

§ 35.4025

40 CFR Ch. I (7-1-00 Edition)

group has been incorporated by the State.

(c) Unless a consolidation agreement makes site-specific incorporation necessary, a previously incorporated group that includes all the individuals and groups that joined in applying for the TAG shall not be required to reincorporate for the specific purpose of representing affected individuals at the site provided that the group can demonstrate that it has a substantial history of involvement at the site.

§ 35.4025 Eligible applicants.

Eligible applicants, except as provided in § 35.4030, are any group of individuals that may be affected by a release or a threatened release at any facility that is listed on the NPL or is proposed for listing under the NCP and at which a response action has begun.

§ 35.4030 Ineligible applicants.

(a) Potentially responsible parties (PRPs) are ineligible to receive or be represented in groups receiving or using TAGs.

(1) No group established or sustained by a PRP shall be eligible for a TAG.

(2) No group that receives services provided by or paid for by a PRP shall be eligible for a TAG.

(3) For an applicant to obtain a grant it must establish an identity separate from that of an entity that is ineligible under § 35.4030 (a)(1) or (2) by making a reasonable demonstration of independence from the ineligible entity. Such a demonstration requires, at a minimum, a showing that the applicant has a formal legal identity (e.g., officers) and a substantive existence, including finances, separate and distinct from that of the ineligible entity.

(b) The following groups and organizations are also ineligible to receive or be represented in groups receiving or using TAGs.

(1) Corporations that are not incorporated for the specific purpose of representing affected individuals at the site except as provided in § 35.4020(c);

(2) Academic institutions;

(3) Political subdivisions (e.g., townships and municipalities); and

(4) Groups established or presently sustained by ineligible entities under § 35.4030 (b) through (c) (including emer-

gency planning committees and citizen advisory boards who may be precluded from acting independently).

(c) This section shall not preclude any individual affected by a Superfund site from participating in a recipient group in his or her capacity as an individual. However, an individual whose financial involvement in a PRP (as other than an employee or contractor) is determined by the Award Official to be sufficiently substantial may be precluded from participation in a recipient group in any capacity.

§ 35.4035 Evaluation criteria.

(a) EPA will award a TAG only after it has determined that all eligibility and responsibility requirements listed in §§ 35.4020, 35.4025, and 35.4030 are met, and after review of the applicant's qualifications in the narrative section of the grant application. Each applicant will be required to provide information on how it meets the eligibility criteria in the grant application. The "Applicant Qualifications" section is Part IV of SF-424.

(b) *Sole applicant.* After the Letter of Intent process (see § 35.4040), if there is still only one group, the evaluation process will consist of the Agency ensuring that the applicant meets the criteria stated in § 35.4035(c) in addition to the administrative and management capability requirements, and can demonstrate that it is representative of the community affected by a release or a threatened release at a facility that is listed on the NPL or is proposed for listing under the NCP and where a response action has begun, as demonstrated by fulfillment of the criteria in § 35.4035(c). Once these requirements have been met by the sole applicant, the Agency may award a TAG.

(c) *Multiple applicants.* Where there are competing applicants EPA will evaluate the strengths and weaknesses of each applicant. EPA will rank each applicant relative to other applicants. Each criterion is assigned a weight showing its relative importance. EPA will rank each applicant by utilizing criteria described below. In order to qualify, applicants must meet criterion 1 and/or 5 and not score zero on criteria 2, 3, or 4.