexibility under the Part 35 rule, but the greatest flexibility is available with PPGs. Under individual program grants, tribes can negotiate work plans that focus resources on their priorities <i>within</i> the activities authorized by that grant program (e.g., CWA Sec. 106, CWA Sec. 319, CAA Sec. 105). Tribes that receive funds in a PPG can achieve cost savings through streamlined administrative requirements. With a PPG, tribes can propose work plans that increase efforts in some program areas where the tribe’s environmental protection needs are greater, and decrease them in others where the tribe’s needs are less. PPGs also allow tribes to pool resources from multiple programs to fund initiatives and projects that cut across program boundaries. Tribes have also used PPGs for cross-cutting projects such as data management improvements, multi-media inspection programs, cross-media permit training, Geographic Information Systems (GIS) mapping, and laboratory services.	§ 35.530 Purpose of Performance Partnership Grants. (a) Purpose of section. Sections 35.530 through 35.538 govern Performance Partnership Grants to Tribes and Intertribal Consortia authorized in the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134; 110 Stat. 1321, 1321–299 (1996)) and Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65; 111 Stat. 1344, 1373 (1997)). (b) Purpose of program. Performance Partnership Grants enable Tribes and Intertribal Consortia to combine funds from more than one environmental program grant into a single grant with a single budget. Recipients do not need to account for Performance Partnership Grant funds in accordance with the funds’ original environmental program sources; they need only account for total Performance Partnership Grant expenditures. Subject to the requirements of this subpart, the Performance Partnership Grant program is designed to: (1) Strengthen partnerships between EPA and Tribes and Intertribal Consortia through joint planning and priority setting and better deployment of resources; (2) Provide Tribes and Intertribal Consortia with flexibility to direct resources where they are most needed to address environmental and public health priorities; (3) Link program activities more effectively with environmental and public health goals and program outcomes; (4) Foster development and implementation of innovative approaches, such as pollution prevention, ecosystem management, and community-based environmental protection strategies; and (5) Provide savings by streamlining administrative requirements. § 35.535 Activities eligible for funding. (a) Delegated, approved, or authorized activities. A Tribe or Intertribal Consortium may use Performance Partnership Grant funds to carry out EPA-delegated, EPA-approved, or EPA-authorized activities, such as permitting and primary enforcement responsibility only if the Tribe or each member of the Intertribal Consortium receives from the Regional Administrator the delegations, approvals, or authorizations to conduct such activities. (b) Other program activities. Except for the limitation in paragraph (a) of this section, a Tribe or Intertribal Consortium may use Performance Partnership Grant funds for any activity that is eligible under the environmental programs listed in § 35.501(a) of this subpart, as determined by the Regional Administrator. If an applicant proposes a Performance Partnership Grant work plan that differs significantly from any of the proposed work plans approved for

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<i>Tribes can use PPGs to fund a wide range of activities.</i> Each categorical program grant is governed by its own law, regulations, and administrative requirements. Funds can only be used to support activities that are eligible for funding under that particular grant’s authority. Under a PPG, the scope of eligible activities includes all of the activities that are eligible under each one of the combined grants. For example, some media programs have several grant programs; several different water program grants may be directed to address the same environmental problem, such as improving water quality in a watershed. The restrictions on the activities eligible for funding under each grant can limit opportunities for coordinating the use of funds in a strategic way. Including these grants in a PPG eliminates those restrictions. Different grant programs can also be used to address the same environmental problem, such as water quality in a geographic region or pollution from an industry sector. With a PPG, resources from several grant programs could be pooled to implement a coordinated strategy. This feature is also useful in supporting projects that cut across program boundaries. For example, activities to improve information systems are clearly eligible for funding under some program grants but may not be under others. By combining grants in a PPG, information system improvements or equipment purchases affecting all programs in the PPG can be funded, with the approval of the Regional Administrator. <i>Tribes can meet the PPG's composite cost share from a combination of program sources rather than with program-by-program cost shares.</i> For many environmental program grants, tribes are required to provide a percentage share of funds order to receive the grants; the cost share can range from 5 percent to more than 50 percent. Some programs have no cost share requirement, while others have both cost share and Maintenance of Effort (MOE) requirements. For example, a tribe may have more than adequate resources in their own budget for one program that is being combined in the PPG, but be strapped for resources in another. The tribe can overmatch with funds from the resource-rich program to cover the cost share from a program having difficulty meeting its own cost share.	funding that the applicant now proposes to move into a Performance Partnership Grant, the Regional Administrator must consult with the appropriate National Program Managers before agreeing to the Performance Partnership Grant work plan. National Program Managers may expressly waive or modify this requirement for consultation in national program guidance. National Program Managers also may define in national program guidance “significant” differences from a work plan submitted with a Tribe’s or a Consortium’s application for funds.

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<i>Tribes can split funds between a PPG and individual program grants.</i> Tribes have the greatest flexibility if they combine all of their funds in a PPG, and are encouraged to do so. However, some tribes may want to use a PPG to fund cross-cutting projects or special initiatives, but may not want to put all of the funds from each individual program grant into the PPG. If at least some portion of an individual program grant's funds are combined in the PPG (sometimes called the "dollar in" rule), the PPG can be used to fund activities associated with that program. If air funds are being split, however, special considerations are involved to ensure that MOE requirements are met. For example, a tribe may want to use a PPG to fund a multi-media environmental enforcement initiative, but may not want to combine all of its grant funds in the PPG. In these cases, the tribe could pool a portion of grant funds from each of the programs covered by the enforcement initiative in a PPG. This feature can be used in combination as well. For example, a tribe could fully fund some programs via the PPG but split funds between the PPG and an individual program grant for others.	
2-2 How is cost share determined and when can it be waived? Upon request by a Tribe or Intertribal Consortium, a Regional Administrator may waive cost share required if he/she determines that meeting the cost share imposes undue hardship on the Tribe or Intertribal Consortium. With a tribal PPG, the required cost share amount of the PPG is the sum of the cost shares, adjusted to not exceed 5% for each program included in the PPG. When the cost share of a program included in the PPG is less than 5%, the required cost share is the amount specified by that program's grant regulation. Many tribes have found this cost share savings to be particularly valuable. Note that after two years, the PPG is assessed by the region and if the Regional Administrator determines that the tribe can demonstrate the ability to sustain a cost share greater than 5%, the cost share is increased to a maximum of 10% for each program with a normal cost share greater than 5%. The cost share may be waived upon the request of the Tribe or Intertribal Consortium if the Regional Administrator determines that meeting the cost share would impose an undue hardship. <u>Note:</u> Program by program cost share specific information is provided in Sections 35.540 through 35.718.	§ 35.536 Cost share requirements. (a) The Performance Partnership Grant cost share shall be the sum of the amounts required for each environmental program grant included in the Performance Partnership Grant, as determined in accordance with paragraphs (b) and (c) of this section, unless waived under paragraph (d) of this section. (b) For each environmental program grant included in the Performance Partnership Grant that has a cost share of five percent or less under the provisions of §§35.540 through 35.718, the required cost share shall be that identified in §§35.540 through 35.718 of this subpart. (c) For each environmental program grant included in the Performance Partnership Grant that has a cost share of greater than five percent under the provisions of §§35.540 through 35.718 of this subpart, the required cost share shall be five percent of the allowable cost of the work plan budget for that program. However, after the first two years in which a Tribe or Intertribal Consortium receives a Performance Partnership Grant, the Regional Administrator must determine through objective assessment whether the Tribe or the members of an Intertribal Consortium meet socio-economic indicators that demonstrate the ability of the Tribe or the Intertribal Consortium to provide a cost share greater than five percent. If the Regional Administrator determines that the Tribe or the members of Intertribal Consortium meets such indicators, then the Regional Administrator shall increase the required cost share up to a maximum of 10 percent of the allowable cost of the work plan budget

