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Part III

Environmental Protection Agency

Revised Allotment Formulas for State and Interstate Monies Appropriated Under Section 106 of the Clean Water Act; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6184–9]

Revised Allotment Formulas for State and Interstate Monies Appropriated Under Section 106 of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revised allotment to formulas and request for comment.

SUMMARY: This notice announces revised allotment formulas for allotting funds appropriated under section 106 of the Clean Water Act (CWA) to States and to interstate agencies for use in administering specific elements of Clean Water Act programs. The notice includes FY 1999 allotments for States and interstate agencies and requests comments on the revised formulas for use in FY 2000 and beyond.

Section 106 of the CWA authorizes the Environmental Protection Agency (EPA) to provide grants to States, interstate agencies, and Indian Tribes to administer programs for the prevention, reduction, and elimination of water pollution, including the development and implementation of ground-water protection strategies. EPA has revised the CWA section 106 allotment formulas, which are based on ''the extent of the pollution problem,'' to better reflect its current understanding of the significant sources of pollution nationwide.

The revised formula will be phased in FY 1999, with no State or interstate agency receiving less than its FY 1998 allotment. EPA is seeking comment on the revised formula for use in FY 2000 and beyond.

DATES: The revised formula for FY 1999 is effective November 5, 1998.

Comments on the revised formula for the full implementation for FY 2000 should be in writing and must be postmarked by January 4, 1999. Electronic comments should be posted by January 4, 1999.

ADDRESSES: Public Comments. All public comments regarding the revised formula shall be submitted no later than January 4, 1999, to: Water Docket, W–98–28, EB 57, USEPA Headquarters, 401 M. St., S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Carol Crow, Office of Wastewater Management (4201), 401 M Street, SW, Washington, D.C. 20460, (202) 260–6742, Facsimile: (202) 260–1156, e-mail: crow.carol@epa.gov.

SUPPLEMENTARY INFORMATION: CWA section 106 provides general authority for grants to States, Tribes, and interstate agencies to support key elements of clean water programs. Grants provide States, Tribes, and interstate agencies with critical resources for the effective management of water pollution control programs including water quality monitoring, standards development, and permit issuance. The Administration proposed and Congress appropriated a significant increase in grant funds to support these activities in FY 1999.

The CWA directs the EPA Administrator to allocate section 106 grants funds ''on the basis of the extent of the pollution problem.'' The existing section 106 formula is derived from data more than 25 years old and is based on population data from the 1960s and an estimate from the early 1970s of the number of large cattle feedlots, industrial and municipal point sources and power plants.

Reports of water quality conditions around the country provided by States under section 305(b) of the CWA indicate that the location and nature of the sources of water pollution has changed significantly since the early 1970s. In evaluating this data, EPA decided to consider whether an alternate formula would better comply with the statutory directive to allocate funds among States and interstate agencies based on the ''extent of the pollution problem.'' (The allotment formula for the Tribal Section was revised in 1998 and it is not affected by this action.)

EPA organized a work group consisting of geographically-balanced representation from the Agency, seven States, and an interstate agency to review the existing formula and consider other approaches. The State representatives were recommended by the Environmental Council of States (ECOS), the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), and the Ground Water Protection Council (GWPC). EPA posted minutes from the work group meetings, background data, and all written comments on an Internet website and invited all States and Interstate agencies to participate in the discussion via the website and contact with work group members.

The work group evaluated a wide range of alternative approaches and ultimately developed and recommended a new allocation formula. The work group believed that the formula should largely be based on impairment, but decided not to give impairment *too much* weight because of shortcomings in data related to water quality monitoring. The work group therefore recommended other surrogates for ''extent of the pollution problem,'' including surrogates for point and nonpoint sources of pollution.

Work group members were concerned about the impact of reductions in funding levels on clean water programs in individual States. A ''safety net'' was built into the new formula to provide for a gradual transition to adjusted funding amounts. The revised formula specifically provides that no State lose more than five percent compared with the previous year or more than a total of 20 percent compared with 1998. In addition, a significant increase in the section 106 grant funds appropriated in FY 1999 ensures that no State will receive less section 106 funding in FY 1999 than it did in FY 1998, while providing additional resources to [most] States. The funding set-aside for interstate agencies will be increased to its historic (FY 1976) level of 2.5 percent of the total State monies appropriated under section 106.

Since no State or interstate agency will receive less funding in FY 1999 than it did in FY 1998, the revised funding formula will be effective November 5, 1998 for use in distributing FY 1999 section 106 funds to State and interstate agencies. EPA is soliciting comments on the revised formula for use in FY 2000 and beyond. EPA is particularly interested in comments on the accuracy of the data bases used in deriving the formula and how well the components meet the statutory test of representing the ''extent of the pollution problem'' and associated workload. After reviewing the comments on the formula, EPA will adopt an allotment formula for FY 2000 and beyond.

