

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE Division of Legislative Finance



P.O. Box 113200  
Juneau, AK 99811-3200  
(907) 465-3795  
FAX (907) 465-1327  
[www.legfin.akleg.gov](http://www.legfin.akleg.gov)

### MEMORANDUM

DATE: October 25, 2019  
TO: Legislative Budget and Audit Committee  
FROM: David Teal, Director  
SUBJECT: Preparation for the October 31, 2019 LB&A Meeting

OMB submitted the following FY20 RPLs for consideration at the October 31, 2019 Legislative Budget and Audit Committee meeting. These RPLs, along with Legislative Finance comments, are posted on our web site at <http://www.legfin.akleg.gov>.

RPL#	Agency	Subject	Amount	Fund Source
08-2020-0105 Operating	Commerce, Community and Economic Development	U.S. EPA Multipurpose Grant	\$51,196	Federal Receipts (1002)
20-2020-0050 Operating	Corrections	Equitable Sharing Program	\$150,000	Federal Receipts (1002)
05-2020-0045 Operating	Education and Early Development	Alaska Comprehensive Literacy State Development Program	\$6,507,695	Federal Receipts (1002)
18-2020-0369 Capital	Environmental Conservation	Fairbanks PM2.5 Nonattainment Area Voluntary Heating Device Change Out Program	\$5,000,000	Federal Receipts (1002)
25-2020-8718 Capital	Transportation and Public Facilities	Whittier Tunnel Fire Truck Replacement	\$1,000,000	Highway Equipment Working Capital Fund (1026)

If you have any questions that you want an agency to address at the meeting, please call us so we can help ensure the agency has a response prepared.

**Department of Corrections  
Population Management  
Institution Director's Office**

<b>Subject of RPL:</b> Equitable Sharing Program	<b>ADN/RPL #:</b> 20-2020-0050
<b>Amount requested:</b> \$150,000	<b>Appropriation Authority:</b> Sec 1 Ch 1 FSSLA 2019 Pg 8 Ln 26
<b>Funding source:</b> Federal Receipts (1002) Operating	<b>Statutory Authority:</b> AS 33.30.011

## **PURPOSE**

The Department of Corrections requests \$150,000 of Federal authorization in FY2020 to spend Federal funds received through the Equitable Sharing Program for inmate care. The Equitable Sharing Program is a Federal program that allows the proceeds of liquidated seized assets from asset forfeiture to be shared between State and Federal law enforcement authorities. The Department receives a share of assets seized during operations when the Department has assisted Federal law enforcement entities. The Department anticipates that the use of its drug dog will result in receiving monies from this program in FY2020.

*Legislative Fiscal Analyst Comment:* Given the implied purpose of a drug dog, we question the description of the receipts as “proceeds of liquidated seized assets”, as we would not expect the seized assets to be sold. We also question how federal law enforcement entities would be involved in day-to-day activities of the drug dog and why new receipts could not be absorbed in the existing \$11.6 million of federal receipt authority. Receipt of federal funds does not occur until after conviction, so receipt of proceeds may be delayed.

The Committee may wish to ask for clarification of

1. what activities are expected to generate receipts,
2. how the requested amount was determined, and
3. why this issue cannot be adequately addressed during the next legislative session.

That said, the agency requested insufficient federal receipt authority—and left federal receipts unspent—for the last few years. That issue was addressed in the FY20 budget cycle. Although existing receipt authority may be sufficient, separate identification of federal receipts for this purpose adds clarity to the budget. The worst case scenario if this RPL is approved is that the agency has some hollow receipt authority. Legislative Finance does not consider that to be a serious issue.

## **PREVIOUS LEGISLATIVE CONSIDERATION**

This is the first year the Department expects to receive funds from this program due to the use of the Department’s drug dog.

## TIMING ISSUES

The funding is not in the current budget because the Department is just beginning to participate in the program. The exact amount of the funds is contingent upon the value of the seized assets. The Department will benefit from having these additional resources to support inmate care as the inmate population is increasing. Without this approval, the Department will not be able to use funds from this ongoing Federal program.

*Legislative Fiscal Analyst Comment:* The legislature has not discussed this new program, and a case can be made that the Committee should defer to the full legislature for a funding/policy decision. Note, however, that the legislature's funding decision would determine only the agency's ability to spend receipts; it will not affect the policy decision to make use of the drug dog.

The requested additional receipt authority does not appear to be an urgent need. While it is true that supplemental appropriations have been delayed in recent years, the agency could use existing receipt authority to cover proceeds and, if necessary, increase federal authorization during the normal budget process. As noted earlier, the worst case scenario if this RPL is approved is that the agency has some hollow receipt authority. Legislative Finance does not consider that to be a serious issue.

## BUDGETARY ISSUES

The availability of these funds to the Department will assist in covering the cost of inmate care. The funds will be spent in FY2020. These monies do not impact staff positions.

*Legislative Fiscal Analyst Comment:* Federal restrictions apply to the spending of these receipts. The receipts must supplement—not supplant—existing funding.

A U.S. Department of Justice document providing information on the equitable sharing program is attached.

U.S. DEPARTMENT OF JUSTICE  
U.S. DEPARTMENT OF THE TREASURY

GUIDE TO EQUITABLE SHARING  
FOR STATE, LOCAL, AND TRIBAL  
LAW ENFORCEMENT AGENCIES



July 2018

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## I. Asset Forfeiture and Equitable Sharing Overview

### A. Asset Forfeiture Programs

The Department of Justice and the Department of the Treasury Asset Forfeiture Programs are, first and foremost, law enforcement programs. They remove the tools of crime from criminal organizations, deprive wrongdoers of the proceeds of their crimes, recover property that may be used to compensate victims, and deter crime. The Department of Justice and the Department of the Treasury emphasize these law enforcement purposes to their own law enforcement agencies and all federal, state, local, and tribal partner agencies.

### B. Civil Rights Compliance

Agencies must comply with the applicable nondiscrimination requirements of the following laws and their implementing regulations: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), which prohibit discrimination on the basis of race, color, national origin, disability, or age in any federally assisted program or activity, or on the basis of sex in any federally assisted education program or activity. Agencies must take reasonable steps to provide meaningful access to their programs and activities for persons with limited English proficiency, consistent with Department of Justice and Department of the Treasury requirements. Agencies also must agree to comply with all federal statutes and regulations permitting federal investigators access to records and any other sources of information as may be necessary to determine compliance with civil rights and other applicable statutes and regulations.

### C. Equitable Sharing Program

One of the ancillary benefits of asset forfeiture is the potential to share federal forfeiture proceeds with cooperating state and local law enforcement agencies through equitable sharing. The Department of Justice and the Department of the Treasury Equitable Sharing Programs (Program)<sup>1</sup> enhance cooperation amongst federal, state, local, and tribal law enforcement by providing valuable additional resources to state and local law enforcement agencies. However, the Program is designed to supplement and enhance, not supplant, appropriated agency resources.

Not all law enforcement efforts will result in equitable sharing. Specifically, compensating victims remains a top priority of the Asset Forfeiture Program. Pursuant to the Crime Victims' Rights Act, the Mandatory Victims Restitution Act, and Department of Justice and Department of the Treasury policies, victim compensation always takes priority over equitable sharing. Government agencies are at times victims entitled to compensation prior to equitable sharing.

The Department of Justice and the Department of the Treasury are two separate federal agencies with two separate forfeiture funds. However, this *Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies (Guide)* applies to both Programs. The Department of Justice and the Department of the Treasury may make further decisions and issue guidance independent of this *Guide* to ensure the integrity of the Program.

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<sup>1</sup> Hereafter, the Department of Justice and the Department of the Treasury Equitable Sharing Programs will be collectively referred to as "Program" unless otherwise noted.

## **1. Equitable Sharing Authority**

Federal law authorizes the Attorney General and the Secretary of the Treasury to share federally forfeited property with participating state and local law enforcement agencies.<sup>2</sup> The exercise of this authority is discretionary and limited by statute. The Attorney General and the Secretary of the Treasury are not required to share property in any case. The Attorney General and the Secretary of the Treasury shall assure that any property transferred to a State or local law enforcement agency:

(A) has a value that bears a reasonable relationship to the degree of direct participation of the State or local agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort as a whole; and with respect to the violation of law on which the forfeiture is based; and

(B) will serve to encourage further cooperation between the recipient State or local agency and Federal law enforcement agencies.<sup>3</sup>

## **2. Department of Justice Participants**

Participation in an investigation with one of the following agencies may result in equitable sharing paid from the Department of Justice Assets Forfeiture Fund.

U.S. Department of Justice agencies and components:

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

Drug Enforcement Administration (DEA)

Federal Bureau of Investigation (FBI)

Participating components outside the U.S. Department of Justice:

U.S. Department of Agriculture – Office of Inspector General (USDA-OIG)

U.S. Department of Defense – Defense Criminal Investigative Service (DCIS)

U.S. Department of State – Bureau of Diplomatic Security (DSS)

U.S. Food and Drug Administration – Office of Criminal Investigations (FDA-OCI)

U.S. Postal Inspection Service (USPIS)<sup>4</sup>

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<sup>2</sup> 21 U.S.C. § 881(e)(1)(A), 18 U.S.C. § 981(e)(2), and 19 U.S.C. § 1616a; 31 U.S.C. § 9705(b)(4)(A) and (b)(4)(B).

<sup>3</sup> 21 U.S.C. § 881(e)(3).

<sup>4</sup> Participation on an investigation led by the U.S. Postal Inspection Service may result in equitable sharing that is paid from the U.S. Postal Inspection Service Forfeiture Fund. These payments are considered Department of Justice equitable sharing funds for the purpose of this *Guide*.

### **3. Department of the Treasury Participants**

Participation in an investigation with one of the following agencies may result in equitable sharing that is paid from the Department of the Treasury Forfeiture Fund.

U.S. Immigration and Customs Enforcement – Homeland Security Investigations (HSI)

Internal Revenue Service – Criminal Investigation (IRS-CI)

U.S. Secret Service (USSS)

U.S. Customs and Border Protection (CBP)

## II. Which Non-Federal Agencies Are Eligible to Participate in the Equitable Sharing Program?

### A. State, Local, or Tribal Law Enforcement Agencies

Any state, local, or tribal law enforcement agency that is a participant in the Program and directly participates in an investigation or prosecution resulting in a federal forfeiture may request an equitable share of the net proceeds of the forfeiture. In order for a state, local, or tribal law enforcement agency to receive shared funds, the agency must be compliant with the Program guidelines and reporting requirements.

For purposes of equitable sharing, a *law enforcement agency* is defined as a state, local, or tribal government organization authorized to engage as its primary function in the investigation and apprehension, or the prosecution of individuals suspected or convicted of offenses against the criminal laws of the United States or of any state, county, municipality, or territory of the United States. Furthermore, a law enforcement agency is primarily composed of or employs individuals designated or qualified under state statutes as peace officers or those who are authorized to prosecute criminal violations or to exercise police powers such as making arrests, seizing property, executing warrants and court orders, and carrying firearms.

A *primary function* is one that: (1) occupies a clear majority of the agency's working time over a typical work cycle; and (2) is performed on a regular and recurring basis by the agency and a majority of its officers, employees, and agents. Functions that are of an emergency, incidental, or temporary nature are not considered primary even if they amount to a majority of an agency's working time.

### B. State National Guard Counterdrug Unit

A state National Guard generally does not meet the criteria for participation in the Program as a law enforcement agency because its primary mission serves a military or other non-law enforcement purpose. An individual National Guard Counterdrug Unit, however, may be eligible to participate in the Program if it is a distinct unit of a state National Guard that has counterdrug activities as its primary mission and receives funding solely for this purpose.

The Department of Justice and the Department of the Treasury determine whether individual National Guard units are eligible to participate in the Program on a case-by-case basis. Once a state National Guard unit has been determined to be eligible, it participates in the Program in the same manner as any other state, local, or tribal law enforcement agency, including adherence to reporting and compliance requirements, procedures to apply for shares of forfeited property, and all equitable sharing policies.

### C. State and Local Prosecutorial Agencies

State and local prosecutorial agencies are eligible to receive equitable sharing for assistance they provide in federal forfeiture cases based on the level of contribution to the law enforcement effort. In addition, an agency may be eligible for sharing if it cross-designated a state or local attorney as a Special Assistant U.S. Attorney (SAUSA) to handle the federal forfeiture or related criminal cases in federal court. In all instances, the agency must submit a sharing request. The percentage awarded will be based on work hours and qualitative contributions to either the prosecution or efforts leading to the forfeiture. Prosecutorial agencies must adhere to reporting and compliance requirements, procedures to apply for shares of forfeited property, and all equitable sharing policies.

## D. Task Forces

Equitable sharing for task forces may be paid either to a fiduciary agency or to individual member agencies. Compliant state, local, and tribal law enforcement agencies participating in task forces may request and receive equitable sharing payments under their individual NCIC codes. These payments will be paid directly either to the fiduciary agency or to individual member agencies based on participation.

Agencies participating in task forces may designate one task force member agency to serve as the fiduciary agency for the task force. The fiduciary agency must be a Program participant and must be compliant with the Program guidelines and reporting requirements. The fiduciary agency may submit one Equitable Sharing Request form (DAG-71) or Treasury TD F 92-22.46 form (TD F) under its NCIC code on behalf of the task force. The DAG-71 or TD F form must include the total workhour and qualitative contributions of all task force member agencies in the investigation. Shared funds based on all task force member agencies' contributions pursuant to the task force agreement or memorandum of understanding (MOU) will be awarded to the fiduciary agency. The other task force member agencies will neither submit individual sharing requests nor receive funds from the fiduciary agency. Funds awarded to the fiduciary agency will be the fiduciary agency's funds and must be maintained by the fiduciary agency's jurisdiction. The fiduciary agency may earmark funds for use in support of the task force's operations. A waiver to transfer funds to other member agencies in extraordinary circumstances may be granted upon concurrence from both the transferring and recipient agency heads, governing body heads, and jurisdiction chief financial officers to ensure applicable sub-recipient monitoring requirements pursuant to OMB *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* are met.

Alternatively, each agency participating in a task force may file an individual DAG-71 or TD F form requesting sharing under its own agency NCIC code. Agencies participating in task forces with written task force agreements or MOUs with pre-arranged percentages may submit the agreement with the DAG-71 or TD F form. The decision maker will generally honor the pre-determined sharing percentages provided the agency is a Program participant and the percentages accurately reflect the degree of participation by the task force members, including work hours by federal agencies. The decision maker may allocate percentages to the individual member agencies based on the agencies' participation in the task force rather than any specific officer's participation in the law enforcement effort leading to forfeiture. A member agency paying task force operating expenses may be awarded a higher percentage as a qualitative factor. If multiple member agencies submit requests, shared funds will be awarded individually to the member agencies. Funds awarded to each individual agency will be the individual agency's funds and must be maintained by the individual agency's jurisdictions.

DAG-71 and T DF forms filed under a task force's NCIC code will be rejected. In addition, payments will not be directed to an account held by a task force or associated with a task force NCIC code.

The fiduciary agency or participating member agencies must file the Equitable Sharing Agreement and Certification (ESAC) form. ESAC filings will not be accepted under task force NCIC codes. Approval from the Agency Head and Governing Body Head and submission of the ESAC obligates the fiduciary agency or participating member agencies to the terms and conditions of participation in the Program.

Participating agencies may support task force operations through permissible expenditures as detailed in Section V of this *Guide*. Task force member agencies may purchase equipment and other tangible items as well as pay direct operational expenses such as leases for the benefit of the task force. However,

agencies may not transfer shared funds to task forces or pay for unspecified or impermissible operational expenses. The agency expending funds must report the expenditure and maintain ownership and control of any tangible items. Should the task force dissolve or the fiduciary withdraw, all equipment must be returned to the purchasing agency. This ensures that audit and regulatory requirements are met under the Single Audit Act Amendments of 1996 and Office of Management and Budget (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

### **E. Federal Agencies**

Federal agencies are not eligible to receive equitable sharing funds. Federal agency participants in the Department of Justice or the Department of the Treasury Forfeiture Programs must follow their agency policy regarding submission of a Federal Contribution Form detailing participation in a forfeiture. The percentage awarded will be based on work hours and qualitative contributions for efforts leading to the forfeiture. Any award will be made to the participating agency's forfeiture fund and not the agency directly.

In no instance will any persons from a federal agency maintain control of shared funds, direct the use of shared funds, sign as the Agency Head or the Governing Body Head on an Equitable Sharing Agreement and Certification (ESAC) form, or certify a DAG-71 or TD F.

### III. How Do Agencies Participate in the Equitable Sharing Program?

#### A. Joining the Equitable Sharing Program

Traditional law enforcement agencies generally include city, district, local, county, state, or tribal police, sheriff, or highway patrol departments, and state or local prosecutors' offices. To become a Program participant, these traditional agencies must first submit an ESAC form and affidavit to the Money Laundering and Asset Recovery Section (MLARS). Once the form is reviewed and accepted, the agency is placed into compliance. Yearly filing of the ESAC is required to maintain compliance.

All participating agencies must submit an Automated Clearing House (ACH) Vendor form to the United States Marshals Service (USMS) and to the Department of the Treasury. Separate accounts or account codes must be established for Department of Justice and Department of the Treasury funds; therefore a separate ACH form must be sent to each federal agency. ACH forms for each respective agency are available on each federal agency's website. If an agency's banking information changes, an updated ACH Vendor form must be submitted to the USMS and to the Department of the Treasury. Agencies may only include account and routing information for accounts assigned to their agency.