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	for each program with a cost share greater than five percent. (d) The Regional Administrator may waive the cost share required under this section upon request of the Tribe or Intertribal Consortium, if, based on an objective assessment of socio-economic indicators, the Regional Administrator determines that meeting the cost share would impose undue hardship.
2-3 What agreements should EPA and a tribe reach as part of a successful PPG negotiation? A PPG should be the product of a joint planning and priority setting dialogue, and should reflect mutual agreement between the tribe and EPA. The grant work plan associated with a PPG is the result of negotiations between EPA and tribal program managers. Successful PPG negotiations rely on a predictable process that fosters prompt resolution of issues, including elevation of issues to senior management if necessary. In successful PPG negotiations, EPA and the tribe will reach mutual understanding and agreement on: • Tribal environmental conditions and program needs; • Goals, indicators, and activities, along with tribe commitments for program deliverables; • Funding allocation; and • A process for joint evaluation. In some tribes and regions, a Tribal Environmental Agreement (TEA) and PPG negotiations occur at the same time. Other topics which might also be addressed in these broader negotiations include: • Investments and disinvestments; • Technical assistance for targeted programs; • Joint ventures that EPA and the tribe will undertake; • Future year activities; and • Anticipated federal actions (i.e., intertribal, state-wide, regional, or national in scope).	
2-4 What is the general planning cycle for developing PPGs? The schedule for developing PPG agreements will vary somewhat by tribe. The annual process for PPG work plan development should reflect the results of EPA and tribal participation in developing the EPA Strategic Plan, regional plans, and National Program Manager (NPM) guidance. <u>Winter:</u> Generally, the PPG planning cycle begins in the winter for the upcoming fiscal year. EPA and tribes develop preliminary priorities and assess resources needs, based in part on the results from the previous year's grant. They review and comment on draft NPM guidance, which usually is issued in February. During this	

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period, work is started to develop mutual goals and priorities based on consideration of the NPM guidance, regional plans and guidance, and tribal priorities and needs. <u>Spring</u>: In the spring, joint planning begins in full. Some regions develop their own regional or tribal-specific guidance. EPA and tribal program managers meet to discuss preliminary priorities, goals, and action items and begin developing the PPG. Unresolved issues are elevated to senior management. <u>Summer</u>: The most interactive phase of negotiation occurs during the summer, when tribes submit their PPG (and tribal grant) applications. EPA regions and tribes review and comment on proposed Annual Performance Commitments. Unresolved issues are elevated to senior management, involving EPA headquarters as needed. Ideally, the PPG is signed by the end of September.	
2-5 How do elements of EPA's planning process – such as National Program Manager (NPM) guidance and Annual Performance Commitments – affect PPGs? Part 35 requires consideration of national, regional, state, and tribal priorities in the development of grant work plans. EPA's planning process was recently revised to provide increased opportunities for tribes to participate in and influence EPA priorities and strategies at the national and regional levels. As these joint planning efforts mature, there should be few major conflicts among the national, regional, state, and tribal priorities. When tribes do have different priorities and strategies, however, provisions of Part 35 ensure that tribal priorities are considered as grant work plans are negotiated. There are several connections between EPA's planning processes and the negotiation of PPG and tribal grant work plans. <u>Consideration of tribal priorities in NPM guidance</u> The NPMs issue guidance setting out national priorities and the strategies that regional offices are expected to carry out to meet program goals in the coming three years. In EPA's planning process, each NPM is expected to reflect regional, state, and tribal priorities and needs in developing its national guidance. <u>NPM guidance in grant work plans</u> EPA regions and tribes are required to consider the NPM guidance when they develop grant work plans, including PPG work plans. To provide flexibility to address regional and tribal needs, the rule also requires tribes to develop work plans that reflect any jointly-identified priorities as well as tribal-specific environmental and programmatic needs.	§ 35.507 Work plans. (a) <i>Bases for negotiating work plans.</i> The work plan is negotiated between the applicant and the Regional Administrator and reflects consideration of national, regional, and Tribal environmental and programmatic needs and priorities. (1) <i>Negotiation considerations.</i> In negotiating the work plan, the Regional Administrator and applicant will consider such factors as national program guidance; any regional supplemental guidance; goals, objectives, and priorities proposed by the applicant; other jointly identified needs or priorities; and the planning target. (2) <i>National program guidance.</i> If an applicant proposes a work plan that differs significantly from the goals and objectives, priorities, or performance measures in the national program guidance associated with the proposed work plan activities, the Regional Administrator must consult with the appropriate National Program Manager before agreeing to the work plan. (3) <i>Use of existing guidance.</i> An applicant should base the grant application on the national program guidance in place at the time the application is being prepared. (b) <i>Work plan requirements.</i> (1) The work plan is the basis for the management and evaluation of performance under the grant agreement. (2) An approvable work plan must specify: (i) The work plan components to be funded under the grant; (ii) The estimated work years and estimated funding amounts for each work plan component; (iii) The work plan commitments for each work plan component, and a time frame for their accomplishment; (iv) A performance evaluation process and reporting schedule in accordance with § 35.515 of this subpart; and (v) The roles and responsibilities of the recipient and EPA in carrying out the work plan commitments. (3) The work plan must be consistent with applicable federal statutes; regulations; circulars; executive orders; and delegations, approvals, or authorizations.

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<u>Consideration of tribal priorities in grant work plan development</u> The grant rule explicitly requires that tribal priorities and needs be considered, along with national program and regional supplemental guidance, in developing grant work plans. <u>Process if a tribe proposes different goals and priorities</u> In keeping with the goals of performance partnerships, section 35.507(a)(1) provides flexibility for tribes to propose grant work plans that differ from the goals, objectives, and measures in NPM guidance. If the tribe proposes a work plan that is <i>significantly</i> different from the NPM guidance, the Regional Administrator must consult with the affected NPM before agreeing to the work plan. For PPGs where the proposed differences affect more than one program, the Regional Administrator must consult with each affected NPM. <u>Timing of NPM guidance</u> Under EPA’s revamped planning process, EPA issues all of the NPM guidance (or guidance updates) on or about the same date, typically in April, to affect the coming fiscal year. By issuing all of the NPM guidance at the same time, EPA regions and tribes can get a comprehensive, cross-program view of priorities and proposed work. While EPA is committed to issuing these guidance documents on time, EPA wants to ensure that grant negotiations can move forward in the event that a program office is late in issuing its NPM guidance. To address this issue, section 35.507(a)(3) says that a tribe may use the NPM guidance that is in place at the time the tribe prepares its grant application as the basis for its work plan. <u>Grants and Annual Performance Commitments</u> Each year, the NPMs also propose Annual Performance Commitments they consider essential for the regions to accomplish so that the Agency can achieve its strategic goals and objectives. EPA and tribes (critical partners in achieving many of these commitments) have an opportunity to review, comment on, and propose adjustments to these commitments based on their priorities and strategies. The Annual Performance Commitments translate EPA goals and objectives into the actual work that will be performed at the operational level. Many of the regional commitments are for work that is actually performed by tribes. These commitments should be reflected in tribal grant work plans (including PPG work plans), which are essentially the operational plans between EPA regions and the tribes. <u>Note</u>: Some tribal grants have a period of performance longer than one year. In these cases, the work to be performed in a given work year under the grant is still negotiated annually based on the amount of funds that are available.	

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2-6 What are the roles and responsibilities of key tribal and EPA regional managers and staff in developing PPGs? While the planning process for developing PPGs varies among regions, the basic roles and responsibilities of key EPA regional and tribal players are comparable. Ideally, PPG and other tribal grant work plans, as well as TEAs and comparable tribal-EPA agreements, should reflect the results of EPA-tribe joint planning. The following is a discussion of roles, responsibilities and functions typically involved in joint planning and the development of PPGs. Specific titles, process steps, and responsibilities may vary by region and tribe. Senior EPA Regional and Tribal Leaders <i>(EPA Regional Administrator, Deputy Regional Administrator, Assistant Regional Administrator, Tribal Leaders)</i> EPA and tribal senior managers set the direction for the region and tribe. They consider individual and mutual priorities, develop strategies, allocate resources, and identify investments and disinvestments. They also resolve issues that are raised to them from lower levels in their organizations, and if necessary, elevate issues to EPA headquarters for resolution. EPA Regional Planners <i>(Managers and staff in the EPA region's planning office)</i> EPA Regional Planners coordinate development of regional plans and revisions. They foster meaningful involvement of tribes and serve as the liaison between EPA headquarters and the region and tribes for the Annual Commitment System. EPA Regional and Tribal Environmental Program Directors <i>(EPA and tribal environmental program and compliance/enforcement program division directors or managers)</i> EPA and tribal environmental program directors ensure that their program goals, priorities, and resource needs are considered in the planning process and adequately reflected in PPG work plans. To do this, they begin working together early in the planning process, exchanging EPA guidance and tribal directives, results of environmental and program assessments, and other information to be considered in developing the PPG work plan. They also coordinate with their compliance and enforcement counterparts who share in making PPG commitments related to their programs. Program directors elevate issues that cannot be resolved at their level to senior management and ensure the commitments negotiated in the PPG are met.	

