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Alexandra Dapolito Dunn

Executive Director &
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To: ECOS Members
From: Alexandra Dapolito Dunn
Executive Director & General Counsel
Date: October 28, 2016
Re: Field Guide to Flexibility and Results

We are pleased to share with you Version 1.0 of *The Field Guide to Flexibility and Results (Field Guide)*, prepared by the Environmental Council of the States (ECOS).

The purpose of the *Field Guide* is to show states clearly where the U.S. Environmental Protection Agency (EPA), through communications and documents from Headquarters and Regions, is promoting and encouraging flexibility in state planning and implementation of delegated federal environmental programs and initiatives. States – who are in the field with their Regional Offices – are encouraged to pursue this important flexibility when negotiating commitments, so that limited state and federal resources are applied to the most pressing and needed environmental problems, delivering improved on-the-ground results.

The *Field Guide* includes references to EPA guidance, memos, and other official documents, as well as documents from ECOS developed in conjunction with EPA, in which flexibility is offered and encouraged to help states implement federal programs in a more efficient, cost-effective, and results-focused manner.

The resources identified in the *Field Guide* generally fall into two categories. Those that:

- (1) speak generally about the availability of and potential for state flexibility visa vis programs such as the National Environmental Performance Partnership System (NEPPS), annual Partnership Action Plans (PAP), National Program Manager (NPM) Guidance, and the Annual Commitment System (ACS) Process; and
- (2) provide specific examples of where EPA has authorized the use of flexibility in response to a state's request.

By collecting these documents in one place, it is ECOS' hope that conversations around flexibility will not only occur between states and their Regional Offices, but that the end result is beneficial to all parties and the environment. The *Field Guide* should help answer the common question - "can we do this?" and if so "how?". The *Field Guide* organizes all documents by date of issuance, provides a link to each document on the internet, identifies the page numbers where flexibility is discussed, and includes excerpts/portions of the text from those pages.

The resources identified in Version 1.0 of the *Field Guide* were released within the 2014-2016 time period. ECOS is issuing the *Field Guide* as a living resource that will be updated as new information is identified and state examples (successful or otherwise) are documented.

We urge users of Version 1.0 of the *Field Guide* to offer comments, edits, omissions, and additions. Please forward input to ECOS' [Andrew Teplitzky](#) and [Beth Graves](#).



E C O S

Environmental Council of the States (ECOS)

Field Guide to Flexibility and Results

Version 1.0

October 28, 2016

Field Guide to Flexibility and Results – List of Documents in Chronological Order

1. Clean Air Act Stationary Source Compliance Monitoring Strategy, October 2016
2. Memo from David A. Bloom, Deputy Chief Financial Officer, U.S. EPA “Guidance on E-Enterprise Workload Tradeoffs Using Performance Partnership Grants and Individual Grants, August 2016
3. Guidance on E-Enterprise Workload Tradeoffs Using Performance Partnership Grants (PPGs) and Individual Grants, August 2016
4. Compliance Monitoring Strategy For Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), August 2016
5. Memo from David A. Bloom, Deputy Chief Financial Officer, U.S. EPA “Upcoming Actions Requested Under Partnerships Action Plan,” June 2016
6. Compliance Monitoring Strategy for the Toxic Substances Control Act (TSCA), April 2016
7. A New Era of State, Local, Tribal, and International Partnerships, FY16 Action Plan, November 2015
8. Technical Guidance for the FY 2017 Exceptions-Based Addendums to the FY 2016-2017 National Program Manager Guidance and Annual Commitment Process, October 2015
9. Renewal of Commitment to the National Environmental Performance Partnership System (NEPPS), Marking the 20th Anniversary, September 2015
10. Compliance Monitoring Strategy for the Resource Conservation and Recovery Act (RCRA) Subtitle C Program, September 2015
11. Grants Policy Issuance (GPI) 15-01 - Performance Partnership Grants with States, August 2015
12. Memo from Stanley Meiburg, Acting EPA Deputy Administrator, U.S. EPA, “Advancing Participation in the E-Enterprise for the Environment Strategy,” July 2015
13. EPA New England (Region 1)/State Investment/Disinvestment Process – instructions, submission template - May 2015 and Summary State Investment/Disinvestment Submissions Table, November 2015
14. Memo from A. Stanley Meiburg, Acting Deputy Administrator, U.S. EPA, “Progress in Advancing a New Era of Partnerships,” May 2015
15. The U.S. EPA’s Overview to the FY 2016-2017 NPM Guidances, April 2015
16. NEPPS FY 16-17 NPM Guidance, April 2015
17. OAR FY16-17 NPM Guidance, April 2015
18. OECA FY16-17 NPM Guidance, April 2015
19. OW FY16-17 NPM Guidance, April 2015
20. OSWER (now OLEM) FY16-17 NPM Guidance, April 2015
21. Examples of Flexibility Sought by State Grantees from EPA Compiled by ECOS, March 2015
22. OCFO's Technical Guidance: FY 2016-2017 National Program Manager Guidance (NPM) and Annual Commitment Process, October 2014
23. Clean Water Act National Pollutant Discharge Elimination System (NPDES) Compliance Monitoring Strategy, July 2014
24. EPA’s Best Practices Guide for Performance Partnership Grants With States, June 2014