Please send an original and three copies of your comments and enclosures to W–98–28, Comment Clerk, Water Docket (MC 4101), USEPA, 401 M., St. S.W. Washington, D.C., 20460. Comments must be received or post-marked by midnight January 4, 1999. Comments may also be submitted electronically to *ow-docket@epa.gov*. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and form of encryption. Electronic comments must be identified by the docket number W–98–28. Comments and data will also be accepted on disks in WP 5.1, 6.1 or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Dated: October 26, 1998.

J. Charles Fox,

Assistant Administrator for Water.

Table of Contents

I. Definitions
II. Background
A. The Existing Section 106 Allotment Formula
B. Rationale for Formula Revision
C. The Development Process for the Revised Section 106 Allotment Formulas
III. The Revised Section 106 State Allotment Formula
A. Components
B. Minimum Level of Funding
C. Maximum Annual Funding Increase
D. Set-Asides
E. Update Cycle
IV. The Revised Section 106 Interstate Allotment Formula for FY 1999

I. Definitions

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

(a) The term ''allotment'' means the sum reserved for each State or interstate agency from funds appropriated by Congress under the § 106 Grant Program. The allotments for States and interstate agencies will be determined by separate formulas. However, both the § 106 State allotment formula and the § 106 interstate allotment formula are designed to reflect the extent of the water pollution problem in the several States.

(b) 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). [CWA § 502(3)]

(c) The term ''interstate agency'' means an agency of two or more States established by, or pursuant to, an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator. [CWA § 502(2)]

(d) The term ''component'' refers to one of the six factors selected for use in the revised § 106 State allotment formula. Each component of the revised formula was selected based on its potential contribution to the extent of water pollution problems within the several States and to the workload of State water pollution control programs.

(e) The term ''element'' refers to one of the constituent factors used to provide greater specificity to a component in the revised § 106 State allotment formula. Certain components are composed of two or more ''elements.'' For example, the non-point source component of the revised § 106 State allotment formula is composed of an agricultural element, a logging element, and an abandoned mine element.

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

II. Background

A. Description of the Existing Section 106 Allotment Formula

The allotment formula currently employed to allot funds appropriated under CWA § 106 was first used in FY 1974. The existing § 106 allotment formula was revised in 1976, and provided for the implementation of a separate allotment formula for interstate agencies based on the level of funding each interstate agency had received in FY 1973. The State and interstate allocation ratios were published in the **Federal Register** on April 27, 1976. These proportionate shares have been used to allocate § 106 funds ever since.

The existing § 106 State allotment formula is based on four point source factors. When the existing formula was first adopted in 1973 (for the determination of FY 1974 allotments), the understanding was that the number of point sources in a particular State adequately represented the ''extent of the pollution problem'' [as required by CWA § 106(b)] in that State. Thus, each of the four point source factors selected for use in the formula enumerates potential contributors to point source pollution. The four selected point source factors were:

(1) number of cattle feedlots with more than 1,000 head;
(2) number of industrial dischargers;
(3) number of municipal dischargers; and
(4) number of nuclear, oil, coal, and gas power plants.

The Agency specified that all States and interstate agencies would be guaranteed an allotment no less than their FY 1973 allotment for FY 1974 and beyond. FY 1973 allotments were distributed according to § 7 of the Federal Water Pollution Control Act (FWPCA). Two components of the FWPCA § 7 allotment formula, population and population density, drove approximately five-sixths of the FY 1974 allotments and continue to drive the existing § 106 State allotment formula.

B. Rationale for Formula Revision

The existing § 106 State allotment formula is based on point source pollution factors, and minimum levels of funding are determined largely by population and population density as established in the Federal Water Pollution Control Act, § 7 allotment. However adequate this formula was in 1974, it does not reflect the complexity of current State water pollution control programs. Also, the data used in the formula are from the 1960's and early 1970's. In the 25 years since the formula was developed, much has changed.

EPA recognized the critical need to develop a revised § 106 allotment formula which reflects the current understanding of the factors that contribute to water quality impairment and which utilizes current data. Thus, the revised formula is designed to allot funds in a manner which more accurately reflects the problems that currently confront State water pollution control programs. To achieve this objective, the revised § 106 formula is based on six components which reflect the extent of water quality impairment and associated potential workload in determining State allotments.

C. The Development Process for the Revised Section 106 Allotment Formulas

An EPA/State Work Group examined ways in which the existing § 106 State allotment formula could be updated and made responsive to the workload associated with water quality impairment. A separate Interstate Work Group, composed of EPA personnel and representatives from six interstate agencies, participated in the development of the revised § 106 interstate allotment formula.

