§ 35.4000 Legal Foundation

(A) Legal foundation. Adequate documentation of the legal authority, including legislation, regulations or executive orders and/or Attorney General certification that authority exists.

(B) Interdisciplinary approach. The availability of expertise, either in-house or otherwise, accessible to the State agency.

(C) Decision documentation. A description of a documentation process adequate to explain the basis for decisions to the public.

(D) Public notice and participation. A description of the process, including routes of publication (e.g., local newspapers and project mailing list), and use of established State legal notification systems for notices of intent, and criteria for determining whether a public hearing is required. The adequacy of a rationale where the comment period differs from that under NEPA and is inconsistent with other State review periods.

(E) Alternatives consideration. The extent to which the SERP will adequately consider:

(1) Designation of a study area comparable to the final system;
(2) A range of feasible alternatives, including the no action alternative;
(3) Direct and indirect impacts;
(4) Present and future conditions;
(5) Land use and other social parameters including relevant recreation and open-space considerations;
(6) Consistency with population projections used to develop State implementation plans under the Clean Air Act;
(7) Cumulative impacts including anticipated community growth (residential, commercial, institutional, and industrial) within the project study area; and
(8) Other anticipated public works projects including coordination with such projects.

Subpart M—Grants for Technical Assistance

AUTHORITY: 42 U.S.C. 9617(e); sec. 9(g), E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

SOURCE: 65 FR 58858, Oct. 2, 2000, unless otherwise noted.

§ 35.4005 What is a Technical Assistance Grant?

A Technical Assistance Grant (TAG) provides money for your group to obtain technical assistance in interpreting information with regard to a Superfund site. EPA awards TAGs to promote public participation in decision making at eligible sites. A TAG allows your group to procure independent technical advisors to help you interpret and comment on site-related information and decisions. Examples of how a technical advisor can help your group include, but are not limited to:

(a) Reviewing preliminary site assessment/site investigation data;
(b) Participating in public meetings to help interpret information about site conditions, proposed remedies, and the implementation of a remedy;
(c) Visiting the site vicinity periodically during cleanup, if possible, to observe progress and provide technical updates to your group; and
(d) Evaluate future land use options based on land use assumptions found in the “remedial investigation/feasibility study.”

§ 35.4010 What does this subpart do?

This subpart establishes the program-specific regulations for TAGs awarded by EPA.

§ 35.4011 Do the general grant regulations for nonprofit organizations apply to TAGs?

Yes, the regulations at 40 CFR part 30 also apply to TAGs. 40 CFR part 30 establishes uniform administrative requirements for Federal grants and agreements to institutions of higher education, hospitals, and other nonprofit organizations. Because EPA awards TAGs to nonprofit organizations, 40 CFR part 30 applies to all TAGs.

§ 35.4012 If there appears to be a difference between the requirements in 40 CFR part 30 and this subpart, which regulations should my group follow?

You should follow the regulations in 40 CFR part 30, except for the following provisions from which this subpart deviates:

(a) 40 CFR 30.11, Pre-Award Policies;
Environmental Protection Agency

§ 35.4035 Does EPA use the same eligibility criteria for TAGs at “Federal facility” sites?

Yes, EPA uses the same criteria found in §35.4020 in evaluating the eligibility of your group or any group of individuals who may be affected by a release or a threatened release at a Federal facility for a TAG under this subpart.

§ 35.4020 Is my community group eligible for a TAG?

(a) Yes, your community group is eligible for a TAG if:
   (1) You are a group of people who may be “affected” by a release or a threatened release at any facility listed on the National Priorities List (“NPL”) or proposed for listing under the National Contingency Plan (NCP) where a “response action” under CERCLA has begun;
   (2) Your group meets the minimum administrative and management capability requirements found in 40 CFR 30.21 by demonstrating you have or will have reliable procedures for record keeping and financial accountability related to managing your TAG (you must have these procedures in place before your group incurs any expenses); and
   (3) Your group is not ineligible according to paragraph (b) of this section.

(b) No, your community group is not eligible for a TAG if your group is:
   (1) A “potentially responsible party” (PRP), receives money or services from a PRP, or represents a PRP;
   (2) Not incorporated as a nonprofit organization for the specific purpose of representing affected people except as provided in §35.4045;
   (3) “Affiliated” with a national organization;
   (4) An academic institution;
   (5) A political subdivision (for example, township or municipality); or
   (6) Established or presently sustained by ineligible entities that paragraphs (b) (1) through (5) of this section describe, or if any of these ineligible entities are represented in your group.

§ 35.4025 Is there any way my group can get a TAG if it is currently ineligible?

You can make your group eligible by establishing an identity separate from that of the PRP or other ineligible entity by making a reasonable demonstration of independence from the ineligible entity. Such a demonstration requires, at a minimum, a showing that your group has a separate and distinct:
   (a) Formal legal identity (for example, your group has different officers); and
   (b) Substantive existence (meaning, is not affiliated with an ineligible entity), including its own finances.

   (1) In determining whether your group has a different substantive existence from the ineligible entity, you must establish for us that your group:
      (i) Is not controlled either directly or indirectly, by the ineligible entity; and
      (ii) Does not control, either directly or indirectly, an ineligible entity.
   (2) You must also establish for EPA that a third group does not have the power to control both your group and an ineligible entity.

§ 35.4030 Can I be part of a TAG group if I belong to an ineligible group?

You may participate in your capacity as an individual in a group receiving a TAG, but you may not represent the interests of an ineligible entity. However, we may prohibit you from participating in a TAG group if the “award official” determines you have a significant financial involvement in a PRP.

§ 35.4035 Does EPA use the same eligibility criteria for TAGs at “Federal facility” sites?

You may participate in your capacity as an individual in a group receiving a TAG, but you may not represent the interests of an ineligible entity. However, we may prohibit you from participating in a TAG group if the “award official” determines you have a significant financial involvement in a PRP.

§ 35.4015 Do certain words in this subpart have specific meaning?

Yes, some words in this subpart have specific meanings that are described in §35.4270, Definitions. The first time these words are used they are marked with quotation marks, for example, “EPA.”

Who is eligible?

§ 35.4025 Is there any way my group can get a TAG if it is currently ineligible?

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