Agencies with law enforcement functions, but not included above as a traditional law enforcement agency, are subject to a separate review to determine the agency's eligibility to participate in the Program. The agency must demonstrate that it meets the requirements of a law enforcement agency as defined in Section II above.

Non-governmental entities, including non-profit organizations and public or private corporations or institutions, are not eligible to participate in the Program.

Determinations of agency eligibility are solely within the discretion of the Department of Justice and the Department of the Treasury.

#### B. Participating in a Federal Forfeiture

In order to receive an equitable share, an agency must assist in the law enforcement effort resulting in federal forfeiture. As a general rule, the forfeiture should follow the criminal case. If the property is seized as part of an ongoing federal investigation and the defendants are being prosecuted in federal court, the property should be federally forfeited. If the property is seized as part of an ongoing state investigation and the defendants are being prosecuted in state court, the property should be forfeited in state court, assuming that state law allows for forfeiture. A state or local law enforcement agency transferring property to the federal government must comply with all applicable state laws and regulations pertaining to such transfers.

Consult the federal seizing agency for minimum monetary or equity thresholds and pre-seizure planning requirements on seized property.

## **IV. What Is the Process to Apply for and Receive a Share?**

### **A. Requesting an Equitable Share**

#### **1. Department of Justice-led Investigations**

If state law permits, a participating state or local law enforcement agency may request a share of the forfeited assets by electronically submitting a DAG-71 to the federal seizing agency through the Department of Justice's eShare Portal. A separate DAG-71 must be completed by the requesting agency for each asset to be shared. An agency may not file a DAG-71 on behalf of another agency.

Sharing requests may be submitted at any time following the seizure, but no later than 45 days after forfeiture. A waiver request must be included with any sharing requests submitted after 45 days following the forfeiture. The lead seizing agency determines whether such a waiver will be granted.

The DAG-71 must include both work hours contributed and a detailed narrative of the agency's contribution to the law enforcement effort resulting in federal forfeiture of the asset. The agency is responsible for ensuring the deciding authority is provided with enough information to adequately evaluate the qualitative and quantitative contributions. Without this information, the deciding authority may not award a share that fully captures the agency's law enforcement contributions resulting in federal forfeiture of the requested asset. Agencies must certify that the information provided on the DAG-71 is a true and accurate statement of the agency's activities. Falsified information on the DAG-71 could, among other things, result in the agency's suspension or expulsion from the Program.

No sharing decisions will be made until after the forfeiture is complete. No sharing request will be accepted and processed after a sharing decision has been made by the deciding authority.

#### **2. Department of the Treasury-led Investigations**

If state law permits, a participating state or local law enforcement agency may request a share of the forfeited assets by submitting a TD F form to the federal agency processing the forfeiture. An agency may not file a TD F on behalf of another agency.

When multiple assets are seized in a single investigation, one TD F may be filed with an attached listing of all the assets for which a share is being requested.

Sharing requests may be submitted at any time following the seizure, but no later than 45 days after forfeiture. A waiver request must be included with any sharing requests submitted after 45 days following the forfeiture. The lead seizing agency determines whether such a waiver will be granted.

The TD F must include both work hours contributed and a detailed narrative of the agency's contribution to the law enforcement effort resulting in federal forfeiture of the asset. The agency is responsible for ensuring the deciding authority is provided with enough information to adequately evaluate the qualitative and quantitative contributions. Without this information, the deciding authority may not award a share that fully captures the agency's law enforcement contributions resulting in federal forfeiture of the requested asset. Agencies must certify that the information provided on the TD F is a true and accurate statement of the agency's activities. Falsified information on the TD F could, among other things, result in the agency's suspension or expulsion from the Program.

No sharing decisions will be made until after the forfeiture is complete. No sharing request will be accepted and processed after a sharing decision has been made by the deciding authority.

## B. Calculating Shares

Percentages allocated to a law enforcement agency must bear a reasonable relationship to the agency's direct participation in the law enforcement effort resulting in the federal forfeiture. The deciding authority ordinarily determines percentages by comparing the number of work hours expended by each agency participating in the federal forfeiture, including all federal, state, local, and tribal agency contributions.

Where the work hours alone do not reflect the contribution of a law enforcement agency, the deciding authority considers qualitative factors in making adjustments to the sharing percentage. The deciding authority will consider such qualitative factors as:

- the inherent importance of the contributing activity;
- whether the agency otherwise entitled to an adjustment would already receive a comparatively large share based on reported work hours;
- whether the agency originated the information leading to the seizure;
- whether the agency provided and articulated specific unique or indispensable assistance; or
- whether the agency seized one or more assets that were forfeited in non-federal proceedings during the same investigation.

Any of these qualitative factors may warrant an increase or decrease in the percentage awarded to an agency. The deciding authority has discretion to determine on a case-by-case basis whether and how much to adjust the sharing allocation.

No sharing request or recommendation, including shares negotiated in a task force or other agreement, is final until approved by the federal deciding authority.

### 1. Federal Contribution

All cases resulting in equitable sharing have some level of federal involvement. The deciding authority must obtain and review the work hours and qualitative contributions of all federal agency participants when determining the appropriate share to retain in the Department of Justice Assets Forfeiture Fund or the Department of the Treasury Forfeiture Fund. Federal participation will be evaluated in the same manner as state and local participation. Work hours and qualitative contributions must be evaluated to determine the appropriate share. In addition, the deciding authority may consider federal prosecutorial contributions when evaluating the federal share.

The *minimum* federal share is 20 percent.

### 2. State and Local Contribution

The deciding authority must review the reported work hours and qualitative contributions of all participating state and local agencies and determine the appropriate share to award to each agency after considering all federal, state, local, and tribal agency contributions to the law enforcement effort resulting in federal forfeiture.

### **3. Task Force Contribution**

Many task forces involving federal, state, local, and tribal law enforcement agencies have pre-arranged, written equitable sharing agreements based upon relative numbers of personnel and other contributions to the task force operation.

The Department of Justice and the Department of the Treasury will generally honor written sharing agreements that were in place *prior* to the onset of the law enforcement effort resulting in federal forfeiture. The sharing agreement must be current, in writing, and signed by the head of each agency that participates in the task force, and must contain the pre-arranged sharing percentages which reflect overall agency investigative, financial, or administrative contributions to the task force. If an agency requests sharing pursuant to a task force agreement or MOU, the agreement must be submitted to the deciding authority along with the DAG-71 or TD F. If a federal law enforcement agency is a member of a task force, and the task force chooses to enter into an MOU containing pre-arranged sharing percentages, the MOU must reflect the manpower and contributions of the federal agency and the federal share must be no less than 20 percent. Approved sharing will be disbursed directly to the member agencies. The deciding authority will not honor any verbal sharing agreements agreed upon before, during, or after the onset of the law enforcement effort resulting in federal forfeiture.

### **4. Spin-off Investigations**

Agencies may share intelligence information that leads to spin-off investigations and additional federal forfeitures. In limited instances, the deciding authority may approve sharing to an agency that provided critical intelligence information essential to that forfeiture, but did not actively participate in the subsequent law enforcement effort resulting in federal forfeiture. The deciding authority will determine an agency's eligibility to share in federal forfeitures in spin-off investigations on a case-by-case basis.

### **5. Excessive Distribution Cap**

A single equitable sharing distribution may not exceed the lesser of \$2 million plus twice the amount of the recipient agency's most recent budget or \$30 million. The overage will remain in the federal forfeiture fund and will be used to support nationwide law enforcement efforts.

## **C. Department of Justice Equitable Sharing Deciding Authorities**

All decision makers will exercise due diligence when reviewing and considering work hours and qualitative factors to ensure consistency and uniformity Program-wide when determining shares.

### **1. Federal Investigative Agency**

If the total appraised value of all the assets forfeited in a single administrative declaration of forfeiture is less than \$1 million, the investigative agency determines the appropriate equitable share for each asset and requesting agency.

### **2. United States Attorney**

If the total appraised value of all the assets forfeited in a single judicial forfeiture order is less than \$1 million, the United States Attorney determines the appropriate equitable share for each asset and requesting agency.

### **3. Department of Justice, Criminal Division**

In multi-district cases, cases involving the equitable transfer of real property, or cases where the total appraised value of all the assets forfeited in a single administrative or judicial forfeiture is equal to or greater than \$1 million, the Criminal Division determines the appropriate equitable share of each asset. Property forfeited under a single judicial order cannot be split up or separated so that only those individual assets with values equal to or greater than \$1 million are sent to the Criminal Division for sharing decisions.

#### **D. Department of the Treasury Equitable Sharing Deciding Authorities**

##### **1. Federal Investigative Agency**

In all forfeiture cases, whether judicial or administrative, where the total appraised value of the assets in a single forfeiture order or declaration is less than \$1 million, the authority to approve equitable sharing has been delegated to the federal investigative agency.

Forfeited assets valued at less than \$1 million that involve foreign sharing require approval from the Director of the Treasury Executive Office for Asset Forfeiture (TEOAF).

##### **2. Department of the Treasury, Treasury Executive Office for Asset Forfeiture**

Where the total appraised value of all assets contained in a single forfeiture order or declaration is equal to or greater than \$1 million, the Director of TEOAF must approve the amount of the equitable share.

In all judicial forfeitures, regardless of value, the United States Attorney's Office shall be given the opportunity to provide input on all recommendations for equitable sharing.

#### **E. Common Causes of Delay**

Equitable sharing occurs only after the federal forfeiture has been completed, the United States has taken clear title to the property, the property has been sold or otherwise disposed of as provided by law, third parties and victims have been fully compensated, and a final sharing decision has been made by the appropriate federal official. Factors that may delay sharing include:

1. If the forfeiture involves victims of crime who may be entitled to compensation, sharing cannot occur until the victims' claims are resolved and paid in full. All available funds must be used to compensate victims before any sharing payments are made.
2. If the forfeiture involves property that must be sold, the sale must be completed and the net proceeds determined before sharing may occur.
3. If the agency submits an incomplete DAG-71 or TD F, the missing information must be provided before sharing can occur. The applicable equitable sharing deciding authority cannot evaluate the sharing request without this information.
4. Distribution in equitable sharing cases involving forfeited assets with a total value of \$1 million or more requires the approval of the Criminal Division for Department of Justice forfeitures or TEOAF for Department of the Treasury forfeitures. These additional levels of approval extend the review time.

5. If complete or correct banking information is not on file, payments will be delayed.
6. In cases involving both domestic and international sharing, international sharing must be approved before domestic sharing can occur. International sharing requires the involvement of the Department of Justice, the Department of State, and the Department of the Treasury, and often takes additional time to complete.

**F. Sharing is Always Based on Net Proceeds**

Equitable sharing is based on the net proceeds of the forfeiture, which is calculated as follows:

<b>Gross receipts</b>	From forfeiture or the sale of forfeited property
<b>Less</b>	Qualified third-party interests (e.g., valid liens or mortgages) Payments to victims Federal case-related expenses (e.g., advertising costs, out-of-pocket investigative or litigation expenses) Federal property management and disposition expenses (e.g., appraisal, storage, security, sale) Awards paid to federal informants Payments for the services of experts and consultants hired to assist in asset identification, seizure, management, forfeiture, or disposition International sharing Reimbursements relating to the seizure from the Department of Justice Assets Forfeiture Fund or the Department of the Treasury Forfeiture Fund to the requesting agency (e.g., overtime, leased space)
<b>Equals</b>	Net proceeds of the forfeiture

Federal law provides that sharing is discretionary. Therefore, any equitable sharing payments to be disbursed to state and local law enforcement agencies that amount to less than \$500 after all expenses are paid will be extinguished and the funds will remain in the forfeiture fund. In addition, federal budgetary constraints such as sequestration and rescissions may affect equitable sharing disbursements.

## V. What Are the Uses of Equitably Shared Funds?

Asset forfeiture is a powerful tool that provides valuable resources to state and local law enforcement that may not have otherwise been available. Equitably shared funds must be used in accordance with this *Guide* for law enforcement purposes that directly supplement the appropriated resources of the recipient law enforcement agency. Sharing will be withheld from any state or local law enforcement agency if the governing body or state or local law, regulation, or policy requires or directs (1) specific expenditures of shared funds; (2) the transfer of federal equitable sharing funds to non-participating law enforcement agencies; or (3) expenditures for non-law enforcement purposes.

Equitably shared funds are federal financial assistance and are subject to the provisions of the Code of Federal Regulations (CFR). Equitable sharing funds must be used in a reasonable and necessary manner and not create the appearance of waste or extravagance.

To avoid a conflict of interest or the appearance of a conflict of interest, any person or members of his or her immediate family who was involved in an investigation which led to the forfeiture of property to be sold is prohibited from purchasing, either directly or indirectly, that forfeited property.

### A. General Guidance on Supplantation and Budgeting

#### 1. Supplantation

Shared funds must be used to increase or supplement the resources of the receiving state or local law enforcement agency. Shared funds shall not be used to replace or supplant the appropriated resources of the recipient. The recipient agency must benefit directly from the sharing. In determining whether supplantation has occurred, the Department of Justice or the Department of the Treasury will examine the law enforcement agency's budget as a whole and allow agencies to use equitable sharing funds for any permissible purpose as long as shared funds **increase the entire law enforcement budget**. The Department of Justice or the Department of the Treasury may terminate sharing with law enforcement agencies that are not permitted by their governing body to benefit directly from equitable sharing.

**Example of Improper Supplantation:** A police department receives \$100,000 in federal sharing money only to have its budget cut \$100,000 by the city council. In this instance, the police department has received no direct benefit from equitable sharing whatsoever. Rather, the city as a whole has received the benefit of the sharing.

#### 2. Anticipated shared funds or property should not be budgeted

Agencies should not "spend it before you get it" or budget anticipated receipts. Receiving agencies may not commit to spending shared funds in advance. For example, if a local law enforcement agency files a DAG-71 or TD F and anticipates a 50 percent share of \$100,000, the anticipated \$50,000 should not be obligated or budgeted for two reasons: (1) the completion of the forfeiture is uncertain; and (2) the amount of the sharing that will ultimately be approved is also uncertain. However, agencies may earmark or budget sharing funds already received.

## B. Use of Shared Funds

Except as noted in this *Guide*, equitably shared funds shall be used by law enforcement agencies for law enforcement purposes only. The uses outlined below are examples of permissible and impermissible expenditures. If an agency is unsure whether a proposed expenditure is permissible, it should email [mlars.ESProgram@usdoj.gov](mailto:mlars.ESProgram@usdoj.gov) for Department of Justice fund expenditures or [treas.aca@treasury.gov](mailto:treas.aca@treasury.gov) for Department of the Treasury fund expenditures.

Shared funds may be used for any permissible agency expenditure and may be used by both sworn and non-sworn law enforcement personnel. The fact that shared property was forfeited by a particular unit or as a result of a particular federal violation does not limit its use to purchases only for that unit or to further investigations only for that particular federal violation. If an agency wishes to support a multi-agency expenditure, such as a new payroll system or city municipal building, with a non-law enforcement agency, the law enforcement agency's costs based on its use may be calculated on a pro-rata basis.

### 1. Permissible Uses

- a. **Law enforcement operations and investigations**—Support of investigations and operations that further the law enforcement goals or missions. Examples include reward money (annual dues paid to a crime tip organization or payment for a specific reward for information in a specific case), recruitment and advertisement costs, agency accreditation or agency membership dues (but individual dues are impermissible), equitable sharing account maintenance fees, reimbursement to the jurisdiction for payments to informants, purchase of evidence, buy-back programs, and “buy” money.
- b. **Law enforcement training and education**—Training of investigators, prosecutors, and sworn and non-sworn law enforcement personnel in any area necessary to perform official law enforcement duties, such as canine handler, narcotics, defensive tactics, criminal justice, language, constitutional law, accounting/finance, or forensics—provided that the employees' regular duties require knowledge of these topics. Examples include training and conference registration fees, tuition, speaker fees, or costs to produce training curricula.

This provision does not permit donations or transfers of funds to associations or organizations providing training.

- c. **Law enforcement, public safety, and detention facilities**—Costs associated with the purchase, lease, construction, expansion, improvement, or operation of law enforcement, public safety, or detention facilities used or managed by the recipient agency. Examples include the costs of leasing, operating, and furnishing an off-site undercover narcotics facility. Improvements should not be made on leased property or space since the law enforcement agency will not benefit from the improvements upon termination of the lease.

Agencies must contact MLARS prior to using Department of Justice equitable sharing funds for all improvement and expansion projects. For example, the construction of a new facility or minor renovations including drywall, electrical, HVAC replacements, and internal modifications to an existing facility. Expenditures such as lease payments or utilities do not require consultation.

- d. **Law enforcement equipment**—Costs associated with the purchase, lease, maintenance (including repairs or service agreements), or operation of law enforcement equipment for use by law enforcement personnel that supports law enforcement activities. Examples include furniture, file cabinets, office supplies, telecommunications equipment, copiers, safes, fitness equipment, computers, computer accessories and software, body armor, uniforms, firearms, radios, cellular telephones, electronic surveillance equipment, vehicles (e.g., patrol and unmarked vehicles), and animals and animal-related expenses.
- e. **Joint law enforcement/public safety operations**—Costs associated with the purchase of multi-use equipment and operations used by both law enforcement and non-law enforcement personnel. Examples include 911 call center equipment, defibrillators, search and rescue boats, aircraft, and diving equipment. These expenditures are exempt from the pro-rata calculation. This provision does not include equipment to be used solely by non-law enforcement personnel, such as fire and EMS vehicles.
- f. **Contracts for services**—Costs associated with a contract for a specific service that supports or enhances law enforcement is permitted. Examples include translation and language assistance services, staffing and feasibility studies, auditor to perform an audit of equitable sharing funds, subject matter expert, grant writer, or software developer. Employment-related contracts or contracts involving inherently law enforcement functions are prohibited. Examples include hiring an attorney, investigator, or civilian personnel to perform tasks typically or previously performed by agency or jurisdiction personnel. Under no circumstances should a contract for service be entered into where the payment of that service is based on a percentage of the seizures and forfeitures of the law enforcement agency.
- g. **Law enforcement travel and per diem**—Costs associated with travel and transportation to perform or in support of law enforcement duties and activities. All related costs must be in accordance with the jurisdiction's per diem policy and must not create the appearance of extravagance or impropriety.
- h. **Law enforcement awards and memorials**—Costs associated with the purchase of plaques, certificates, and challenge coins for law enforcement personnel in recognition of a law enforcement achievement, activity, or training. Shared funds may not be used to pay awards in the form of cash or cash equivalents or stored value cards.

