



EPA 841-R-24-008

Response to Comments on the 2024 Updated Nonpoint Source Program and Grants Guidelines for States and Territories

May 4, 2024

Introduction

This document provides the EPA's response to public comments on *The Draft Revision for Public Comment of the Nonpoint Source Program Guidelines for States and Territories* (referred to as the "Draft Revision for Public Comment") provided during October 30, 2023 through December 31, 2023. The EPA received responses from 19 states, one tribe, three national water organizations, and three state or local organizations. A comprehensive list of all comments received is provided in the attached spreadsheet.

The EPA has reviewed each comment on the draft Guidelines; this document summarizes the comments by themes with EPA responses. If you do not see your comment directly addressed, please reach out to your [EPA regional contact](#). In addition, below you will find references to a forthcoming Questions and Answers (Q&A) document and technical resources (e.g., environmental co-benefits compendium). The link to the Q&A document will be included on our [CWA Section 319 Grant: Current Guidance](#) webpage. The EPA will announce technical resources and where to find them as they are released in the coming months.

The EPA released the *Nonpoint Source Program and Grants Guidelines for States and Territories* (referred to as the "2024 Guidelines") in June 2024. The 2024 Guidelines are available on the [CWA Section 319 Grant: Current Guidance](#) webpage. Revisions noted in the response to comments are incorporated into the 2024 Guidelines. More details about the revision process and this response to comments can be found on the [CWA Section 319 Grant Guidance Update](#). The preface of the 2024 Guidelines provides a list of major changes relative to the 2013 Guidelines.

Comment themes and responses

For your convenience, a list of comment themes and hyperlinks follow:

1. [Suggestions to "only include what is required" versus "examples would be helpful."](#)
 - a. [Examples provided in the 2024 Guidelines](#)
 - b. [Are grantees required to follow the Section 319 Guidelines?](#)
 - c. ["Relationship to Other Federal Programs" \(Chapter 11\) and including other references using hyperlinks](#)
2. [Tribal eligibility and State-Tribal coordination](#)
3. [Requests for technical assistance and clarification](#)
 - a. [Accounting for climate resilience in planning activities and best management practice \(BMP\) design](#)
 - b. [Wetlands and nature-based solutions](#)
 - c. [Equity work and defining disadvantaged communities](#)
 - d. [Watershed-based planning and watershed planning handbook](#)
 - e. [Watershed financing partnership](#)
4. [Advancing protection efforts](#)
5. [Elements of NPSMP and Appendix A](#)
6. [Frequency of updates to these guidelines](#)
7. [Prioritization of national priorities](#)
8. [NPS project limitations related to National Pollutant Discharge Elimination System \(NPDES\) permits](#)
9. [Davis Bacon and Build America, Buy America \(BABA\)](#)

10. [New additions or updated content in “Relationship to other Federal Programs” \(Chapter 11\)](#)
 - a. [Match](#)
 - b. [NRCS Regional Conservation Partnership Program \(RCP\) clarification](#)
 - c. [CWA Section 604\(b\)](#)
 - d. [New addition](#)
11. [EPA review of WBPs and alternative plans](#)
12. [Allocation formula](#)
13. [Leverage exemption](#)

1. Suggestions to “only include what is required” versus “examples would be helpful.”

a. Examples provided in the 2024 Guidelines

In some sections of the guidelines, grantees asked to remove all examples. Some grantees expressed concern that when examples are given, they may be confused as requirements. In contrast, others responded positively to examples as offering greater clarity or requested more examples be added to improve clarity.

EPA Response:

After discussion with EPA regions and counsel, the EPA considers the 2024 Guidelines’ wording sufficiently clear when offering examples. The EPA recognizes that examples are additional details that support states and regions looking for more context or clarity.

b. Are grantees required to follow the Section 319 Guidelines?

One commentor asked if grantees are required to follow the 2024 Guidelines.

EPA Response:

Yes, the 2024 Guidelines identify eligible and ineligible activities; however, parts of the guidelines are meant to be best practices and suggestions for states to consider. Generally speaking, the 2024 Guidelines identify requirements by using the words *required* or *shall* instead of *should* and *encourage*. Note that the EPA provided the opportunity for public comment before finalization. The grant terms and conditions define requirements and incorporate the 2024 Guidelines by reference.

c. “Relationship to Other Federal Programs” (Chapter 11) and including other references using hyperlinks

One commenter suggested removing the hyperlinks in the main text and alternatively sharing them as a separate reference sheet. Additionally, there was a suggestion to remove Chapter 11.

