

## REFERENCES IN TEXT

This Act, referred to in text, 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119 Stat. 594, as amended, known as the Energy Policy Act of 2005, which enacted this chapter and enacted, amended, and repealed numerous other sections and notes in the Code.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.

**§ 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.