

2 CFR 910.130 Cost sharing (EPACT) – (2023)

In addition to the requirements of 2 CFR 200.306 the following requirements apply to research, development, demonstration and commercial application activities:

(a) Cost sharing is required for most financial assistance awards for research, development, demonstration and commercial applications activities initiated after the enactment of the Energy Policy Act of 2005 on August 8, 2005. This requirement does not apply to:

(1) An award under the small business innovation research program (SBIR) or the small business technology transfer program (STTR); or

(2) A program with cost sharing requirements defined by other than Section 988 of the Energy Policy Act of 2005 including other sections of the 2005 Act and the Energy Policy Act of 1992.

(b) A cost share of at least 20 percent of the cost of the activity is required for research and development except where:

(1) A research or development activity of a basic or fundamental nature has been excluded by an appropriate officer of DOE, generally an Under Secretary; or

(2) The Secretary has determined it is necessary and appropriate to reduce or eliminate the cost sharing requirement for a research and development activity of an applied nature.

(c) A cost share of at least 50 percent of the cost of a demonstration or commercial application activity is required unless the Secretary has determined it is necessary and appropriate to reduce the cost sharing requirements, taking into consideration any technological risk relating to the activity.

(d) Cost share shall be provided by non-Federal funds unless otherwise authorized by statute. In calculating the amount of the non-Federal contribution:

(1) Base the non-Federal contribution on total project costs, including the cost of work where funds are provided directly to a partner, consortium member or subrecipient, such as a Federally Funded Research and Development Center;

(2) Include the following costs as allowable in accordance with the applicable cost principles:

(i) Cash;

(ii) Personnel costs;

(iii) The value of a service, other resource, or third party in-kind contribution determined in accordance with Subpart E - Cost Principles - of [2 CFR part 200](#). For recipients that are for-profit organizations as defined by [2 CFR 910.122](#), the Cost Principles which apply are contained in [48 CFR 31.2](#). See [§ 910.352](#) for further information;

(iv) Indirect costs or facilities and administrative costs; and/or

(v) Any funds received under the power program of the Tennessee Valley Authority (except to the extent that such funds are made available under an annual appropriation Act);

(3) Exclude the following costs:

(i) Revenues or receipts from the prospective operation of an activity beyond the time considered in the award;

(ii) Proceeds from the prospective sale of an asset of an activity; or

(iii) Other appropriated Federal funds.

(iv) Repayment of the Federal share of a cost-shared activity under Section 988 of the Energy Policy Act of 2005 shall not be a condition of the award.

(e) For purposes of this section, the following definitions are applicable:

Demonstration means a project designed to determine the technical feasibility and economic potential of a technology on either a pilot or prototype scale.

Development is defined in [2 CFR 200.1](#).

Research is also defined in [2 CFR 200.1](#).

[[79 FR 76024](#), Dec. 19, 2014, as amended at [84 FR 12049](#), Apr. 1, 2019; [87 FR 15320](#), Mar. 18, 2022]

ENERGY POLICY ACT OF 2005, PUBLIC LAW 109–58 – (AUG. 8, 2005)

SEC. 988. COST SHARING.

(a) APPLICABILITY.—Notwithstanding any other provision of law, in carrying out a research, development, demonstration, or commercial application program or activity that is initiated after the date of enactment of this section, the Secretary shall require cost-sharing in accordance with this section.

(b) RESEARCH AND DEVELOPMENT.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3) and subsection (f), the Secretary shall require not less than 20 percent of the cost of a research or development activity described in subsection (a) to be provided by a non-Federal source.

(2) EXCLUSION.—Paragraph (1) shall not apply to a research or development activity described in subsection (a) that is of a basic or fundamental nature, as determined by the appropriate officer of the Department.

(3) REDUCTION.—The Secretary may reduce or eliminate the requirement of paragraph (1) for a research and development activity of an applied nature if the Secretary determines that the reduction is necessary and appropriate.