EPA Response:

The 2024 Guidelines will include hyperlinks in the main text as presented in the 2024 Draft for public comment. However, the EPA will also provide a separate reference sheet that lists all the referenced web pages in the guidelines. Providing both of these options should accommodate different users’ reading styles. The 2024 Guidelines will include Chapter 11 titled relationship to other federal programs.

2. Tribal eligibility and State-Tribal coordination

Comments included a request to clarify that a Tribe may apply for Section 319 funds even if they do not currently have “treatment as a state” (TAS) status. Other commenters requested that Tribes be included in the lists of partners in Appendix A. There was also a request to update the EPA Tribal CWA Section 319 Guidelines, which the EPA issues separately from guidelines for states and territories.

EPA Response:

In Chapter 1, a call-out box entitled “Tribes and Section 319” first introduces that Tribes are not required to have EPA-approved nonpoint source management programs (NPSMPs), which includes TAS approval under CWA Section 518 from the EPA, to be eligible for state Section 319 subawards. The EPA incorporated minor revisions in Chapter 4.6.3, “When implementing an EPA-approved Tribal NPSMP Plan.” The partner lists provided under components 4 and 5 in Appendix A were updated to include Tribes. Lastly, the EPA is evaluating updates that may be needed for the Tribal CWA Section 319 Guidelines.

3. Requests for technical assistance and clarification

a. Accounting for climate resilience in planning activities and best management practice (BMP) design

Comments included requests for (1) examples of activities that address climate change impacts; (2) technical assistance (i.e., data, tools, or training) regarding BMP design considerations for climate change; and (3) flexibility in how climate resilience in planning and BMP design is met.

EPA Response:

The EPA anticipates providing a list of technical resources that support and inform climate change considerations in planning efforts and BMP selection and design. This list of resources will be shared in a Q&A document released soon after the 2024 Guidelines on the [CWA Section 319 Grant: Current Guidance](#) webpage. The EPA will update the NPS community as these reference documents are released.

In addition, the EPA uses the term “consider” in the 2024 Guidelines because we recognize that our collective understanding of approaches to climate change adaptation, climate resiliency and hazard mitigation continues to evolve as we gather data from the latest published scientific literature and observations from projects on the ground. To that end, the EPA anticipates working with states in the coming months and years. Additionally, the EPA anticipates providing a compendium of resources and tools to estimate environmental co-benefits and hosting technical forums to support knowledge exchange. Lastly, we anticipate reestablishing the national long-term monitoring effort to support and inform our collective understanding of how BMPs perform under changing climate conditions.

b. Wetlands and nature-based solutions

Several comments requested the recognition of wetlands as an asset for climate resiliency.

EPA Response:

The EPA added a definition of nature-based solutions to the 2024 Guidelines (Chapter 7.9.2 Co-benefits and the glossary). The definition recognizes restoring or protecting wetlands as nature-based solutions that provide multiple benefits.

c. Equity work and defining disadvantaged communities

Comments included requests for technical assistance to help identify disadvantaged communities, clarity on the disadvantaged communities definition, and state flexibility in identifying disadvantaged communities at the local level, such as recognizing the different challenges faced by small rural communities and large urban communities. One commenter asked what documentation besides a watershed-based plan (WBP)/ NPSMP is needed by the EPA to allow project funds for equity work.

EPA Response:

- Regarding technical assistance, the EPA encourages you to reach out to your EPA regional point of contact. See Appendix A for added clarity on the eligibility for using Section 319 funds and the consistency with civil rights laws.
- Regarding the clarity of defining a disadvantaged community, the EPA slightly modified the definition in the 2024 Guidelines glossary: *As set forth in Executive Order 14008, [Tackling the Climate Crisis at Home and Abroad](#), disadvantaged communities are those that are marginalized, underserved, and overburdened by pollution. Definitions of disadvantaged communities will be updated in Grants Reporting and Tracking System (GRTS) to reflect the latest agency guidance.*
- Regarding state flexibilities for identifying disadvantaged communities, the EPA recognizes the nuances of state-specific water quality, public health, and demographic variables. The EPA initiated state-level screening pilot projects to address these complexities using the [Recovery Potential Screening](#) (RPS) tool. The pilot analysis assisted three states with applying the RPS tool to identify subwatersheds where nonpoint source (NPS) issues intersect with disadvantaged communities. The advantage of this approach is the flexibility for states to select ecological, stressor, and social indicators tailored to their needs and priorities. The report [Integrating Equity and Environmental Justice into Nonpoint Source Management Planning with the Recovery Potential Screening Tool](#) summarizes the outcomes of this effort. It provides state NPS programs with a process and insight into how watershed, water quality, and demographic data, available in the RPS tool, can be analyzed to support the integration of equity and environmental justice into NPS management planning.
- Regarding the documentation of equity work using project funds, states should note in their workplan that they are exercising the flexibility and explain how they identified the community as disadvantaged and the overall plan for building capacity in that community (Chapter 6.3.1).

d. Watershed-based planning and the watershed planning handbook

Suggestions included updating the 2008 *Handbook for Developing Watershed Plans to Restore and Protect Our Waters* (2008 Handbook) and offering more technical guidance on the level of specificity needed in emergency plans. One commenter requested examples or a crosswalk showing the use of existing plans. Other commenters expressed concern about the expected time frames of 4–5 years to see water quality improvements or reach water quality goals identified in a WBP.

EPA Response:

- The EPA agrees that additional technical guidance for alternative plans would be beneficial as the NPS program navigates the new challenges of climate change and the increased frequency and severity of natural disasters. The type of technical support needed is best delivered outside the scope of the guidelines. Regarding the level of specificity in emergency plans, incorporating site-specific information is an important component to inform effective rapid decisions. For example, the Burned Area Emergency Response (BAER) program provides burn severity data that can help inform strategies outlined in a wildfire emergency plan. The EPA anticipates offering additional technical guidance and sharing lessons learned as we improve our collective understanding of the effective use of alternative and watershed-based plans along with climate and equity considerations.
- Some other clarifications are provided in Chapter 4 “Watershed-Based Planning”. These clarifications include when an approved tribal NPSMP can be considered an acceptable alternative to a nine-element WBP and EPA’s role in the review of WBP (nine element and alternative plans).
- The EPA agrees that, depending on the nature of the water quality challenge, addressing a water quality issue fully within a 5-year time frame could be unrealistic. The 2008 Handbook (Page 4-2) states:

“The issues in your watershed and the geographic scope will also affect the temporal scope of the implementation of the watershed plan. Although there are no hard and fast rules, watershed plans are typically written for a time span of 5 to 10 years. Even if you do not achieve your watershed goals in 10 years, much of the information might become out-of-date, and you’ll probably want to update the watershed plan.”

We incorporated minor word edits to Chapter 4.4 “Developing the WBP for the Unique Scope and Scale of the NPS Problem” to support this intent.

- The EPA rearranged and edited the total maximum daily load (TMDL) language in chapters 4.5.1 and 6.2.2 to improve clarity of the potential leveraging of TMDLs and what is expected to be included if Section 319 funds are used for TMDL development. The revisions in Chapter 4.5.1 also describe that TMDLs can address more than nine-element WBP elements a, b, and parts of c, based on comments received and TMDL program input.
- The EPA supports the interest in sharing the latest science and lessons from watershed planning and is exploring approaches to any updates or addendums to the 2008 Handbook.
- Regarding leveraging other plans, the EPA’s NPS program is coordinating with the TMDL program to share examples of state or regional approaches to leveraging existing plans and streamlining the process. We anticipate sharing a compilation of collected examples and continuing to build that resource list.

e. Watershed financing partnership

Some reviewers requested that the EPA offer training on watershed financing partnerships.

EPA Response:

The EPA agrees with this need and is currently developing a fact sheet on watershed financing partnerships to provide a broader context, highlight their potential, and offer a real-world example of a successful partnership that leverages CWA Section 319 grant funding with financing

from the Clean Water State Revolving Fund (CWSRF) and other sources. EPA expects to release this fact sheet in summer 2024, if not sooner. Beyond this, the EPA plans to offer training and workshops on watershed financing partnerships. The EPA will provide information and announcements through the usual channels as plans are developed.

