

EPA SNEP RFA Frequently Asked Questions from Email Inquiries

(Last Updated 6-6-2019)

Questions in green were added after the informational webinar on 6-6-2019

Additional questions should be submitted to SECoastalNE@epa.gov by June 21, 2019.

Submission Questions:

1. What time are applications due on June 28, 2019?

Applications are due by 11:59 P.M. (EST) on June 28, 2019.

2. Will webinar slides be shared either by email or on the SNEP website?

Slides will be posted on the website (<http://www.epa.gov/snecwrp>), as well as emailed to registered participants of the informational webinar.

3. Do subcontractors have to submit an individual SF424 or is that cost included as a line item on the applicant's SF424?

See Appendix A below. (Line item on the 424)

4. If multiple partners are collaborating, are commitment letters required from collaborators?

If you intend to collaborate with partners, commitment letters are required to document their roles and the resources/expertise they will bring to the effort. If project partners are not included, commitment letters are not required, and the applicant will be evaluated based on their ability to effectively perform and complete the project without such collaboration.

5. Is there a maximum number of pages for the Budget Description?

There is no page limit for the Budget Description submitted as part of the proposal. However, the narrative of the 424 should be brief.

6. Are Commitment Letters optional?

See question 4.

7. Are the budget pages (424s) included in the 12-page limit?

No. Additionally, the Budget Description is not included in the 12-page proposal narrative limit.

8. Are there requirements for biographical sketches and/or conflict of interest lists?

The RFIP requires applicants to demonstrate qualifications related to their proposed projects by providing a list of key staff and briefly describing their expertise/qualifications and knowledge, as well as the roles of each partner and their involvement and how their resources will support the proposed project activities.

9. If a town applies - can some of the partners be co-awarded, so that the town does not have to administer funds? For another municipal entity in another state?

No. EPA awards the grant to the eligible entity that successfully competes for funding. That entity is accountable to EPA for successful completion of the project and financial administration. EPA does not "co-award" a single grant to multiple entities although the recipient may act as a pass-through entity for subawards to eligible project partners. Recipients for grants may hire contractors (e.g. consultants) to assist with financial administration provided the selection process complies with the Procurement Standards in 2 CFR Part 200. Also, recipients may enter into intergovernmental agreements under 2 CFR 200.318(e) with other units of government (e.g. a State) to use properly awarded contracts that are already in place to acquire shared services. Please refer to Appendix A.

10. What is the SAM.gov database?

It is a database where applicants and contractors are required to register. It is separate from DUNS. Applicants should do due diligence to ensure they are registered in advance of submittal.

11. Is the "Cover Page" inclusive to the 12-page Proposal Narrative? What should the cover page content consist of?

The cover page is included in the 12-page proposal narrative limit. At a minimum, the cover page should include applicant contact information and proposal title.

12. Does the budget description have a page limit? Any guidance on length?

No, but should be brief.

13. What does letter of commitment mean? Are they a financial commitment only?

Description of commitment and/or involvement in the project, not necessarily financial only.

14. Where do you attach the cover page, budget description and commitment letters to the application package?

The order of the materials does not matter as long as all of the required materials and any additional attachments (e.g. partner letters) are uploaded to Grants.gov

15. Should proposals follow these header formats?

The organization of the project proposal is up to the applicant but including headings based on the evaluation criteria is easier for reviewers.

16. How much of the 12-page limit would you recommend using for organizational description?

This is up to the applicant to decide.

17. Do the applicant and its subrecipients need to have DUNS and SAM numbers for the submittal?

The Applicant must have a DUNS and SAM number to submit a proposal on Grants.gov. Subrecipients of successful applicants must obtain a DUNS number as provided in 2 CFR 200.331(a)(1). Contractors are not subrecipients and need not obtain a DUNS number based on requirements in 2 CFR Part 200.

18. With regards to the SF424: the web site offers several versions. Which applies to this application?

The required SF424 forms are located within the funding opportunity package which can either be downloaded, filled out and uploaded to grants.gov, or can be filled out using the Grants.gov workspace. These required forms are uploaded under the EPA-R1-SNEP-2019 funding opportunity.