Doc. #	Name of Document/Summary	Key Pages	Excerpts/Portions Associated with Flexibility
1.	<p data-bbox="289 305 688 407">Clean Air Act Stationary Source Compliance Monitoring Strategy [October 2016]</p> <p data-bbox="289 448 800 618">This 20-page document provides guidance to employees of EPA and authorized states with respect to administering and implementing an Agency program for CAA stationary source compliance monitoring.</p>	<p data-bbox="842 305 932 329">Page 2</p> <p data-bbox="842 662 932 686">Page 3</p> <p data-bbox="842 873 932 898">Page 7</p> <p data-bbox="842 1084 932 1149">Page 11</p>	<p data-bbox="961 305 1934 618">Minimum frequencies for compliance evaluations to be conducted by states/locals/tribes/territories are recommended for making compliance determinations at facilities covered by the policy. However, alternative evaluation frequencies may be negotiated with the Regions to enable states/locals/tribes/territories to address important local compliance issues. Regarding the minimum frequencies, the time frames are based on Federal fiscal year, not state fiscal year or calendar year. While CMS plans and commitments of states/locals/tribes/territories are developed consistent with the EPA planning process, the policy still allows flexibility in planning compliance evaluations.</p> <p data-bbox="961 662 1927 800">One of the five goals of this compliance monitoring strategy is to provide national consistency in developing stationary source air compliance monitoring programs, while at the same time provide states/locals/tribes/territories with flexibility to address local air pollution and compliance concerns.</p> <p data-bbox="961 846 1955 1049">A Full Compliance Evaluation (FCE) should be completed within the Federal fiscal year in which the commitment is made. However, flexibility is provided in the case of extremely large, complex facilities (hereafter referred to as mega-sites). Regulatory agencies may take up to three Federal fiscal years to complete an FCE at a mega-site, provided the agency is conducting frequent on-site visits or FCEs throughout the entire evaluation period.</p> <p data-bbox="961 1094 1955 1300">An FCE should be conducted, at a minimum, once every two Federal fiscal years at all Title V major sources except those classified as mega-sites. For mega-sites, an FCE should be conducted, at a minimum, once every three Federal fiscal years. Each Region, in consultation with affected states/locals/tribes/territories, has the flexibility to define and identify mega-sites as it deems appropriate within the Region. However, this universe of facilities is expected to be small.</p>

			<p>The regulations also authorize a state, territory, or tribe to propose PPG grant workplans that differ from the goals, objectives, and measures in the NPM Guidance; Regional Administrator must consult with affected NPMs.</p> <p>Each of the NPM Guidances includes a listing of E-Enterprise projects that the respective NPM is leading, supporting, or evaluating, and the introduction to each guidance encourages states, tribes, and other offices to coordinate with or participate in these projects where they see complementary priorities, processes, or objectives.</p>
		Page 4	E-Enterprise tradeoffs may also be negotiated under non-competitive, individual, continuing environmental program grants. For tradeoffs to be grant-eligible, they must be within the scope of the authorizing grants statute.
		Page 5	Includes a table of potential E-Enterprise Tradeoff Scenarios and Responses.
		Pages 6-7	Delineates steps for integrating E-Enterprise projects into existing PPGs or into stand-alone grant workplans.
4.	<p>Compliance Monitoring Strategy For Federal Insecticide, Fungicide, and Rodenticide Act [August 2016]</p> <p>This 25-page document provides guidance to employees of EPA and authorized states with respect to administering and implementing an Agency program for FIFRA compliance monitoring.</p>	Page 13	The inspection frequencies listed below are goals for an important subset of all FIFRA inspections, and can serve as a starting point for cooperative agreement negotiations, knowing that there needs to be flexibility to adapt to particular situations, as necessary.
5.	<p>Memo from David A. Bloom, Deputy Chief Financial Officer, U.S. EPA “Upcoming Actions Requested Under Partnerships Action Plan” [June 2016]</p>	Pages 1-10	Flexibility not explicitly mentioned in this document, but implied as a way to build momentum for E-Enterprise projects and their scale-up.

	This 8-page memo from EPA's Deputy Chief Financial Officer discusses next steps in advancing E-Enterprise projects under the Partnership Action Plan.		
6.	<p><u>Compliance Monitoring Strategy for the Toxic Substances Control Act (TSCA) [April 2016]</u></p> <p>This 119-page document provides guidance to employees of EPA and authorized states with respect to administering and implementing an Agency program for TSCA compliance monitoring.</p>	<p>Page 4</p> <p>Page 6</p>	<p>The CMS adopts the strategic One-TSCA approach to give each Region the flexibility, consistent with the National Program Managers Guidance; to shift its priority focus as needed to address its most significant compliance, human health, and environmental issue(s).</p> <p>While the One-TSCA approach gives the Region flexibility to allocate its resources, the approach is not intended to allow a Region to unilaterally disinvest indefinitely from any of its TSCA focus areas.</p>
7.	<p><u>A New Era of State, Local, Tribal, and International Partnerships, FY16 Action Plan [November 2015]</u></p> <p>This 4-page document outlines an action plan for addressing EPA's cross-agency strategy of launching a new era of state, tribal, local and international partnerships, where collaboration can improve the success of the national environmental protection enterprise.</p>	<p>Page 2</p> <p>Page 4</p>	<p>Continue work begun in FY15 to test and evaluate regional-state approaches to ensure NEPPS is used to identify mutual priorities and deploy resources flexibly and effectively.</p> <p>By September 30, 2016, each EPA regional office and interested states in that region will work collaboratively through established or adopted regional processes to consider and facilitate temporary tradeoffs in workload in exchange for participation by such states in E-Enterprise or similar projects or program activities designed to modernize business processes.</p>
8.	<p><u>Technical Guidance for the FY 2017 Exceptions-Based Addendums to the FY 2016-2017 National Program Manager Guidance and Annual Commitment Process [October 2015]</u></p> <p>This 5-page technical guidance provides the</p>	Page 1	References the NPM Guidance/NEPPS Workgroup, comprised of state, tribal, regional, and headquarters representatives, to develop a new two-year process and clarify the relationship to state and tribal grants, including PPAs and PPGs. The workgroup advanced several key changes in the process, one of which is that the NPM guidances must clearly articulate support of EPA, states, and tribes to pursue flexibilities that advance the most important environmental and human health work as well as guidelines for seeking approval where flexibility is requested.