Shared funds may be used to pay the costs for commemorative plaques, displays, or memorials on law enforcement property that serve to recognize or memorialize a law enforcement officer's contributions, such as a memorial plaque or stone in honor of an agency's officers killed in the line of duty. The plaque, display, or memorial must not create the appearance of extravagance.
- i. **Drug, gang, and other prevention or awareness programs**—Costs associated with conducting law enforcement agency awareness programs. Examples include public service announcements, meeting costs, motivational speakers, and items used or distributed by the agency such as child identification kits and anti-crime items, literature, or software. See Section V.B.1.k for supporting non-law enforcement agency community-based programs.

- j. **Matching grants**—Costs associated with paying a state or local law enforcement agency’s matching contribution or share in a state or federal grant program for items other than salaries, provided that the grant funds are used for a permissible law enforcement purpose in accordance with this *Guide* and the grant provision permits matching with federal funds. See Section V.B.3 for information regarding the use of equitable sharing funds to match federal salary grants.
- k. **Support of community-based organizations**—Transfers of shared funds from a state or local law enforcement agency to community based non-profit organizations (501(c)(3) or (4)) whose stated missions are supportive of and consistent with a law enforcement effort, policy, and/or initiative. An agency may expend up to a total of \$25,000 annually to transfer to such organizations. Examples include a drug treatment facility, job skills program, or a youth program with drug and crime prevention education. The following requirements apply:
  - 1. Law enforcement agency head must approve the transfer and must ensure the recipient is a qualified entity;
  - 2. Agency must ensure that all transferred funds are spent permissibly in accordance with this *Guide*; and
  - 3. Agency’s jurisdiction must perform applicable sub-recipient monitoring requirements pursuant to the OMB *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

This community-based organization provision **does not** apply to Department of the Treasury equitable sharing funds; therefore agencies may not use Department of the Treasury funds to support community-based organizations.

## 2. Impermissible Uses

- a. **Use of forfeited property by non-law enforcement personnel**—Personnel from non-law enforcement agencies are not permitted to use shared vehicles, forfeited property, or items retained for official use or purchased with shared funds unless the property is purchased for joint law enforcement/public safety use. See Sections V.B.1.c and e for joint public safety facilities and equipment.
- b. **Creation of endowments or scholarships**—Shared funds may not be used to create or establish endowments or scholarships.
- c. **Uses contrary to state or local laws**—Shared funds and property may not be used for any purpose that would constitute an illegal or improper use of state or local law enforcement funds or property under the laws, rules, regulations, and orders of the state or local jurisdiction of which the agency is a part.

Compliance with state or local legislation addressing federal equitable sharing is the responsibility of the Program participant. The Department of Justice and the Department of the Treasury reserve the right to suspend agencies where compliance with both state and local laws and Program guidelines is not possible.

- d. **Personal or political use of shared assets**—Shared funds may not be used for any purpose that creates the appearance that shared funds are being used for political gain or personal benefit. Examples include campaign paraphernalia, gym memberships, commercial driver's licenses, passports, non-uniform clothing, and bar, union, or other individual dues or membership fees.
- e. **Purchase of food and beverages**—Shared funds may not be used to pay for food and beverages (alcoholic and non-alcoholic) except for meals for officers engaged in local emergency operations such as an earthquake or hurricane.
- f. **Extravagant or wasteful expenditures and entertainment**—Agencies should use federal sharing funds prudently and in such a manner as to avoid any appearance of extravagance, waste, or impropriety. In addition, funds may not be used for entertainment expenditures. Examples include tickets to social events, hospitality suites at conferences, entertainers, or meals or travel in excess of the per diem.
- g. **Cash on hand, secondary accounts, and stored value cards**—Shared funds may not be used to establish cash accounts, purchase prepaid credit cards, or used in any other type of transaction where expenditures are not managed or monitored by the jurisdiction and tracked to ensure permissibility in accordance with this *Guide*. See Section VI.A.1.
- h. **Transfers to other law enforcement agencies**—Shared funds may not be transferred to another state or local law enforcement agency. In limited circumstances, MLARS and TEOAF may consider a waiver upon concurrence from both the transferring and recipient agency heads, governing body heads, and jurisdiction chief financial officers to ensure applicable sub-recipient monitoring requirements pursuant to the *OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* are met.
- i. **Purchase of items for other law enforcement agencies**—Shared funds may not be used to purchase equipment or other permissible items for other law enforcement agencies. Equipment purchased for use by officers assigned to a task force must remain titled to and inventoried with the purchasing agency. See Section II.D for task force operations.
- j. **Costs related to lawsuits**—Shared funds may not be used to pay attorney fees, settlement payments, or any other related costs of lawsuits involving the agency or governing body or their employees.
- k. **Loans**—Shared funds may not be used as advance payment for expenditures being reimbursed or paid by other funds or to reimburse the jurisdiction for expenses already purchased with general funds. Examples include task force overtime or equipment reimbursements or appropriated funds used for permissible expenditures in advance of receipt of sharing revenue.
- l. **Money laundering operations**—Shared funds may not be used to support state and local undercover money laundering operations that are not part of an approved federal undercover money laundering investigation.

### 3. Salaries

**Equitable sharing funds may not be used to pay the salaries and benefits of sworn or non-sworn law enforcement personnel.** The purpose of this rule is to protect the integrity of the Asset Forfeiture and Equitable Sharing Programs so that the prospect of receiving equitable sharing funds does not influence, or appear to influence, law enforcement decisions.

**Exceptions:** Equitable sharing funds may be used to pay the salaries and benefits of current law enforcement officers and personnel in the limited situations listed below.<sup>5</sup>

- (1) **Matching federal grants**—Shared funds may be used to pay the match requirement for the salaries and benefits of current sworn and non-sworn law enforcement personnel funded by federal grant programs provided the grant provision permits matching with federal funds.
- (2) **Overtime**—Shared funds may be used to pay the overtime and related benefits of current sworn and non-sworn law enforcement personnel involved in law enforcement operations.
- (3) **Federal task force replacement salary**—Shared funds may be used to pay the salary and benefits of current, sworn and non-sworn law enforcement personnel hired to fill vacancies created when a law enforcement agency assigns personnel to a federal task force. If the vacated position was sworn, the backfill position must also be sworn. If the vacated position was non-sworn, the backfill position must also be non-sworn. The replacement personnel cannot engage in the seizure of assets or narcotics as a principal law enforcement duty. A principal duty is a duty that the personnel is expected to perform regularly.

When such personnel return from the federal task force, the law enforcement agency may continue to use forfeited funds to pay for the salary and benefits of the replacement personnel for a period not to exceed six months.

- (4) **Specialized programs**—Shared funds may be used pay the salary and benefits of current, sworn law enforcement officers assigned to specialized programs which do not generally involve traditional law enforcement functions, such as school resource officers (SRO) or officers assigned to programs such as DARE. SROs and other officers assigned to specialized programs must be employed by the law enforcement agency. If the officer does not serve in this position on a full-time basis, only the pro-rata portion of the salary and benefits covering the time worked in the specialized position may be paid with shared funds.

#### C. Transfer of Forfeited Tangible and Real Property through Equitable Sharing

In certain instances, a participating state or local law enforcement agency may request the transfer of tangible or real property in lieu of proceeds for official law enforcement use. MLARS and TEOAF must approve all property transfers. If approved, the recipient agency is responsible for reimbursing the federal government for costs and expenses, the federal share, and for tracking the property in its inventory.

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## 1. Tangible Property

Any tangible property transferred to a state or local law enforcement agency must be used for law enforcement purposes only. Transferred property is subject to the rules applicable to similar property purchased by a state or local agency with appropriated funds. Agencies must provide a justification and approval from the governing body to MLARS or TEOAF when requesting tangible property for official use. Agencies must include the asset identification number, intended use, funding source for the federal share and potential storage fees, and approval from the governing body. MLARS and TEOAF will review the request to ensure the agency has a demonstrated need for the item, is able to maintain the property for its intended use for the required two-year period, and is able to pay all liens and storage fees.

### a. Two-Year Use Requirement

Transferred tangible property must be used for at least two years by the recipient agency. If, however, the property becomes unsuitable for law enforcement use before the end of the two-year period, it may be sold with approval from MLARS or TEOAF. To the extent practicable and if consistent with the agency's procurement and disposal policies, agencies must deposit proceeds from the sale of such property into the agency's sharing account or accounting code. If the item has minimal or no value, the agency may donate the item to a recipient of its choice if permitted under the agency's disposal policies.

### b. Reimbursement of Federal Costs

Agencies that receive tangible property must pay for any liens, costs related to storage or maintenance, and the federal share. If the agency is unable to pay these expenses with appropriated or equitably shared funds, MLARS or TEOAF may permit an offset against approved sharing that has not yet been disbursed.

Payment must be made within 30 calendar days of notification of the total expenses. If the requesting agency has no pending sharing or is unable or unwilling to pay the balance within 30 calendar days, the property will be disposed and an equitable share of the proceeds, if any, may be equitably disbursed to the agency in lieu of transfer.

## 2. Real Property

Real property may be transferred to a state or local law enforcement agency that substantially participated in the investigation that led to the seizure of the property. The agency must demonstrate a compelling law enforcement need for the property and outline its intended use through correspondence to the federal seizing agency. In addition, the property must be used for the designated law enforcement purpose for at least five years. If sold after five years, the proceeds must be deposited in the agency's equitable sharing account.

The agency must also sign an MOU outlining the agency's responsibilities with regard to the use of the property. The agency must agree to pay any federal costs/expenses, including liens, environmental assessments, or taxes, as well as the federal share before the transfer will be approved. Real property transfers must be approved by the Criminal Division in Department of Justice forfeitures and by TEOAF in Department of the Treasury forfeitures before title is transferred or funds expended to improve the property.

#### **D. Return of Equitably Shared Funds**

On occasion, a criminal conviction or forfeiture order may be reversed, or victims and third parties may be identified after equitable sharing payments have been disbursed. Victim compensation remains one of the Department of Justice's and the Department of the Treasury's top priorities and must take place prior to equitable sharing. In those instances, agencies will be required to return previously disbursed equitable sharing. If the agency has approved sharing that has not yet been disbursed, MLARS or TEOAF may permit the agency to offset the amount due against future sharing.

#### **E. Treasury Offset Program**

The Treasury Offset Program (TOP) offsets federal payments, including equitable sharing payments, to collect delinquent nontax debts owed to the United States, as required by the Debt Collection Improvement Act of 1996. On occasion, an agency's equitable sharing disbursement may be offset to satisfy a debt from another entity sharing its Tax Identification Number (TIN). Agencies whose funds have been offset should first contact the USMS to determine the TIN listed on the ACH form. Next, agencies should contact the TOP call center at 800-304-3107 to determine the amount of and reason for the debt. Agencies should seek reimbursement for the offset funds from the delinquent entity to ensure that funds are used for law enforcement purposes in accordance with this *Guide*.

## VI. What Are the Accounting Procedures and Requirements for Shared Cash, Proceeds, and Tangible Property?

All participating state and local law enforcement agencies must implement standard accounting procedures and internal controls that are consistent with the guidelines set forth below to track equitably shared funds and tangible property. At any time, the Department of Justice or the Department of the Treasury may request documents related to equitable sharing, conduct an audit or compliance review, or implement additional reporting requirements and spending plans. Department of Justice and Department of the Treasury equitable sharing funds must be tracked and maintained separately.

### A. Bookkeeping Procedures and Internal Controls

The state or local participating law enforcement agency must:

1. Maintain equitable sharing funds with the same entity that maintains the agency's appropriated funds and administers procurement actions. Bank accounts, checkbooks, purchase cards, and other financial instruments or documents must be maintained in the same manner as appropriated funds.
2. Establish separate Department of Justice and Department of the Treasury accounts or accounting codes to track both revenues and expenditures for each respective Program. No other funds may be commingled in these accounts or with these accounting codes.
3. Process all expenditures and payments in the same manner as appropriated funds, including procurement and payment transactions.
4. Deposit all interest earned on equitable sharing funds into the respective account or accounting code. All interest is subject to the same use restrictions as equitable sharing funds. Losses to funds maintained in investment accounts in accordance with the jurisdiction's policies may not be allocated to or deducted from the equitable sharing account.
5. Maintain and follow written policies for accounting, bookkeeping, inventory control, and procurement that comply with the applicable provisions of the OMB *Uniform Administrative Requirements, Costs, Principles, and Audit Requirements for Federal Awards* or any subsequent updates and jurisdiction policies. Ensure distribution of relevant policies to all appropriate personnel.
6. Maintain records of all revenue and expenditures posted to the account or accounting code—to include bank/ledger statements, invoices, receipts, required jurisdiction approvals, or any other documents used or created during the procurement process.
7. Report all transactions using cash-based accounting methods.

8. Dispose of items purchased with shared funds in accordance with the agency's disposal policies. To the extent practicable and if consistent with the agency's procurement and disposal policies, deposit proceeds from the sale of such property into the agency's sharing account or accounting code. If an item has minimal or no value, an agency may donate the item to a recipient of its choice if permitted under the agency's disposal policies.
9. Ensure the law enforcement agency head, or designee, authorizes all expenditures from the sharing accounts.
10. Obtain approval for expenditures from the governing body, such as the town council or city manager's office, when required.

## VII. What Are the Reporting and Audit Requirements?

To ensure effective management, promote public confidence in the integrity of the Program, and protect the Asset Forfeiture Program against potential waste, fraud, and abuse, the Department of Justice and the Department of the Treasury have established reporting requirements that include the annual submission of the ESAC form. The ESAC includes the agency's annual Affidavit and details an agency's receipts and expenditures of equitably shared funds for both the Department of Justice and the Department of the Treasury Equitable Sharing Programs. A state or local law enforcement agency must be compliant with the use and reporting requirements set forth in this *Guide* to receive any distribution of funds or property. An agency is considered compliant once the ESAC is received, reviewed, and approved by MLARS. Because the ESAC captures both Department of Justice and Department of the Treasury equitable sharing receipts and expenditures, submission of the ESAC to MLARS constitutes submission to the Department of the Treasury.

The eShare Portal is a Department of Justice online tool that allows agencies to obtain information regarding equitable sharing requests and distributions made by the Department of Justice. This information assists with reconciling deposits to the agency's Department of Justice equitable sharing account, as well as tracking and obtaining the status of pending Department of Justice sharing requests. At this time, the Department of the Treasury does not have a similar online tool; however, distribution reports are available by contacting TEOAF.

### A. Federal Equitable Sharing Agreement and Certification Form

Agencies must annually submit an ESAC in the eShare portal, regardless of whether funds were received or maintained during the fiscal year, in order to maintain compliance. The ESAC must be reviewed and approved by the head of the law enforcement agency and a designated official of the governing body prior to submission. For the purposes of the Program, the governing body is the governmental entity that allocates appropriated funding to the law enforcement agency. In no instance can any individual from the law enforcement agency sign as the governing body head. By approving the ESAC, the signatories agree to be bound by the statutes and guidelines that regulate the Program and certify that the law enforcement agency will comply with these guidelines and statutes.

Agencies must submit the ESAC within two months after the end of their fiscal year. No extensions to this deadline will be granted. Agencies will remain non-compliant until all paperwork is received and approved. For example, if the agency's fiscal year ends September 30, the ESAC must be filed, reviewed, and accepted by November 30 for the agency to remain compliant.

### B. Extinguishment of Funds

An agency that remains non-compliant for more than one year will have all approved sharing pending disbursement extinguished. Such extinguishments are final and the previously approved funds will remain in the Department of Justice Assets Forfeiture Fund or the Department of the Treasury Forfeiture Fund.

### C. Audit Requirements

State and local law enforcement agencies that receive equitable sharing must comply with the applicable Single Audit Act Amendments of 1996 and *OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* or any subsequent updates to this guidance. Per those guidelines, state or local governments that expend more than the applicable threshold in federal

funds (e.g., Department of Justice and/or Department of the Treasury equitable sharing funds, grants, cooperative agreements) per fiscal year are required to conduct an independent audit.

Department of Justice and Department of the Treasury equitable sharing funds are direct payments for specified use. Auditors should consult the Catalog of Federal Domestic Assistance (CFDA) number 16.922 for Department of Justice equitable sharing funds and CFDA number 21.016 for Department of the Treasury equitable sharing funds to determine applicable audit guidance. Expenditures of these funds must be included on the jurisdiction's Schedule of Expenditures of Federal Awards (SEFA) as federal financial assistance.