Work Group recommendations contributed heavily to the development of the revised § 106 allotment formulas. First, to ensure that monies were directed to the areas where the greatest water quality problems and the greatest workload exists, weighting factors that reflected the individual contribution of the six different components in the revised § 106 State allotment formula were developed. Second, modulating procedures [e.g., a base level of funding, a maximum increase in annual funding, etc.] were built into both the revised § 106 State and interstate allotment formulas to prevent disruption of State and interstate programs. Third, a five-year update cycle was implemented in each revised § 106 allotment formula to ensure that supporting data for the

formulas would be updated regularly. The weights, modulating procedures, and the update cycle for the revised § 106 allotment formulas are discussed more fully in sections III and IV of this notice.

III. The Revised Section 106 State Allotment Formula

A. Components

The revised § 106 State allotment formula, as defined in this notice, is based on six components that were selected to more accurately reflect the extent of the water pollution control problems in the United States. These components reflect a shift in emphasis from point source pollution and population data to an emphasis on water quality impairment and the associated workload. The six components selected for use in the revised § 106 State allotment formula were:

(1) surface water area;
(2) ground water use;
(3) water quality impairment;
(4) point sources;
(5) non-point sources; and
(6) population of urbanized areas.

A primary reason for the development and adoption of a revised § 106 State allotment formula was the need to improve the quality and the consistency of the data used for allocating § 106 funds. The selected components for the revised § 106 formula are presented in Table 1 (below) with their associated elements, sub-elements, and supporting data sources.[1] Data sources for the components were selected on the basis of data availability, currency, quality, national consistency, and reliability.

EPA invites comments on the revised formula prior to issuing FY2000 planning targets in early 1999. Comments will be accepted until January 4, 1999.

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

*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).

[1] Note that in the future additional elements and sub-elements may be considered for inclusion in the revised § 106 allotment formula if they are deemed appropriate and if they are reflective of the extent of water quality impairment or State workload.

To account for the fact that not all of the selected formula components contribute equally to the extent of the water pollution problem within the States, and to address concerns regarding the current consistency of some of the new data sources, each formula component will be weighted individually. Component weights will be phased-in over the course of the first and second five-year implementation periods, according to the schedule presented in Table 2 (below).

TABLE 2.—COMPONENT WEIGHTS IN THE REVISED SECTION 106 STATE ALLOTMENT FORMULA—FY 1999 AND BEYOND

Component	FY 1999 (percent)	FY 2001 (percent)	FY 2004+ (percent)
Surface Water Area	13	13	12
Ground Water Use	11	12	12
Impairment	13	25	35
Potential Point Sources	25	17	13
Potential Non-Point Sources	18	15	13
Population of Urbanized Area	20	18	15
Total	100	100	100

The increase in the weight of the impairment component will be phased in over time to allow for improvement in the consistency of its data source, the CWA § 305(b) report. This gradual transition will also provide greater fiscal stability for State and interstate water pollution control programs.

B. Minimum Level of Funding

Under the revised § 106 State allotment formula, all States will be allotted a minimum level of funding. In FY 1999, the minimum level of funding for each State will be the larger of: (1) the guaranteed base level of funding for which the State qualifies (defined below); or (2) the FY 1998 § 106 allotment for that State. This second provision allows for stability during the transition to the revised § 106 State allotment formula. In FY 2000 and all future years, the minimum level of funding for a specific State will be the largest of: (1) the guaranteed base level of funding for which the State qualifies; (2) 95 percent of the State's § 106 allotment from the previous fiscal year; or (3) 80 percent of the State's FY 1998 § 106 allotment. By limiting the maximum annual reduction in a State allotment to 5 percent of the previous fiscal year's allotment and by limiting the maximum total reduction to 20 percent of the State's FY 1998 § 106 allotment, the revised formula allows for gradual funding adjustments. These modulating procedures will serve to ease the burden that unrestricted allotment reductions might otherwise create.

The base level of funding for the fifty States, DC, PR, VI, and GU will be set at $500,000 for FY 1999, while the base level of funding for AS and CNMI will be set at $250,000 for FY 1999. The base level of funding is designed to ensure a minimum level of funding for the operation of a water quality pollution control program. Beginning in FY 2000, to protect against erosion in the real value of the base level of funding due to inflation, annual adjustments will be made to the base level of funding as determined by changes to the Consumer Price Index.

C. Maximum Annual Funding Increase

All States will be subject to a cap on the annual increase in their § 106 allotment. The maximum funding level any State can receive will be 150 percent of that State's § 106 allotment from the previous fiscal year.[2]

D. Set-Asides

A portion of the § 106 appropriation available to States will continue to be set aside for interstate agencies. For FY 1999 and every year thereafter, the size of this set-aside will be set at its historic (FY 1976) level of 2.6 percent of the total § 106 State appropriation.