(c) DEMONSTRATION AND COMMERCIAL APPLICATION.—

(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (f), the Secretary shall require that not less than 50 percent of the cost of a demonstration or commercial application activity described in subsection (a) to be provided by a non-Federal source.

(2) REDUCTION OF NON-FEDERAL SHARE.—The Secretary may reduce the non-Federal share required under paragraph (1) if the Secretary determines the reduction to be necessary and appropriate, taking into consideration any technological risk relating to the activity.

(d) CALCULATION OF AMOUNT.—In calculating the amount of a non-Federal contribution under this section, the Secretary—

(1) may include allowable costs in accordance with the applicable cost principles, including— (A) cash; (B) personnel costs; (C) the value of a service, other resource, or third party in-kind contribution determined in accordance with the applicable circular of the Office of Management and Budget; (D) indirect costs or facilities and administrative costs; or (E) any funds received under the power program of the Tennessee Valley

Authority (except to the extent that such funds are made available under an annual appropriation Act); and

(2) shall not include— (A) revenues or royalties from the prospective operation of an activity beyond the time considered in the award; (B) proceeds from the prospective sale of an asset of an activity; or (C) other appropriated Federal funds.

(e) REPAYMENT OF FEDERAL SHARE.—The Secretary shall not require repayment of the Federal share of a cost-shared activity under this section as a condition of making an award.

(f) EXCLUSIONS.—This section shall not apply to— (1) a cooperative research and development agreement under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.); (2) a fee charged for the use of a Department facility; or (3) an award under— (A) the small business innovation research program under section 9 of the Small Business Act (15 U.S.C. 637); or (B) the small business technology transfer program under that section.

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The exemption language added to 42 U.S.C 16352 by the 2018 DOE Research and Innovation Act, P.L. 115-246, Section 108 is identified in red.

42 U.S.C. 16352. Cost sharing (Sept 2018)

(a) Applicability

Notwithstanding any other provision of law, in carrying out a research, development, demonstration, or commercial application program or activity that is initiated after August 8, 2005, the Secretary shall require cost-sharing in accordance with this section.

(b) Research and development

(1) In general

as provided in paragraphs (2), (3), and (4) and subsection (f), the Secretary shall require not less than 20 percent of the cost of a research or development activity described in subsection (a) to be provided by a non-Federal source.

(2) Exclusion

Paragraph (1) shall not apply to a research or development activity described in subsection (a) that is of a basic or fundamental nature, as determined by the appropriate officer of the Department.

(3) Reduction

The Secretary may reduce or eliminate the requirement of paragraph (1) for a research and development activity of an applied nature if the Secretary determines that the reduction is necessary and appropriate.

(4) Exemption for institutions of higher education and other nonprofit institutions

(A) In general

Paragraph (1) shall not apply to a research or development activity performed by an institution of higher education or nonprofit institution (as defined in section 4 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703)).

(B) Termination date

The exemption under subparagraph (A) shall apply during the 2-year period beginning on September 28, 2018.

(c) Demonstration and commercial application

(1) In general

Except as provided in paragraph (2) and subsection (f), the Secretary shall require that not less than 50 percent of the cost of a demonstration or commercial application activity described in subsection (a) to ¹ be provided by a non-Federal source.

(2) Reduction of non-Federal share

The Secretary may reduce the non-Federal share required under paragraph (1) if the Secretary determines the reduction to be necessary and appropriate, taking into consideration any technological risk relating to the activity.

(d) Calculation of amount

In calculating the amount of a non-Federal contribution under this section, the Secretary—

(1) may include all allowable costs in accordance with the applicable cost principles, including—

- (A) cash;
- (B) personnel costs;
- (C) the value of a service, other resource, or third party in-kind contribution determined in accordance with the applicable circular of the Office of Management and Budget;
- (D) indirect costs or facilities and administrative costs; or
- (E) any funds received under the power program of the Tennessee Valley Authority (except to the extent that such funds are made available under an annual appropriation Act); and

(2) shall not include—

- (A) revenues or royalties from the prospective operation of an activity beyond the time considered in the award;
- (B) proceeds from the prospective sale of an asset of an activity; or
- (C) other appropriated Federal funds.