	NPMs with specific details, deliverables, and milestones to guide development of exceptions-based FY17 addendums to the FY16-17 NPM Guidances.		
9.	<p><u>Renewal of Commitment to the NEPPS, Marking the 20th Anniversary [September 2015]</u></p> <p>This two-page document marks the renewal of EPA and state commitment to the National Environmental Performance Partnership System (NEPPS), an environmental performance system designed to improve the efficiency and effectiveness of state environmental programs and EPA-state partnerships.</p>	Pages 1-2	<p>On May 17, 1995, EPA and the states entered into a joint agreement to establish NEPPS and committed to direct federal and state resources to improve environmental results, allow states greater flexibility to achieve results....</p> <p>As part of this renewal of commitment to NEPPS, EPA and the states emphasize...commitment to embrace flexibility and innovation. EPA and states will collaborate on the development and implementation of innovative and effective alternative compliance monitoring strategies, efficient approaches to utilize appropriate and effective flexibility in implementing programs, and efficient approaches to implement mutually agreed upon work-sharing arrangements.</p>
10.	<p><u>Compliance Monitoring Strategy for the Resource Conservation and Recovery Act (RCRA) Subtitle C Program [September 2015]</u></p> <p>This 39-page document provides guidance to employees of EPA and authorized states with respect to administering and implementing an Agency program for RCRA compliance monitoring.</p>	<p>Page 12</p> <p>Page 14</p>	<p>As explained fully in the sections below, RCRA imposes inspection requirements for TSDFs – and OECA’s <i>NPMG</i> states corresponding expectations for those, and other, facilities. In summary:</p> <ul style="list-style-type: none"> • The statute mandates minimum inspection frequencies for TSDFs: annually for government-owned or operated TSDFs, and biennially for non-government TSDFs. OECA has established corresponding annual commitments.²⁵ • OECA has set minimum annual inspection expectations for LQGs: at least 20 percent of the universe.²⁶ • States may elect to inspect SQG, CESQG, Transporter, Non-notifier, and/or Other RCRA Handler facilities, in lieu of inspecting 20 percent of their LQG universe, under OECA’s policy for State Alternative Plans (or “State Flexibility Plans”). <p>Under an approved Alternative Plan, OECA (or the Region) may modify the 20 percent LQG requirement (RCRA02.s) to allow a state flexibility to inspect other RCRA facilities.</p>

	program for EPA staff and managers.		<p>process is available, but is something that should be used as a last resort to solve the issue.</p> <p>When funds are in a PPG, they lose their programmatic identity. A benefit of PPGs is that states have the option to submit one overall progress report rather than one progress report for each program. Because of the financial flexibility inherent in PPGs, monitoring workplan commitments is crucial for ensuring PPG success.</p>
12.	<p>Memo from Stanley Meiburg, Acting EPA Deputy Administrator, U.S. EPA, “Advancing Participation in the E-Enterprise for the Environment Strategy.” [July 2015]</p> <p>This 2-page memo from the Acting EPA Deputy Administrator to the Regions underscoring the importance of working with states and tribes on E-Enterprise efforts.</p>	Pages 1-2	<p>This memo from the Acting EPA Deputy Administrator serves to underscore the importance of EPA and state/Tribal work on E-Enterprise for the Environment. The Regions are asked to work with their states on E-Enterprise modernization efforts because of their ability to improve state-region business processes and service delivery.</p>
13.	<p>EPA New England (Region 1)/State Investment/Disinvestment Process – instructions, submission template [May 2015] and Summary State Investment/Disinvestment Submissions Table [November 2015]</p> <p>These documents provide information on the FY2016 New England State Investment/Disinvestment process, which may be a good reference for other regions and states.</p>		<p>New England states had experienced sustained, declining funding from EPA and could no longer accommodate proportional across-the-board cuts. State Commissioners requested greater flexibility in addressing budget shortfalls. In response, an EPA-state dialogue resulted in the agreement for each state to submit proposals that represented high priority, major shifts (investments and disinvestments) which would provide greater flexibility to direct resources to their most critical environment and public health needs for FY14. These state proposals were the foundation for directing resources to align with the greatest environmental/public health priorities in each state to be accomplished with existing staff, by shifting resources from one area to another, and where there were measurable environmental/public health results. EPA New England (Region 1) continues to request from states investment/disinvestment proposals as a precursor to workplan negotiations.</p>