Approved transfers to other participating law enforcement agencies and transfers to qualifying community-based organizations are subject to various subparts of the Code of Federal Regulations (CFR). The CFR requires sub-recipient monitoring to be performed by the transferring entity. The recipient entity must adhere to all sub-recipient monitoring requirements imposed on by the transferring agency. Sub-recipient monitoring includes, but is not limited to, issuing award letters to the recipient, monitoring the recipient's expenditures for permissibility, and ensuring the recipient agency reports the received and expended funds on its annual ESAC and its jurisdiction reports the agency's expended funds on its Single Audit. A comprehensive list of requirements are posted in the eShare Portal.

On occasion, agencies may be selected by the Department of Justice or the Department of the Treasury Office of Inspector General, MLARS, TEOAF, or other federal entities, to undergo an audit or other form of review. Agencies must comply with all requests for documents and information. Failure to comply with these requests or failure to implement corrective measures may result in temporary or permanent exclusion from the Program.

#### **D. Record Retention**

State and local law enforcement agencies must retain all documents and records pertaining to their participation in the Program for a period of at least five years. Such documentation includes, but is not limited to, receipts and procurement documentation for all expenditures of shared funds, bank statements, Forms DAG-71 and TD F, ESACs, accounting and bookkeeping documents, logs and records, bank records and statements, and audit reports.

All records may be subject to release under applicable federal, state, and local Freedom of Information Act laws and regulations.

## **VIII. How Does an Agency Terminate Program Participation?**

When an agency ends participation in the Program, it must notify MLARS and TEOAF of its decision. MLARS and TEOAF will coordinate with the agency on the disbursement of the agency's remaining funds. The agency will be required to file a final ESAC form showing a zero balance. Any pending sharing requests will be extinguished and retained by the Department of Justice or the Department of the Treasury.

## **IX. What If Agencies Do Not Comply with Program Requirements?**

The policies contained in this *Guide* are binding upon all state and local agencies participating in the Program. No equitable sharing funds or property will be distributed to any state or local law enforcement agency that is not a compliant Program participant.

Failure to comply with the policies in this *Guide* may subject recipient agencies to sanctions such as:

1. Denial or extinguishment of sharing requests;
2. Temporary or permanent exclusion from the Program;
3. Freeze on receipt and/or expenditure of shared funds;
4. Return of funds or offsets from future sharing;
5. Civil enforcement actions in U.S. District Court; or
6. Federal criminal prosecution for false statements under 18 U.S.C. § 1001, fraud involving theft of federal program funds under 18 U.S.C. § 666, or other sections of the criminal code, as applicable.

An agency or governing body head, or designee, is required to immediately notify MLARS and TEOAF of any allegations or theft, fraud, waste, or abuse involving federal equitable sharing funds.



**U.S. Department of Justice**  
Criminal Division  
Money Laundering and Asset Recovery Section  
1400 New York Avenue, N.W.  
10th Floor  
Washington, D.C. 20005  
Phone: (202) 514-1263  
Fax: (202) 616-1344



**U.S. Department of the Treasury**  
Executive Office for Asset Forfeiture  
1341 G Street, N.W.  
Suite 900  
Washington, D.C. 20220  
Phone: (202) 622-9600  
Fax: (202) 622-9610

**Department of Commerce, Community and Economic Development  
Alaska Oil and Gas Conservation Commission**

<b>Subject of RPL:</b> U.S. EPA Multipurpose Grant	<b>ADN/RPL #:</b> 08-2020-0105
<b>Amount requested:</b> \$51,196	<b>Appropriation Authority:</b> Sec 1 Ch 1 SLA 2019 Pg 4 Ln 18
<b>Funding source:</b> Federal Receipts (1002) Operating	<b>Statutory Authority:</b> AS 31.05.093

*Legislative Fiscal Analyst Comment:* Per Administrative Order #307, the Alaska Oil and Gas Conservation Commission (AOGCC) was moved from the Department of Administration to the Department of Commerce, Community and Economic Development for administrative purposes only. The appropriation authority for AOGCC still resides within the Department of Administration for the FY20 budget.

### **PURPOSE**

The Alaska Oil and Gas Conservation Commission (AOGCC) requests an additional \$51,196 in Federal authorization for FY2020. The additional authorization will be used to receive Federal grant funding from the U.S. Environmental Protection Agency (EPA) to perform high priority oilfield inspections and mechanical integrity testing (MIT) of Class II injection and disposal wells, in compliance with the Underground Injection Control (UIC) program authorized under the Safe Drinking Water Act 1443(b). The funding is authorized by the 2018 Consolidated Appropriations Act (P.L 115-141) and the 2019 Consolidated Appropriations Act (P.L 116-6).

### **PREVIOUS LEGISLATIVE CONSIDERATION**

The AOGCC UIC program is authorized with \$118,000 in Federal funds from the EPA and \$1,630,000 in AOGCC receipts. This is the first time AOGCC has been awarded a Multipurpose Grant from the EPA, which can also be utilized for the UIC program.

### **TIMING ISSUES**

The AOGCC was first notified August 1, 2019 that these funds were available, so the funding was not anticipated for the FY2020 budget. The EPA anticipates grant funding to be issued in December 2019, and the AOGCC anticipates expenditure of the funds by the end of FY2020. A delay or disapproval of this request would likely result in the EPA distributing the funding to other states or state agencies. The EPA would not defer their grant to allow AOGCC to accept it in the future.

### **BUDGETARY ISSUES**

The additional funds will support the UIC program, which the AOGCC oversees on behalf of the EPA. This is directly related to AOGCC's mission of "the protection of health, safety, fresh ground waters." Funding will be used for Personnel Services only, on hours worked with direct relation to the UIC program. No general funds will be used, and no match is required for this work.

Agency Contact: Micaela Fowler, Administrative Services Director (907) 465-2506  
LFD Contact: Rob Carpenter (907) 465-5413

The AOGCC currently has an EPA agreed performance measure to witness 50% of MITs and the additional funding will help ensure that the AOGCC meets that goal. AOGCC regulations require the operator give AOGCC inspectors notice and the opportunity to witness certain tests. AOGCC decides to witness the test or not depending on availability of inspectors and other inspection program priorities.

*Legislative Fiscal Analyst Comment:* There are no technical issues with this RPL. The grant funding will be in hand December 2019.

The AOGCC budget currently has federal expenditure authority of \$120.0 of which \$118.0 is used for the UIC program (FY18 actuals were \$114.0). This additional federal grant will supplement existing authorization and provide a total of \$169.2 of federal receipts for the UIC program. The grant is absent any restrictions or performance measures and the federal funding will offset expenditures of AOGCC receipts for UIC activities.

The last two years, AOGCC has witnessed over 50% of MITs as agreed upon with the EPA. Their goal is to witness 75% of tests if possible. The 50% has been exceeded in FY2017 and FY2018 (51% and 59% respectively), but varied between 38% and 48% from FY2011 to FY2016. The performance measures on witnessing well safety tests can be found at: <https://omb.alaska.gov/html/performance/details.html?p=198>.

Additional back-up provided by the agency follows.



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

1200 Sixth Avenue, Suite 155  
Seattle, WA 98101-3188

OFFICE OF THE REGIONAL  
ADMINISTRATOR

**AUG - 1 2019**

Commissioner Jessie Chmielowski  
Alaska Oil & Gas Conservation Commission  
333 W. 7th Ave.  
Anchorage, Alaska 99501

Dear Commissioner Chmielowski:

On behalf of the U.S. Environmental Protection Agency, I am pleased to inform you of the availability of \$51,196 for Alaska Oil & Gas Conservation Commission as part of the Fiscal Year 2018-2019 Multipurpose Grant program. Recognizing states' lead role in implementing our nation's environmental laws, the EPA invites states to direct these resources towards high priority activities that complement programs under established environmental statutes.

The 2018 Consolidated Appropriations Act provided \$10 million from the State and Tribal Assistance Grant appropriation for the Multipurpose Grant program. The 2019 Consolidated Appropriations Act provided an additional \$11 million for the program. The EPA is issuing the FY2018 and FY2019 funds together, for high-priority activities that support the foundational, programmatic work of state and tribal environmental programs. To further maximize states' flexibility, the EPA encourages, but does not require, the use of Performance Partnership Grants, which reduce administrative burden and allow for innovative, multi-media approaches to implementing environmental programs. Additional information on the grant program, timelines, and PPGs are detailed in the attached guidance.

We kindly request you respond with the following information:

- 1) Whether or not you intend to accept these funds, and
- 2) The high-priority activities you intend to direct these funds towards.

Please send this information by August 23<sup>rd</sup> to Margo Young at [Young.Margo@epa.gov](mailto:Young.Margo@epa.gov).

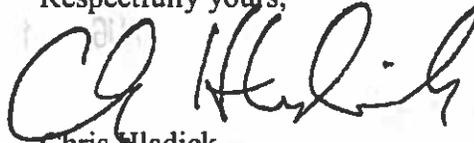
The EPA is also sending a letter to other Departments in your state that implement the federal environmental programs outlined in our guidance (e.g., Departments of Environment and Natural Resources). Should the Commission decline MPG funds this year, your allotment will be divided and offered in equal amounts to the other Departments within your state. Conversely, should one of your sister Departments decline its share of MPG funds, the available amount for Alaska Oil & Gas Conservation Commission will increase.

As the partnership between the EPA and the states nears its fifth decade, we are proud of the environmental enterprise we have created together. With this funding, the EPA demonstrates its support of your work to address local needs and priorities and to deliver environmental and public health results

to our nation's citizens. Please let me know if you have any questions, or you can direct your staff to Margo Young at (206) 553-1287.

Respectfully yours,

2105

A handwritten signature in black ink, appearing to read "Chris Hladick". The signature is written in a cursive, flowing style.

Chris Hladick  
Regional Administrator

Enclosure

# **U.S. Environmental Protection Agency Multipurpose Grant Guidance for States**

August 1, 2019

## **SUMMARY**

The U.S. Environmental Protection Agency is issuing multipurpose State and Tribal Assistance Grants to state and tribal co-regulator partners. Multipurpose funds are intended to be used at state and tribal discretion, for high-priority activities to complement activities funded under established environmental statutes. EPA is awarding **\$17,585,077** to eligible state and territorial recipients (referred to as “states” as described in the “Eligible Recipients” section below). This guidance provides information on: eligibility, use of funding, grant mechanisms and processes for awarding funding, the allocation methodology used for distribution of funding, timelines, and terms for reporting under these grants.

This guidance is for states. Tribal guidance is issued separately.

## **BACKGROUND**

The 2018 Consolidated Appropriations Act (2018 Act) provided \$10,000,000 (\$9,772,000 after rescission) from the State and Tribal Assistance Grant (STAG) appropriation for the Multipurpose Grant (MPG) program, following on \$21 million provided by Congress in the agency’s FY 2016 appropriation. No MPG funds were appropriated in FY17. The explanatory statement accompanying the 2018 Act says,

Because the states are expected to take a leading role in compliance with environmental cleanup, the agreement provides \$10,000,000 for Multipurpose grants to States and Tribes...In fiscal year 2018, the Agency is directed to give maximum flexibility to States, so that States, not the Agency, may determine where funds from this grant program are of most value.

In FY19, Congress provided an additional \$11,000,000 (\$10,642,000 after rescission) in STAG for the MPG program. EPA is issuing the FY18 and FY19 multipurpose funds together, to supplement certain STAG-funded environmental programs eligible for inclusion in Performance Partnership Grants (environmental programs) implemented by states and tribes (see “Eligible Activities” section below). Because these programs support the foundational, programmatic work of state and tribal environmental programs, recipients have flexibility to direct funds to priority areas.

The total amount available to states is \$17,585,077. This includes unused MPG funds from FY16 that were de-obligated from state grants.

## **AUTHORITY**

This grant funding is authorized by the 2018 Consolidated Appropriations Act (P.L. 115-141) and the 2019 Consolidated Appropriations Act (P.L. 116-6).

## ELIGIBLE RECIPIENTS

Recipients eligible to receive direct awards of multipurpose grant funding include: states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and other state entities with authority conferred by the governor or designee of the governor to administer federal environmental programs on behalf of the state (referred to as “states” for the purposes of this guidance).

States may have more than one agency or department receiving funds directly from EPA to implement programs tied to national environmental statutes; each of these entities is eligible to receive MPG funding. Recipients generally must be agencies of state or territorial governments.<sup>1</sup> States may also name a single agency as the recipient and transfer funds among state agencies under state law and policies, provided the EPA funds are properly accounted for under 2 CFR 200.302(a).

States may use the MPG to fund a sub-recipient in accordance with [2 CFR 200.330](#) and [2 CFR 200.331](#) and the [EPA Subaward Policy](#).

## ELIGIBLE ACTIVITIES

MPG funds may be used to support activities associated with certain STAG-funded environmental programs. Those programs include:

1. Air Pollution Control (CAA §105)
2. Water Pollution Control (CWA §106)
3. Public Water System Supervision (SDWA §1443(a) and §1451(a)(3))
4. Underground Injection Control (SDWA §1443(b))
5. Hazardous Waste Management (SWDA §3011(a))
6. Pesticide Cooperative Enforcement (FIFRA §23(a)(1))
7. Pesticide Applicator Certification and Training (FIFRA §23(a)(2))
8. Pesticide Program Implementation (FIFRA §23(a)(1))
9. Nonpoint Source Management (CWA §205(j)(5) and §319(h))
10. Lead-Based Paint Program (TSCA §404(g))
11. State Indoor Radon Grants (TSCA §306)
12. Toxic Substances Compliance Monitoring (TSCA §28)
13. Underground Storage Tanks (SWDA §2007(f)(2))
14. Pollution Prevention (PPA §6605)
15. Wetlands Development Grants (CWA §104(b)(3))
16. Environmental Information Network Exchange Grants (PL 108-7 and PL 108-199)
17. Brownfields (CERCLA §128(a) with the exception of Small Community Technical Assistance Grant activities authorized by CERCLA §128(a)(1)(B)(iii))
18. Beaches (PL 106-284)

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<sup>1</sup> All documentation requirements for recipients are presented at 2 CFR Part 200, Subpart E, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.”

Examples of eligible activities under these programs include planning, development, implementation, research, investigations, experiments, monitoring, assessment, training, surveys, inspections, compliance assistance, enforcement, process improvement, education and outreach, technical support, and maintenance associated with the environmental programs listed above. Activities may also include joint efforts between the recipient and EPA, such as streamlining and other E-Enterprise projects. States should contact their EPA Regional Points of Contact (listed at the end of this guidance) for questions about eligible activities associated with the environmental programs listed above.

All activities for which MPG funds are used must be eligible under one or more of the federal environmental statutes specified above. Conversely, activities that are ineligible for grant funding under federal environmental statutes may not be conducted using MPG funds.

### **MATCH, COST-SHARE, AND MAINTENANCE OF EFFORT REQUIREMENTS**

States will not be required to provide a match, cost-share, or maintenance of effort for MPG funds. MPG funding authority does not have a match, cost share, or maintenance of effort requirement. Adding MPG funds to a Performance Partnership Grant (PPG) will not impact the PPG's existing cost-share requirement under 40 CFR 35.136.

### **GRANT MECHANISMS**

EPA encourages states to take full advantage of the reduced administrative burden and maximum flexibility offered by accepting MPG funds into PPGs.<sup>2</sup> States may also receive MPG funds through a separate, stand-alone grant awarded under CFDA 66.204. States should work with their Regions to determine which grant vehicle is most appropriate. The following funding vehicles are available for MPG funds:

- Agencies that have an existing PPG, may add MPG funding to the PPG through an amendment.
- Agencies nearing the end of their existing PPG, or negotiating a new PPG, may include MPG funding in the new PPG award.
- Agencies that wish to use a PPG, but who do not already have one, may combine MPG funds with one or more PPG-eligible standalone grant(s) into a new PPG. All of the environmental programs listed above are eligible to be included in a PPG.
- Agencies without a PPG, and who do not wish to pursue a PPG at this time, may accept MPG funding through a standalone grant awarded under CFDA 66.204.
- Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands may add this funding to an existing or new consolidated assistance agreement awarded under the authority of 48 U.S.C. §1469a(a).

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<sup>2</sup> For more information about the flexibilities offered through PPGs, see: <https://www.epa.gov/ocir/national-environmental-performance-partnership-system-nepps>

### Amending an existing PPG

Agencies who wish to amend an existing PPG should contact their Regional POCs (listed at the end of this guidance) to discuss the best way to update the existing project workplan with MPG funding added as a new activity or commitment. Agencies should submit the amended PPG through [grants.gov](https://www.epa.gov/grants) using the opportunity number **EPA-CEP-01**, CFDA number **66.605** (see: <https://www.epa.gov/grants/grantsgov-submission-requirements>). Please note, amending an existing PPG will require the agency to submit a new SF-424, SF-424A, workplan, and budget detail.

In the event a state agency is approaching the end of its PPG or budget end date, the agency could contact its Regional POC about requesting a waiver to the five-year limit, to add MPG funds to an existing PPG. This extension would only apply to the activities associated with the MPG funds.

Agencies using a Performance Partnership Agreement (PPA) as the grant workplan should work with their Regional POC to determine the best way to incorporate MPG funds and associated activities into the PPA.

### Establishing a new PPG

Agencies nearing the end of their existing PPG, in the process of negotiating a new PPG, or who do not have a PPG but wish to create one may accept MPG funds through a new PPG. States should submit a complete grant application and workplan through [grants.gov](https://www.epa.gov/grants) using the opportunity number **EPA-CEP-01**, CFDA number **66.605**.

### Using a standalone grant

Agencies that wish to accept the MPG funds through a standalone grant should submit a complete grant application and workplan through [grants.gov](https://www.epa.gov/grants) using the opportunity number **EPA-CEP-02**, CFDA number **66.204**.