19. Can ineligible applicants be an AOR (authorized organization representative) of the applicant?

No. Only eligible applicants can apply and the DUNS they are using to apply MUST be assigned to the organization that is applying.

20. On the SF-424 application, for question 1 "type" do we select "preapplication"?

Select application.

21. If the fiscal agent is different than the applicant, can the fiscal agent submit the application on behalf of the applicant?

EPA does not recognize "fiscal agents" who submit applications on behalf of applicants. Applications must be submitted by the organization that is responsible to EPA for carrying out the project and proper financial management. Consistent with the Procurement Standards in 2 CFR Part 200, applicants may hire firms or organizations with financial management expertise to assist them. .

22. Do you have guidance on the appropriate response for question 19 of the 424 form?? Is the application subject to review by state under EO12372.

Further information regarding this requirement will be provided if an application is selected for funding. Single points of contact (SPOC) can be found at https://www.whitehouse.gov/omb/grants_spoc/

23. If the expected project period is 5 years, do I need to include the 5 years in the budget detail?

Since this will be an incrementally funded award for up to 5 years, we recommend providing some information of how you will spend incremental funds awards in future years in the budget detail.

Eligibility Questions:

24. Can only one department/division in a local/county government unit receive an award?

Only one applicant will be selected regardless of whether the applicants are from the same organization, department or local/county government unit.

25. Are project partners subject to the same eligibility requirements as applicants, e.g. no companies or individuals?

No. In some cases, recipients may refer to their contractors (particularly consultants) as “partners”. See Appendix A below for more information on the difference between subrecipients (or partners) and contractors.

26. Can a project be funded to assist with permit compliance?

Maybe. Although projects with compliance components may be eligible, projects that address and result from the settlement of enforcement violations or ongoing non-compliance issues are likely not eligible for funding under the terms of the settlement agreements that resolve these violations or issues. In addition, EPA’s Supplemental Environmental Projects policy prohibits the use of federal funding for these types of projects. However, it’s possible the requested assistance from the Network could be to provide guidance on how to maximize results from various enforcement or mitigation actions.

27. What do you mean by "Link" to EPA’s Strategic Plan?

To identify how the proposed project aligns with the goals outlined in EPA's strategic plan, links to the strategic plan can be found in Section 1.C of the RFA.

28. Does the area include Little Narragansett Bay?

Check the map located at <http://www2.epa.gov/snecwrp/background-information-southeast-new-england-coastal-watershed-restoration-program> to determine whether or not it falls within the SNEP boundary.

29. Can salaries be funded through the grant?

Yes. As long as the project expenses align with the project tasks, reasonable salaries are considered an eligible expense subject to the requirements of 2 CFR 200.430 and 200.431

30. Are there any rules regarding the indirect cost rates for partners?

We assume by "partner" you mean a subrecipient who will receive EPA funding under a subaward from a successful applicant. Indirect cost rates that are 1) federally approved; 2) approved by the recipient based on Federal standards in 2 CFR Part 200; or 3) the 10% de minimus indirect cost rate authorized by 2 CFR 200.414 are acceptable. See Appendix A for clarification.

Match Questions:

31. What is the period of eligible match? Will you allow pre-award match within a certain timeframe?

EPA grant regulations allow an applicant to incur pre-award costs, including match, up to 90 days prior to the award of funding provided that the costs are for expenses identified in an approved work plan.

32. What percentage matching is required?

A minimum non-federal match of **15 percent** of the federal share is required under this RFA.

33. When does the match have to occur?

Prior to the end of the project and budget period.

34. When does the applicant need to show the match?

Match should be documented in the proposal narrative.

35. Can applicants include indirect costs as part of match?

Yes, assuming the question refers to waived indirect costs as part of match, this practice is acceptable under 2 CFR 200.306 unrecovered indirect costs; including indirect costs on cost sharing or matching may be included as part of cost sharing or matching with the prior approval of the federal awarding agency. Unrecovered indirect cost means the difference between the amount charged to the federal award and the amount which could have been charged to the federal award under the non-federal entity's approved negotiated indirect cost rate.