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EPA and Tribal Program Staff Representatives <i>(Staff representatives of the programs whose grants are being combined in the PPG)</i> Program staff representatives of the individual EPA and tribal programs (including compliance/enforcement programs) negotiate the work plan, conditions, and commitments in the PPG for their respective programs, and ensure that EPA and tribal priorities are addressed during PPG negotiations. Program staff representatives elevate issues in a timely manner to their program directors if there is an impasse. PPG Project Officers and Tribal PPG Leads <i>(PPG project officer develops and manages the PPG for EPA; for purposes of this discussion, the tribal environmental program director is the principal contact for PPG development for the tribe)</i> The EPA project officer and tribal environmental program director develop schedules, content, and format for negotiating and completing the PPG and ensure that EPA and tribal priorities are addressed. They compile and exchange a record of relevant EPA and tribal guidance. They monitor negotiation progress and facilitate resolution of cross-program and cross-functional issues, elevating issues to senior management as needed. To ensure PPG documents are consistent with PPG and other grant and financial requirements, they work with EPA grants specialists and tribal financial staff. Grants and Financial Specialists <i>(Specialists in EPA and tribes who ensure adherence to administrative and financial requirements for grants)</i> Grants and financial specialists in EPA and tribes are responsible for ensuring that grant documents and financial aspects of the PPG are consistent with all statutory and regulatory requirements. They provide technical assistance to EPA and tribal senior managers, PPG project officers, and tribal environmental program directors on preparation of grant documents, status of funds, and grant obligations.	
2-7 What responsibilities do tribes have with regard to PPGs? PPGs offer tribes a special opportunity to direct environmental grant funding to their most important environmental problems and program needs. In turn, tribes are responsible for implementing core program requirements and setting priorities to identify optimal ways for using available federal resources. This vital role stems from one of the fundamental concepts underlying performance partnerships; that is, each tribe is different and each tribe-EPA partnership negotiation	

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must take into account the specific interests, needs, and capacities of that tribe. Tribes are responsible for ensuring that their own legal requirements are factored into the PPG process. Tribal agencies must operate in accord with their statutory and regulatory authorities, and the tribe's use of grant funds must be consistent with their appropriations authorities and applicable fiscal procedures. Grant work plans should be consistent with these requirements. Tribes should first work to align federal and tribal priorities. If a tribe foresees a problem, it should advise the region as soon as possible so that joint action can be taken to address the situation. With a PPG, tribes remain responsible for providing performance commitments in work plans that reflect the negotiated strategic agenda. The tribe, in cooperation with an EPA region, is also responsible for delivering the program achievements that are defined in the grant work plan and for providing appropriate reports. Implementing a PPG in accordance with all federal and tribal accountability requirements is an important way to demonstrate that greater flexibility can and will lead to better performance outcomes for a tribe. The tribe should ensure that important program performance issues or concerns that arise during the year are communicated to the region in a timely manner. Such heads-up contact helps avoid troublesome "surprises" at the end of the year when the final performance accounting takes place and affords an opportunity for cooperative resolution of these matters, including taking any appropriate corrective action.	
2-8 What should be included in a PPG work plan? <u>Role of work plans in ensuring accountability</u> Grant work plans document how grantees intend to use federal funds and what they will accomplish. In this era of the Government Performance and Results Act (GPRA), reviews by the Office of Management and Budget (OMB) and increased Congressional oversight of EPA grants, EPA work plans are receiving more scrutiny than ever before. Performance-driven grant agreements will link to EPA's Strategic Plan and contain output and outcome measures. <u>PPG work plan requirements</u> PPG work plans are subject to the same requirements as any other grant work plan, as set out in section 35.507. An approvable work plan must specify:	§ 35.507 Work plans. (a) <i>Bases for negotiating work plans.</i> The work plan is negotiated between the applicant and the Regional Administrator and reflects consideration of national, regional, and Tribal environmental and programmatic needs and priorities. (1) <i>Negotiation considerations.</i> In negotiating the work plan, the Regional Administrator and applicant will consider such factors as national program guidance; any regional supplemental guidance; goals, objectives, and priorities proposed by the applicant; other jointly identified needs or priorities; and the planning target. (2) <i>National program guidance.</i> If an applicant proposes a work plan that differs significantly from the goals and objectives, priorities, or performance measures in the national program guidance associated with the proposed work plan activities, the Regional Administrator must consult with the appropriate National Program Manager before agreeing to the work plan. (3) <i>Use of existing guidance.</i> An applicant should base the grant application on the national program guidance in place at the time the application is being prepared.

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• The work plan components to be funded under the grant; • The estimated work years and the estimated funding amounts for each work plan component; • The work plan commitments for each work plan component and a time frame for their accomplishment; • A performance evaluation process and reporting schedule in accordance with section 35.515, and • The roles and responsibilities of the recipient and EPA in carrying out the work plan commitments. The work plan must also be consistent with applicable federal statutes; regulations; circulars; executive orders; and EPA delegations, approvals, or authorizations. <u>TEA serving as a PPG/grant work plan</u> A TEA, or comparable negotiated agreement, can serve as a grant work plan for a PPG or other tribal grants. A comprehensive TEA that serves as the PPG work plan can be the most strategic, flexible and outcome-oriented option for tribes and regions. The portions of the TEA that serve as a grant work plan must meet the same work plan requirements as for any tribal program grant (see discussion above). The portion(s) of a TEA that serve as a work plan must be clearly identified and distinguished from the rest of the TEA. The work plan portion must include specific work plan commitments and is subject to audit. Other parts of the TEA, such as parts that are a strategic overlay or that set out other aspects of the tribal-EPA working relationship, are not subject to specific requirements. Grant-related accountability attaches only to those sections of the TEA that are designated as a grant work plan. <u>Grant budget period</u> The length of a grant period is flexible and can be negotiated between EPA and the tribe. However, current policy (Grants Policy Issuance 08-02: Guidance on Project Period Duration and the Use of New Awards to Fund Additional Work) and reaffirmed recently in Grants Policy Issuance 11-01: Managing Unliquidated Obligations (ULO) and Ensuring Progress Under EPA Assistance Agreements) limits total project periods to 7 years, for certain grants, absent specific regulatory or statutory authorization for a longer period. GPI-08-02 is available on EPA’s intranet: http://intranet.epa.gov/OGD/policy/7.0-GPI-GPI-08-02.htm. GPI-11-01 is available on EPA’s internet site: http://www.epa.gov/ogd/forms/gpi_11_01_12_07_10.pdf. Both are also available from EPA’s Office of Grants and Debarment.	(b) <i>Work plan requirements.</i> (1) The work plan is the basis for the management and evaluation of performance under the grant agreement. (2) An approvable work plan must specify: (i) The work plan components to be funded under the grant; (ii) The estimated work years and estimated funding amounts for each work plan component; (iii) The work plan commitments for each work plan component, and a time frame for their accomplishment; (iv) A performance evaluation process and reporting schedule in accordance with § 35.515 of this subpart; and (v) The roles and responsibilities of the recipient and EPA in carrying out the work plan commitments. (3) The work plan must be consistent with applicable federal statutes; regulations; circulars; executive orders; and delegations, approvals, or authorizations. (c) <i>Tribal Environmental Agreement as work plan.</i> An applicant may use a Tribal Environmental Agreement or a portion of the Tribal Environmental Agreement as the work plan or part of the work plan for an environmental program grant if the portion of the Tribal Environmental Agreement that is to serve as the grant work plan: (1) Is clearly identified as the grant work plan and distinguished from other portions of the Tribal Environmental Agreement; and (2) Meets the requirements in § 35.507(b). § 35.515 Evaluation of performance. (a) <i>Joint evaluation process.</i> The applicant and the Regional Administrator will develop a process for jointly evaluating and reporting progress and accomplishments under the work plan (see section 35.507(b)(2)(iv)). A description of the evaluation process and reporting schedule must be included in the work plan. The schedule must require the recipient to report at least annually and must satisfy the requirements for progress reporting under 40 CFR 31.40(b). (b) <i>Elements of the evaluation process.</i> The evaluation process must provide for: (1) A discussion of accomplishments as measured against work plan commitments; (2) A discussion of the cumulative effectiveness of the work performed under all work plan components; (3) A discussion of existing and potential problem areas; and (4) Suggestions for improvement, including, where feasible, schedules for making improvements. (c) <i>Resolution of issues.</i> If the joint evaluation reveals that the recipient has not made sufficient progress under the work plan, the Regional Administrator and the recipient will negotiate a resolution that addresses the issues. If the issues cannot be resolved through negotiation, the Regional Administrator may take appropriate measures under 40 CFR 31.43. The recipient may request review of the Regional Administrator’s decision under the dispute processes in 40 CFR 31.70. (d) <i>Evaluation reports.</i> The Regional Administrator will ensure that the required evaluations are performed according to the negotiated schedule and that copies of evaluation reports are placed in the official files and provided to the recipient.