<p>14.</p>	<p><u>Memo from A. Stanley Meiburg, Acting Deputy Administrator, U.S. EPA “Progress in Advancing a New Era of Partnerships” [May 2015]</u></p> <p>This two-page memo from EPA’s Acting Deputy Administrator discusses progress made in collaborations between EPA and states/tribes, referencing NEPPS, a revised NPM Guidance process, the ECOS resource on examples of programmatic flexibility, and E-Enterprise.</p>	<p>Pages 1-2</p>	<p>Twenty year ago, EPA and the states signed an agreement establishing NEPPS, a forward-thinking, flexible, and outcome-focused approach to environmental protection. What has not changed since then is the need to continue to work collaboratively with our partners to further improve efficiency and achieve more programmatic and financial flexibility.</p> <p>The revised NPM guidance process should increase state and tribal involvement in developing national priorities through earlier and more meaningful engagement, provide a clearer understanding of where flexibility is available and reduce administrative burden. Our new approach to developing NPM and grant guidance should better shape discussions about how priorities can be implemented with flexibility in NEPPS agreements and state and tribal grant work plans.</p> <p>There are other important efforts underway. Regions are taking a fresh look at how regional and state managers review environmental priorities, available resources, and program flexibilities to inform work negotiated in NEPPS agreements and state grant work plans.</p> <p>I am also excited about a helpful new resource developed by ECOS, which enumerates examples of state requests for programmatic flexibilities from EPA. It describes specific flexibilities sought and the reasons for supporting or denying the request.</p>
<p>15.</p>	<p><u>The U.S. EPA’s Overview to the FY 2016-2017 National Program Manager (NPM) Guidances [April 2015]</u></p> <p>This five-page document provides an overview of EPA’s new two-year process for developing NPM Guidances. This document should be used in conjunction with the FY16-17 NPM Guidances to gain understanding of the EPA’s FY16-17 environmental priorities and</p>	<p>Page 1</p>	<p>The new two-year NPM guidance process reflects the following four key changes:</p> <ol style="list-style-type: none"> (1) Earlier and more meaningful state and tribal engagement in joint priority-setting to identify the most important areas of work for protecting the environment and human health; (2) Clear and transparent support for flexibility within the NPM guidances, including guidelines for seeking approval where flexibility is requested; (3) Better alignment of NPM guidances and grant guidances to minimize workload for regions, states, and tribes; (4) Earlier and more meaningful state and tribal engagement in commitment-setting, which is aligned with grant work planning to the extent possible.

		Page 7	<p>available Agency processes; (2) language on parameters for flexibilities in sections on National Areas of Focus and Program-Specific Guidance; (3) guidelines for seeking approval for flexibilities and elevating issues. The NEPPS issue resolution process for raising and resolving various policy and implementation issues related to Performance Partnerships is outlined in EPA’s Best Practices Guide for Performance Partnership Grants with States.⁶ The process includes various informal and formal steps culminating in a final decision by the Deputy Administrator, where needed. This is especially appropriate in situations involving denial of a state’s request for flexibility and innovation in a PPG.</p> <p>Through PPGs, states and tribes can:</p> <ol style="list-style-type: none"> (1) Use funds from one program area to address a budget shortfall in another, and meet cost-share requirements by using overmatch from one program to cover the match from another. (2) Hire temporary personnel, fund emergency activities such as hurricane response, address permit backlogs, and support staff training and travel. The activities must be fundable under one or more of the included grant programs. (3) Fund multi-media inspections and permitting, sector compliance/enforcement initiatives, and data system improvements such as participating in the National Environmental Data Exchange Network.
17.	<p>OAR FY16-17 NPM Guidance [April 2015]</p> <p>This 66-page guidance document provides OAR areas of focus for the two fiscal year period.</p>	Page 3	<p>Page 9</p> <p>It is the Agency’s policy to support the use of PPGs as a tool to balance flexibility with fiscal accountability to achieve program outcomes.</p> <p>Specific expectations and deliverables will be established through negotiations in grant agreements between regions and air agencies and OAR encourages air agencies to engage EPA on activities where there may be opportunities for flexibility.</p> <p>Regions and air agencies are encouraged to use the established work-planning process to provide flexibility and tailor work expectations and resource allocations to meet local circumstances, as long as priority work continues. And, if there are not adequate resources to carry out all of the necessary work, regions will work collaboratively with state and local air agencies to prioritize activities and agree on</p>

			the level of effort for each.
18.	<p>OECA FY16-17 NPM Guidance [April 2015]</p> <p>This 70-page document provides OECA areas of focus for the two fiscal year period.</p>	Page 3	<p>(CMSs) which provide increased compliance monitoring flexibility for the Clean Water Act, the Resource Conservation and Recovery Act, and the Clean Air Act programs. They were issued after OECA held a national dialogue about flexibility in the CMSs and how compliance monitoring activities could be further expanded while maintaining program integrity. The revised CMSs provide increased flexibility to EPA and state agencies when conducting compliance monitoring activities through an expanded set of tools for determining compliance and to address local pollution and compliance concerns. The revised strategies provide additional flexibility to address the most important pollution problems within each media program, an expanding universe of regulated entities and resource limitations. In response to state comments and at the request of the states, OECA also developed more specific guidance on the process for states to request alternative CMS plans and for regions to review and approve state alternative plans. This guidance has been distributed to states and associations is accessible at: http://www2.epa.gov/compliance/resources-and-guidance-documents-compliance-monitoring</p> <p>OECA and the Office of Pesticides Programs (OPP) jointly issue FIFRA Cooperative Agreement Guidance, which explicitly discusses parameters for flexibility. The FIFRA Cooperative Agreement Guidance attempts to balance support for National Pesticide Program priorities, goals and performance measures, with providing flexibility to grantees to focus on those national program areas that present the greatest concern locally. The specific parameters for flexibility are discussed in the Guidance Framework on page 2 of the FIFRA Cooperative Agreement Guidance (http://www2.epa.gov/sites/production/files/2014-10/documents/15-17guidance.pdf).</p> <p>Grantees may also negotiate a Performance Partnership Grant (PPG) in lieu of pesticide program and enforcement cooperative agreements. Under the PPG system, regions and grantees should continue to use our FIFRA Cooperative Agreement Guidance to ensure that program areas are addressed consistent with the Guidance.</p>

