

Environmental Protection Agency

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eligible Indian Tribes to administer programs for the prevention, reduction, and elimination of water pollution, including programs for the development and implementation of ground-water protection strategies. Some of these activities may be eligible for funding under section 205 (g) and (j) of that Act. (See §§ 35.300 and 35.350.) Program requirements for water quality planning and management activities are provided in 40 CFR part 35, subpart G.

[47 FR 44954, Oct. 12, 1982, as amended at 54 FR 14358, Apr. 11, 1989; 59 FR 13817, Mar. 23, 1994]

§ 35.251 Definitions.

As used herein, the following words and terms shall have the meaning set forth below:

(a) The term *allotment* means the sum reserved for each State or interstate agency from funds appropriated by the Congress. The allotment is determined by formula based on the extent of the water pollution problem in the respective States. It represents the maximum amount of money potentially available to the State or interstate agency for its program grant.

(b) The term *program grant* means the amount of federal assistance awarded to a State or interstate agency under Section 106 of the Clean Water Act to assist in administering programs for the prevention, reduction and elimination of water pollution.

(c) The term *State* means a State, the District of Columbia (DC), the Commonwealth of Puerto Rico (PR), the U.S. Virgin Islands (VI), Guam (GU), American Samoa (AS), and the Commonwealth of the Northern Mariana Islands (CNMI).

(d) The term *interstate agency* means an agency that meets the requirements of Section 502(2) of the Clean Water Act (CWA) and which is determined to be eligible for receipt of a grant under CWA Section 106 and these regulations by the Administrator.

(e) The term *component* refers to one of the six factors selected for use in the Section 106 State allotment formula. Each component of the formula was selected based on its potential contribution to the extent of water pollution problems within the respective States

and to the workload of State water pollution control programs.

(f) The term *element* refers to one of the constituent factors used to provide greater specificity to a component in the Section 106 State allotment formula. Certain components are composed of two or more "elements." For example, the nonpoint source component of the Section 106 State allotment formula is composed of an agricultural element, a logging element, and an abandoned mine element.

(g) The term *sub-element* refers to one of the constituent factors used to provide greater specificity to an element in the Section 106 State allotment formula. Certain elements are composed of two or more "sub-elements." For example, the abandoned mine element of the nonpoint source component is composed of a soft-rock mining sub-element and a hard-rock mining sub-element.

(h) The term *funding floor* refers to the minimum amount of funding that a State will be allotted in any fiscal year.

(i) The term *maximum level of funding* refers to the ceiling on the amount of funding that a State can be allotted in any fiscal year.

[64 FR 23736, May 3, 1999]

§ 35.252 State and interstate allotments.

(a) *Allotments.* Each fiscal year funds appropriated for States under Section 106 will be allotted to States and interstate agencies on the basis of the extent of the pollution problems in the respective States. A portion of the funds available to States under the Section 106 Grant Program will be set-aside for allotment to eligible interstate agencies. For FY 2000 and subsequent years, the interstate set-aside will be set at the level of 2.6 percent of the total funds appropriated for States under the Section 106 Grant Program.

(b) *State allotment formula.* The Section 106 State allotment formula establishes an allotment ratio for each State based on six components selected to reflect the extent of the water pollution problem in the respective States. A funding floor is established for each State with provisions for periodic adjustments for inflation. The formula

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also provides for a maximum funding level that a State can receive in any fiscal year (150% of its previous fiscal year allotment).

(1) *Components and component weights*—(i) *Components*. The six components used in the Section 106 State allotment formula are: Surface Water

Area; Ground Water Use; Water Quality Impairment; Point Sources; Nonpoint Sources; and Population of Urbanized Area. The components for the formula are presented in Table 1 of this section, with their associated elements, sub-elements, and supporting data sources.