Note: Because MPG funds have a different funding code than those associated with the other categorical grant programs, EPA cannot amend existing standalone grants to add MPG funds. MPG funds must be accepted as a new standalone grant, under CFDA 66.204, unless they are incorporated into a PPG.

Regardless of the funding vehicle used, work conducted using MPG funds should complement activities under existing EPA assistance agreements. States should coordinate with their Regional POCs (listed below) to begin workplan negotiation. Further, as required by EPA's Environmental Results Order ([EPA Order 5700.7A1](#)), workplans must link the MPG activities to EPA's strategic goals and objectives, and include outputs and outcomes. The Regional POCs may also assist with linking workplan activities to the Agency's FY18-22 Strategic Plan.<sup>3</sup>

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<sup>3</sup> EPA FY2018-2022 Strategic Plan: <https://www.epa.gov/planandbudget/fy-2018-2022-epa-strategic-plan>

## PROCESS FOR AWARD

EPA will send letters to each eligible recipient, informing the recipient of its allocation, and requesting the agency to accept or decline the funds. In the case where a state agency declines the funds, its allocation will be re-distributed to its sister agencies within the state. EPA’s Regional POCs will work with each eligible recipient to negotiate final award amounts and assist with work plan development. See “Timeline,” below.

## FUNDING ALLOCATION

A total of \$20,414,000 is available for all eligible recipients. 85% of the funds (\$17,351,900) will go to state agencies, and 15% of the funds (\$3,062,100) will go towards tribal agencies. This generally reflects the proportion of STAG funds allocated to states and tribes.

State agencies will receive a base amount of \$50K per agency - \$25K for FY18 and \$25K for FY19 - supplemented by an amount based on that agency’s portion of FY17 STAG funding for the 18 environmental programs listed above. The supplemental amount is calculated by multiplying the amount of total available supplemental funding by each agency’s share of the total amount of STAG-funded environmental program funding awarded by EPA in FY17. For example, if a state’s Department of Environment received \$7M in STAG-funded environmental program funding in FY17, and that \$7M accounted for 1% of the total STAG funding awarded to states in FY17, that state’s DOE would receive 1% of the supplemental (i.e., non-base) amount.

Example allocation: A state that implements its pesticides program out of its Department of Agriculture; its lead-based paint and public water programs through its Department of Health; and its air, wetlands, and hazardous waste programs out of its Department of Environment might receive three awards, as follows:

State Agency	Program	Base Amount	Supplemental	Total
Department of Agriculture	Pesticides	\$50,000	\$10,000	\$60,000
Department of Health	Lead Paint	\$50,000	\$3,500	\$67,500
	PWSS		\$14,000	
Department of Environment	Air Monitoring	\$50,000	\$6,000	\$84,750
	Water Quality		\$20,000	
	Hazardous Waste		\$8,750	
<b>State Total:</b>				<b>\$212,250</b>

In the example above, these agencies are free to choose what eligible activities to fund with their MPG allotment under the listed environmental programs. For example, the Department of Environment might choose to fund a combination of eligible air, water, and hazardous waste activities, or to use all of its \$84,750 for eligible activities under one of these three programs.

In the event an eligible agency wishes to decline MPG funds, that agency should communicate this decision to their respective Regional POC (see below), who will work with other agencies within the state to re-distribute funds. This means a state agency's final award amount may be higher than the amount initially offered.

## TIMELINE

- **August 1, 2019** – EPA Regional Administrators send letters (via email) to state agencies, informing eligible recipients of available funding, and requesting a response
- **August 23, 2019** – States notify EPA (via email to Regional POCs) of their intent to accept or decline MPG funds, and towards what priority areas agencies will direct FY18-19 MPG funds
- **August 30, 2019**: Regions work with state agencies to finalize and redistribute allocation as needed and notify states of final award amounts.
- **Mid-September 2019**: States submit application through grants.gov
- **Early November 2019**: Programs submit award package to grants office
- **End of CY2019**: EPA awards grants

## TERMS AND CONDITIONS

There are no new terms and conditions for MPG funding. The typical grant terms and conditions associated with awards to the environmental programs listed above apply. The repository for EPA's Assistance Agreement General Terms and Conditions by year can be found at <http://www.epa.gov/grants/grant-terms-and-conditions>.

## PERFORMANCE TRACKING AND REPORTING

The requirements of 2 CFR part 200 (OMB Uniform Grant Guidance)<sup>4</sup> and 2 CFR part 1500 (EPA Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards)<sup>5</sup> apply to this grant funding.

MPG funds awarded to states must be managed in accordance with existing Federal and EPA-specific administrative grant regulations and policies, including but not limited to: [2 CFR Part 200](#), [2 CFR Part 1500](#), [40 CFR Part 35 Subpart A](#), EPA's [Environmental Results Order](#), [GPI 11-03 State Grant Workplans and Progress Reports](#), [GPI 12-06 Timely Award, Obligation, and Expenditure of EPA Grant Funds](#), and [GPI 15-01 Performance Partnership Grants for States](#).<sup>6</sup>

There is no additional reporting associated with the MPG funds, but agencies should be prepared to summarize specific results that will be, or have been, achieved through the contribution of these funds under the reporting requirements contained in their EPA grants.

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<sup>4</sup> 2 CFR part 200 (OMB Uniform Grant Guidance) available at: [https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)

<sup>5</sup> 2 CFR part 1500 (EPA Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) available at: <https://ecfr.io/Title-02/pt2.1.1500>

<sup>6</sup> Grant policies are available at <https://www.epa.gov/grants/epa-grants-policy-resources>

## PROJECT PERIOD

Existing EPA grant policies limit project periods for the environmental programs listed above to no more than five years. EPA asks that states demonstrate the projects they've identified in their work plans are "of most value," as Congress directs, by drawing down the funds as soon as reasonably possible.

## REGIONAL POINTS OF CONTACT

States should direct questions about the FY18-19 MPG program to their Regional Point of Contact:

EPA Region	Regional POC	Phone Number	Email
R1	Jen Brady	617-918-1698	<a href="mailto:Brady.JenniferL@epa.gov">Brady.JenniferL@epa.gov</a>
R2	Rudy O'Neal	212-637-3427	<a href="mailto:Oneal.Rudnell@epa.gov">Oneal.Rudnell@epa.gov</a>
R3: DC, DE, MD, PA	Kyle Zieba	215-814-5420	<a href="mailto:Zieba.Kyle@epa.gov">Zieba.Kyle@epa.gov</a>
R3: VA, WV	Mark Ferrell	215-814-0231	<a href="mailto:Ferrell.Mark@epa.gov">Ferrell.Mark@epa.gov</a>
R4	James Davies	404-562-8232	<a href="mailto:Davies.James@epa.gov">Davies.James@epa.gov</a>
R5	Alex Girard	312-886-7089	<a href="mailto:Girard.Alexander@epa.gov">Girard.Alexander@epa.gov</a>
R6	Barbara Schrodt	214-665-7138	<a href="mailto:Schrodt.Barbara@epa.gov">Schrodt.Barbara@epa.gov</a>
R7	Whitney Rawls	913-551-7678	<a href="mailto:Rawls.Whitney@epa.gov">Rawls.Whitney@epa.gov</a>
R8	Anthony DeLoach	303-312-6070	<a href="mailto:DeLoach.Anthony@epa.gov">DeLoach.Anthony@epa.gov</a>
R9	Renee Chan	415-972-3675	<a href="mailto:Chan.Renee@epa.gov">Chan.Renee@epa.gov</a>
R10	Margo Young	206-553-1287	<a href="mailto:Young.Margo@epa.gov">Young.Margo@epa.gov</a>

## ADDITIONAL INFORMATION

The webpages listed below contain information that may be helpful for eligible recipients.

- Multipurpose Grants to States and Tribes: <https://www.epa.gov/grants/multipurpose-grants-states-and-tribes>
- A listing of EPA's grant programs: <https://www.epa.gov/grants/specific-epa-grant-programs>
- A searchable compendium of EPA's grant policy resources: <https://www.epa.gov/grants/epa-grants-policy-resources>
- Interim General Budget Development Guidance for Applicants and Recipients of EPA Financial Assistance: <https://www.epa.gov/sites/production/files/2019-05/documents/applicant-budget-development-guidance.pdf>
- Standard form 414A, "Budget Information for Non-Construction Programs": <https://apply07.grants.gov/apply/forms/sample/SF424A-V1.0.pdf>

**Department of Environmental Conservation**  
**Air Quality**  
**Division of Air Quality**

<b>Subject of RPL:</b> Fairbanks PM2.5 Nonattainment Area Voluntary Heating Device Change Out Program	<b>ADN/RPL #:</b> 18-2020-0369
<b>Amount requested:</b> \$5,000,000	<b>Appropriation Authority:</b> Sec 1 Ch 19 SLA 2018 Pg 4 Ln 27
<b>Funding source:</b> Federal Receipts (1002) Capital	<b>Statutory Authority:</b> AS 46.03

## **PURPOSE**

The Department of Environmental Conservation has been awarded a competitive grant from the U.S. Environmental Protection Agency (EPA) for the purpose of solid fuel burning appliance (SFBA) conversion or removal and expanded marketing and outreach efforts under the Targeted Air Shed grant program. This federal funding fits into a long-term plan for the State and the Fairbanks North Star Borough (FNSB), which has the highest recorded levels of fine particulate matter air pollution (PM2.5) in the nation and is classified as a serious nonattainment area by the EPA.

Wood smoke is the primary source of the PM2.5 pollution, contributing between 60% and 80% of pollution levels. Changing out older, more polluting home heating devices is an effective way to reduce air pollution. This program allows residents with solid fuel (e.g. wood, coal, etc.) burning appliances used as primary, secondary, or emergency backup heating sources to convert to oil, electric, natural gas, or propane heaters.

In order to accommodate the grant, the Department is seeking to amend an existing SLA 2018 capital appropriation by adding an additional \$5,000,000 in federal authority.

## **PREVIOUS LEGISLATIVE CONSIDERATION**

The Division of Air Quality has received two prior year capital appropriations for previous grants under this competitive grant program:

“Fairbanks PM2.5 Nonattainment Area Voluntary Heating Device Change Out Program” was awarded in the amount of \$2,477,250 and expires in 2022. Sec 1, Ch 1, TSSLA 2017, pg 4, ln 15.

“Fairbanks PM2.5 Nonattainment Area Voluntary Heating Device Change Out Program” was awarded in the amount of \$4,000,000 and expires in 2023. Sec 1, Ch 19, SLA 2018, pg 4, ln 27.

**Legislative Fiscal Analyst Comment:** All but \$116.0 of the two existing capital appropriations has been obligated.

## **TIMING ISSUES**

The Department applied for this competitive federal grant on December 31, 2018. Having been awarded funds in the last two application periods, the Division was not confident Alaska would receive the funding again, and thus did not preemptively ask for capital appropriation authority for

Agency Contact: Ruth Kostik, Administrative Services Director (907) 465-8560  
LFD Contact: Alexei Painter (907) 465-5434

FY2020. The grant has now been secured and signed by both the EPA and the Department. Work is ready to begin once capital appropriation authority is approved. If authority is not provided, the state will be unable to meet the work plan requirements of this grant and the funding will be surrendered back to the EPA unused.

*Legislative Fiscal Analyst Comment:* The grant award includes funding for the FNSB to conduct outreach to make more residents aware of the wood stove change-out program. The best time to conduct that outreach is during the winter when residents are using their wood stoves. Waiting to request the authorization until the next legislative session would limit outreach opportunities this winter, which could result in fewer wood stoves being replaced.

## BUDGETARY ISSUES

The Division of Air Quality will again partner with the Department of Commerce, Community, and Economic Development and the FNSB to run this program as detailed in the grant application.

The line item distribution of the grant is as follows. These lines should be added to the existing SLA 2018 capital appropriation for replacing solid fuel heating systems with oil, electric, natural gas, or propane heaters:

<b>Personal Services</b>	\$88,161
<b>Travel</b>	\$1,130
<b>Contractual</b>	\$4,910,709
<b>Supplies</b>	\$0
<b>Equipment</b>	\$0
<b>Grants</b>	\$0
<b>Total</b>	<b>\$5,000,000</b>

The program does not require a state contribution and does not require ongoing state costs once the funds are expended and the grant has expired. There are no new positions created with this funding.

*Legislative Fiscal Analyst Comment:* There are no technical issues with this RPL. This RPL increases the amount of an FY19 capital budget appropriation for the same purpose from \$4 million to \$9 million to reflect the new grant award.

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Cooperative Agreement</b>	<b>GRANT NUMBER (FAIN):</b> 01J66001	<b>DATE OF AWARD</b> 08/26/2019
		<b>MODIFICATION NUMBER:</b> 0	<b>MAILING DATE</b> 09/02/2019
		<b>PROGRAM CODE:</b> TA	<b>ACH#</b> X0006
		<b>TYPE OF ACTION</b> New	
<b>RECIPIENT TYPE:</b> State		<b>Send Payment Request to:</b> Las Vegas Finance Center LVFC-grants@epa.gov	
<b>RECIPIENT:</b> AK Dept of Environ Conserv 410 Willoughby Ave, Suite 303 Juneau, AK 99801-1780 <b>EIN:</b> 92-6001185		<b>PAYEE:</b> AK Dept of Environ Conserv 333 Willoughby Avenue, 11th Floor Juneau, AK 99801-1770	
<b>PROJECT MANAGER</b> Cindy Heil 555 Cordova Street Anchorage, AK 99501-2617 <b>E-Mail:</b> cindy.heil@alaska.gov <b>Phone:</b> 907-269-7579		<b>EPA PROJECT OFFICER</b> John Chi 1200 Sixth Avenue, Suite 155 Seattle, WA 98101 <b>E-Mail:</b> chi.john@epa.gov <b>Phone:</b> 206-553-1185	
		<b>EPA GRANT SPECIALIST</b> Andrea Bennett REG 10, 17-CO4 <b>E-Mail:</b> bennett.andrea@epa.gov <b>Phone:</b> 206-553-1789	
<b>PROJECT TITLE AND DESCRIPTION</b>  Fairbanks, Alaska PM-2.5 Nonattainment Area SFBA Conversion or Removal  The economics of living in a subarctic climate plays a significant role in finding a solution to reaching attainment. To help permanently reduce particulate emissions, this projects seeks to continue the existing Solid Fuel Burning Appliance (SFBA) conversion or removal program and expand marketing and outreach efforts.			
<b>BUDGET PERIOD</b> 09/01/2019 - 08/31/2024	<b>PROJECT PERIOD</b> 09/01/2019 - 08/31/2024	<b>TOTAL BUDGET PERIOD COST</b> \$5,000,000.00	<b>TOTAL PROJECT PERIOD COST</b> \$5,000,000.00
<b>NOTICE OF AWARD</b>			
Based on your Application dated 12/31/2018 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$5,000,000. EPA agrees to cost-share <u>100.00%</u> of all approved budget period costs incurred, up to and not exceeding total federal funding of \$5,000,000. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.			
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>		<b>AWARD APPROVAL OFFICE</b>	
<b>ORGANIZATION / ADDRESS</b> EPA Region 10 1200 Sixth Avenue, Suite 155 (17-C04) Seattle, WA 98101		<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 10 Air and Radiation Division 1200 Sixth Avenue, Suite 155 Seattle, WA 98101	
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>			
<b>Digital signature applied by EPA Award Official</b> PeggyD Johnson - Chief - Grants Section			<b>DATE</b> 08/26/2019

# EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 5,000,000	\$ 5,000,000
EPA In-Kind Amount	\$	\$ 0	\$ 0
Unexpended Prior Year Balance	\$	\$ 0	\$ 0
Other Federal Funds	\$	\$ 0	\$ 0
Recipient Contribution	\$	\$ 0	\$ 0
State Contribution	\$	\$ 0	\$ 0
Local Contribution	\$	\$ 0	\$ 0
Other Contribution	\$	\$ 0	\$ 0
<b>Allowable Project Cost</b>	<b>\$ 0</b>	<b>\$ 5,000,000</b>	<b>\$ 5,000,000</b>

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.956 - Targeted Air Sheds Grant Program	Consolidated Appropriations Act of 2018 (P.L. 115-141)	2 CFR 200 2 CFR 1500 40 CFR 33 and 40 CFR 35 Subpart A

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	1910BDG160	18	E4	10B1	000AJ9	4183			5,000,000
									5,000,000

## Budget Summary Page

<b>Table A - Object Class Category (Non-construction)</b>	<b>Total Approved Allowable Budget Period Cost</b>
<b>1. Personnel</b>	\$55,402
<b>2. Fringe Benefits</b>	\$32,759
<b>3. Travel</b>	\$1,130
<b>4. Equipment</b>	\$0
<b>5. Supplies</b>	\$0
<b>6. Contractual</b>	\$0
<b>7. Construction</b>	\$0
<b>8. Other</b>	\$4,889,929
<b>9. Total Direct Charges</b>	\$4,979,220
<b>10. Indirect Costs: % Base</b>	\$20,780
<b>11. Total (Share: Recipient 0.00 % Federal 100.00 %.)</b>	\$5,000,000
<b>12. Total Approved Assistance Amount</b>	\$5,000,000
<b>13. Program Income</b>	\$0
<b>14. Total EPA Amount Awarded This Action</b>	\$5,000,000
<b>15. Total EPA Amount Awarded To Date</b>	\$5,000,000

## **Administrative Conditions**

### **1. Standard Administrative Terms and Conditions**

#### **General Terms and Conditions**

The recipient agrees to comply with the current EPA general terms and conditions available at: <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2018>

These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award.

The EPA repository for the general terms and conditions by year can be found at <http://www.epa.gov/grants/grant-terms-and-conditions>.