36. Is there a maximum allowable overhead rate that the SNEP grants will allow? If so, can the difference between your maximum allowable indirect rate and an organization's negotiated indirect rate be used as match?

There is no maximum allowable indirect rate for the SNEP program that is less than the indirect rate an applicant has negotiated with its cognizant Federal agency. Also see question #34 above.

Evaluation Criteria Questions:

37. Do you lose points if you don't have partners?

Points will not be deducted for those projects without partners, but applicants that do not include partners in their project will be evaluated based on the extent to which they demonstrate how they will be able to effectively perform and complete the project without collaboration.

38. Is there any requirement or preference for projects in degraded waterways or non-attainment areas as defined by EPA?

No. Proposals will be evaluated based on how well the project aligns with SNEP priorities listed in Section IB of the RFA.

Partners and Contractors

39. For a project partner with two units involved, such as two departments in a single large university, should one or two commitment letters be submitted?

This is up to the applicant to decide but keep in mind there is a limit on the number of commitment letters that are considered in the review process. If you intend to collaborate with partners, there is no limit to how many partner letters are submitted.

40. Can an organization be considered a partner even if they are not getting any funding from the grant?

Yes, as long as they have involvement in the project. Partners can also contribute funding.

41. What does EPA mean by "partner"?

The term "partner" refers to a mutually understood, documented relationship between an applicant and one or more third parties to collaboratively carry out a proposed project. A partner may contribute funds or in-kind

resources to the joint effort and/or EPA funds may be used to finance the partner's activities. Any financial transactions between an applicant and a partner that involve EPA funds, however, must comply with the requirements in the UGG governing procurement contracts, subawards, or participant support costs depending on the nature of the relationship. Also, contributions of funds or in-kind resources that an applicant intends to use to meet a cost share on an EPA grant must comply with the UGG as well.

42. Should contractors (as defined under FAQ, i.e. for profit firm) be included as a partner list/description?

Maybe. Contractors may be included as partners only if the applicant has selected them in compliance with the Procurement Standards of 2 CFR Part 200. Please refer to Section IV D of this RFA. Keep in mind the distinctions between contractors and subaward recipients. See Appendix A to these questions for clarification.

43. If a consultant was selected competitively for an On-Call Contract and the grant was for a project that is a continuation of the existing project that the consultant was selected for, then could the grantee continue with that consultant without an additional competitive solicitation?

Yes, if an applicant or municipality has selected a contractor/consultant competitively under local law, the scope of the contract includes the services to be delivered with grant funds, and the price is reasonable. The UGG prohibits noncompetitive contracts to consultants on retainers. See Appendix A for clarification.

44. If using a consultant - does the applicant (town) have to go out and competitively bid for one?

Yes, unless a previously competed consultant contract is present.

45. For innovative approaches procurement would a sole sourcing justification apply for non-competitive procurement?

EPA rarely considers profit organizations and individual consultants as subrecipients who are eligible for noncompetitive subawards or acceptable sole source contractors even if an applicant names them in the proposal as a consortium member. See section IV.D of the RFA. Generally, the only exception to EPA's policy is when a for profit organization or individual holds a patent or copyright which makes them the only source for a particular technology or unique analytical tool the recipient needs to carry out the project. See Appendix A for clarification.

46. Is there an hourly rate on partners?

There is no hourly rate limit with the exception of contacts for individual consultants subject to the rate cap described at 2 CFR 1500.9. However, proposals will be scored based upon budget reasonability, as seen in Proposal Criterion 4.

47. If I would like to hire a topic expert, would I be able to sole source them as a consultant?

If a previously competed consultant contract is present and their contract covers the same types of activities and tasks, then yes. If a previously competed consultant contract has not been established, then applicants must award procurement contracts competitively. See question 62.

Other:

48. Can the non-profit be a 501(c) (6) or does it need to be a 501(c) (3)?

Organizations that are recognized as non-profit organizations under state law are eligible. Note, however, that non-profit organizations described in section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in section 3 of the Lobbying Disclosure Act of 1995 are not eligible to apply for this funding.

49. Can applicants without a negotiated indirect cost rate use a 10% de minimus rate?

Yes.