Table 1: Components of the Section 106 State Allotment Formula

Formula Component	Element	Sub-Element	Data Source
1. Surface Water Area			U.S. Department of Commerce, Bureau of the Census, <i>Statistical Abstract of the United States</i> .
2. Ground Water Use	a. Non-agricultural withdrawals		U.S. Department of the Interior, U.S. Geological Survey, <i>Estimates of Water Use in the United States</i> .
	b. Population served by CWSs that use GW for the majority of their source water		U.S. Environmental Protection Agency, Office of Water, <i>Safe Drinking Water Information System</i> .
3. Water Quality Impairment	a. Impaired rivers and streams (miles)		U.S. Environmental Protection Agency, Office of Water, <i>National Water Quality Inventory</i> [based on State-submitted §305(b) reports].
	b. Impaired lakes, ponds, and reservoirs (acres)		
	c. Impaired estuaries (square miles)		
	d. Impaired wetlands (acres)		
	e. Impaired ocean waters (shoreline miles)		
	f. Impaired Great Lake waters (shoreline miles)		
4. Point Sources	a. Agriculture (total animal units)		U.S. Department of Commerce, Bureau of the Census, <i>Census of Agriculture</i> .
	b. Industrial	i. Manufacturers	U.S. Department of Commerce, Bureau of the Census, <i>Census of Manufactures</i> .
		ii. Mining operations	U.S. Department of Commerce, Bureau of the Census, <i>Census of Mineral Industries</i> .
		iii. Power plants	U.S. Department of Energy, Office of Coal, Nuclear, Electric, and Alternate Fuels, <i>Inventory of Power Plants in the U.S.</i>
	c. Municipal dischargers		U.S. Environmental Protection Agency, Office of Water, <i>Wastewater Facilities Database</i> .
5. Nonpoint Sources	a. Agriculture		U.S. Department of Commerce, Bureau of the Census, <i>Census of Agriculture</i> .
	b. Logging		U.S. Department of Commerce, Bureau of the Census, Economic Census, <i>Census of Manufactures</i> .
	c. Abandoned mines	i. Abandoned soft-rock (coal) mining operations	U.S. Department of the Interior, Office of Surface Mining, <i>Abandoned Mine Land Inventory System</i> .
		ii. Abandoned hard-rock mining operations	U.S. Department of the Interior, Bureau of Mines, <i>Minerals Availability System/ Mineral Industry Location System</i> .
6. Population of Urbanized Areas			U.S. Department of Commerce, Bureau of the Census, <i>Census of Population and Housing</i> . ¹

¹ The population living in urban areas (*Census* designated places with 2,500 or more residents) rather than population living in urbanized areas (one or more *Census* designated places and the associated urban fringe that together have 50,000 or more residents) will be used for PR and the Insular Areas (VI, AS, GU, and CNMI).

(ii) *Component weights.* To account for the fact that not all of the selected formula components contribute equally to the extent of the pollution problem within the States, each formula compo-

nent is weighted individually. Final component weights will be phased-in by FY 2004, according to the schedule presented in Table 2 of this section:

TABLE 2.—COMPONENT WEIGHTS IN THE SECTION 106 STATE ALLOTMENT FORMULA

Component	FY 2000 (percent)	FY 2001 (percent)	FY 2004+ (percent)
Surface Water Area	13	13	12
Ground Water Use	11	12	12
Water Quality Impairment	13	25	35
Point Sources	25	17	13
Nonpoint Sources	18	15	13
Population of Urbanized Area	20	18	15
Total	100	100	100

(2) *Funding floor.* A funding floor is established for each State. Each State's funding floor will be at least equal to its FY 2000 allotment in all future years unless the appropriation for States under the Section 106 Grant Program decreases from its FY 2000 level.

(3) *Funding decrease.* If the appropriation for the State Section 106 Grant Program decreases in future years, the funding floor will be disregarded and all States allotments will be reduced by an equal percentage.

(4) *Inflation adjustment.* Funding floors for each State will be adjusted for inflation when the appropriation for the State Section 106 Grant Program increases from the preceding fiscal year. These adjustments will be made on the basis of the cumulative change in the Consumer Price Index (CPI), published by the U.S. Department of Labor, since the most recent year in which State Section 106 funding last increased. Inflation adjustments to State funding floors will be capped at the lesser of the percentage change in appropriated funds or the cumulative percentage change in the inflation rate.

(5) *Cap on annual funding increases.* The maximum allotment to any State will be 150 percent of that State's allotment for the previous fiscal year.

(6) *Cap on component ratio.* A component ratio is equal to each State's share of the national total of a single component. The cap on each of the six State formula components ratios is 10 percent. If a State's calculated component ratio for a particular component exceeds the 10 percent cap, the State will instead be assigned 10 percent for that component. The component ratios

for all other States will be adjusted accordingly.