#### **A. Correspondence Condition**

The terms and conditions of this agreement require the submittal of reports, specific requests for approval, or notifications to EPA. Unless otherwise noted, all such correspondence should be sent to the following email addresses:

- Federal Financial Reports (SF-425): [LVFC-grants@epa.gov](mailto:LVFC-grants@epa.gov)
- MBE/WBE reports (EPA Form 5700-52A): [bennett.andrea@epa.gov](mailto:bennett.andrea@epa.gov)
- All other forms/certifications/assurances, Indirect Cost Rate Agreements, updates to recipient information (including email addresses, changes in contact information or changes in authorized representatives) and other notifications: [wasson.wendy@epa.gov](mailto:wasson.wendy@epa.gov)
- Quality Assurance documents, workplan revisions, equipment lists, programmatic reports and deliverables: [chi.john@epa.gov](mailto:chi.john@epa.gov)
- Administrative questions: [bennett.andrea@epa.gov](mailto:bennett.andrea@epa.gov)

#### **B. Extension of Project/Budget Period Expiration Date**

EPA has not exercised the waiver option to allow automatic one-time extensions for non-research grants under 2 CFR 200.308 (d)(2). Therefore, if a no-cost time extension is necessary to extend the period of availability of funds the recipient must submit a written request to the EPA prior to the budget/project period expiration dates. **The written request must include:** a justification describing the need for additional time, an estimated date of completion, and a revised schedule for project completion including updated milestone target dates for the approved workplan activities. In addition, if there are overdue reports required by the general, administrative, and/or programmatic terms and conditions of this assistance agreement, the recipient must ensure that they are submitted along with or prior to submitting the no-cost time extension request.

#### **C. Disadvantages Business Enterprise (DBEs)**

##### **UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MBE/WBE)**

##### **GENERAL COMPLIANCE, 40 CFR, Part 33**

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33.

##### **MBE/WBE REPORTING, 40 CFR, Part 33, Subpart E**

Reporting is required for assistance agreements where there are funds budgeted for procuring construction, equipment, services and supplies, including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the "Other" category that exceed the threshold amount of \$250,000., including amendments and/or modifications. The recipient agrees to complete and submit a "MBE/WBE Utilization Under Federal Grants and Cooperative Agreements" report (EPA Form 5700-52A) on an annual basis. The current EPA Form 5700-52A can be found here: [https://www.epa.gov/sites/production/files/documents/5700-52a\\_updated.pdf](https://www.epa.gov/sites/production/files/documents/5700-52a_updated.pdf) or at the EPA Office of Small and Disadvantaged Business Utilization's Home Page at <https://www.epa.gov/resources-small-businesses>

**Based on EPA's review of the planned budget, this award meets the conditions above and is subject to the Disadvantaged Business Enterprise (DBE) Program reporting requirements.**

However, if recipient believes this award does not meet these conditions, the recipient must provide a justification and budget detail within 21 days of the award date clearly demonstrating that, based on the

planned budget, this award is not subject to the DBE reporting requirements to the Region 10 DBE Coordinator. All procurement actions are reportable, not just that portion which exceeds \$250,000. When completing the annual report, recipients are instructed to check the box titled "annual" in section 1B of the form. For the final report, recipients are instructed to check the box indicated for the "last report" of the project in section 1B of the form. Annual reports are due by October 30th of each year. Final reports are due by October 30th or 90 days after the end of the project period, whichever comes first. The reporting requirement is based on total procurements. Recipients with expended and/or budgeted funds for procurement are required to report annually whether the planned procurements take place during the reporting period or not. If no budgeted procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form. This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR, Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in effect, including the Good Faith Effort requirements as described in 40 CFR Part 33 Subpart C, and Fair Share Objectives negotiation as described in 40 CFR Part 33 Subpart D. Visit this [link](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr33_main_02.tpl) for more information on 40 CFR Part 33: [https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr33\\_main\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr33_main_02.tpl)

### **SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C**

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

### **NATIVE AMERICAN PROVISIONS, 40 CFR, Section 33.304**

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.304. Any recipient, whether or not Native American, of an EPA financial assistance agreement for the benefit of Native Americans, is required to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. If the efforts to solicit and recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts.

### **CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302**

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

### **BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)**

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

### **FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D**

1. For Grant Awards \$250,000 or Less

This assistance agreement is a Technical Assistance Grant (TAG); or the award amount is \$250,000 or

less; or the total dollar amount of all of the recipient's financial assistance agreements from EPA in the current Federal fiscal year is \$250,000 or less. Therefore, the recipient of this assistance agreement is exempt from the fair share objective requirements of 40 CFR, Part 33, Subpart D, and is not required to negotiate fair share objectives/goals for the utilization of MBE/WBEs in its procurements.

## 2. For Recipients Accepting Goals

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements. In accordance with 40 CFR, Section 33.411 some recipients may be exempt from the fair share objectives requirements as described in 40 CFR, Part 33, Subpart D. Recipients should work with their DBE coordinator, if they think their organization may qualify for an exemption. Accepting the Fair Share Objectives/Goals of Another Recipient - The dollar amount of this assistance agreement, or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000, or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA. The Region 10 fair share objectives/goals can be found:

[http://www.epa.gov/osbp/pdfs/r10\\_fair\\_share\\_goals.pdf](http://www.epa.gov/osbp/pdfs/r10_fair_share_goals.pdf)

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market. Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404 - The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment. The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is not accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

## 3. For Recipients with Established Goals

The recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements. In accordance with 40 CFR, Section 33.411 some recipients may be exempt from the fair share objectives requirements described in 40 CFR, Part 33, Subpart D. Recipients should work with their DBE coordinator, if they think their organization may qualify for an exemption. Current Fair Share Objective/Goal - The dollar amount of this assistance agreement or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000, or more. The Region 10 fair share objectives/goals can be found:

[http://www.epa.gov/osbp/pdfs/r10\\_fair\\_share\\_goals.pdf](http://www.epa.gov/osbp/pdfs/r10_fair_share_goals.pdf)

Negotiating Fair Share Objectives/Goals - In accordance with 40 CFR, Part 33, Subpart D, established goals/objectives remain in effect for three fiscal years unless there are significant changes to the data supporting the fair share objectives. The recipient is required to follow requirements as outlined in 40 CFR Part 33, Subpart D when renegotiating the fair share objectives/goals.

## **D. INTERGOVERNMENTAL REVIEW PERIOD (IF APPLICABLE)**

In accordance with 40 CFR Part 29, EPA must allow for an intergovernmental review comment period on this grant program. Accordingly, the Grantee may incur costs at its own risk but shall not draw down any funds associated with this award until the process is completed.

## **E. Pre-Award Costs**

In accordance with 2 CFR 1500.8, the grantee may charge otherwise allowable pre-award costs (both Federal and non-Federal matching shares) incurred from budget start date to the actual award date provided that such costs were contained in the approved application and all costs are incurred within the approved budget period.

## **F. Interim Federal Financial Reports (FFRs) (also listed in General Terms and Conditions)**

Pursuant to 2 CFR 200.327, EPA recipients shall submit an interim annual Federal Financial Report

(SF-425) to EPA no later than 90 calendar days following the anniversary of the start date of the agreement. The FFR must be emailed to [LVFC-grants@epa.gov](mailto:LVFC-grants@epa.gov). A courtesy copy of the interim FFR can be submitted to the local Grants Office via email to: [bennett.andrea@epa.gov](mailto:bennett.andrea@epa.gov) All email attachments must be sent in pdf format. Documents emailed to us in any other format will not be accepted. EPA may take enforcement actions in accordance with 2 CFR 200.338 if the recipient does not comply with this term and condition.

#### **G. Closeout (also listed in General Terms and Conditions)**

The Administrative Closeout Phase for this grant will be initiated with the submission of a "final" FFR, in accordance with 2 CFR 200.343. At that time, the recipient must submit the following forms/reports to EPA if applicable:

- Federally Owned Property Report
- An Inventory of all Property Acquired with federal funds
- Contractor's or Grantee's Invention Disclosure Report (EPA Form 3340-3)

Visit this link for submission requirements and frequently asked questions:

<https://www.epa.gov/grants/frequent-questions-about-closeouts>

#### **H. Indirect Costs for States and Tribal (also listed in General Terms and Conditions)**

The cost principles of 2 CFR 200 Subpart E are applicable, as appropriate, to this award.

In addition to the General Terms and Conditions "Indirect Cost Rate Agreements", if the recipient does not have a previously established indirect cost rate, it agrees to prepare and submit its indirect cost rate proposal in accordance with 2 CFR 200 Appendix VII.

#### **For State Agencies**

The recipient must send its proposal to its cognizant federal agency within six (6) months after the close of the governmental unit's fiscal year. If EPA is the cognizant federal agency, the state recipient must send its indirect cost rate proposal within six (6) months after the close of the governmental unit's fiscal year to:

##### Regular Mail

Financial Analysis and Rate Negotiation Service Center  
Office of Acquisition Management  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW, MC 3802R  
Washington, DC 20460

##### Mail Courier (e.g. FedEx, UPS, etc.)

Financial Analysis and Rate Negotiation Service Center  
Office of Acquisition Management  
US Environmental Protection Agency  
1300 Pennsylvania Avenue, NW, 6th floor  
Bid and Proposal Room Number 61107  
Washington, DC 20004

#### **For Indian Tribe**

If the recipient does not have a previously established indirect cost rate, the recipient must submit their indirect cost rate proposals to:

National Business Center  
Indirect Cost Services  
U.S. Department of the Interior  
2180 Harvard Street, Suite 430  
Sacramento, CA 95815-3317

The recipient agrees to comply with the audit requirements in accordance with 2 CFR 200 Subpart F.

#### **I. Pre-Award Costs (2 CFR 200.209 and 200.458; 2 CFR 1500.8)**

Pre-award costs have been approved in accordance with the recipient's application.

### **Programmatic Conditions**

#### **Wood-Burning Appliances Targeted Air Shed FY2018 Programmatic Terms and Conditions (NOTE: FY18 TAG awards are being awarded in FY19/20)**

The Recipient must meet the 2018 Targeted Air Shed grant requirements in the Request for Applications (RFA) [epa.gov/grants/2018-targeted-air-shed-grant-program-closed-announcement-fy-2019](http://epa.gov/grants/2018-targeted-air-shed-grant-program-closed-announcement-fy-2019).

Recipient shall consult the EPA Project Officer regarding whether a budget or work plan revision constitutes a change in the scope or the objective of the project or program.

#### **Standard Programmatic Terms and Conditions**

(Additional targeted airshed terms and conditions begin on page 13)

#### **A. PERFORMANCE REPORTING AND FINAL PERFORMANCE REPORT**

##### **A.1. Performance Reports – Content**

In accordance with 2 CFR 200.328, the recipient agrees to submit performance reports that include brief information on each of the following areas: 1) A comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period; 2) The reasons why established outputs/outcomes were not met; and 3) Additional pertinent information, including, when appropriate, analysis and explanation of cost overruns or high-unit costs.

Additionally, the recipient agrees to inform EPA as soon as problems, delays, or adverse conditions which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan are known.

##### **A.2. Performance Reporting Frequency.**

###### **Quarterly Reporting and Environmental Results:**

Quarterly progress reports will be required. Quarterly reports are considered project status reports and will address the progress made achieving the work plan goals. A template for the quarterly reports will be provided by the Project Officer. In general, quarterly reports will include summary information on technical progress and expenditures, and planned activities for next quarter. The total number of old scrapped and funded new, cleaner burning appliances providing heat must be included in the quarterly report, including a tracking sheet providing information on each old scrapped and new funded burning appliance.

Quarterly reports are due according to the following schedule:

- Oct. 1 - Dec. 31; Reporting Period: report due January 31;
- Jan. 1 - March 31; Reporting Period: report due April 30;
- April 1 - June 30; Reporting Period: report due July 31; and
- July 1 - Sep. 30; Reporting Period: report due Oct. 31. This quarterly reporting schedule shall be repeated for the duration of the award agreement.

**A.2.1. Subaward Reporting Requirement:** If the recipient chooses to pass funds from this assistance agreement to other entities, the recipient must comply with applicable provisions of 2 CFR Part 200 and the EPA Subaward Policy, which may be found at: [epa.gov/grants/EPA-subaward-policy](http://epa.gov/grants/EPA-subaward-policy). If applicable, the recipient must report on its subaward monitoring activities under 2 CFR 200.331(d). Examples of items that must be reported if the pass-through entity has the information available are:

- A.2.1.1. Summaries of results of reviews of financial and programmatic reports.
- A.2.1.2. Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance.
- A.2.1.3. Environmental results the subrecipient achieved.
- A.2.1.4. Summaries of audit findings and related pass-through entity management decisions.
- A.2.1.5. Actions the pass-through entity has taken to correct deficiencies such as those specified

at 2 CFR 200.331(e), 2 CFR 200.207 and the 2 CFR Part 200.338 Remedies for Noncompliance.

### **A.3. Final Report:**

A final report will be required. A template for the final report will be provided by the Project Officer. The final project report will include all categories of information required for quarterly reporting. The total number of old scrapped and funded new, cleaner burning appliances providing heat must be included in the quarterly report. The final project report will also include, among other possible requirements:

- A narrative summary of the project or activity.
- Project results (outputs and outcomes) including:
  - o A list of all the appliances providing heat changed out, including: the name of the participant; address; type of appliance replaced (e.g., uncertified wood stove); and new appliance (e.g., EPA-certified wood stove) installed. Required documentation, including photographs and records, as listed in the Scrappage Section E.5 below.
  - o Final emissions benefit calculations for all the activities undertaken by the recipient utilizing funds. To the extent possible, final emission benefit calculations should be based on the actual number and type of appliances replaced and actual amount of wet wood diverted from being burned. The final report will include a detailed explanation of how these values are derived, as well as any assumptions or default values used, for the purposes of emissions benefit calculations. The final report will also detail the methodologies used for the emission benefit calculation.
  - o To the extent possible, qualitative health benefits achieved, which can be measured by the type of illnesses prevented, health care costs, missed work/school days avoided or reduced mortality from air pollution.
- If any cost-share or additional leveraged funds were reported, identifying the source of funds.
- If any program income was generated, identifying the amount of program income, how it was generated, and how the program income was used.
- A description of how the project or activities contributed towards compliance with the State Implementation Plan and/or National Ambient Air Quality Standards.
- A discussion of the problems, successes, and lessons learned – including feedback received from project participants — from the entire project or activity that could help overcome structural, organizational or technical obstacles to implementing a similar project elsewhere.

The final report shall be submitted to the EPA Project Officer within 90 days after the project period end date or termination of the assistance agreement.

**A.3.1. Subaward Reporting Requirement:** If the recipient chooses to pass funds from this assistance agreement to other entities, the recipient must comply with applicable provisions of 2 CFR Part 200 and the EPA Subaward Policy, which may be found at: [epa.gov/grants/epa-subaward-policy](http://epa.gov/grants/epa-subaward-policy). If applicable, the recipient must report on its subaward monitoring activities under 2 CFR 200.331(d). Examples of items that must be reported if the pass-through entity has the information available are:

- A.3.1.1. Summaries of results of reviews of financial and programmatic reports.
- A.3.1.2. Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance.
- A.3.1.3. Environmental results the subrecipient achieved.
- A.3.1.4. Summaries of audit findings and related pass-through entity management decisions.
- A.3.1.5. Actions the pass-through entity has taken to correct deficiencies such as those specified at 2 CFR 200.331(e), 2 CFR 200.207 and the 2 CFR Part 200.338 Remedies for Noncompliance.

## **B. Cybersecurity Condition**

### **B.1. State Grant Cybersecurity**

- (a) The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all applicable State law cybersecurity requirements.
- (b) (1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure.

For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

(2) The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.331(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

### **Targeted Airshed-Specific Terms & Conditions**

#### **C. Substantial Federal Involvement for Cooperative Agreements:**

EPA will provide substantial involvement in the form of technical assistance, development of outputs, and oversight. Specifically, substantial federal involvement will take the form of monitoring the recipient's project by EPA, participation and collaboration between EPA and the recipient in program content, review of project progress, and quantification and reporting of results.

#### **D. Applicable Appliances Providing Heat:**

The term appliance or equipment applies to appliances that provide heat. Recipient agrees that funds under this award will be used to repair or replace inefficient, higher-polluting appliances with cleaner appliances consistent with the EPA-approved workplan or in consultation with EPA and approved by EPA in writing. Inefficient, higher-polluting appliances include, but are not limited to: wood stoves, open-hearth fireplaces, coal stoves, and pellet stoves. Cleaner appliances include, but are not limited to: EPA-certified wood-burning appliances, EPA-certified pellet appliances, certified masonry heaters, oil appliances, electric appliances (such as heat pumps), propane heaters, and natural gas appliances. Any question as to the eligibility of equipment repair or replacement should be directed to the EPA Project Officer. Significant technology changes may not be allowed after a final workplan has been approved without prior written approval of the EPA Project Officer. If technology compatibility issues arise, EPA may elect to terminate the cooperative agreement, at which time unobligated assistance funds must be returned to EPA.

#### **E. Use of Funds Restriction for Appliances Providing Heat:**

E.1. Appliance Replacement: Appliances must be repaired or replaced in the following manner:

E.1.1. An old non-certified wood, coal or pellet appliance must be replaced with a cleaner appliance consistent with the EPA-approved workplan or in consultation with EPA and approved by EPA in writing. Cleaner devices include but are not limited to: EPA-certified wood-burning appliance, EPA-certified pellet appliance, certified masonry heaters, oil appliance, electric appliance (such as a heat pump), propane heater, or natural gas appliance. A wood stove or pellet appliance must be EPA-certified to be considered a cleaner device.