		Page 34, 36, 37, 39	For FY 2016-2017, 90 percent of the region’s overall TSCA resources should focus on the lead compliance assurance program. However, up to 20 percent of these same resources may be shifted by the region to other TSCA compliance assurance activities consistent with this NPM Guidance. The intent here is to provide flexibility for regional TSCA initiatives and to take into account unique regional situations while still maintaining a national TSCA program. Where regions choose to exercise this flexibility they should provide a rationale and articulate how this flexibility is consistent (or why inconsistent) with the CMS.
19.	<p>OW FY16-17 NPM Guidance [April 2015]</p> <p>This 122-page document provides OW areas of focus for the two fiscal year period.</p>	<p>Page 3</p> <p>Page 50</p> <p>Page 53</p> <p>Pages 119 - 121</p>	<p>EPA, states, and tribes should provide special attention to these national priority areas to ensure the safety and cleanliness of water consumed by people in the United States. In requesting special attention, however, OW recognizes that EPA regional offices, states, and tribes need flexibility allocating resources to achieve clean water and safe drinking water goals, given their specific circumstances. We look forward to strengthening partnerships as we move toward meeting those goals.</p> <p>In FY 2016, OWM will continue to work with EPA regions and states to set targets for the existing priority permits and backlog measures, but will also work with EPA regions and states to determine a new approach for these measures for FY 2017. OWM believes that certain prioritization criteria should be uniform nationwide but that EPA regions and states should also have flexibility in identifying their high priority permits.</p> <p>In FY 2016-2017, EPA will continue to work closely with and support the many efforts of states, interstate agencies, tribes, local governments and communities, watershed groups, and others to develop and implement their local watershed-based plans. States also have the flexibility through their CWSRF programs to provide funding that supports efforts to control pollution from NPSs.</p> <p>State, interstate, and tribal agencies can use CWA Section 106 grants to carry out a wide range of water quality planning and management activities. Agencies have the flexibility to allocate funds toward priority activities. Other activities that may be</p>

			funded with CWA Section 106 funds include: source water protection and wellhead protection actions that protect both ground water and surface water used for drinking water; develop watershed-based plans and to conduct monitoring on a watershed basis; wetlands monitoring and protection projects.
20.	<p><u>OSWER (now OLEM) FY16-17 NPM Guidance [April 2015]</u></p> <p>This 77-page guidance document provides OSWER (now OLEM) areas of focus for the two fiscal year period.</p>	<p>Page 2</p> <p>Page 19</p> <p>Page 24</p>	<p>OSWER recognizes regional/local environmental concerns and constrained budgets and strives to provide flexibility and support for regional strategies that align with our shared priorities and goals.</p> <p>The RCRA national program will work with state programs to the extent practicable, to ensure that they have provisions for handling unplanned waste from disasters and that facilities that manage non-hazardous and hazardous waste after a national emergency have the appropriate controls and flexibility in place to receive and properly manage the unplanned waste, and that there are also incentives in place to ensure the appropriate reuse and recycling of these wastes, whenever possible.</p> <p>Fund a cooperative agreement for the Federal Facilities Subcommittee of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO). This funding supports the EPA-state partnership and promotes the dialogue and advancement of federal facility cleanups. It also allows individual state program managers to share ideas, expertise and lessons learned on a wide range of cleanup issues. The work plan will include language that allows flexibility for the states to focus research on current issues of concern.</p>
21.	<p><u>Environmental Council of States (ECOS) Examples of Flexibility Sought by State Grantees from EPA Compiled by ECOS [March 2015]</u></p> <p>This 16-page document provides a compilation of examples where state environmental agencies have sought flexibility from U.S. EPA in their federally-funded grant commitments or in their</p>	All	All

	federal grant administrative procedures, and the results of states' requests.		
22.	<p><u>OCFO's Technical Guidance: FY 2016-2017 National Program Manager Guidance and Annual Commitment Process [October 2014]</u></p> <p>This 13-page technical guidance provides NPMs with specific details, deliverables, and milestones to guide development of their individual NPM Guidances, including providing clear and transparent support for flexibility within the NPM Guidances.</p>	<p>Page 2</p> <p>Page 4 – 5, 9, 12-13</p>	<p>In March 2014, a NPM Guidance/NEPPS Workgroup, comprised of state, tribal, regional, and headquarters representatives, to develop a new two-year process and clarify the relationship to state and tribal grants, including PPAs and PPGs. The workgroup advanced several key changes in the process, one of which is that the NPM guidances must clearly articulate support of EPA, states, and tribes to pursue flexibilities that advance the most important environmental and human health work as well as guidelines for seeking approval where flexibility is requested.</p> <p>To highlight the importance of flexibility, NPM Guidances will include the following: (1) language in the introduction that affirms and articulates the intent to address flexibility issues within identified parameters and using available agency processes; (2) language on parameters for flexibilities in sections on National Areas of Focus and Program-Specific Guidance; (3) guidelines for seeking approval for flexibilities and elevating issues; and (4) examples of NPM-specific flexibilities.</p>
23.	<p><u>Clean Water Act National Pollutant Discharge Elimination System (NPDES) Compliance Monitoring Strategy [July 2014]</u></p> <p>This 29-page document provides guidance to employees of EPA and authorized states with respect to administering and implementing an Agency program for NPDES compliance monitoring.</p>	<p>Page ii</p> <p>Pages iii-iv</p>	<p>Furthermore, the revised CMS reflects the key concepts of Next Generation Compliance, including electronic reporting, increased transparency and technological advances, and offers additional flexibilities to states in determining the most effective use of limited compliance monitoring resources. For example, we expect implementation of this revised policy to facilitate increased use of next generation targeting tools, such as the Pollutant Loading Tool (available through "Enforcement and Compliance History Online" (ECHO)) and EPA's GeoPlatform, and further program transparency by utilizing the ECHO state dashboards and e-reporting to better manage NPDES compliance monitoring activities across the country.</p> <p>This revised NPDES CMS provides circumstances where EPA regions and states may utilize "focused compliance inspections" and "off-site desk audits" in addition and complementary to traditional comprehensive inspections. This change expands upon the flexibilities in the 2007 NPDES CMS, which did not provide for off-site desk audits or focused inspections to count toward any of the national goals. Part 1 of</p>