- 50. If an applicant applies as lead organization, can that applicant also be included as a subcontractor on another grant?**
Yes, an organization can serve as both a lead applicant for its own proposal as well as a subcontractor or sub-recipient in a different the application. It is important to note the distinctions between contracts and subawards. Please see Appendix A below.
- 51. Can subcontractors be sole sourced or is a bidding process required once the grant is awarded to the applicant?**
With very few exceptions successful applicants must award procurement contracts competitively. See Appendix A below.
- 52. Will there be opportunity to review specific projects with EPA prior to submission to determine eligibility (other than this webinar)?**
EPA has posted answers to questions related to eligibility and other requirements on the website. EPA cannot discuss potential proposals with applicants.
- 53. Does the Quality Assurance Project Plan have to be submitted as part of proposal?**
QAPPs or steps for their development can be submitted as part of the work plan.
- 54. Would multiple applications from a university be compared against each other?**
Proposals are not evaluated against each other. They are evaluated based on the evaluation criteria in section V.B. However, EPA will only award one grant to the university so not all the applications will be eligible for funding at the final stage of the competition.
- 55. Is there any other platform for more questions if they come up?**
Send an email SECoastalNE@epa.gov or use the "contact us" function on the SNEP website.
- 56. When is the deadline for submitting questions?**
Questions may be submitted up until June 28, 2019 11:59 EST but there is no guarantee that questions will be answered after business hours. Keep in mind that proposals must be submitted by that deadline as well.
- 57. What is the source to obtain input for specific line items on the SF424 document?**
There is an SF424 instruction document that will help if you have questions about the form or its content. You can find that form here: <http://www.grants.gov/web/grants/form-instructions/sf-424-instructions.html>
- 58. Are contracts with private vendors chosen using EPA's simplified acquisitions process (3 rate quotes and qualifications) listed under contracts?**
Yes.
- 59. The budget form does not contain a line for subawards. Should these subawards be categorized as "other" in line h of this form or should a separate 424A be filled in for the subawardees budget?**
Subawards will be under "other" on the 424A form, and then may be described further in the budget description that you provide with your proposal.
- 60. Are 501(c)3 nonprofit organizations required to comply with Procurement Standards 2 CFR Part 200 including specifically the requirement for Competitive Procurement for contractors?**
EPA has determined that transactions between any recipient and a for-profit firm or individual consultant, in almost all cases, would be a procurement contract subject to competitive requirements. EPA considers a competition among three consulting to firms to be consistent with the regulatory standard. If the applicant describes the process it followed to select the consultant as its project partner EPA will evaluate the consultant's qualifications as part of the grant competition. See Appendix A for more information.

61. Will awardee and their subawardees be conflicted in participating in any future SNEP awards?

Applicants, subawardees and subcontractors would not be precluded from applying for grants under a future opportunity.

62. Can applicants include for-profit entities as part of their team to respond to this RFA?

Applicants can propose to include for-profit entities as part of their assistance network, but their services would have to be competed after the grant is awarded unless an applicant has already gone through a process to compete the services.

63. Is there a specific mix of financial and stormwater services that the Network should provide?

We consider stormwater management and financing to be integrated areas, so we do not have a recommendation for the specific mix or breakdown of services that the Network should provide.

64. Since the RFA is emphasizing the improvement of habitat, water quality, and ecosystem function, are we to assume that the services and expertise provided by the Network should address this?

Yes.

Appendix A: Distinctions between Subrecipients and Contractors¹

Pass-through entities make subawards to other organizations to carry out a portion of the Federal award under terms that establish a financial assistance relationship. Federal requirements such as the prohibition on Management Fees or other charges to the subaward in excess of actual costs (i.e., profit) apply to sub-recipients. In contrast, contractors (including individual consultants) typically provide goods and services on commercial terms and operate in a competitive environment and a reasonable profit is allowable.

