

Policy Act of 2005, which enacted this chapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 15801 of this title and Tables.

### § 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

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<sup>1</sup> 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 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.)

#### 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, as amended, 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.

### § 16353. Merit review of proposals

#### (a) Awards

Awards of funds authorized under this Act or an amendment made by this Act shall be made only after an impartial review of the scientific and technical merit of the proposals for the awards has been carried out by or for the Department.

#### (b) Competition

Competitive awards under this Act shall involve competitions open to all qualified entities within one or more of the following categories:

- (1) Institutions of higher education.
- (2) National Laboratories.
- (3) Nonprofit and for-profit private entities.
- (4) State and local governments.
- (5) Consortia of entities described in paragraphs (1) through (4).

#### (c) Sense of Congress

It is the sense of Congress that research, development, demonstration, and commercial application activities carried out by the Department should be awarded using competitive procedures, to the maximum extent practicable.

(Pub. L. 109-58, title IX, §989, Aug. 8, 2005, 119 Stat. 911.)

<sup>1</sup> So in original. The word “to” probably should not appear.

## REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (b), is Pub. L. 109-58, Aug. 8, 2005, 119 Stat. 594, as amended, known as the Energy Policy Act of 2005, which enacted this chapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 15801 of this title and Tables.

**§ 16354. External technical review of departmental programs**

**(a) National energy research and development advisory boards**

**(1) Establishment**

The Secretary shall establish one or more advisory boards to review research, development, demonstration, and commercial application programs of the Department in energy efficiency, renewable energy, nuclear energy, and fossil energy.

**(2) Alternatives**

The Secretary may—

(A) designate an existing advisory board within the Department to fulfill the responsibilities of an advisory board under this section; and

(B) enter into appropriate arrangements with the National Academy of Sciences to establish such an advisory board.

**(b) Use of existing committees**

The Secretary shall continue to use the scientific program advisory committees chartered under the Federal Advisory Committee Act (5 U.S.C. App.) by the Office of Science to oversee research and development programs under that Office.

**(c) Membership**

Each advisory board under this section shall consist of persons with appropriate expertise representing a diverse range of interests.

**(d) Meetings and goals**

**(1) Meetings**

Each advisory board under this section shall meet at least semiannually to review and advise on the progress made by the respective one or more research, development, demonstration, and commercial application programs.

**(2) Goals**

The advisory board shall review the measurable cost and performance-based goals for the programs as established under section 16181 of this title, and the progress on meeting the goals.

**(e) Periodic reviews and assessments**

**(1) In general**

The Secretary shall enter into appropriate arrangements with the National Academy of Sciences to conduct periodic reviews and assessments of—

(A) the research, development, demonstration, and commercial application programs authorized by this Act and amendments made by this Act;

(B) the measurable cost and performance-based goals for the programs as established under section 16181 of this title, if any; and

(C) the progress on meeting the goals.

**(2) Timing**

The reviews and assessments shall be conducted every 5 years or more often as the Secretary considers necessary.

**(3) Reports**

The Secretary shall submit to Congress reports describing the results of all the reviews and assessments.

(Pub. L. 109-58, title IX, §990, Aug. 8, 2005, 119 Stat. 912.)

## REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (b), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

This Act, referred to in subsec. (e)(1)(A), is Pub. L. 109-58, Aug. 8, 2005, 119 Stat. 594, as amended, known as the Energy Policy Act of 2005, which enacted this chapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 15801 of this title and Tables.

**§ 16355. National Laboratory designation**

After August 8, 2005, the Secretary shall not designate a facility that is not listed in section 15801(3) of this title as a National Laboratory.

(Pub. L. 109-58, title IX, §991, Aug. 8, 2005, 119 Stat. 913.)

**§ 16356. Report on equal employment opportunity practices**

Not later than 12 months after August 8, 2005, and biennially thereafter, the Secretary shall transmit to Congress a report on the equal employment opportunity practices at National Laboratories. Such report shall include—

(1) a thorough review of each National Laboratory contractor's equal employment opportunity policies, including promotion to management and professional positions and pay raises;

(2) a statistical report on complaints and their disposition in the National Laboratories;

(3) a description of how equal employment opportunity practices at the National Laboratories are treated in the contract and in calculating award fees for each contractor;

(4) a summary of disciplinary actions and their disposition by either the Department or the relevant contractors for each National Laboratory;

(5) a summary of outreach efforts to attract women and minorities to the National Laboratories;

(6) a summary of efforts to retain women and minorities in the National Laboratories; and

(7) a summary of collaboration efforts with the Office of Federal Contract Compliance Programs to improve equal employment opportunity practices at the National Laboratories.

(Pub. L. 109-58, title IX, §992, Aug. 8, 2005, 119 Stat. 913.)