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However, for continuing state and tribal environmental programs under the State and Tribal Assistance Grant (STAG) appropriations, EPA’s policy (GPI-11-01) is that the total project period of a new assistance agreement may not exceed 5 years, except for Tribal General Assistance Program (GAP) awards, which may not exceed 4 years. With a multi-year budget period and multi-year work plan, specific work plan commitments are negotiated annually based on the amount of funding that is available. <u>Note:</u> GPI-11-01 section 17.0 states that OGD may approve a waiver to this policy on an individual or class basis because of national security concerns, circumstances of unusual or compelling urgency, unique programmatic considerations or the public interest. <u>Output and outcome measures</u> The preamble to Part 35 states that a work plan should have commitments and a time frame for accomplishing them. Section 35.502 defines outputs and outcomes. While the rule’s preamble encourages use of outcome measures, the rule does not specify what the mix of output and outcome measures should be. The EPA national and regional guidance and tribal priorities and objectives will provide direction for the mix of output and outcome measures that should be included in the grant work plan. It is well recognized that usually it takes longer than a typical grant funding period to achieve an environmental or public health outcome. Part 35 does not require that an outcome must be accomplished within the funding period for a grant. Outputs, however, must be measurable within the grant funding period.	§ 35.502 Definitions of terms. Terms are defined as follows when they are used in this regulation: <i>Outcome.</i> The environmental result, effect, or consequence that will occur from carrying out an environmental program or activity that is related to an environmental or programmatic goal or objective. Outcomes must be quantitative, and they may not necessarily be achievable during a grant funding period. See “output.” <i>Output.</i> An environmental activity or effort and associated work products related to an environmental goal or objective that will be produced or provided over a period of time or by a specified date. Outputs may be quantitative or qualitative but must be measurable during a grant funding period. See “outcome.”
2-9 What information do tribes need to support their proposals for funding or program flexibility or alternate strategies? <u>Flexibility available in individual tribal program grants</u> When negotiating a grant work plan, regions are expected to consider tribal priorities and strategies that are different from those in the EPA’s National Program Managers (NPMs) guidance. Part 35 allows tribes to propose alternative tribal priorities and approaches both within a single grant program or, if the tribe combines its grants in a PPG, across and among programs. In either case, the tribe should explain the basis for its proposed priorities and how the tribe’s alternative approach will be effective in addressing the tribe’s needs. This information will help EPA officials in determining whether or not to accept the alternative priority or approach in the proposed work plan. The Regional	§ 35.507 Work plans. (a) <i>Bases for negotiating work plans.</i> The work plan is negotiated between the applicant and the Regional Administrator and reflects consideration of national, regional, and Tribal environmental and programmatic needs and priorities. (1) <i>Negotiation considerations.</i> In negotiating the work plan, the Regional Administrator and applicant will consider such factors as national program guidance; any regional supplemental guidance; goals, objectives, and priorities proposed by the applicant; other jointly identified needs or priorities; and the planning target. (2) <i>National program guidance.</i> If an applicant proposes a work plan that differs significantly from the goals and objectives, priorities, or performance measures in the national program guidance associated with the proposed work plan activities, the Regional Administrator must consult with the appropriate National Program Manager before agreeing to the work plan. (3) <i>Use of existing guidance.</i> An applicant should base the grant application on the national program guidance in place at the time the application is being

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Administrator is the decision official regarding requests for flexibility in tribal grants. However, if a tribe's proposal deviates significantly from the NPM guidance, the Regional Administrator must consult with the appropriate NPM(s) before agreeing to the tribe's proposal. <u>Programmatic flexibility in PPGs</u> PPGs provide more flexibility than individual categorical grants because tribes can propose work plans that shift the amount of work to be performed in a lower priority area to a higher priority area. Tribes can also propose to aggregate funds from across multiple programs to support an important cross-cutting project. To maintain support for the PPG program, EPA must be able to explain to the Office of Management and Budget (OMB), Congress, and others how PPG flexibility is being used and its value in helping tribes meet environmental and public health goals. EPA must ensure that all core programs will nonetheless continue to be adequately implemented if the work plan proposes shifts in emphasis among the programs.	prepared.
2-10 How can PPG work plan components be organized to provide flexibility? Tribal grant work plans are organized primarily by work plan components. Part 35 defines a work plan component as a “negotiated set or group of work plan commitments as established in the grant agreement.” A work plan may have one or more work plan components. Under the Government Performance and Results Act (GPRA), EPA must show how grants funds support the achievement of the goals and objectives in EPA's Strategic Plan. To do this for PPGs, EPA project officers estimate the amount of funds in a PPG to assign to each goal and objective. While EPA may ask a tribe for help in developing these estimates, EPA does not require the tribe to provide the estimates. Tribes and EPA have several options for organizing PPG work plan components, and current practice reflects the range of these options. The best option for a given tribe and region depends on the circumstances. Operational flexibility can be achieved using any of these approaches to organizing work plan components. Tribes can adopt multi-media work plan components in their PPGs. In this approach, commitments are grouped under categories such as permits, monitoring, inspections, and enforcement. This approach requires EPA project officers to estimate the relative amount of the	§ 35.502 Definitions of terms. Terms are defined as follows when they are used in this regulation: <i>Work plan component.</i> A negotiated set or group of work plan commitments established in the grant agreement. A work plan may have one or more work plan components.

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budget for each component that should be assigned to the goals and objectives in EPA's Strategic Plan. Tribes can organize the work plan components in accordance with the individual program grants included in the PPG. In this approach, total work years for a whole program are specified in the PPG. An advantage to this approach is that there is no need to negotiate about how to assign specific work years to detailed program activities. This approach also tends to make it easier for EPA project officers to perform the crosswalk with EPA's Strategic Plan structure. Tribes can use more specific program elements as their program components. In this more detailed approach, they estimate work years for inspections, monitoring, permitting, enforcement, etc., within a program area. This approach may provide managers with less flexibility to allocate work on an as-needed basis because adjustments may involve changes in grant or program commitments.	
2-11 How are competitive grants managed in a PPG? The following PPG-eligible environmental program grants are awarded competitively, i.e., the tribe must win a competitive process in order to receive the funds. • Tribal Response (Brownfields) (CERCLA Sec. 128) • Environmental Information Exchange Network • Pollution Prevention Grants (PPA Sec. 6605) • Water Quality Cooperative Agreements (CWA Sec. 104(b)(3)) • Wetlands Development Grants (CWA Sec. 104(b)(3)) • Toxic Substances Compliance Monitoring Program (TSCA Sec. 28) • Hazardous Waste Management (SWDA Sec. 3011(a)) • Nonpoint Source Management (CWA Sec. 319(h)) Competitive grants pose special management challenges for PPGs. The tribe (and EPA) will not know, at the time that strategic planning and priority setting is under way, whether or not the tribe will receive funds for the competitive program. This presents a challenge for developing comprehensive plans and priorities and a fully integrated PPG work plan. Grant cycles for competitive grants often do not coincide with the major program grants and the awarding of a PPG. Competitive grants are typically awarded later in the year than a PPG. To incorporate a competitive grant, the PPG must be formally amended. <u>EPA's grant competition policy</u> Award of competitive grants must adhere to the requirements of EPA's grant competition policy. This policy ensures that grant	§ 35.514 Amendments and other changes. The provisions of 40 CFR 31.30 do not apply to environmental program grants awarded under this subpart. The following provisions govern amendments and other changes to grant work plans and budgets after the work plan is negotiated and a grant awarded. (a) <i>Changes requiring prior approval</i> The recipient needs the Regional Administrator's prior written approval to make significant post-award changes to work plan commitments. EPA, in consultation with the recipient, will document approval of these changes including budgeted amounts associated with the revisions. (b) <i>Changes requiring approval.</i> Recipients must request, in writing, grant amendments for changes requiring increases in environmental program grant amounts and extensions of the funding period. Recipients may begin implementing a change before the amendment has been approved by EPA, but do so at their own risk. If EPA approves the change, EPA will issue a grant amendment. EPA will notify the recipient in writing if the change is disapproved. (c) <i>Changes not requiring approval.</i> Other than those situations described in paragraphs (a) and (b) of this section, recipients do not need to obtain approval for changes, including changes in grant work plans, budgets, or other parts of grant agreements, unless the Regional Administrator determines approval requirements should be imposed on a specific recipient for a specified period of time. (d) <i>Office of Management and Budget (OMB) cost principles.</i> The Regional Administrator may waive, in writing, approval requirements for specific recipients and costs contained in OMB cost principles. (e) <i>Changes in consolidated grants.</i> Recipients of consolidated grants under § 35.509 may not transfer funds among environmental programs. (f) <i>Subgrants.</i> Subgrantees must request required approvals in writing from the recipient and the recipient shall approve or disapprove the request in writing. A recipient will not approve any work plan or budget