(7) *Update cycle.* The data used in the State formula will be periodically updated. The first update will impact allotments for FY 2001, and will consist of updating the data used to support the Water Quality Impairment component of the State formula. These data will be updated using the most currently available CWA Section 305(b) reports. After this initial update, the data used to support all six components of the Section 106 State allotment formula will be updated in FY 2003 (for use in the determination of FY 2004 allotments). Thereafter, all data will be updated every five years (i.e., in FY 2008 for FY 2009 allotments, in FY 2013 for FY 2014 allotments, etc.) Note there will be an annual adjustment to the funding floor for all States, based on the appropriation for the Section 106 Grant Program and changes in the CPI.

(c) *Interstate allotment formula.* EPA will set-aside 2.6 percent of funds appropriated for States under the Section 106 Grant Program for interstate agencies. The Section 106 interstate allotment formula consists of two parts: a base allotment; and a variable allotment.

(1) *Base allotment.* Each eligible interstate agency is provided with \$125,000 as a base allotment to help fund coordination activities amongst its member States. However, no more than 50 percent of the total available interstate set-aside may be allocated as part of the base allotment. If, given the 50 percent limitation placed on the base allotment the amount of interstate set-aside funds is insufficient to provide each interstate agency with \$125,000,

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then each interstate agency will receive a base allotment equal to 50 percent of the total interstate set-aside divided by the total number of eligible interstate agencies.

(2) *Variable allotment.* The variable allotment provides for funds to be distributed to interstate agencies on the basis of "the extent of the pollution problems in the respective States." Funds not allotted under the base allotment will be allotted to eligible interstate agencies based on each interstate agency's share of their member States' Section 106 formula allotment ratios. Updates of the data for the six components of the Section 106 State allocation formula will automatically result in corresponding updates to the variable allotment portion of the interstate allotments. The allotment ratios for those States involved in compacts with more than one interstate agency will be allocated amongst such interstate agencies based on the percentage of each State's territory that is situated within the drainage basin or watershed area covered by each compact.

[64 FR 23737, May 3, 1999]

§ 35.255 Maintenance of effort.

(a) To receive funds under section 106, any State or interstate agency must expend annually for recurrent section 106 program expenditures an amount of non-Federal funds at least equal to expenditures during the fiscal year ending June 30, 1971.

(b) The maintenance of effort requirement in paragraph (a) of this section shall not apply to eligible Indian Tribes.

[54 FR 14358, Apr. 11, 1989, as amended at 59 FR 13817, Mar. 23, 1994]

§ 35.260 Limitations.

(a) The Regional Administrator will not award section 106 funds to any State which does not monitor and compile, analyze, and report water quality data as described in section 106(e)(1) of the Clean Water Act. The Regional Administrator may award section 106 funds to eligible Indian Tribes even if they do not meet this requirement. However, all monitoring and analysis activities performed by a Tribe must

meet the applicable quality assurance, quality control requirements as specified in 40 CFR part 31.

(b) The Regional Administrator will not award section 106 funds to any State, including any eligible Indian Tribe, which does not have authority comparable to that in section 504 of the Clean Water Act and adequate contingency plans to implement such authority.

(c) The Regional Administrator will not award section 106 funds if federally assumed enforcement as defined in section 309(a)(2) of the Clean Water Act is in effect with respect to the agency.

(d) The Regional Administrator will not award section 106 funds unless the work program submitted with the assistance application shows that the activities to be funded are coordinated, as appropriate, with activities proposed for funding under section 205 (g) and (j) of the Clean Water Act.

[47 FR 44954, Oct. 12, 1982, as amended at 54 FR 14358, Apr. 11, 1989; 59 FR 13817, Mar. 23, 1994]

§ 35.265 Awards to Indian Tribes.

(a) The Regional Administrator will not award section 106 funds to an Indian Tribe unless EPA has determined that the Indian Tribe meets the requirements set forth at 40 CFR 130.6(d) as well as the applicable limitations in 40 CFR 35.260.

(b) The Regional Administrator will not give a continuation award to any Indian Tribe unless the Tribe shows satisfactory progress in meeting its negotiated milestones and goals.

[54 FR 14358, Apr. 11, 1989, as amended at 59 FR 13817, Mar. 23, 1994]

STATE ADMINISTRATION (SECTION 205(G))

§ 35.300 Purpose.

Section 205(g) of the Clean Water Act authorizes assistance to States (as defined in section 502 of the Act) for two purposes.

(a) *Construction management assistance.* The 205(g) funds may be used for administering elements of the construction grant program under sections 201, 203, 204, and 212 of the Clean Water Act and for managing waste treatment