(e) Repayment of Federal share

The Secretary shall not require repayment of the Federal share of a cost-shared activity under this section as a condition of making an award.

(f) Exclusions

This section shall not apply to—

- (1) a cooperative research and development agreement under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.);

(2) a fee charged for the use of a Department facility; or

(3) an award under—

(A) the small business innovation research program under section 638 of title 15; or

(B) the small business technology transfer program under that section.

(Pub. L. 109–58, title IX, §988, Aug. 8, 2005, 119 Stat. 910; Pub. L. 115–246, title I, §108(a), Sept. 28, 2018, 132 Stat. 3134.)

Editorial Notes

References in Text

The Stevenson-Wydler Technology Innovation Act of 1980, referred to in subsec. (f)(1), is Pub. L. 96–480, Oct. 21, 1980, 94 Stat. 2311, which is classified generally to chapter 63 (§3701 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of Title 15 and Tables.

Amendments

2018—Subsec. (b)(1). Pub. L. 115–246, §108(a)(1), substituted "Except as provided in paragraphs (2), (3), and (4)" for "Except as provided in paragraphs (2) and (3)".

Subsec. (b)(4). Pub. L. 115–246, §108(a)(2), added par. (4).

PUBLIC LAW 117–167—AUG. 9, 2022

DIVISION B—RESEARCH AND INNOVATION, ("Research and Development, Competition, and Innovation Act")

Sec. 10725. Cost-share waiver extension.

(a) IN GENERAL.—Section 988 of the Energy Policy Act of 2005 (42 U.S.C. 16352) is amended in subsection (b)(4)(B) by striking “this paragraph” and inserting “the Research and Development, Competition, and Innovation Act”.

(b) REPORT.—Section 108(b) of the Department of Energy Research and Innovation Act is amended in subsection (b) by striking “this Act” each place it appears and inserting “the Research and Development, Competition, and Innovation Act”.

The exemption termination language in paragraph (B) that was amended by 2022 Research and development, Competition, and Innovation Act, P.L. 117-167, Section 10725 is identified in red. The previous exemption provided by the 2018 DOE RIA expired in 2020.

42 U.S.C. 16352. Cost sharing

(a) Applicability

Notwithstanding any other provision of law, in carrying out a research, development, demonstration, or commercial application program or activity that is initiated after August 8, 2005, the Secretary shall require cost-sharing in accordance with this section.

(b) Research and development

(1) In general

as provided in paragraph (2), (3), and (4) and subsection (f), the Secretary shall require not less than 20 percent of the cost of a research or development activity described in subsection (a) to be provided by a non-Federal source.

(2) Exclusion

Paragraph (1) shall not apply to a research or development activity described in subsection (a) that is of a basic or fundamental nature, as determined by the appropriate officer of the Department.

(3) Reduction

The Secretary may reduce or eliminate the requirement of paragraph (1) for a research and development activity of an applied nature if the Secretary determines that the reduction is necessary and appropriate.

(4) Exemption for institutions of higher education and other nonprofit institutions

(A) In general

Paragraph (1) shall not apply to a research or development activity performed by an institution of higher education or nonprofit institution (as defined in section 4 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703)).

(B) Termination date

The exemption under subparagraph (A) shall apply during the 2-year period beginning on August 9, 2022.

The redline shows deviation language added to this section for the 2-year period August 9, 2022 – August 9, 2024.

2 CFR 910.130(b) Cost Sharing (EPACT) –

(b) A cost share of at least 20 percent of the cost of the activity is required for research and development except where:

(1) A research or development activity of a basic or fundamental nature has been excluded by an appropriate officer of DOE, generally an Under Secretary; or

(2) The Secretary has determined it is necessary and appropriate to reduce or eliminate the cost sharing requirement for a research and development activity of an applied nature.

(3) The research or development activity is to be performed by an institution of higher education or nonprofit institution (as defined in section 4 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703)) during the two-year period beginning on August 9, 2022 and ending on August 8, 2024.