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competitions are conducted according to accepted government- wide principles. The Agency’s policy assures fair competition while giving programs the flexibility they need to customize a competition to maximize program results. Each competitive grant has its own regulations, guidance and grant award criteria. <u>Adding a competitive grant to a PPG</u> If the tribe receives a competitive grant, the grant can be folded into the PPG. However, the PPG work plan must be amended to include the specific work plan commitments that were the basis for the competitive grant award. This requirement assures fairness in the competition as well as accountability. The process for adding a competitive grant is straightforward. There are two approaches: the competitive grant work plan can simply be “stapled” to the PPG, or the work plan can be fully integrated into the PPG work plan. <u>Integrating competitive grants into TEAs and PPGs</u> EPA’s policy is to promote comprehensive joint planning and priority setting as a way to maximize program effectiveness and environmental results. Although competitive grants pose certain practical issues for comprehensive planning, EPA and tribes are urged to consider ways to integrate competitive grant programs in the development of their TEAs and PPGs. <u>PPG award for programs with approved work plans but one or more programs are pending approval</u> If the work plan has been approved for other programs, but there are significant issues in a specific program work plan that cannot be resolved in a timely manner, the PPG can be awarded without that program. Once the issues are resolved, amend the PPG to include the work plan (and funds) for that program (see also Question 2-13).	revision which is inconsistent with the purpose or terms and conditions of the federal grant to the recipient. If the revision requested by the subgrantee would result in a significant change to the recipient’s approved grant which requires EPA approval, the recipient will obtain EPA’s approval before approving the subgrantee’s request.
2-12 What policies and procedures ensure that grants are awarded in a timely manner? Ensuring timeliness of grant awards is a critical issue for tribal-EPA relations. Many tribes operate on a cash basis, and delays in grant awards can threaten program continuity. In addition, delayed awards can reduce work plan accomplishments and impact environmental or program results. Some of the obstacles that can delay the award of grants are beyond EPA’s direct control. Congress must first enact EPA’s appropriation bill, and then the Office of Management and Budget (OMB) must approve EPA’s operating plan before EPA can use its budget. Other	§ 35.510 Time frame for EPA action. The Regional Administrator will review a complete application and either approve, conditionally approve, or disapprove it within 60 days of receipt. The Regional Administrator will award grants for approved or conditionally approved applications if funds are available. § 35.511 Criteria for approving an application. (a) After evaluating other applications as appropriate, the Regional Administrator may approve an application upon determining that: (1) The application meets the requirements of this subpart and 40 CFR part 31; (2) The application meets the requirements of all applicable federal statutes; regulations; circulars;

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potential obstacles originate within EPA, such as delays in allocating the grant budget to the National Program Managers (NPMs) and regions or administrative delays with budget reprogramming and grant processing. Stalled or tangled work plan negotiations are another potential source of delay. EPA has the tools needed to award grants in a timely manner. Under current policies, project officers can improve the timeliness of tribal grant awards, including PPG awards, even when the Agency is funded by continuing resolution. <u>Agency policy on timely grant awards</u> The timely award of tribal grants continues to be a priority for the Agency. For more information on the current EPA policy, see Grants Policy Issuance 92-6, “Policy on the Timely Award of Assistance,” available on EPA’s intranet (Appendix N – Policy on the Timely Award of Assistance Funds GPI-92-06) or from EPA’s Office of Grants and Debarment. Regions, NPMs, and project officers will be notified formally when the Agency issues any policy that supplements or supersedes existing policy on timely awards. <u>Conditional approval if minor changes are needed</u> Using conditional approvals can prevent situations where unresolved work plan issues in one program hold up the entire PPG award. If only minor changes are necessary to have a complete application, section 35.511 allows the Regional Administrator to conditionally approve an application, thus allowing a grant to be made on the condition that certain changes are made to the work plan or application. The approval should include the condition that the remaining portions of the work plan must be approved in order for the tribe to receive additional, specified funding increments. <u>Prompt elevation of issues</u> For the obstacles that are internal to EPA, resolution often involves staff from all offices in a region and/or an NPM. In these cases, the issues can only be resolved with the attention of the senior executives. It is important that such issues be elevated in a timely manner so they can be resolved as quickly as possible. <u>Timely grant awards under a continuing resolution</u> It is more difficult for EPA to make timely awards while the Agency operates under a series of short continuing resolutions, but it is still possible. Under continuing resolutions, regions receive the portion of all State and Tribal Assistance Grants (STAG) accounts, including Clean Water and Drinking Water State Revolving Funds (SRF), which the Agency is allowed to spend while the continuing resolution is in effect. The Agency can make initial tribal grant	executive orders; and EPA delegations, approvals, or authorizations; (3) The proposed work plan complies with the requirements of § 35.507 of this subpart; and (4) The achievement of the proposed work plan is feasible, considering such factors as the applicant’s existing circumstances, past performance, program authority, organization, resources, and procedures. (b) If the Regional Administrator finds the application does not satisfy the criteria in paragraph (a) of this section, the Regional Administrator may either: (1) Conditionally approve the application if only minor changes are required, with grant conditions necessary to ensure compliance with the criteria, or (2) Disapprove the application in writing. § 35.514 Amendments and other changes. The provisions of 40 CFR 31.30 do not apply to environmental program grants awarded under this subpart. The following provisions govern amendments and other changes to grant work plans and budgets after the work plan is negotiated and a grant awarded. (a) <i>Changes requiring prior approval.</i> The recipient needs the Regional Administrator’s prior written approval to make significant post-award changes to work plan commitments. EPA, in consultation with the recipient, will document approval of these changes including budgeted amounts associated with the revisions. (b) <i>Changes requiring approval.</i> Recipients must request, in writing, grant amendments for changes requiring increases in environmental program grant amounts and extensions of the funding period. Recipients may begin implementing a change before the amendment has been approved by EPA, but do so at their own risk. If EPA approves the change, EPA will issue a grant amendment. EPA will notify the recipient in writing if the change is disapproved. (c) <i>Changes not requiring approval.</i> Other than those situations described in paragraphs (a) and (b) of this section, recipients do not need to obtain approval for changes, including changes in grant work plans, budgets, or other parts of grant agreements, unless the Regional Administrator determines approval requirements should be imposed on a specific recipient for a specified period of time. (d) <i>Office of Management and Budget (OMB) cost principles.</i> The Regional Administrator may waive, in writing, approval requirements for specific recipients and costs contained in OMB cost principles. (e) <i>Changes in consolidated grants.</i> Recipients of consolidated grants under § 35.509 may not transfer funds among environmental programs. (f) <i>Subgrants.</i> Subgrantees must request required approvals in writing from the recipient and the recipient shall approve or disapprove the request in writing. A recipient will not approve any work plan or budget revision which is inconsistent with the purpose or terms and conditions of the federal grant to the recipient. If the revision requested by the subgrantee would result in a significant change to the recipient’s approved grant which requires EPA approval, the recipient will obtain EPA’s approval before approving the subgrantee’s request.