E.1.2. An old EPA-certified wood appliance may not be repaired or replaced with a wood-burning stove or fireplace insert, unless the old EPA-certified wood appliance is twenty years old, or older. A newer, less than 20-years old, EPA-certified wood stove that is in poor condition with extreme disrepair may be replaced or repaired with an EPA-certified pellet stove or other cleaner appliance, consistent with the EPA-approved workplan or in consultation with EPA and approved by the EPA Project Officer in writing.

E.1.3. A pellet appliance may not be replaced with a wood stove or wood-burning fireplace insert. An old uncertified pellet appliance can only be replaced with a new EPA-certified pellet appliance, oil appliance, electric appliance, propane heater, natural gas appliance, or other cleaner appliance consistent with the EPA-approved workplan or in consultation with EPA and approved by the EPA Project Officer in writing.

E.1.4. An open-hearth fireplace may be retrofitted with an EPA-qualified fireplace retrofit device or cleaner appliance (e.g., an EPA-certified pellet insert, gas or electric appliance) consistent with the EPA-approved

workplan or in consultation with EPA and approved by EPA in writing. An open-hearth fireplace may be retrofitted with an EPA-certified wood stove only in circumstances where it can be demonstrated, documented or attested that the fireplace has been used as a primary or significant source of heat, which must include the homeowner demonstrating their primary source of heat is wood; the homeowner documenting their utility bill that demonstrates they are using minimal amounts of gas; and/or the homeowner attesting that they are burning more than one cord of wood per year.

E.1.5. New certified wood or pellet devices must be identified on the current list of EPA Certified Wood Heaters to be eligible for replacement:

<https://www.epa.gov/compliance/epa-certified-wood-heater-database> or approved prior in writing by the EPA Project Officer.

E.1.6. Gas stoves, gas inserts, gas fireplaces or devices with a gas log are not eligible for replacement through this program. Gas fireplaces and appliances that are used exclusively for aesthetic or decorative use are not eligible as a replacement appliance under this program, unless approved by EPA in the workplan or in writing by the EPA Project Officer. The recipient agrees that the replacement appliance must meet heating needs and will perform the same function and operation as the appliance that is being replaced.

E.1.7. Recipients may provide funding incentives for an emergency backup power supply when a project participant is upgrading from an uncertified wood stove or one that is older than 20-years to a cleaner technology that may require electricity or backup power supply, including but not limited to a pellet stove or ductless heat pump.

E.1.8. The recipient can choose to provide additional incentive funding for cleaner and more efficient appliances.

E.2. Installation: New appliance installation must be conducted by a certified or licensed professional (e.g., National Fireplace Institute, Chimney Safety Institute of America, or equivalent) or under the approval and supervision of a certified installer. Self-installation or installation by non-licensed contractors is not eligible for funding.

E.3. Location: The funded project must be located in the recipients' respective air pollution nonattainment area, Fairbanks, Alaska as listed in the RFA. The project or activity must remain in this nonattainment area for the entire life of this project.

E.4. Scrappage/Rendering Inoperable: All of the old appliances must be taken to a licensed dismantler/recycler for permanent destruction or rendering the appliance inoperable in order to ensure that the emissions reduced are real and permanent. The old appliance must be delivered to the licensed dismantler/recycler by the retailer or by the applicant within 90 days of replacement. If the applicant undertakes the responsibility of submitting the old appliance to the licensed dismantler/recycler, the applicant must submit documentation and proof, including certification from the dismantler/recycler that the appliance will be destroyed and a dated receipt from the dismantler/recycler with the applicant's claim for incentive funding disbursement. If the retailer or implementing agency undertakes the responsibility of submitting the old appliance to the licensed dismantler/recycler, the retailer or implementing agency must obtain and retain the following documentation as documentation and proof of submittal:

E.4.1. Certification from the dismantler/recycler that the appliance was destroyed, which includes a form signed by the retailer (or implementing agency) and the recycler indicating that the stove has been either destroyed and/or rendered inoperable (e.g., hinges crushed, cut off, multiple holes drilled into the stove, or stove crushed or deformed).

E.4.2. Dated receipt from the dismantler/recycler for the old appliance submitted.

E.4.3. Clear, color separate photographs of the following for every appliance, all of which must be included in the final report: 1) photograph(s) of the old appliance installed in the home; 2) photograph(s) of the newly installed appliance; and 3) photograph(s) of the stove rendered inoperable (e.g., hinges crushed or cut off, holes drilled in to the stove). If rendering of the stove inoperable is done by another method e.g., placed in bulk container and then into a bulk shredder or crushing machine then taking a photo of the bulk container with the stoves along with the equipment used to destroy the stove will suffice. The date and number of stove and which stoves were part of that batch should be documented. See below for requirements for other acceptable scrappage methods.

E.4.4. Records that include the following to be included in the Final Report (as listed in Section A.3. above): project number with name of the participant and home address where the appliance is located; type of old appliance replaced (e.g., uncertified wood stove) and new appliance (e.g., EPA-certified wood stove) installed; documentation photograph(s) of the old appliance installed in the home; separate documentation photograph(s) of the new appliance installed in the home; receipt for the new appliance; separate documentation photograph(s) of the method of destruction or rendering the appliance inoperable (i.e., bulk shredder, crushing machine); to the extent possible, separate documentation photograph(s) that the old appliance that has been destroyed or rendered inoperable, or documentation photograph(s) that the old appliance will be destroyed (i.e., located in a bin to be delivered to the bulk shredder or crushing machine); and properly signed certification/verification of destruction form for the old appliance.

E.4.5. Such documentation and proof is required and must be available should it be requested. Other acceptable scrapage methods may be considered and will require prior written approval by the Project Officer. If the old appliance is scrapped and components are to be sold, program income requirements apply (see below for more information).

E.5. Priority of Determining Appliance Replacements: The recipient agrees that funds under this award will ensure priority is first given to existing appliances used as a primary or significant source of heat, or will utilize a prioritization system that is designed to maximize emissions reductions and/or air quality benefit, as documented in the EPA-approved workplan or in consultation with EPA and approved by the EPA Project Officer in writing.

E.6. Owner/Tenant Agreement: The recipient agrees that funds under this award will encourage residential unit owners and tenants interested in participating in an appliance replacement to both cooperate and work together. Both the home owner and tenant must agree to allow the necessary inspections, estimates, installation, permitting and follow-up activities in the unit. The owner shall not: raise the rent of the unit; pass any costs to the renter; or evict the resident because of increased value of the unit due solely to the newly installed appliance. The tenant shall not take possession of the appliance upon vacating the property; the appliance must stay with the property and belongs to the owner.

**F. Delays or Favorable Developments:**

The recipient agrees that it will promptly notify the EPA Project Officer of any problems, delays, or adverse conditions which may materially impair its ability to deliver on the outputs/outcomes specified in the work plan. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation. The recipient agrees that it will also notify the EPA Project Officer of any favorable developments which may enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

**G. Employee and/or Contractor Selection:**

EPA will not help select employees or contractors hired by the recipient.

**H. Procurement Procedures:**

The recipient must follow applicable procurement and sub-grant procedures. EPA will not be a party to these transactions. If EPA funds are used to purchase goods or services, recipient agrees to compete the contracts for those goods and services and conduct cost and price analyses to the extent required by the fair and open competition for procurement provisions of 2 CFR §200.317 – .326. Approval of a funding proposal does not relieve recipients of their obligations to compete service contracts, conduct cost and price analyses and use sub-grants only for financial assistance purposes.

**I. For-Profit Sub-recipients:**

In addition to the EPA General Term and Condition “Establishing and Managing Subawards”, the recipient (i.e. “pass-through entity”) agrees to require that for-profit subrecipients comply with Subparts A through F of the Uniform Grant Guidance (2 CFR Part 200) and the Federal cost principles applicable to for-profit entities located at 48 CFR Part 31, with the exception of the method of payment to for-profit subrecipients must be “reimbursement” rather than “advance”. Pass-through entities must obtain documentation that the for-profit subrecipient has incurred eligible and allowable costs prior to releasing EPA funds to the subrecipient.

**J. Competency Policy**

**Competency of Organizations Generating Environmental Measurement Data**

In accordance with Agency Policy Directive Number FEM-2012-02, Policy to Assure the Competency of

Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements. Recipient agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable, Recipient agrees to demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data. Recipient shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at <https://www.epa.gov/sites/production/files/2015-03/documents/competency-policy-aaia-new.pdf> or a copy may also be requested by contacting the EPA Project Officer for this award.

#### **K. Public or Media Events**

The Recipient agrees to notify the EPA Project Officer listed in this award document of public or media events publicizing the accomplishment of significant events related to projects resulting from this agreement and provide the opportunity for attendance and participation by federal representatives with at least fifteen (15) working days' notice.

#### **L. EPASS Security**

In accordance with Homeland Security Presidential Directive-12 (HSPD-12), "Policy for a Common Identification Standard of Federal Employees and Contractors;" Executive Order 13467, "Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information;" and Executive Order 13488, "Granting Reciprocity on Excepted Service and Federal Contractor Employee Fitness and Reinvestigating Individuals in Positions of Public Trust," the recipient agrees to follow instructions from the EPA project officer to ensure compliance with the EPA Personnel Access and Security System (EPASS).

Prior to beginning work at an EPA facility, the recipient, or its employees or program participants, must complete either:

- A. A favorable fingerprint check for recipients (and their employees or program participants) who require six (6) months or less of unescorted physical access to EPA facilities; or
- B. A favorable background investigation and fingerprint check for recipients (and their employees or program participants) who require more than six (6) months of unescorted physical access to EPA facilities.

Recipients, their employees, or program participants may not be permitted access to EPA facilities until meeting these requirements.

Recipients may initiate the appropriate check through the following link: <https://cdx.epa.gov>

Failure of a recipient, their employees, or program participants to receive a favorable fingerprint or background check, whichever is applicable, shall result in the termination of the recipient, the employees, or program participants from continued enrollment in the program.

#### **M. Program Income**

In accordance with 2 CFR Part 200.307(e)(2) and 2 CFR 1500.7(b), the recipient is hereby authorized to retain program income earned during the project period.

The program income shall be used in one of the following ways:

1. Added to funds committed to the project by EPA and used for the purposes and under the conditions of the assistance agreement.
2. Used to finance the non-Federal share of the project or program.
3. Deducted from total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

The recipient must provide as part of its Quarterly report, a description of how program income is being used. Further, a report on the amount of program income earned during the award period must be submitted with the Quarterly Federal Financial Report, Standard Form 425.

#### **N. Paperwork Reduction Act**

The scope of work for this cooperative agreement includes a survey or other information collection of identical information from 10 or more parties. As provided by 5 CFR 1320.3(d), EPA is a sponsor of the information collection for purposes of obtaining approval from the Office of Management and Budget for

collecting information. The recipient agrees to assist EPA in complying with OMB procedures at 5 CFR Part 1320 for obtaining Information Collection Request authorization. The recipient may not collect information until EPA obtains OMB approval.

**END OF DOCUMENT**

**Department of Education and Early Development  
Education Support and Administrative Services  
Student and School Achievement**

<b>Subject of RPL:</b> Alaska Comprehensive Literacy State Development Program	<b>ADN/RPL #:</b> 05-2020-0045
<b>Amount requested:</b> \$6,507,695	<b>Appropriation Authority:</b> Sec1 Ch1 FSSLA 2019 Pg 11 Ln 11
<b>Funding source:</b> Federal Receipts (1002) Operating	<b>Statutory Authority:</b> AS 14.30.335; AS 14.50.030 AS 14.50.080

## **PURPOSE**

The Department of Education and Early Development (DEED) is requesting \$6,507,695 in Federal receipt authority to receive a new Federal grant for the Alaska Comprehensive Literacy State Development Program. The grant funds for this project will be awarded as competitive sub-grants to local agencies to advance literacy skills, pre-literacy skills, reading, and writing for children from birth through grade 12 with a focus on economically disadvantaged children. This project aligns with Alaska's Education Challenge by providing opportunities to reduce the education gap, increase early literacy, as well as increase graduation rates.

Alaska's Education Challenge initiative is a primary focus for the Department, this grant funding directly supports several goals of the Challenge including all students reading at grade level by the end of third grade, closing the achievement gap, and increasing graduation rates. The increase of Federal authority is necessary to ensure funding of these efforts.

## **PREVIOUS LEGISLATIVE CONSIDERATION**

There was no previous legislative consideration for this grant.

*Legislative Fiscal Analyst Comment:* Although the legislature did not review this specific grant, the Alaska Comprehensive Literacy State Development Program aligns with the agency's statutory responsibilities regarding maximization of federal funding to improve educational outcomes. Approval would increase the FY20 Enacted federal receipts budget within this allocation from \$155,720.2 to \$162,227.9.

## **TIMING ISSUES**

In March 2019, after the FY2020 budget submission, DEED applied for a five-year Comprehensive Literacy State Development Program grant through the U.S. Department of Education (USDOE) to further meet Alaska's Education Challenge. In September 2019, the Department was awarded the grant effective October 1, 2019. The total amount awarded for Federal FY2020 is \$6,507,695, followed by \$3,945,933 annually through Federal FY2024.

The Department did not anticipate this grant availability during the FY2020 budget development period and does not have adequate Federal receipt authority to collect and expend this award. In support of Alaska's Education Challenge, the Department sought out this grant to advance literacy, reading, and writing skills to children from birth to grade 12 in Alaska, specifically children living in poverty, English learners, and children with disabilities.

Agency Contact: Neil Steininger, Administrative Services Director (907) 465-8721  
LFD Contact: Michael Partlow (907) 465-5435

**BUDGETARY ISSUES**

There is no general fund match required for this grant award. Below is a table showing the estimated line item distribution for FY2020:

1000 – Personal Services	\$121,147.00
2000 – Travel	\$5,000.00
3000 – Services	\$50,000.00
4000 – Commodities	\$6,500.00
7000 – Grants	\$4,765,000.00

*Legislative Fiscal Analyst Comment:* Although the department has lapsed federal funding in this appropriation during the last several fiscal years, “excess” federal authorization is essential due to the characteristics of overlapping annual grants that allow grant money to be spent over a 27-month period.

The department does not have control over when recipients of the federal pass-through grants draw federal funds through the department. This situation requires the department to encumber large amounts of federal authority each year to cover potential expenditures. The requested additional authority will allow the department to accept available federal funding and obligate those funds for grants to school districts.

This additional grant funding will require staff time for coordination of the program and granting awards to school districts. The department is currently reviewing options to either create full-time positions, non-permanent positions, or contract out for the coordination work.

No general funds are required. There are no technical issues with this RPL.

S371C190025 - 19A

Deborah Riddle

Alaska Department of Educaiton & Early Development

801 West 10th Street, Suite 200

801 West 10th Street, Suite 20

Juneau, AK 99811 - 0571

S371C190025 - 19A

Michael Johnson  
Alaska Department of Educaiton & Early Development  
801 West 10th Street, Suite 200  
Juneau, AK 99811 - 0571



**US Department of Education  
Washington, D.C. 20202**

S371C190025 - 19A

**GRANT AWARD NOTIFICATION**

<b>1</b>	<b>RECIPIENT NAME</b>  Alaska Department of Educaiton & Early Development 801 West 10th Street, Suite 200 Juneau, AK 99811 - 0571	<b>2</b>	<b>AWARD INFORMATION</b>  PR/AWARD NUMBER      S371C190025 - 19A ACTION NUMBER        2 ACTION TYPE            Revision AWARD TYPE            Discretionary (Research and Development)																			
<b>3</b>	<b>PROJECT STAFF</b>  <b>RECIPIENT PROJECT DIRECTOR</b> Deborah Riddle                    (907) 465-2892 <a href="mailto:deborah.riddle@alaska.gov">deborah.riddle@alaska.gov</a> <b>EDUCATION PROGRAM CONTACT</b> Cindy S Savage                    (202) 453-5998 <a href="mailto:cindy.savage@ed.gov">cindy.savage@ed.gov</a> <b>EDUCATION PAYMENT HOTLINE</b> G5 PAYEE HELPDESK      888-336-8930 <a href="mailto:edcaps.user@ed.gov">edcaps.user@ed.gov</a>	<b>4</b>	<b>PROJECT TITLE</b>  84.371C Alaska Comprehensive Literacy State Development Program Grant Proposal																			
<b>5</b>	<b>KEY PERSONNEL</b>  <table border="0"> <thead> <tr> <th><u>NAME</u></th> <th><u>TITLE</u></th> <th><u>LEVEL OF EFFORT</u></th> </tr> </thead> <tbody> <tr> <td>Deborah Riddle</td> <td>Project Director</td> <td>0 %</td> </tr> </tbody> </table>			<u>NAME</u>	<u>TITLE</u>	<u>LEVEL OF EFFORT</u>	Deborah Riddle	Project Director	0 %													
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<b>7</b>	<b>AUTHORIZED FUNDING</b>  <table border="0"> <tr> <td>THIS ACTION</td> <td>\$1,552,459.00</td> </tr> <tr> <td>BUDGET PERIOD</td> <td>\$6,507,695.00</td> </tr> <tr> <td>PERFORMANCE PERIOD</td> <td>\$6,507,695.00</td> </tr> </table>			THIS ACTION	\$1,552,459.00	BUDGET PERIOD	\$6,507,695.00	PERFORMANCE PERIOD	\$6,507,695.00													
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US Department of Education
Washington, D.C. 20202

S371C190025 - 19A

GRANT AWARD NOTIFICATION

CFDA/SUBPROGRAM NO: 84.371C

Table with 10 columns: FUND CODE, FUNDING YEAR, AWARD YEAR, ORG. CODE, CATEGORY, LIMITATION, ACTIVITY, CFDA, OBJECT CLASS, AMOUNT. It contains two rows of funding data.