		<p>Page 1</p> <p>Page 2</p> <p>Pages 2 - 4</p>	<p>this revised CMS articulates certain conditions that must be met in order for these expanded compliance monitoring activities to count toward CMS coverage, including, for example, that the off-site desk audit or focused inspection must be conducted for the purpose of making a compliance determination. Part 2 of this CMS includes several metrics under which off-site desk audits or focused inspections count toward the national goals when included in a traditional CMS plan. For all other CMS metrics articulated in this policy, the region or state may propose to conduct focused inspections or off-site desk audits as part of an alternative plan, according to the conditions and process set forth in Part 1 below.</p> <p>We expect that there will be a dialogue between regions and individual states about annual program commitments and potential resource trade-offs. The national goals in this policy, many of which have built-in flexibilities, are a starting point for negotiations. States and regions may utilize the flexibilities set forth in the policy to tailor inspection frequency goals to target compliance monitoring resources on facilities that pose the greatest threat to water quality. Trade-offs should be considered in the context of supporting overall NPDES program integrity.</p> <p>Where a region or state relies on the flexibilities provided by this policy to make commitments for inspection frequencies and compliance monitoring activities, the annual CMS plan should clearly reflect those decisions by including an explanation of why and how the flexibility was applied. Any such explanation must be detailed enough to explain the basis for the flexibility applied in the plan, including any implications on CMS planning in future years. Depending on the circumstances of the agreed upon commitment, the written explanation could be brief (i.e., one or two sentences) or a full paragraph.</p> <p>An alternative NPDES CMS plan is a plan that includes one or more compliance monitoring commitments that deviate from the national goals and flexibilities set forth in Part 2 of this policy. As compared to the national goals, an alternative plan could include modified frequency of comprehensive inspections, modified compliance monitoring activities (e.g., off-site desk audit), or a combination of the two.</p>
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		<p>plan implementation, as appropriate, including through the State Review Framework process.</p> <p><u>Any alternative CMS commitments that include focused inspections and/or off-site desk audits must meet the following conditions, at a minimum, in order to be approved as part of an alternative plan:</u></p> <ol style="list-style-type: none"> 1. The activity must be conducted for the purpose of making a compliance determination ; 2. The activity must be conducted by appropriate personnel, as specified in the definitions of each alternative activity (see Part 3); 3. The approved alternative CMS plan must document the region/state’s evaluation of the five facility-specific questions below; and 4. The activity must be reported to ICIS-NPDES (including through the CDX National Environmental Information Exchange Network) to ensure transparency, accountability and appropriate follow-up. Reporting includes entry of facility-specific information, compliance actions, and results of the activity (e.g., any noted violations, SNC, etc.). <p>When developing an alternative CMS plan, regions and states <u>should consider</u> the following facility-specific questions before proposing a focused compliance inspection and/or off-site desk audit:</p> <ol style="list-style-type: none"> 1. Is the facility currently subject to an enforcement action or a compliance schedule resulting from an enforcement action? 2. Has the facility been reported in Significant Noncompliance (SNC) within the previous four quarters? 3. Does the facility have any unresolved single-event violation(s) identified in prior inspection(s)? 4. Does the facility discharge listed pollutants to impaired waters? 5. Does the facility have any known potential to impact drinking water supplies? <p>If the answer to any of the above questions is “yes”, the region or state should further scrutinize whether a focused inspection or off-site desk audit of the facility would be adequate to assess compliance and protect water quality. Each year that</p>
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		<p>an alternative plan is proposed that includes focused inspections and/or off-site desk audits, planners and EPA reviewers should revisit these questions on a facility-specific basis to address changing circumstances (e.g., impaired waters listings and compliance status). For any facility that is a viable candidate for a focused inspection or off-site desk audit, review of the alternative plan proposal will include consideration of how long it has been since the last comprehensive inspection in order to ensure that all facilities are subject to periodic comprehensive inspections.⁵</p> <p>Following are several example alternative CMS plan scenarios. This is not an exhaustive list of alternative plan provisions that could be approved. Rather, it is a sample of some of the likely scenarios that states may encounter when implementing this policy. All proposed alternative plans will be approved by EPA regions on a case-by-case basis.</p> <p>A. For major facilities that have been evaluated under the five alternative CMS considerations set forth above, a region or state could propose the following alternative approach: every five years conduct at least one comprehensive on-site inspection, one focused compliance inspection, and one off-site desk audit. Regions and states are encouraged to utilize the ITM or comparable method to evaluate facilities against the five alternative CMS considerations.</p> <p>B. A region or state may have a situation where their MS4s are not performing well in their role of overseeing active construction sites and industrial stormwater dischargers. In exchange for reduced comprehensive inspection coverage in industrial and construction stormwater sectors, the region or state could increase the number of comprehensive inspections for their MS4s to ensure that the MS4s are conducting critical local oversight of construction and industrial stormwater discharges. Under this scenario, a state could commit to conducting inspections at 5% of industrial stormwater facilities and off-site desk audits at an additional 5% of the universe, for example. In this scenario, the compliance improvement benefit would presumably accrue through higher compliance in the future at the facilities under the MS4’s jurisdiction, versus increased compliance at just a few individually inspected facilities.</p>
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		Page 14	<p>C. A region or state may propose fewer inspections in a particular area, such as industrial stormwater, for a limited time (up to two years, for example) in order to utilize those resources to explore or ground-truth innovative compliance monitoring approaches/techniques. Such a trade-off in an alternative CMS plan would require accompanying justification for the innovative approach, including a description of the expected results (i.e., how and when expected results will be documented and how the results could enhance the state, regional and/or national program).</p> <p><u>The minimum compliance monitoring goal for Municipal Separate Storm Sewer Systems (MS4s) is for regions and states to determine compliance of each MS4 permittee and co-permittee at least once every five years by conducting one or more of the following compliance monitoring activities: on-site audit, MS4 inspection, or off-site desk audit.</u> Off-site desk audits should not be conducted for any MS4 permittee that has not previously been subject to an on-site inspection or audit that has documented a compliance baseline for the MS4. <u>As part of this goal, each MS4 permittee and co-permittee should receive an on-site audit or inspection at least once every seven years.</u> Regions and states have the flexibility to extend the seven-year goal for on-site inspections/audits to every 10 years for a co-permittee that contributes a minimal volume of the total flow to the MS4.</p> <p>This goal provides flexibility to regions and states to determine the most appropriate approach to assess compliance within the MS4 universe without having to develop an alternative CMS.</p>
24.	<p><u>EPA’s Best Practices Guide for Performance Partnership Grants with States [June 2014]</u></p> <p>This 41-page guide is designed to help EPA and state officials understand and take full advantage of features and benefits of PPGs, in which states can combine multiple environmental program grants into a single</p>	Page 5 Page 12	<p>A PPG streamlines administrative requirements, gives states greater flexibility to direct resources to their most pressing environmental needs and makes it easier to fund efforts that cut across program boundaries.</p> <p>EPA must ensure that all core programs continue to be adequately implemented regardless of shifts in emphasis among the programs. To that end, 40 CFR 35.137(a)(4) contains a specific requirement for states to explain the reasons and expected benefits of proposed work plans that involve programmatic flexibility. The Regional Administrator is the decision-official regarding requests for flexibility in</p>