Federal regulations require that non-Federal entities award contracts following full and open competition; exceptions include transactions in amounts below the micro-purchase level (\$3,500) or when a sole source contract is properly justified. ***Pass-through entities may enter into subawards without competition unless a statute, regulation, or the terms of the EPA award provide otherwise. This distinction makes it particularly important to accurately determine whether a transaction is with a subrecipient or a contractor.***

A subaward may be provided by any form of legal agreement that complies with regulations governing subrecipient monitoring and management. Even if the pass-through entity considers it a contract, the substance of the agreement is more important than the form. The legal status of an organization as a governmental unit, non-profit organization, institute of higher education, or for-profit organization while not necessarily determinative of whether the transaction at issue is a subaward or procurement contract is an important factor to consider. Recipients must exercise judgment in deciding whether a transaction is a procurement contract or subaward subject to EPA guidance. EPA has determined that:

- (1) transactions between units of government will in almost all cases be either subawards or intergovernmental agreements rather than procurement contracts since governmental units do not provide services on commercial terms.
- (2) transactions between institutions of higher education (IHE), or between IHEs and units of government or nonprofit organizations, are typically subawards particularly when the transactions relate to joint research, training (including technical assistance and public education) or demonstration projects.

¹Exact language governing this discussion is found primarily in 2 CFR 200.67, 2 CFR 200.74, 2 CFR 200.92, 2 CFR 200.306 through 333, and 2 CFR 200.456

(3) transactions between nonprofit organizations for collaborative projects that further the missions of both organizations are typically subawards; however, situations in which one nonprofit provides ancillary services that are widely available in the competitive market such as accounting or information technology for operations (e.g., payroll) to another nonprofit are characteristic of a procurement contract.

(4) transactions between any recipient and a for-profit firm or individual consultant, in almost all cases, would be a procurement contract subject to competitive requirements. For-profit firms and individual consultants operate in a competitive environment and provide goods and services on commercial terms to many different purchasers rather than carrying out a program for public purposes under the statute authorizing EPA to award financial assistance.

EPA's Programmatic National Subaward Term and Condition requires approval by the EPA award official for subawards to --as opposed to contracts with -- for-profits and individual consultants. Examples of situations in which a for-profit firm may be an eligible sub-recipient would be an EPA financial assistance program that provides funding for installation of pollution control equipment at company facilities or subsidizes purchases of such equipment. The for-profit firm in those cases would not be providing goods and services to the pass-through entity.

Below are examples of situations where appropriate status must be determined.

- A university applicant proposes to form a research consortium with other Institutions of Higher Education and fund its partners to study conditions in Southern New England. The financial transaction between these partners would be a proper subaward. The applicant need not conduct a competition to make the subawards. However, EPA would consider the qualifications of the research partners in evaluating the application.

-A consultant prepares an application for a non-profit organization or local government free of charge with the understanding that if the applicant is funded, the consultant will receive a sole source contract in the amount of \$100,000 for the EPA funded work. The application specifies that the consultant is a "project partner". EPA will neither consider the qualifications of the consultant nor accept a sole source justification based on the consultant's role in preparing a project. Consultants are contractors for the purposes of Federal procurement standards. Consulting services are widely available in the commercial market place and there are no practical barriers to obtaining their services competitively. Arguments that the consultant is "uniquely familiar with our project" and therefore the only source for consulting services will not be persuasive under the circumstances described in this example.

-A non-profit organization or local government determines that it lacks in-house expertise to prepare an application and manage the project if the application is successful. The applicant asks three consulting firms for rate quotes/qualification statements to perform this work and sets a price ceiling of \$150,000 contingent on EPA funding the application. This practice is acceptable to EPA. The current threshold for simplified acquisitions is \$150,000. Recipients must obtain price or rate quotes from an ". . . adequate number of qualified sources" for contracts that do not exceed this threshold. EPA considers a competition among three consulting to firms to be consistent with the regulatory standard. If the applicant describes the process it followed to select the consultant as its project partner EPA will evaluate the consultant's qualifications as part of the grant competition.

- For a water quality monitoring project, an applicant will use volunteer services received from members of a local environmental group to meet its match or cost share requirement. The volunteers will take samples from streams and lakes in the project area. In valuing these services, rates must be based on the work involved, not the professional background of the volunteers. The applicant must either use the rate charged for its own monitoring employees or perform labor market research to determine how to value the volunteers' sampling time and products. A potential source for determining a reasonable value for volunteer sampling time would be the rate a state or local government pays employees or contractors for sampling work.

