

§ 35.146

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(b) Revenue collected pursuant to a State's Title V operating permit program may not be used to meet the cost share requirements of section 105.

§ 35.146 Maintenance of effort.

(a) To receive funds under section 105, an agency must expend annually, for recurrent section 105 program expenditures, an amount of non-federal funds at least equal to such expenditures during the preceding fiscal year.

(b) In order to award grants in a timely manner each fiscal year, the Regional Administrator shall compare an agency's proposed expenditure level, as detailed in the agency's grant application, to that agency's expenditure level in the second preceding fiscal year. When expenditure data for the preceding fiscal year is complete, the Regional Administrator shall use this information to determine the agency's compliance with its maintenance of effort requirement.

(c) If the expenditure data for the preceding fiscal year shows that an agency did not meet the requirements of § 35.146, the Regional Administrator will take action to recover the grant funds for the year in which the agency did not maintain its level of effort.

(d) The Regional Administrator may grant an exception to § 35.146(a) if, after notice and opportunity for a public hearing, the Regional Administrator determines that a reduction in expenditure is attributable to a non-selective reduction of the programs of all executive branch agencies of the applicable unit of government.

(e) The Regional Administrator will not award section 105 funds unless the applicant provides assurance that the grant will not supplant non-federal funds that would otherwise be available for maintaining the section 105 program.

§ 35.147 Minimum cost share for a Performance Partnership Grant.

(a) To calculate the cost share for a Performance Partnership Grant (see §§ 35.130 through 35.138) in the initial and subsequent years that it includes section 105 funds, the minimum cost share contribution for the section 105 program will be the match requirement set forth in § 35.145, or the maintenance

of effort established under § 35.146 in the first year that the section 105 grant is included in a Performance Partnership Grant, whichever is greater.

(b) If an air pollution control agency includes its section 105 air program funding in a Performance Partnership Grant and subsequently withdraws that program from the grant:

(1) The required maintenance of effort amount for the section 105 program for the first year after the program is withdrawn will be equal to the maintenance of effort amount required in the year the agency included the section 105 program in the Performance Partnership Grant.

(2) The maximum federal share for the section 105 program in the first and subsequent years after the grant is withdrawn may not be more than three-fifths of the approved cost of the program.

(c) The Regional Administrator may approve an exception from paragraph (b) of this section upon determining that exceptional circumstances justify a reduction in the maintenance of effort, including when an air pollution control agency reduces section 105 funding as part of a non-selective reduction of the programs of all executive branch agencies of the applicable unit of government.

§ 35.148 Award limitations.

(a) The Regional Administrator will not award section 105 funds to an interstate or intermunicipal agency:

(1) That does not provide assurance that it can develop a comprehensive plan for the air quality control region which includes representation of appropriate State, interstate, local, Tribal, and international interests; and

(2) Without consulting with the appropriate official designated by the Governor or Governors of the State or States affected or the appropriate official of any affected Indian Tribe or Tribes.

(b) The Regional Administrator will not disapprove an application for or terminate or annul a section 105 grant without prior notice and opportunity for a public hearing in the affected State or States.