Funds will be distributed to interstate agencies on the basis of a separate allotment formula. The particulars of the revised § 106 interstate allotment formula are described in detail in section IV of this notice.

EPA will provide a single allotment to each State under the § 106 Grant Program rather than separate allotments for ground water and surface water programs. Since this grant program provides one of the few sources of federal funds for State ground water protection efforts that, in turn, are critical to the maintenance of water quality, EPA strongly advises States to target at least 15 percent of their § 106 allotment for ground water protection programs and activities. Should the State agency responsible for the administration of the § 106 grant not include the State's ground water protection program, the appropriate agency should be immediately informed of the amount of funds targeted and available for ground water activities.

E. Update Cycle

The data used in the revised § 106 State allotment 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 impairment component of the revised formula. These data will be updated based on 1998 CWA § 305(b) reports. After this initial update, the data used to support all six components of the revised § 106 State allotment formula will be updated in 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.).

The base level of funding for all States will be updated annually to account for inflation based on the Consumer Price Index (CPI).

IV. The Revised Section 106 Interstate Allotment Formula for FY 1999

The interstate set-aside will be allocated to interstate agencies for FY 1999 and all fiscal years thereafter according to the formula defined below. The revised § 106 interstate allotment formula will consist of two parts: (1) a base portion, and (2) a variable portion.

The base portion of the formula ensures that each interstate agency will receive a minimum base level of funding equal to $125,000, to provide for coordination activities among its member States. Should the size of the interstate set-aside decrease due to a reduction in the total § 106

[2] Note that the minimum level of funding described in section III.B. takes precedence over the maximum annual funding increase. For example, since the FY 1998 allotment for CNMI ($150,251) represents less than two-thirds of its Base level of funding for FY 1999 ($250,000), CNMI will realize a 66 percent increase in its allotment for FY 1999.

appropriation, the minimum level of funding may be modified.

Funds not allocated by the base portion of the revised § 106 interstate allotment formula will be allocated based on the sum of State allocation ratios from the revised § 106 State allotment formula for the signatory States in the Compact of each eligible interstate agency. The allocation ratios for those States involved in compacts with more than one eligible interstate agency will be distributed among those interstate agencies based on the percentage of the State's territory that is situated within the drainage basin or watershed area covered by each compact.

REVISED SECTION 106 ALLOTMENTS FOR STATES, DC, PR, AND THE INSULAR AREAS

Entity	FY 1999
Connecticut	$1,241,717
Maine	952,282
Massachusetts	1,877,408
New Hampshire	659,035
Rhode Island	888,532
Vermont	518,786
Region One	6,137,760
New Jersey	2,145,811
New York	4,293,034
Puerto Rico	1,263,308
Virgin Islands	599,364
Region Two	8,301,517
Delaware	761,034
D.C	684,123
Maryland	1,620,935
Pennsylvania	3,487,826
Virginia	1,990,420

REVISED SECTION 106 ALLOTMENTS FOR STATES, DC, PR, AND THE INSULAR AREAS—Continued

Entity	FY 1999
West Virginia	1,115,516
Region Three	9,659,854
Alabama	2,103,431
Florida	3,028,010
Georgia	2,470,720
Kentucky	1,202,400
Mississippi	1,799,009
North Carolina	3,226,738
South Carolina	1,594,878
Tennessee	1,467,740
Region Four	16,892,926
Illinois	3,125,087
Indiana	1,665,511
Michigan	4,136,782
Minnesota	2,265,180
Ohio	2,979,273
Wisconsin	3,221,840
Region Five	17,393,673
Arkansas	1,241,263
Louisiana	2,032,092
New Mexico	873,803
Oklahoma	1,428,423
Texas	4,341,770
Region Six	9,917,351
Iowa	1,756,629
Kansas	1,351,923
Missouri	2,080,385
Nebraska	1,423,225
Region Seven	6,612,162
Colorado	1,237,173
Montana	988,553
North Dakota	720,804
South Dakota	739,929

REVISED SECTION 106 ALLOTMENTS FOR STATES, DC, PR, AND THE INSULAR AREAS—Continued

Entity	FY 1999
Utah	912,053
Wyoming	586,931
Region Eight	5,185,443
Arizona	1,105,960
California	6,334,978
Hawaii	858,690
Nevada	552,084
American Samoa	250,000
Guam	613,490
Northern Marianas	250,000
Region Nine	9,965,202
Alaska	586,931
Idaho	896,671
Oregon	1,558,054
Washington	2,476,920
Region Ten	5,518,576
U.S. Total	95,584,464

REVISED SECTION 106 ALLOTMENTS FOR INTERSTATE AGENCIES

Entity	FY 1999
DRBC	$332,206
ICPRB	354,506
ISC	380,306
NEIWPCC	469,406
ORSANCO	681,006
SRBC	334,106
Total Interstate Set-Aside	2,551,536

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