4. Advancing protection efforts

The EPA received several comments expressing support for the increased emphasis on water quality protection in the draft guidelines. The EPA also received some questions about the specific categories of waters included in the definition of “healthy waters.”

EPA Response:

Consistent with the 2013 Guidelines, the 2024 Guidelines provide states flexibility to identify the specific waters targeted for protection. Under previous Section 319 guidelines, the EPA referred to the protection of “unimpaired/high quality waters.” The 2024 Guidelines now refer to the protection of “healthy waters” to more fully represent the types of waters states may prioritize for protection and to align with the protection of healthy waters, as described in EPA’s [Vision for the CWA Section 303\(d\) Program](#). The EPA clarified the definition of healthy waters to include “at-risk waters not yet impaired but where data trends may show signs of water quality degradation.” The EPA plans to create a compendium of NPS protection strategies, including watershed-based planning examples. Additionally, the EPA is currently working with states to develop the new GRTS success story builder tool, which will allow states to submit NPS success stories on the protection of healthy waters.

5. Elements of NPSMP and Appendix A

Several commenters asked for additional clarifications on changes that apply to NPSMP expectations.

EPA Response:

Please note that elements are generally the same as the 2013 guidance but are rearranged. The EPA expanded the expectations to include climate resilience, equity, and protection considerations in elements 2 and 4. Additionally, the list of stakeholders under element 5 includes Tribal NPS programs and Tribal governments. States have the flexibility to adjust their programs based on where their program may be in incorporating these factors.

6. Frequency of updates to these guidelines

Some commenters expressed appreciation for the various opportunities to engage with the guideline revisions, while others requested more frequent updates (e.g., every 5 years). One commenter requested more state engagement.

EPA Response:

EPA will keep these suggestions under consideration. In the past, the EPA has updated the guidelines as circumstances indicated. As with the 2024 update, future updates will involve substantial engagement with states and subgrantees.

7. Prioritization of national priorities

Some commenters expressed support for the national priorities, while others requested additional clarity regarding expectations. Some comments asked for clarification on whether waters to be addressed also include lakes and wetlands.

EPA Response:

- The EPA’s revisions in Chapter 2, NPS Program Goals and National Priorities, reaffirm that effective state NPSMPs must maintain and improve water quality by addressing criteria listed in Chapter 2.1 “NPS Program Water Quality Improvement”. The primary goal of the NPS Program is water quality improvements. Other national priorities defined in Chapter 2 are encouraged as they align with a state’s NPSMP.
- The EPA also clarified that national priorities include lakes and wetlands as well as protecting public health.

8. NPS project limitations related to National Pollutant Discharge Elimination System (NPDES) permits

Two commenters asked whether the examples provided represent the only cases of project eligibility. One commenter requested a detailed process for determining what green stormwater infrastructure is included in an NPDES permit.

EPA Response:

Project eligibility remains consistent with previous programmatic guidance; CWA Section 319 funding cannot be used to support activities required to meet NPDES permit requirements. Revisions to chapters 7.1.1, 7.1.2, and 7.1.4 focused on updating the language to clarify project eligibility. NPDES permit requirements vary on a municipality-by-municipality basis. Site-specific complexities of NPDES permits (and municipal separate storm sewer system (MS4) jurisdictional boundaries) can create many scenarios where project-specific factors can impact potential eligibility for Section 319 funding. Therefore, the 2024 Guidelines do not specify a detailed process for determining what green stormwater infrastructure is included in an NPDES permit. The EPA encourages states to continue to work with their EPA regional NPS contact on specific project scenarios. The EPA may add more general clarifications of eligibility to our Q&A reference section in the future.

9. Davis Bacon and Build America, Buy America (BABA)

Some commenters requested more detailed guidance on these laws.

EPA Response:

The EPA understands the cross-cutting nature of these programs can be challenging for grantees. For project-specific determinations, we encourage states to reach out to their EPA regional coordinator with any questions early in the process. In addition, the EPA developed a two-page document titled “Build America, Buy America (BABA) Act Summary for Section 319 Grant funded projects” (February 22, 2024) and plans to update this resource as needed. Contact your regional coordinator if you would like an electronic copy. States may also find additional details in our Q&A reference in the future.