10

PR/AWARD NUMBER: S371C190025 - 19A
RECIPIENT NAME: Alaska Department of Educaiton & Early Development
GRANTEE NAME: EDUCATION AND EARLY DEVELOPMENT, ALASKA DEPARTMENT OF
801 W 10TH ST STE 200,
JUNEAU, AK 99801 - 1878
PROGRAM INDIRECT COST TYPE: Restricted
PROJECT INDIRECT COST RATE: 3.8%

TERMS AND CONDITIONS

- (1) THIS ACTION INCREASES THE AMOUNT OF FUNDS AUTHORIZED FOR THE CURRENT BUDGET PERIOD AND PERFORMANCE PERIOD AS SHOWN IN BLOCK 7.
(2) The Department is frontloading a portion of the recommended Year 2 continuation funds for this grant. The grantee may not draw down the frontloaded funds until the start of second budget period. In addition, the grantee may not draw down funds for Year 2 until an Annual Performance Report (APR) for Year 1 has been submitted, and the Department has reviewed and accepted the APR and determined that substantial progress has been made.

AUTHORIZING OFFICIAL

DATE

## EXPLANATION OF BLOCKS ON THE GRANT AWARD NOTIFICATION

**For Discretionary, Formula and Block Grants** (See Block 2 of the Notification)

- 1. RECIPIENT NAME** - The legal name of the recipient or name of the primary organizational unit that was identified in the application, state plan or other documents required to be submitted for funding by the grant program.
- 2. AWARD INFORMATION** - Unique items of information that identify this notification.
  - PR/AWARD NUMBER** - A unique, identifying number assigned by the Department to each application. On funded applications, this is commonly known as the "grant number" or "document number." The PR/Award Number is also known as the Federal Award Identifying Number, or FAIN.
  - ACTION NUMBER** - A numeral that represents the cumulative number of steps taken by the Department to date to establish or modify the award through fiscal or administrative means. Action number "01" will always be "NEW AWARD"
  - ACTION TYPE** - The nature of this notification (e.g., NEW AWARD, CONTINUATION, REVISION, ADMINISTRATIVE)
  - AWARD TYPE** - The particular assistance category in which funding for this award is provided, i.e., DISCRETIONARY, FORMULA, or BLOCK. If this award was made under a Research and Development grant program, the terms RESEARCH AND DEVELOPMENT will appear under DISCRETIONARY, FORMULA OR BLOCK.
- 3. PROJECT STAFF** - This block contains the names and telephone numbers of the U.S. Department of Education and recipient staff who are responsible for project direction and oversight.
  - \*RECIPIENT PROJECT DIRECTOR** - The recipient staff person responsible for administering the project. This person represents the recipient to the U.S. Department of Education.
  - EDUCATION PROGRAM CONTACT** - The U.S. Department of Education staff person responsible for the programmatic, administrative and business management concerns of the Department.
  - EDUCATION PAYMENT CONTACT** - The U.S. Department of Education staff person responsible for payments or questions concerning electronic drawdown and financial expenditure reporting.
- 4. PROJECT TITLE AND CFDA NUMBER** - Identifies the Catalog of Federal Domestic Assistance (CFDA) subprogram title and the associated subprogram number.
- 5.\* KEY PERSONNEL** - Name, title and percentage (%) of effort the key personnel identified devotes to the project.
- 6. AWARD PERIODS** - Project activities and funding are approved with respect to three different time periods, described below:
  - BUDGET PERIOD** - A specific interval of time for which Federal funds are being provided from a particular fiscal year to fund a recipient's approved activities and budget. The start and end dates of the budget period are shown.
  - PERFORMANCE PERIOD** - The complete length of time the recipient is proposed to be funded to complete approved activities. A performance period may contain one or more budget periods.
  - \*FUTURE BUDGET PERIODS** - The estimated remaining budget periods for multi-year projects and estimated funds the Department proposes it will award the recipient provided substantial progress is made by the recipient in completing approved activities, the Department determines that continuing the project would be in the best interest of the Government, Congress appropriates sufficient funds under the program, and the recipient has submitted a performance report that provides the most current performance information and the status of budget expenditures.
- 7. AUTHORIZED FUNDING** - The dollar figures in this block refer to the Federal funds provided to a recipient during the award periods.
  - \*THIS ACTION** - The amount of funds obligated (added) or de-obligated (subtracted) by this notification.
  - \*BUDGET PERIOD** - The total amount of funds available for use by the grantee during the stated budget period to this date.
  - \*PERFORMANCE PERIOD** - The amount of funds obligated from the start date of the first budget period to this date.
  - RECIPIENT COST SHARE** - The funds, expressed as a percentage, that the recipient is required to contribute to the project, as defined by the program legislation or regulations and/or terms and conditions of the award.
  - RECIPIENT NON-FEDERAL AMOUNT** - The amount of non-federal funds the recipient must contribute to the project as identified in the recipient's application. When non-federal funds are identified by the recipient where a cost share is not a legislation requirement, the recipient will be required to provide the non-federal funds.
- 8. ADMINISTRATIVE INFORMATION** - This information is provided to assist the recipient in completing the approved activities and managing the project in accordance with U.S. Department of Education procedures and regulations.

**DUNS/SSN** - A unique, identifying number assigned to each recipient for payment purposes. The number is based on either the recipient's assigned number from Dun and Bradstreet or the individual's social security number.

**\*REGULATIONS** - Title 2 of the Code of Federal Regulations(CFR), Part 200 as adopted at 2 CFR 3474; the applicable parts of the Education Department General Administrative Regulations (EDGAR), specific program regulations (if any), and other titles of the CFR that govern the award and administration of this grant.

**\*ATTACHMENTS** - Additional sections of the Grant Award Notification that discuss payment and reporting requirements, explain Department procedures, and add special terms and conditions in addition to those established, and shown as clauses, in Block 10 of the award. Any attachments provided with a notification continue in effect through the project period until modified or rescinded by the Authorizing Official.

**9. LEGISLATIVE AND FISCAL DATA** - The name of the authorizing legislation for this grant, the CFDA title of the program through which funding is provided, and U.S. Department of Education fiscal information.

**FUND CODE, FUNDING YEAR, AWARD YEAR, ORG.CODE, PROJECT CODE, OBJECT CLASS** -

The fiscal information recorded by the U.S. Department of Education's Grants Management System (G5) to track obligations by award.

**AMOUNT** - The amount of funds provided from a particular appropriation and project code. Some notifications authorize more than one amount from separate appropriations and/or project codes. The total of all amounts in this block equals the amount shown on the line, "THIS ACTION" (See "AUTHORIZED FUNDING" above (Block 7)).

**10. TERMS AND CONDITIONS** - Requirements of the award that are binding on the recipient.

**\*PARTICIPANT NUMBER** - The number of eligible participants the grantee is required to serve during the budget year.

**\*GRANTEE NAME** - The entity name and address registered in the System for Award Management (SAM). This name and address is tied to the DUNS number registered in SAM under the name and address appearing in this field. This name, address and the associated DUNS is what is displayed in the SAM Public Search.

**\*PROGRAM INDIRECT COST TYPE** - The type of indirect cost permitted under the program (i.e. Restricted, Unrestricted, or Training).

**\*PROJECT INDIRECT COST RATE** - The indirect cost rate applicable to this grant.

**\*AUTHORIZING OFFICIAL** - The U.S. Department of Education official authorized to award Federal funds to the recipient, establish or change the terms and conditions of the award, and authorize modifications to the award

**FOR FORMULA AND BLOCK GRANTS ONLY:**

(See also Blocks 1, 2, 4, 6, 8, 9 and 10 above)

**3. PROJECT STAFF** - The U.S. Department of Education staff persons to be contacted for programmatic and payment questions.

**7. AUTHORIZED FUNDING**

**CURRENT AWARD AMOUNT** - The amount of funds that are obligated (added) or de-obligated (subtracted) by this action.

**PREVIOUS CUMULATIVE AMOUNT** - The total amount of funds awarded under the grant before this action.

**CUMULATIVE AMOUNT** - The total amount of funds awarded under the grant, this action included.

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\* This item differs or does not appear on formula and block grants.

**Department of Transportation and Public Facilities  
State Equipment Fleet**

<b>Subject of RPL:</b> Whittier Tunnel Fire Truck Replacement	<b>ADN/RPL #:</b> 25-2020-8718
<b>Amount requested:</b> \$1,000,000	<b>Appropriation Authority:</b> Sec 1 Ch 3 FSSLA 19 Pg 7 Ln 20
<b>Funding source:</b> Highway Equipment Working Capital Fund (1026) Capital	<b>Statutory Authority:</b> AS 44.42.020, AS 44.68.010-.040; AS 44.68.210-.250; AS 44.68.270-.280

**PURPOSE**

The Department of Transportation and Public Facilities, State Equipment Fleet (SEF) is requesting \$1 million in additional Highway Equipment Working Capital Fund (HEWCF) authority to replace two aging fire trucks for the Whittier Access and Tunnel Operations. The existing fire trucks located at either end of the Anton Anderson Memorial Tunnel are now 20-years old and at least five years past their useful life.

The Tunnel Operations, Maintenance, Inspection and Evaluation Manual (TOMIE) sets forth the overarching requirements for tunnel operations. In the TOMIE are requirements for an approved Emergency Response Plan (ERP). Firefighters and operational fire-fighting equipment are called for in the ERP. Failing to meet the requirement of the ERP puts the Department and State of Alaska at risk for tort liability in the event of a tunnel fire.

**PREVIOUS LEGISLATIVE CONSIDERATION**

SEF has a current year capital appropriation that can be amended to include the authority necessary to purchase these fire trucks (Sec 1 Ch 3 FSSLA 19 pg 7 ln 20). There has been no previous legislative consideration for this request.

**TIMING ISSUES**

It will take approximately one year to contract and receive the new equipment, and have it fitted with rail gear for tunnel operations. So, the sooner the purchase can be made the better.

**BUDGETARY ISSUES**

SEF's HEWCF authority of \$12.5 million in FY2020 must cover the replacement needs of mission essential equipment for all executive branch agencies. This amount is insufficient to cover regular agencies needs and the fire truck replacement. The revenue necessary for the equipment replacement is available due to fully depreciated Whittier Tunnel assets whose value were overestimated and useful life underestimated.

*Legislative Fiscal Analyst Comment:* The FY20 budget review language for RPLs included (for the first time) the Highway Equipment Working Capital Fund (HEWCF). The intent was to provide an avenue for DOT&PF to access additional money for replacement of essential state equipment. This RPL falls in line with the language intent.

Agency Contact: Dom Pannone, Administrative Services Director (907) 465-2956  
LFD Contact: Rob Carpenter (907) 465-5413

There are no technical issues with this RPL.

LFD submitted a list of questions to DOT&PF regarding this RPL. Q&A follows.

**Why is this time critical other than the “sooner the better”? If the trucks are “5 years past their useful life,” why is this request coming forward now?**

The firetrucks are 5 years past the maximum recommended useful life for front-line fire trucks. They are still in use and useful, but maintenance complexity and maintenance costs increase exponentially with age. There is also significantly increased risk of components failing which puts the department and State of Alaska at risk for tort liability in the event of a tunnel fire. The existing trucks are discontinued in the configuration that we have. New and replacement parts and components are not compatible with our trucks and sourcing old parts is becoming increasingly difficult.

This is the first reasonable and appropriate use DOT&PF has had to take advantage of the new Revised Program Legislative (RPL) process. It's our understanding this is the first year the RPL process has been available for HEWCF. The request for RPL is also our way of separating this funding request from the approved HEWCF capital appropriation, which is for replacing current HEWCF assets that have acquired replacement credits within that fund.

**Why are the existing trucks obsolete? Will there be any salvage value? Why do the trucks have to be fitted with rail gear...vehicles drive through the tunnel?**

The trucks were assigned a salvage value of ~\$65k per truck (vehicle #33339 salvage value of \$64,388.00, vehicle #33340 salvage value \$65,921.00).

We do not anticipate getting that value at auction and estimate closer to \$30,000.00 each. It could be even less. These trucks are highly specialized and customized and there is not a significant market for aged, oversized rail tunnel fire trucks.

The rail gear is necessary to allow the truck to be driven and move within the tunnel quickly, safely and predictably in a fire emergency without damaging the truck or the tunnel. This tunnel is unique in terms of transportation tunnels. The tunnel is 5 miles long, with a single paved lane for motor vehicle traffic and a single rail line. Traffic moves through the 5-mile tunnel in one direction at a time.

Emergency response to a vehicle or railcar fire could require a fire truck to drive the entire distance of the tunnel in pitch black and heavy black smoke. There is nowhere in the tunnel to turn a fire truck around, so to get out of the tunnel, the operator of the fire truck would need to repeat that task, while driving the truck in reverse as a fire event would create a blockage at the point of incident that would likely not allow the truck to proceed to the other end of the tunnel. Driving in reverse, the best infrared camera guidance system would not guarantee a driver could navigate without bouncing the truck off the tunnel walls. The rails and rail gear keep the vehicle centered in the tunnel, all the way in and all the way out.

**Are there any federal requirements or issues involved? Is the TOMIE and ERP a FHWA requirement?**

The Tunnel Operations Maintenance Inspection and Evaluation (TOMIE) document is a Federal document. Fire protections systems are required for tunnels. The system we have in place was cleared and approved with FWHA to allow us to operate a facility of this type.

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At this time the Whittier Fire Department is underfunded, and their equipment is old and dysfunctional. Neither Girdwood nor Whittier would be able to make entry into the tunnel due to the specialized equipment and training required for the environment.

A fire incident is the greatest liability a transportation tunnel has. An article on the Mont Blanc Tunnel fire tragedy ([hyperlink below](#)) paints a terrifying picture of how quickly a fire incident in a tunnel can become deadly and why rail gear is necessary.

Link: [https://en.wikipedia.org/wiki/Mont\\_Blanc\\_Tunnel#Mont\\_Blanc\\_Tunnel\\_1999\\_fire](https://en.wikipedia.org/wiki/Mont_Blanc_Tunnel#Mont_Blanc_Tunnel_1999_fire)

**What assets are currently planned to be replaced/purchased with the \$12.5 million existing capital appropriation? Why are the other assets prioritized over the fire trucks? Couldn't the fire trucks be replaced with existing authority and other asset purchases be postponed until the next budget cycle? Couldn't this RPL just as easily be for police cruisers or other assets on the replacement list?**

SEF has a working list of assets that has been identified by SEF and user agencies as priorities for current year replacement. That list is fluid, as other priorities come up due to total loss accidents, theft, or shifts in mission.

The current list of assets that are fully amortized and fully depreciated would require \$60M+ in capital spending. The assets that get replaced by the regular annual appropriation are those that have the greatest need of replacement, considering operational cost savings, ability to purchase replacement parts & service availability.

Incorporating these trucks into this year's current capital allocation will push \$1M of asset replacement further into FY2021, increasing operating costs, and increasing the backlog of aging assets.

The difference between this request and the police cruiser request is that the DOT&PF Central Region Highways & Aviation (H&A) component has the replacement credits available in the HEWCF to fund this purchase, whereas Department of Public Safety does not have the replacement credits available in the HEWCF to fund their 32 additional vehicles.

**Given the budget reductions to the annual SEF equipment replacement capital appropriation, from \$20 million in FY17 to \$12.5 million in FY20, what have been the impacts and would a broader titled RPL with additional funding (beyond \$1 million) be useful to complete the fiscal year? What would the benefits be of this action?**

A broader RPL would allow more assets to be replaced this year. Benefits would include increases in reliability, reduced SEF operating costs for vehicles whose maintenance expenses and component failure rates have increased beyond the costs of a replacement.

**Revenue available explanation: fully depreciated – How much has been collected for replacement with the replacement rate? Is the maintenance rate still being paid to SEF? Are these considered X class vehicles?**

The intent of this process is to onboard and integrate these new trucks into the fleet, as additions.

The existing fire trucks were not purchased or set up in a manner to be replaceable by the Highway Equipment Capital Working Fund (HEWCF). These trucks are outliers and fall completely outside of all the normal replacement processes. They were federal grant funded originally and have not been included in other replacement plans.

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All other DOT&PF fire trucks are located at airports, replaced via the Airport Improvement Plan (AIP) process, and do not factor in to HEWCF replacement planning either, they are taken care of by AIP funding.

No funds have been collected or saved in the HEWCF for replacement of these trucks. The HEWCF funds that will be used to purchase new fire trucks are funds that have been paid in for the replacement of other Whittier Tunnel assets that will not need to be replaced in the future, and their replacement can be handled in future H&A and/or HEWCF appropriations, over a long period of time.

The majority of the funding is coming from the replacement funds designated to replace asset WT004, which is chain link fencing that is mounted on the inner walls of the tunnel. The fencing acts as a 'safety net' to keep any rocks or debris that might loosen up in the raw walls and ceiling of the tunnel from falling onto trains or vehicles or people. This asset was originally set up in 2000 with a \$1M cost, and a 20-year life. It was originally funded by a federal grant and set up as a replaceable HEWCF asset Central Region H&A paid replacement funding to HEWCF over the ensuing 20 years to build up \$1M+ in replacement credits for this asset. It has become apparent that the current fencing will last for many years to come and replacement will most likely be done in segments rather than all at once. This replacement can be incorporated into future year appropriations in smaller increments, likely over multiple fiscal years.