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awards with these funds. For PPGs, current policy allows regions to pool all STAG categorical funds eligible for PPG inclusion, if necessary, to make initial PPG awards. Project officers, by working closely with their budget officers and grants management officers, determine how much money is available for each tribe and prepare a funding recommendation for this amount once the PPG work plan is approved or conditionally approved. Since many STAG awards are normally not made until later in the year, a region may use these initial allocations to make timely PPG awards, and then re-balance all their STAG accounts (that is, “payback” the other accounts) when the Agency receives its appropriation for the year. Grants Policy Issuance 92-6 also provides detailed instructions for making continuing environmental grant awards under continuing resolutions.	
2-13 Can a PPG be awarded if some programs have not yet reached agreement on the work plan? It is EPA policy to award continuing environmental grant funds as soon as possible after funds are available for distribution. It is not acceptable to delay the award of the entire PPG based upon unresolved issues in specific programs. In most cases, a region should be able to make a PPG award expeditiously, even if the work plan for one or more of the programs combined in the PPG has not been approved. The most important way for regions to ensure that unresolved issues do not hold up the award of PPGs is to establish and use a clear process, including time frames, for elevating and resolving issues. For more information about the process for resolving issues, see Questions 2-14 and 2-15. In the event that issues within specific program areas cannot be resolved within a reasonable time frame, the region can still award the PPG. The appropriate approach for making the award depends on how significant the remaining issues are. If the unresolved issues are minor, the region can make a conditional PPG award. As set out in section 35.511(b)(1), the Regional Administrator may conditionally approve the application if only minor changes are required, with grant conditions necessary to ensure compliance with the criteria. If the unresolved issues in a program’s portion of the work plan are significant, the region can award the PPG for the programs with approved work plans and amend it later to add the unresolved program. EPA must ensure that tribes receiving PPGs are not unfairly treated in receiving their grant funds if there is a major disagreement about the work plan in a specific program that prevents approval of that program’s part of the PPG work plan. In these circumstances, the region should award the PPG for the programs	§ 35.511 Criteria for approving an application. (a) After evaluating other applications as appropriate, the Regional Administrator may approve an application upon determining that: (1) The application meets the requirements of this subpart and 40 CFR part 31; (2) The application meets the requirements of all applicable federal statutes; regulations; circulars; executive orders; and EPA delegations, approvals, or authorizations; (3) The proposed work plan complies with the requirements of § 35.507 of this subpart; and (4) The achievement of the proposed work plan is feasible, considering such factors as the applicant’s existing circumstances, past performance, program authority, organization, resources, and procedures. (b) If the Regional Administrator finds the application does not satisfy the criteria in paragraph (a) of this section, the Regional Administrator may either: (1) Conditionally approve the application if only minor changes are required, with grant conditions necessary to ensure compliance with the criteria, or (2) Disapprove the application in writing. § 35.513 Reimbursement for pre-award costs. (a) Notwithstanding the requirements of 40 CFR 31.23(a) (Period of availability of funds), and OMB cost principles, EPA may reimburse recipients for pre-award costs incurred from the beginning of the funding period established in the grant agreement if such costs would have been allowable if incurred after the award. Such costs must be specifically identified in the grant application EPA approves. (b) The applicant incurs pre-award costs at its own risk. EPA is under no obligation to reimburse such costs unless they are included in an approved grant application. § 35.514 Amendments and other changes. The provisions of 40 CFR 31.30 do not apply to environmental program grants awarded under this subpart. The following provisions govern amendments and other changes to grant work plans and budgets after the work plan is negotiated and a grant awarded. (a) <i>Changes requiring prior approval.</i> The recipient needs the Regional Administrator’s prior written

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that do have approved work plans, and amend the PPG later to include the other program once the work plan has been approved. If there are delays in reaching final agreement on the content of the work plan, pre-award costs may be reimbursed if certain conditions are met. However, tribes face some risks if they incur expenses before an award is made. As set out in section 35.513, while EPA may reimburse pre-award costs if they are allowable, EPA is under no obligation to reimburse the costs unless those costs are in the approved grant application. Once the issues have been resolved, the work plan must be amended to reflect the changes. An amendment is required in either situation – conditional approval or adding a program into a PPG after it has been awarded. Post-award amendments are governed by the requirements of section 35.514.	approval to make significant post-award changes to work plan commitments. EPA, in consultation with the recipient, will document approval of these changes including budgeted amounts associated with the revisions. (b) <i>Changes requiring approval.</i> Recipients must request, in writing, grant amendments for changes requiring increases in environmental program grant amounts and extensions of the funding period. Recipients may begin implementing a change before the amendment has been approved by EPA, but do so at their own risk. If EPA approves the change, EPA will issue a grant amendment. EPA will notify the recipient in writing if the change is disapproved. (c) <i>Changes not requiring approval.</i> Other than those situations described in paragraphs (a) and (b) of this section, recipients do not need to obtain approval for changes, including changes in grant work plans, budgets, or other parts of grant agreements, unless the Regional Administrator determines approval requirements should be imposed on a specific recipient for a specified period of time. (d) <i>Office of Management and Budget (OMB) cost principles.</i> The Regional Administrator may waive, in writing, approval requirements for specific recipients and costs contained in OMB cost principles. (e) <i>Changes in consolidated grants.</i> Recipients of consolidated grants under § 35.509 may not transfer funds among environmental programs. (f) <i>Subgrants.</i> Subgrantees must request required approvals in writing from the recipient and the recipient shall approve or disapprove the request in writing. A recipient will not approve any work plan or budget revision which is inconsistent with the purpose or terms and conditions of the federal grant to the recipient. If the revision requested by the subgrantee would result in a significant change to the recipient's approved grant which requires EPA approval, the recipient will obtain EPA's approval before approving the subgrantee's request.
2-14 What steps should be taken to ensure prompt resolution of issues that could delay award of a PPG? Appropriate elevation is the key to achieving timely resolution of issues that arise within a region or between a region and a tribe. It is critical that both tribal and EPA staff elevate issues up their chains-of-command when necessary. Often, delays in resolving a specific program issue or work plan item can delay an entire PPG award, stall negotiation of a TEA, or disrupt program operations. In recent years, many regions have implemented explicit issue resolution procedures that call for the orderly elevation of issues until resolution is achieved. Ideally, the process should include clear steps and time frames. Staff negotiating PPGs should check within their region on specific procedures. Within the region, the Regional Administrator is the final decision-maker on all PPG issues. As discussed in Question 2-15, the Regional Administrator and the National Program Manager should notify the Office of Congressional and Intergovernmental Relations (OCIR) if there is a PPG-related	

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disagreement that the offices involved have been unable to resolve in a timely manner. These issues are then addressed through the Performance Partnership Steering Committee and elevated to the Deputy Administrator if necessary.	
2-15 What is EPA’s process for resolving policy and implementation issues when a National Program Manager (NPM) does not agree with a regional office's decision about a PPG? Sometimes, the NPM and the Regional Administrator may be unable to resolve a PPG-related issue within a reasonable time frame. For example, an NPM may disagree with a Regional Administrator’s decision to accede to a tribal request for flexibility in a grant work plan. When such an impasse occurs, the offices should notify the Office of Congressional and Intergovernmental Relations (OCIR) to begin a process to achieve resolution of the issue. Once notified of the issue: • OCIR will bring the interested parties, including the program and regional offices, Office of Grants and Debarment (OGD), Office of Regional Counsel (ORC), and Office of General Counsel (OGC) together to discuss issues and possible resolutions. OCIR will help facilitate an informal resolution if possible. • OCIR will, after consultation with the involved offices, and if informal resolution is not possible within a reasonable time frame, place the issue on the agenda for the Performance Partnership Steering Committee for discussion. The Steering Committee may either resolve the issue by consensus or elevate it to the Deputy Administrator. • OCIR will, if the issue is elevated to the Deputy Administrator, work with the involved offices to coordinate development of appropriate briefing materials, including any advice or position(s) from the Steering Committee. • Decisions of the Deputy Administrator will be final. OCIR will work with the Deputy Administrator’s office and other involved offices to document and communicate the decision. <u>Note on resolving disputes involving EPA and external parties:</u> External disputes, such as those between tribes or other parties and EPA, are ultimately resolved through the EPA Disputes Resolution Process described at 40 CFR 31, Subpart F. Tribes and regions should make every effort to resolve issues through direct communication and negotiation, involving EPA headquarters where appropriate. The formal dispute resolution process should be	40 CFR 31.70, Subpart F—Disputes § 31.70 Disputes. (a) Disagreements should be resolved at the lowest level possible. (b) If an agreement cannot be reached, the EPA disputes decision official will provide a written final decision. The EPA disputes decision official is the individual designated by the award official to resolve disputes concerning assistance agreements. (c) The disputes decision official's decision will constitute final agency action unless a request for review is filed by registered mail, return receipt requested, within 30 calendar days of the date of the decision. (1) For final decisions issued by an EPA disputes decision official at Headquarters, the request for review shall be filed with the Assistant Administrator responsible for the assistance program. (2) For final decisions issued by a Regional disputes decision official, the request for review shall be filed with the Regional Administrator. If the Regional Administrator issued the final decision, the request for reconsideration shall be filed with the Regional Administrator. (d) The request shall include: (1) A copy of the EPA disputes decision official's final decision; (2) A statement of the amount in dispute; (3) A description of the issues involved; and (4) A concise statement of the objections to the final decision. (e) The disputant(s) may be represented by counsel and may submit documentary evidence and briefs for inclusion in a written record. (f) Disputants are entitled to an informal conference with EPA officials. (g) Disputants are entitled to a written decision from the appropriate Regional or Assistant Administrator. (h) A decision by the Assistant Administrator to confirm the final decision of a Headquarters disputes decision official will constitute the final Agency action. (i) A decision by the Regional Administrator to confirm the Regional disputes decision official's decision will constitute the final Agency action. However, a petition for discretionary review by the Assistant Administrator responsible for the assistance program may be filed within 30 calendar days of the Regional Administrator's decision. The petition shall be sent to the Assistant Administrator by registered mail, return receipt requested, and shall include: (1) A copy of the Regional Administrator's decision; and (2) A concise statement of the objections to the decision. (j) If the Assistant Administrator decides not to review the Regional Administrator's decision, the Assistant Administrator will advise the disputant(s) in writing that the Regional Administrator's decision remains the final Agency action. (k) If the Assistant Administrator decides to review the Regional Administrator's decision, the review will