Additional Davis Bacon references:

- [The Department of Labor’s updated Davis Bacon regulations](#), effective October 23, 2023.
- [EPA Grant Policy Resources](#) – Search for Davis Bacon for the latest EPA policy

BABA References:

- OMB guidance: [M-24-02](#) and [2 CFR 184](#)
- EPA websites: www.epa.gov/cwsrf/build-america-buy-america-baba
- Email inboxes: BABA-OW@epa.gov (include hyphen)
- Made in America Office: MBX.OMB.MadeInAmerica@omb.eop.gov

10. New additions or updated content in “Relationship with other Federal Programs” (Chapter 11)

a. Match

Commenters requested additional examples of how grantees/subgrantees can leverage match requirements (Chapter 5.2.2).

EPA Response:

The EPA added language in Chapter 11.3 about the Department of Defense’s Readiness and Environmental Protection Integration (REPI) program statutory provision, which allows recipients of REPI grants to use these funds as a match for conservation or resilience programs, such as Section 319 grants. The EPA also added language to Chapter 5.2.2 to clarify when other federal funds might be used as match.

b. NRCS Regional Conservation Partnership Program (RCPP) clarification

One commenter requested clarification on what conditions Section 319 funds can count towards RCPP contributions.

EPA Response:

The EPA added a paragraph to Chapter 11.3 to provide conditions on when Section 319 funds can be counted towards RCPP project contributions. These conditions are that the 319-funded activities support the goals/objectives of the RCPP project, occur within the RCPP boundaries, and occur after the RCPP award announcement.

c. CWA Section 604(b)

Some commenters requested additional information on the use of Section 604(b) funds to address emerging contaminants.

EPA Response:

The EPA is compiling examples and plans to share them at a later date. In the interim, questions about climate, equity, and emerging contaminants can be directed to the EPA regional Section 604(b) point of contact.

d. New addition

Although not in response to a comment, information on the EPA’s Water Reuse Program, another program that provides technical assistance, was added to Chapter 11.2.8.

11. EPA review of WBPs and alternative plans

Additional clarity was requested regarding the EPA review and approval of acceptable alternative plans, the eligibility of using 319 funds to implement nine-element WBPs prior to EPA acceptance, and anticipated timelines for EPA review.

EPA Response:

- The EPA added subheadings to Chapter 4.7 “EPA’s Role in Developing and Reviewing WBPs” to clearly distinguish the differences between EPA review of nine-element and alternative plans. Alternative plans require EPA approval to ensure the plans address the five elements outlined in Chapter 4.6.2 and funding is authorized for the specific circumstances defined in Chapter 4.6.3.
- Using Section 319 funds to implement nine-element WBPs requires EPA review and acceptance prior to or in conjunction with approving a project in the work plan.
- Regarding review timelines, the EPA strives to provide reviews in a timely manner. The review timeline of a nine-element WBP and alternative plans depends on many factors, including the EPA region’s workload. States are encouraged to work with their EPA regional coordinator to develop an agreed-upon timeline. For alternative plans, states are also encouraged to request a timeframe for EPA review.

12. Allocation formula

Commenters suggested modifying the allocation formula to consider or weigh factors such as a state’s effective use of funding, nutrient TMDLs, land use type percentages, or equity considerations.

EPA Response:

Consistent with report language in the EPA’s budget for the past several fiscal years, the EPA continues to evaluate whether the allocation formula is a sound approach for addressing NPS issues nationally. While revisions to the allocation formula were not in the scope of the 2024 Guidelines revision process, these comments will be considered in EPA’s annual review of the formula.

13. Leverage exemption

One commenter recommended that other federal programs should be allowed to be leveraged against the 50% watershed project requirement (Chapter 6.6).

EPA Response:

Recognizing the widespread extent of nonpoint source pollution, the EPA continues to believe that the 50% leveraging exemption is appropriate to benefit states that commit state and local funds beyond statutory match expectations. Since 2013, the guidelines provide an exemption for states that contribute substantial state or local funding to watershed projects from the requirement to use 50% of their EPA program funding for watershed projects. This flexibility allows those states to use more of their EPA funds for staff, planning and monitoring efforts.