- Two small municipal applicants have private architect/engineering (A/E) firms on retainer to provide A/E consulting services on an as needed basis. Municipality A does not conduct a competition to select the A/E firm. Municipality B hires its A/E firm competitively although qualifications rather than price is the determining factor in the selection.

* Municipality A **may not** use EPA funds in amounts over the \$3500 micro-purchase threshold to contract with the A/E firm on a sole source basis for design work for its project even if the municipality names the firm as a “partner” in the application. A/E services are widely available and regulations expressly state that noncompetitive contracting with consultants on retainer improperly restricts competition. Municipality A also cannot issue a series of \$3500 purchase orders to the A/E firm to circumvent competition requirements.

* Municipality B **may** use EPA funds to contract with the A/E firm in amounts over the \$3500 micro-purchase threshold provided the municipality negotiates a fair and reasonable price for the EPA funded work. Recipients may use qualifications based selection criteria for A/E firms, and provided the competition was properly conducted under state/local laws, EPA will accept the results of Municipality B’s selection process. Note, however, that Municipality B **may not** award an EPA-funded contract to the A/E firm for both the design and construction work for the project. Construction services provided by A/E firms are not covered by the exemption from price competition.

- A county government proposes a project that involves using EPA funds to partner with for profit firms to install innovative environmental technology in private dwellings in a community with a history of environmental justice challenges. The county will subsidize 100% of the cost for installing the technology through direct payments to the vendors and establishes criteria that firms must meet to qualify for subsidies. Residents decide which firm to use for installation although the county provides the residents with technical assistance in selecting the appropriate technology. Vendors must provide reports to the county on how well the technology performs. The subsidies the county pays the technology vendors may be characterized as “program participant support costs” rather than procurement contracts. No single firm has an exclusive right to receive the subsidies which are paid on behalf of the community members who participate in the program. The reports the county receives are an incidental benefit from the program.

-A nonprofit organization proposes a project that requires the use a specific pollution control technology that a firm has patented. The nonprofit may legitimately determine that the item is available from only one source and may contract with the patent holder on a sole source basis to acquire the technology. EPA will consider the firm’s qualifications if the nonprofit names it in the application and explains why the firm’s patented technology is necessary for successful implementation of the project.

-A municipality proposes a project that involves a partnership with a community organization, a builder’s association and a union to implement “best management practice” systems to protect wetlands from runoff from construction sites. The project involves stakeholder meetings for design charrettes. The municipality may use EPA funds to support the partners’ participation in the project through noncompetitive subawards. If successful implementation of the BMP requires training for construction managers and workers, reasonable training stipends to encourage attendance at training sessions would be allowable as a participant support cost under authorities that allow stipends to be paid to community members who actively participate in the charrettes. The municipality should ensure that its proposal clearly describes the stipends and that there are adequate accounting records to document stipend payments particularly if the payments are made in cash.

- A municipality (“A”) applies for funding to restore a river that passes through two other municipalities (“B” and “C”). Municipality A proposes to partner with B and C on a comprehensive restoration project and to fund their participation in the project through subawards. The project partners determine that implementation of the project would be more effective if a single A/E firm designed and managed the project. However, A’s ordinances do not allow the municipality to award a construction contract for work that will be performed outside of its jurisdiction. B and C have similar laws. Project partners could enter into an intergovernmental agreement² that would allow A to competitively select an A/E firm that would be awarded separate contracts by the three municipalities as long as that practice does not violate A, B or C’s ordinances.

² Intergovernmental agreements are arrangements between units of government for procurement or use of shared goods and services.

-A state awards contracts to several firms for environmental consulting services. The terms of the state's contracts provide that the consultants may also provide services to municipalities in the state under the same terms as those the state has negotiated as long as the municipality agrees to pay the consulting fee. A municipality proposing a project may include one of the state's consultants in its application as a project partner without conducting a competition. EPA defers to state procurement policies and procedures and considers arrangements a state makes to procure services for municipalities to be allowable intergovernmental agreements. Note, however, that the consultant fees charged to EPA grants must still be reasonable and comply with the limitations on compensation for individual consultants. The consultant may not charge fees on Federally funded projects that are higher than the state pays with its own funds.