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regarded as a last resort option. When a tribe appeals the decision of a Regional Disputes Decision Official (DDO), the Regional Administrator will be the review official. When a tribe appeals the decision of a Regional Administrator, an Assistant Administrator will be the review official.	generally be limited to the written record on which the Regional Administrator's decision was based. The Assistant Administrator may allow the disputant(s) to submit briefs in support of the petition for review and may provide an opportunity for an informal conference in order to clarify technical or legal issues. After reviewing the Regional Administrator's decision, the Assistant Administrator will issue a written decision which will then become the final Agency action. (l) Reviews may not be requested of: (1) Decisions on requests for exceptions under §31.6; (2) Bid protest decisions under §31.36(b)(12); (3) National Environmental Policy Act decisions under part 6; (4) Advanced wastewater treatment decisions of the Administrator; and (5) Policy decisions of the EPA Audit Resolution Board.
2-16 What are the requirements for joint evaluation of PPGs? <u>Purposes of joint evaluation</u> Joint evaluations of tribal grants serve several important purposes. Evaluations assure compliance with state and tribal grant rules (40 CFR Parts 31 and 35). They also produce valuable performance information to support tribal and EPA program planning and decision making and provide assurance to officials and the public that EPA and the tribes are carrying out their environmental program responsibilities. These evaluations are also of interest to the EPA National Program Managers (NPMs), as they may help in gauging the results being achieved with tribal program grants. Although the primary purpose of the joint evaluation of grants, including PPGs, is to assess progress in accomplishing the commitments in a grant agreement, this evaluation is also essential to planning, priority setting, and continuous improvement efforts. Periodic program-wide reviews are also important tools in the joint evaluation process. These reviews may include review of delegation and other program requirements not found in a grant agreement. All PPG and other tribal grant work plans must contain a binding set of commitments in the form of program goals, objectives, and performance measures. If a TEA also serves as a grant work plan, the grant evaluation requirements apply only to those portions of a TEA that are the actual grant work plan. The information found in other sections of the TEA – such as priorities, roles, and funding allocations – can also be used as supporting documentation in the joint evaluation. <u>Tribal grant/PPG evaluation requirements</u> Part 35 recognizes the importance of the tribal partnership in evaluating results, and establishes a joint evaluation requirement in section 35.515. These evaluation requirements apply to all tribal grants, including PPGs. The evaluation process must include:	§ 35.515 Evaluation of performance. (a) <i>Joint evaluation process.</i> The applicant and the Regional Administrator will develop a process for jointly evaluating and reporting progress and accomplishments under the work plan (see section 35.507(b)(2)(iv)). A description of the evaluation process and reporting schedule must be included in the work plan. The schedule must require the recipient to report at least annually and must satisfy the requirements for progress reporting under 40 CFR 31.40(b). (b) <i>Elements of the evaluation process.</i> The evaluation process must provide for: (1) A discussion of accomplishments as measured against work plan commitments; (2) A discussion of the cumulative effectiveness of the work performed under all work plan components; (3) A discussion of existing and potential problem areas; and (4) Suggestions for improvement, including, where feasible, schedules for making improvements. (c) <i>Resolution of issues.</i> If the joint evaluation reveals that the recipient has not made sufficient progress under the work plan, the Regional Administrator and the recipient will negotiate a resolution that addresses the issues. If the issues cannot be resolved through negotiation, the Regional Administrator may take appropriate measures under 40 CFR 31.43. The recipient may request review of the Regional Administrator's decision under the dispute processes in 40 CFR 31.70. (d) <i>Evaluation reports.</i> The Regional Administrator will ensure that the required evaluations are performed according to the negotiated schedule and that copies of evaluation reports are placed in the official files and provided to the recipient. § 31.40 Monitoring and reporting program performance. (a) <i>Monitoring by grantees.</i> Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee

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• A discussion of accomplishments as measured against work plan commitments; • A discussion of the cumulative effectiveness of the work performed under all work plan components; • A discussion of existing and potential problem areas; and • Suggestions for improvement, including, where feasible, schedules for making improvements. Section 31.40 provides additional detail on requirements for a satisfactory evaluation of tribal grant agreements. <u>EPA response to tribal annual performance report</u> By regulation, tribes are required to submit an annual performance report for their grants or PPGs (Sections 31.40(b) and 35.515). These reports show progress made during the grant period and document performance relative to program commitments made in the work plan. Typically, considerable effort goes into development of these reports by participating tribes. Thus, it is important for a region that receives a report to conduct a complete review and to respond to the tribe either in writing or by direct contact (e.g., via conference call) in a timely manner. This response completes the communication cycle and maintains the utility of the reporting process. <u>Documenting the joint evaluation</u> Part 35 requires that EPA and tribes produce a documented joint evaluation within 90 days of the end of the grant period. This evaluation can be made up of several ingredients, including information in program data systems, informal and formal program reviews, and reports. PPG project officers must maintain a document file of joint evaluations of PPG grant agreements. Though regions and tribes conduct many types of program evaluations and interactions during the year, the regulations require a documented joint evaluation, at least annually. <u>Ongoing evaluation to improve the planning process</u> While Part 35 sets out requirements for a formal, documented annual joint evaluation for grants, EPA and tribes recognize that joint evaluation occurs throughout the entire year. Evaluation is carried out in a variety of contexts. Over the course of the year, such as during mid-year meetings between EPA and the tribe, much more substantial joint reviews will take place that can produce a deeper understanding of environmental and program conditions. EPA and the tribes strongly benefit from these more in-depth interactions, as they provide the fundamentals for successful joint planning and priority setting. While it is important to satisfy	monitoring must cover each program, function or activity. (b) <i>Nonconstruction performance reports.</i> The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report. (1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency. (2) Performance reports will contain, for each grant, brief information on the following: (i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful. (ii) The reasons for slippage if established objectives were not met. (iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs. (3) Grantees will not be required to submit more than the original and two copies of performance reports. (4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees. (c) <i>Construction performance reports.</i> For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly. (d) <i>Significant developments.</i> Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known: (1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation. (2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned. (e) Federal agencies may make site visits as warranted by program needs. (f) <i>Waivers, extensions.</i> (1) Federal agencies may waive any performance report required by this part if

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regulatory requirements, it is more important to do so in a way that maximizes use of information and draws upon the knowledge of tribe and EPA program staff to produce meaningful evaluations that feed an effective tribal-EPA planning process. The result of a robust, year-round joint evaluation process is that regions and tribes have real data on environmental and program conditions. Ideally, evaluation results should inform the regional plans and set the stage for the next round of tribal-EPA planning and the negotiation of PPG and grant work plans. Because evaluation information comes from a variety of sources – including formal reports from program data systems, informal and formal program reviews, site visits and, most important, ongoing EPA-tribal staff relationships – it is a challenge to ensure that this information feeds into the joint planning and priority-setting process.	not needed. (2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.
2-17 What is the relationship between EPA's reporting under the Government Performance and Results Act (GPRA) and performance reporting by tribes? Since the early 1990s, Congress, the Office of Management and Budget (OMB), state, tribal and local governments, and the public have increasingly focused on results-based management. The 1993 Government Performance and Results Act (GPRA) holds agencies accountable for using resources wisely and achieving program results. Under GPRA, EPA must set out strategic goals and objectives and the measures that will be used to assess progress towards meeting them. EPA's budget and accounting systems are also tied to the GPRA goals and objectives. Tribes are vital partners in achieving these goals, so EPA has revamped its processes to increase opportunities for tribes to engage in and influence EPA's plans, strategies, and performance measures. Since EPA awards some percentage of its budget to tribes in the form of grants, EPA is accountable for ensuring that grants support the achievement of EPA's goals and objectives (see discussion of EPA's environmental results order in Question 2-18). <u>GPRA framework and grant work plans</u> Tribes do not need to use EPA's GPRA framework in their work plans, budgets, or performance reports. EPA will use budget and work plan information that tribes provide in their grant applications as the basis for linking grant expenditures with commitments and accomplishments and with the GPRA framework. EPA may ask tribes to help in making these links during grant negotiations. Part 35 does require grant recipients to specify the estimated work years and the estimated funding for each work plan component (defined as	