	grant to maximize state flexibility.	<p>Page 18</p> <p>Page 21</p>	<p>state grants. However, if a state’s proposal deviates significantly from the National Program Manager (NPM) guidance, the Regional Administrator must consult with the appropriate NPM before agreeing to the state’s proposal.</p> <p>Examples of how states have incorporated these benefits into their work plans are included below and in Exhibit 3. Through PPGs, states can:</p> <ul style="list-style-type: none"> • Use funds from one program area to address a budget shortfall in another, and meet cost-share requirements by using overmatch from one program to cover the match from another. • Hire temporary personnel, fund emergency activities such as hurricane response, address permit backlogs, and support staff training and travel. The activities must be fundable under one or more of the included grant programs. • Fund multi-media inspections and permitting, sector compliance/enforcement initiatives, and data system improvements such as participating in the National Environmental Data Exchange Network. <p><u>Process if a state proposes different goals and priorities.</u> In keeping with the goals of performance partnerships, 40 CFR 35.107(a)(1) provides flexibility for states to propose grant work plans that differ from the goals, objectives and measures in the NPM guidance. If the state proposes a work plan that is significantly different from the NPM guidance, the Regional Administrator must consult with the affected NPM before agreeing to the work plan. For PPGs where the proposed differences affect more than one program, the Regional Administrator must consult with each affected NPM.</p> <p>State grant work plans are organized primarily by work plan component. 40 CFR 35 defines a work plan component as “a negotiated set or group of work plan commitments established in the grant agreement. A work plan may have one or more work plan components.” (See 40 CFR 35.102.)</p> <p>States and EPA have several options for organizing PPG work plan components, and current practice reflects the range of these options. The best option for a given state and region depends on the circumstances. Operational flexibility can be achieved using any appropriate approach to organizing work plan components. For example, states that have adopted multi-media work plan components in their PPGs</p>
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		<p>Page 33</p> <p>Page 37</p>	<p>group their commitments under categories such as permits, monitoring, inspections and enforcement. Other states organize the work plan components in accord with the individual program grants included in the PPG such as air, water or waste.</p> <p>PPGs are designed to provide recipient programmatic flexibility to direct resources based on environmental and public health priorities.</p> <p>Examples of Flexibility in PPGs - Address emergency situations and changing conditions:</p> <p>Alabama: Used a multi-year PPG to divert manpower to the BP oil spill effort realizing that if certain grant commitments were not achieved due to the shift in manpower, the state could tap into the extra time frame built into the PPG.</p> <p>Mississippi: Used PPG flexibility to deal with issues stemming from the 2011 tornado and flooding disasters. The ability to move funds immediately for response and recovery work in the affected areas was very helpful to the state.</p> <p>Iowa: In August 2008, parts of Iowa experienced flooding from substantial rainfalls. EPA Region 7 awarded additional funds in the state's PPG to enable it to complete water monitoring in twenty-five targeted areas where the flooding was most severe. The funds awarded were PPG carryover funds reprogrammed from another state's closed out PPG.</p> <p>Illinois: The PPG provides the state the ability to pool resources to address priority work. For example, CWA Sections 106 and 319 funds are pooled to develop TMDLs that address both point and nonpoint sources of pollution. In addition, the PPG allows the use of pooled resources to address emergency environmental and public health issues such as those caused by the 2011 flooding.</p>
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		Pages 37-38	<p>Examples of Flexibility in PPGs - Address state- identified priority/support special project</p> <p>Georgia: Used its PPG to accomplish priority work on a specific program (water). Since air, water (both CWA Section 106 and drinking water) and RCRA funding were in the PPG, GA was able to combine small savings from each program to fund water quality studies, water flow studies, and additional monitoring to better document available drinking water sources and assess potential weather impacts on them.</p> <p>Georgia: Also assisted the metropolitan public water system suppliers in developing watershed management plans to protect their drinking water supplies using funds de-obligated from previous year grants. GA would not have been able to accomplish this without a PPG because the de-obligated funds from the water grant programs alone would not have been sufficient to fund these additional efforts. Also, EPA funding for the water grant programs was not sufficient to cover the state’s needs.</p> <p>Texas: Used its PPG to fund a special project involving NPDES permitting and enforcement in all water pollution control programs by continuing the development of the Permitting and Registration Information System (PARIS) database project. The project strengthened planning efforts for implementing the Clean Water Action Plan and integrated data reporting. The project benefitted the state by providing for business process and systems analysis documentation and improved the state’s ability to identify, collect and provide timely, accurate and complete data for reporting to EPA’s ICIS-NPDES database. The project was funded from savings realized from each of the programs in the PPG and then awarded into the next year’s grant.</p> <p>Colorado: Used PPG flexibility to continue its long-standing emphasis on Pollution Prevention (P2) as the pollution control tool of choice and the incorporation of pollution prevention into state regulations, compliance assistance, enforcement and permitting activities. The P2 program received supplemental funding from each program that has integrated pollution</p>
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		Page 38	<p>prevention in its core work. The supplemental funding provided staffing support, technical assistance to recipients of both recycling and advanced technology grant programs, and greater public outreach.</p> <p>Examples of Flexibility in PPGs - Meet cost share requirements:</p> <p>Washington: Uses extra water match funds to help meet the CAA Section 105 maintenance of effort contribution in its PPG.</p> <p>Utah: Uses PPG flexibility to ensure that the state can provide sufficient match for all the programs in the PPG. For various timing reasons regarding when federal funds are spent and the availability of state funds for match, the state uses available matching funds from one program to meet the needs of another.</p>
		Page 39	<p>Examples of Flexibility in PPGs - Redirection of carryover funds to purchase equipment, fund staff</p> <p>Washington: In situations where there are carryover funds from a closed grant, the state typically redirects them to another program in the PPG (e.g., a water project).</p> <p>Utah: Redirected PPG funds, mainly from CAA Section 105, to fund an FTE in Region 8's Office of Planning and Public Affairs to work on public outreach and involvement in the SIP for air quality. In the past, carryover funds were used to finance partnership efforts in the Unita Basin and southwestern parts of the state. Carryover funds also have been used to purchase lab equipment for testing samples from various media (e.g., air, water, soil, waste).</p> <p>North Dakota: Purchased new lab equipment to replace existing equipment using carryover funds.</p>
		Page 39	<p>Examples of Flexibility in PPGs - Address state priority by shifting work from a lower to higher priority program area:</p>