DRAFT

Appendix B: Paperwork Reduction Act and Information Collection Requests

Background

The Paperwork Reduction Act (PRA) was created to protect the public from burdensome, unnecessary, low-utility or duplicative Federal requests for information. The provisions of the Act apply broadly “regardless of form or format,³” including newer technologies and communications media that not only disseminate information but also enable two-way online exchanges to elicit public responses.

The PRA requires that EPA receive prior approval from the Office of Management and Budget (OMB) before legally asking for most types of information from the public. Approval is obtained through submission of an Information Collection Request (ICR), which is generally a substantial undertaking that requires 6-9 months on average to complete. A completed ICR provides an overview of the collection effort, including what information will be collected, why the information is needed, what members of the public would need to respond to the information collection request, and what is the estimated burden the request would place on the public. *ICRs are required whenever identical or substantially similar information is gathered by or for EPA from 10 or more non-Federal entities, regardless of whether a collection is voluntary or mandatory.*

When the Paperwork Reduction Act Applies

Note the following clarifications about information collection and renewal of existing information collections:

For projects funded as cooperative agreements; i.e., where EPA expects to have substantial involvement:

If the scope of work includes a survey or collection of identical information from ten or more non-Federal respondents within a 12-month period, the EPA project officer must prepare and submit an ICR describing the survey to the Office of Management and Budget (OMB) for review and approval. This applies regardless of whether or not EPA has requested or influenced the design of the information collection.

If the cost of designing and administering the survey is not charged to the agreement, and EPA has not requested and/or helped design the survey, then an ICR is not required.

Funding under cooperative agreements may pay for analysis of the survey data and publication of the results.

For projects funded as grants rather than cooperative agreements:

If the scope of work includes a survey or collection of identical information from ten or more non-Federal persons and EPA has requested a survey or directed the survey design or implementation, the EPA project officer must prepare and submit an ICR describing the survey to the Office of Management and Budget for review and approval. If EPA has not directed a grantee to conduct the survey or directed the survey design or implementation, no OMB approval is required.

However, not all public responses constitute “information collections” depending on their format and use. Many (though not all) uses of social media fall outside the scope of the PRA. As social media uses are open to large numbers of people, ICRs do not apply if either of the following are true: The solicitation does not qualify as “information” (per OMB’s definition), or seek “identical” information.

The guidelines outlined below for social media may also be applied to questions asked in traditional off-line formats.

Information

OMB has specifically stated that submissions made via many social media platforms do not qualify as “information” because they fall under longstanding exemptions for:⁴

³ “The PRA defines and uses ‘collection of information’ very broadly... to mean ‘the obtaining, causing to be obtained, solicitation or requiring the disclosure to third parties or the public’ of facts of opinions ‘regardless of the form or format’ used.” Implementing Guidance for OMB Review of Agency Information Collection, June 2, 1999 <http://intranet.epa.gov/icrintra/ivc.html> Discussion of what is not considered “information” is contained on pages 23-28.

⁴ OMB Memorandum, “Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act”, April 7, 2010, http://www.whitehouse.gov/omb/assets/inforeg/SocialMediaGuidance_04072010.pdf

General Solicitations. 5 C.F.R. 1320.3(h)(4) excludes “facts or opinions submitted in response to general solicitations of comments from the public, published in the Federal Register **or other publications**, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency’s full consideration of the comment.”

Public Meetings. 5 C.F.R. 1320.3(h)(8) excludes certain “facts or opinions obtained or solicited at or in connection with public hearings or meetings.”

Like Items. 5 C.F.R. 1320.3(h)(10) reserves general authority for OMB to identify other “like items” that are not “information.”