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a set or group of commitments in the grant agreement). A work plan component might be a traditional media program, such as air quality, or it might be a goal that is comprised of parts of many programs. <u>GPRA and performance reporting</u> Some of the information EPA reports under GPRA are drawn from tribal data. Most of the data which tribes report is the same information they have been reporting to the national environmental databases all along, under long-standing regulatory and statutory requirements. Therefore, tribes do not have to spend additional resources gathering new data to report on grant performance or for other GPRA-related reporting. <u>GPRA and environmental indicators</u> Under GPRA, EPA develops planning and accountability measures linking program activities and environmental results, and reports on them on a periodic, regular basis. Since tribes are often responsible for implementing these programs, these measures may be translated into commitments in grant work plans. EPA is also developing environmental indicators that are examined and tracked over the long-term to provide a better understanding of environmental conditions and potential impacts to human health. These indicators inform both EPA's broad mission and individual programs. However, these indicators by themselves cannot fulfill all planning and accountability requirements under GPRA. Because indicator trends are affected by complex factors, reports on indicators should not be considered a "report card" on the specific results of EPA programs.	
2-18 How does EPA Order 5700.7, Environmental Results Under EPA Assistance Agreements, affect PPGs and other tribal grants? EPA Order 5700.7, which is available on EPA's internet site (see http://www.epa.gov/ogd/grants/award/5700.7.pdf) or from EPA's Office of Grants and Debarment, requires project officers to link proposed assistance agreements to EPA's Strategic Plan. Project officers must ensure that outputs and outcomes are appropriately addressed in work plans, solicitations, and performance reports. They must also consider how the results from completed assistance agreement projects contributed to the Agency's goals and objectives. Approximately one-half of EPA's budget is awarded through assistance agreements (grants and cooperative agreements) to states and tribes and to educational, nonprofit, and other organizations. To meet its obligations under the Government Performance and Results Act (GPRA), EPA must be able to link the work that is performed with grant funds to the achievement of the goals and objectives in the	

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EPA's Strategic Plan. The Order recognizes that PPGs and other state and tribal environmental program grants are among the primary mechanisms through which the nation's environmental programs are implemented. Part 35 already requires state and tribal grant (including PPG) work plans to include performance measures (outcomes and outputs) and requires joint evaluation of progress. Consequently, the only additional requirement for state and tribal grants is that project officers must list on the funding documents the EPA Strategic Plan goals, objectives, and sub-objectives that the grant supports.	
2-19 How can changes be made to the list of PPG-eligible grants? The list of grants eligible for inclusion in PPGs as of FY 2006 is included in Question 1-4. Under section 35.533(b), the Administrator has the authority to add, delete, or change the programs eligible for inclusion in a PPG in guidance or in a regulation. If a new grant program is authorized in the appropriate line item in the State and Tribal Assistance Grants (STAG) appropriations account, the Administrator could opt to include that new program in the list of PPG eligible programs. <u>EPA policy on adding new PPG-eligible grants</u> EPA policy presumes that any new State and Tribal Assistance Grant (STAG) categorical grant program will be approved for inclusion in a PPG unless there is specific legislative language or an Administration policy determination to the contrary. <u>Note:</u> STAG grant programs grouped together in the STAG categorical earmark have been determined to be PPG-eligible. <u>Procedure for adding new PPG-eligible grants</u> For each new PPG-eligible grant program in the STAG appropriation, the Administrator makes the final decision as to whether or not that grant is approved for inclusion in PPGs. The Office of Congressional and Intergovernmental Relations (OCIR) will coordinate with the appropriate offices to develop a decision package for the Administrator's signature approving new programs for PPG eligibility. If an EPA office believes a new STAG program should be excluded from PPGs, the office must notify OCIR. OCIR will convene meetings with interested offices; develop the issue for deliberation by the Performance Partnership Steering Committee; and raise the issue to the Deputy Administrator or Administrator as necessary.	Sec. 35.533 Programs eligible for inclusion. (a) <i>Eligible programs.</i> Except as provided in paragraph (b) of this section, the environmental program grants eligible for inclusion in a Performance Partnership Grant are listed in Sec. 35.501(a)(2) through (9) of this subpart. (b) <i>Changes in eligible programs.</i> The Administrator may, in guidance or regulation, describe subsequent additions, deletions, or changes to the list of environmental programs eligible for inclusion in Performance Partnership Grants.

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2-20 What are the responsibilities of the Office of Congressional and Intergovernmental Relations (OCIR) as lead office for performance partnerships? The Office of Congressional and Intergovernmental Relations (OCIR) was named lead office for performance partnerships in 2003. As lead office, OCIR is responsible for strengthening state, tribal and EPA partnerships and facilitating the resolution of policy and implementation issues associated with performance partnerships. In doing so, OCIR will involve all interested program offices, including the Office of General Counsel (OGC), Office of Grants and Debarment (OGD), and the Office of the Chief Financial Officer (OCFO). The process that OCIR will use to resolve internal performance partnership issues involving several EPA offices, such as when a Regional Administrator and an Assistant Administrator disagree over a tribe's request for flexibility, is described in Question 2-15. OCIR's responsibilities as lead office for performance partnerships also include coordinating the Agency's TEA and PPG development process; assuring that EPA program and grant guidance materials do not inappropriately limit the flexibility available in PPGs; maintaining a clearinghouse of information on performance partnerships; coordinating the work of the Performance Partnership Steering Committee; and developing guidance to advance performance partnerships.	
2-21 What techniques have been used to engage the public in developing TEAs and PPGs? One of the principal objectives of performance partnerships is to improve public understanding of environmental conditions, the steps government is taking to address environmental problems, and the results of these efforts. Engaging the public can help ensure that TEAs or comparable strategic documents, as well as the PPG and other tribal grant work plans associated with them, reflect the priorities, concerns, and interests of the entire tribal community. EPA and tribal staff working on implementing performance partnerships around the country have used a range of techniques to gain public views on priorities, which are then reflected in TEAs and PPGs. Experts in engaging the public recognize that different outreach techniques and methods of participation work for different groups; no one approach works equally well for all audiences. Informed tribal members are most likely to be interested in participating in the tribal-EPA priority-setting process. They also may be concerned about other aspects of a tribal-EPA partnership,	

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such as arrangements regarding compliance and enforcement or performance measures. When engaging stakeholders, it is important to set realistic expectations about whether and how the views that are expressed will be used in making decisions. Stakeholders will quickly lose trust if their views are not reflected in final products. An effort should also be made to ensure that a balance of interests is represented in whatever participation process is used. EPA and staff working on implementing performance partnerships around the country say they have been successful in gaining public views on priorities using the techniques described below. <u>Briefing legislators, tribal council and other elected officials</u> Tribal legislators and elected officials are perhaps the most important stakeholders. Not only do they represent their constituents, engaging them can help ensure understanding of and support for the environmental priorities that are ultimately selected as well as for performance measures that will be used for accountability purposes. <u>Convening advisory panels</u> Options for panels include establishing a special performance partnership advisory panel or using an existing advisory panel or panels to review and comment on priorities and strategies. Panels should include representatives of different stakeholder categories to ensure balance. <u>Holding or participating in public meetings</u> This category includes a range of activities such as holding special public meetings or hearings on environmental priorities and making presentations or holding seminars as part of meetings by tribal organizations. <u>Conducting surveys</u> Public surveys, conducted periodically, can help tribes understand Indian country priorities as well as perceptions about environmental quality and government programs. <u>Educating the media</u> The media can play an important role in educating the public. Background materials can be used to educate the media (and others) about environmental conditions, proposed strategies, and performance measures. Press releases can announce draft and final strategies and how the public can learn more.	