		<p>Page 40</p>	<p>Maine: With regional support, shifted resources from TMDL development to TMDL implementation which gave it the ability to reissue all the priority NPDES permits in the Androscoggin River Basin with water-quality based permits for nutrients and “biochemical oxygen demand” (BOD). This allowed the state to focus its resources on remediating a long-standing water quality problem.</p> <p>Vermont: Shifted staff from lower priority programs to higher priority ones thus allowing the state to efficiently utilize dwindling federal and state funding in the most effective manner possible to obtain results.</p> <p>Virgin Islands: Would use its PPG to focus on higher priority programs such as drinking water (PWSS program) or water quality (CWA Sec. 106) in the event they are impacted by storms during the hurricane season, and still comply with the rest of PPG work plan commitments at the end of the project period. Also, PPG flexibility makes it easier for VI to combine projects/initiatives that deal with air pollution monitoring and the effect of air pollution on the quality of water in cisterns that is a critical water source for its citizens.</p> <p>New Jersey: Revenues generated from environmental fees and fines are reserved for specific purposes, and expenditures are limited by the amount of revenue realized. Under its PPG, NJ deposited many of these dedicated monies into the state’s General Fund. Such a shift allows NJ greater flexibility in allocating resources to high priority environmental issues.</p> <p>Examples of Flexibility in PPGs -Fund cross-cutting projects/initiatives:</p> <p>Colorado: Funds a number of crosscutting projects and initiatives. One integrates air, water and waste inspections and compliance assistance for animal feeding operations. Others deal with permit and environmental impact reviews; outreach to federal, state and local authorities dealing with the state’s rapidly expanding energy industries; information management; the Environmental Leadership Program; and the Pollution Prevention</p>
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		<p>Page 41</p>	<p>program.</p> <p>Missouri: In FY 2006 and 2008, the state requested flexibility to use PPG-eligible funds for a cross-media permit initiative. As part of the permitting process, MO followed up on each newly issued permit, environmental concern received from a citizen or other source, or facilities never before inspected by an Environmental Assistance Visit (EAV). The purpose of the EAV was to: 1) ensure that the responsible parties understood the permit requirements; 2) verify that the conditions of the permit were being met; 3) investigate any concerns with the permittee or other operation; 4) provide assistance to help achieve compliance where needed; and 5) follow up to ensure that environmental performance is satisfactory. These EAVs were conducted for permits eligible under the water, air, and RCRA programs funded in the PPG.</p> <p>Arizona: The PPG eases the administrative transactions and costs for the state and EPA when funding crosscutting water projects and initiatives since the state's PPG includes only water grants.</p> <p>New Jersey: Uses PPG funds to provide current information on the state's environmental conditions by maintaining and updating its Environmental Trends Report. There are forty-eight chapters and each chapter describes a specific area in which the state has been working to improve conditions, and presents a specific environmental measure or category of measurements meaningful in gauging the current status of the environment in NJ. The Environmental Trends Report includes chapters that address crosscutting issues: Climate Change, Greenhouse Gas Emissions, Energy Use, Mercury Emission, and Pollution Prevention. There was an upgrade to the state's data systems using multiple program funds through the PPG. Working closely with Region 2's Information Systems Branch, discretionary funds were added to the PPG for this project.</p> <p>Examples of Flexibility in PPGs - Reduce administrative burden, provide financial flexibility:</p>
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