OMB’s [Guidance on Social Media](#) memo provides greater detail, but in brief, public comments or submissions made via the following social media platforms *generally* fall under the exemptions above and **DO NOT require an ICR** (within the stated limitations):

Media Platform	Exemption	Notes
Blogs (Greenversations, etc.)	General Solicitations Public Meetings	Can pose specific questions for response in comments, but no embedded web polls.
Microblogs (Facebook, Twitter)	General Solicitations	Same as blogs.
Audio, Video, Photo-sharing Websites (YouTube, Flickr)	General Solicitations	Contests okay, but cannot request more than basic contact information and eligibility certification in addition to the audio/video/photo submission itself.
Online Message Boards/Chat Sessions	General Solicitations Public Meetings	Same as blogs or online meetings.
Online Meetings/Webinars	Public Meetings	Limited to same scope as in-person meetings. Focus Groups or surveys conducted during meetings are not exempt.
Wikis	General Solicitations	Not exempt if used as a substitute for information that would otherwise be collected by asking identical questions (e.g. as a compliance reporting tool).
Subscriptions for: -agency updates -alerts -publications -email subscription services -text message notifications -RSS feeds	Like Items	Cannot request more than basic contact information necessary to respond to subscription request (i.e. name, email, mobile phone number, etc.).

Questions

OMB defines as “identical” those questions for which each respondent or group of respondents (e.g., in a focus group) is being asked to provide the same level of information on the same subject. *Identical questions need not be phrased exactly the same way each time they are asked, nor does each respondent need to be asked the same “set of questions.”* For this reason, we often characterize “identical” as meaning “substantially similar”.

The following attempts to circumvent this definition are not valid and require an ICR:

Rephrasing questions for different respondents

Breaking up a list of questions among 10 or more respondents so that each question is only asked of 9 or fewer respondents

Enlisting surrogates (such as Regions, States, Contractors or Grantees) to each gather the information from 9 or fewer people. (e.g. even if 10 Regions each ask 5 people the same question, it counts as 50 respondents)

OMB does not consider the following to be “identical”: Nonspecific or nondirective questions – such as those that ask for “facts or opinions” that the respondent wishes to provide on a specific topic without further specification of the information being sought or the form that a response should take.

For example, a nondirective request for a respondent’s experience with a Federal program or a request for comment on a published report would appear to be so general as not to be “identical.” Such nondirective questions ask respondents to choose the information to be provided or recorded, and each respondent may choose to interpret the collection of information differently.

A general solicitation (as described in the previous section) may pose a series of specific questions designed to elicit relevant public feedback; but the solicitation may not be a survey and the responses should be unstructured.

Surveys of any kind, including web polls and satisfaction surveys that pose identical, specific questions (including through pop-up windows) are subject to the PRA.

Nonstandardized oral inquiries--i.e., inquiries that do not follow a plan used to obtain “identical” information from ten or more persons--are also not considered to be “identical.”

Brief Guidelines for Nonspecific/Nondirective Questions

DO	DON'T
Solicit facts, opinions or experiences	Request data, statistics, reporting or compliance information
Use open-ended questions	Use Yes/No questions
Use suggestion/free response boxes	Use check boxes, radio buttons, menus, text boxes that limit responses to a few lines or characters
Allow the respondent to interpret the question and decide what and how much information to give	Suggest or give examples of what a “correct” response looks like
Have free discussion	Script discussion

Asking questions in a nonspecific/nondirective way precludes aggregate responses for statistical purposes; if the goal is to acquire comparable responses, then an ICR is needed.

The following table lists commonly used types of online solicitations and whether or not the PRA applies to them. For more information, consult OMB’s [Guidance on Social Media](#).

Functions	PRA Exempt?	Reason
Web Polls	NO	Identical Questions
Suggestion Boxes	YES	Non-Identical Information
“Share/Send to a Friend”	YES	Not Information
User Account Registration on EPA Websites	YES, but limited to email address, username, password, and geographic location (e.g., State, region, or ZIP code)	Not Information

User Account Registration on Third-Party Websites	YES	Not Collected by/for EPA
Name and/or Email Address	YES	Self-identification
Demographic Information (age, sex, race/ethnicity, employment, citizenship)	NO	Identical Questions beyond Self-Identification
Satisfaction Surveys	NO, but "generic ICR" for this category may simplify/expedite approval	Identical Questions
Rating and ranking of posts or comments by website users	YES	Not Information

DRAFT