



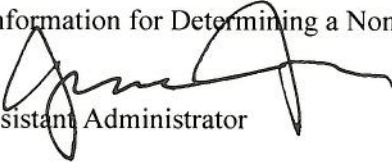
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Updated Information for Determining a Non-Selective Reduction

FROM: Jim Jones 
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TO: Regional Air Division Directors
Regions I-X

Summary

Numerous state and local governments have had to grapple with difficult economic conditions and variable levels of federal support in recent years. This has complicated their ability to meet the cost share requirements of the continuing air grant program under §105 of the Clean Air Act (CAA or the Act)). EPA has reexamined the provisions for obtaining an exception (i.e., waiver) from the §105 program's maintenance of effort (MOE) requirement due to economic circumstances and has identified a more flexible approach that could enable more jurisdictions to qualify for the waiver.¹ Additional information on the overall waiver determination process has also been provided to make it possible for state and local agencies to better evaluate their eligibility for a non-selective reduction in advance of contacting EPA.

Background

Section 105 of the Act provides grant assistance to state, local and tribal air agencies to support their continuing air pollution control programs. Section 105 contains two cost sharing provisions intended to ensure adequate recipient support: a minimum 2/5 (or 40%) recipient match, and a MOE requirement. The latter requires a recipient to expend at least as much for recurrent program activities each grant year as it did in the previous grant year. See CAA section 105(c)(1).

An increasing number of state and local governments have been providing a larger share of their recurrent program costs while simultaneously dealing with the challenge of budget reductions and variable levels of federal support. This has led numerous jurisdictions to inquire about financial relief from the Act's MOE requirement. The Act allows a recipient to adjust its MOE if the recipient can demonstrate that a non-selective reduction in the expenditures of all executive branch agencies has occurred. See CAA section 105(c)(2). A waiver to adjust the required MOE level due to a non-selective reduction is included in the statute to specifically address economic distress within a state. The Agency has exercised flexibility in

¹ The term waiver, as used in this guidance, means a waiver from the requirement to annually spend as much in recurrent expenditures as in the prior grant year and the ability to reduce and reset that level for the year in question based on a non-selective reduction. This document addresses only the non-selective reduction provisions of the maintenance of effort requirement. For more information on the overall cost sharing requirements of §105 of the Clean Air Act, including the required match, see 'Consolidated Guidance to Administer the Section 105 Air Grant Program,' Office of Program Management Operations; September, 2008.

interpreting how this waiver is applied based upon its legislative history (e.g., health and safety agency expenditures need not be reduced). EPA has also identified a range of other unique circumstances in which a recipient could lower its grant contribution without obtaining a nonselective reduction (see Appendix 1).

Recently, several Regions and recipients have indicated that the criteria to obtain a MOE waiver are too restrictive and the process too complex. As a result, the Agency has reevaluated the relevant statutory provisions and legislative history to determine what additional flexibility could be afforded in making a nonselective reduction determination.

Defining a Non-Selective Reduction

The legislative history of the CAA indicates that the non-selective reduction waiver was included in the statute to specifically address adverse economic conditions. The nonselective reduction is the primary mechanism available for reducing a state or local agency's MOE to address an economic downturn.²

While EPA has historically interpreted the statutory language addressing the non-selective reduction waiver as providing the Agency with some flexibility, EPA has found that a major deterrent in qualifying for a non-selective reduction for many recipients has been the strict interpretation that the appropriations for all executive branch agencies may not be disproportionately reduced in a budget crisis. The Agency has reevaluated this requirement and determined that an across-the-board proportional reduction is not required under the statute. The purpose of the nonselective reduction provision is to prevent targeted reductions of air programs within the states. A variable reduction in appropriations across agencies or programs does not necessarily mean that the particular air agency³ is being singled out for a selective reduction. EPA has determined that the statute does not require the prior interpretation of the nonselective reduction provision and that the objective of the statute is still met if the Agency examines the overall budget circumstances of the affected agency and jurisdiction and applies a more flexible 'weight of evidence' approach.

The weight of evidence approach recognizes that it may not be possible or feasible for all executive branch agencies to have their expenditures reduced or reduced proportionally relative to the air program. Clear examples of this are exceptions for agencies that protect public health and safety. There may also be executive branch agencies that receive support from separate revenue sources (e.g., trust funds, user fees) that are not subject to executive level budget limitations or agencies or programs that are targeted with one time special appropriations. However, under the weight of evidence approach, it must be clear to EPA that air program expenditures are not being singled out for reduction or for disproportionate reduction relative to other executive branch agencies and programs. EPA will not necessarily rely upon a strict dollar for dollar comparison or percentage differential in making its determination.

Nonselective reduction determinations are discretionary and the Agency may decline to approve a nonselective reduction where it determines that circumstances indicate an inappropriate targeting of the air program or where the reduction would lead to an adverse impact on air quality. For example, a nonselective reduction request may be denied if the air program is reduced more than all other programs

² EPA interprets the non-selective reduction provision as allowing an affected recipient to reduce its MOE based solely upon the reductions required as part of the relevant executive level budget action. However, EPA has identified various other unique circumstances whereby a recipient could lower its grant contribution without obtaining a nonselective reduction (see Appendix 1).

³ The terms agency, recipient or grantee used throughout the document all refer to the §105 air pollution control agency that is seeking an adjustment of its MOE. Jurisdiction refers to the broader state or local government that determines the air pollution control agency's budget.

or the environmental program that contains the air program is disproportionately reduced when compared with all other programs within the jurisdiction.

If a nonselective reduction request is approved, the grantee's MOE level can be adjusted by an amount equivalent to the reduction in the grantee's contribution to the §105 air program that is attributable to the nonselective reduction. However, the statute has no provision for a waiver of the required 40% minimum match and the grantee's revised MOE level cannot be lower than its required 40% minimum match amount.⁴ If the revised MOE level results in the recipient's percentage contribution falling below 40% (relative to the combined federal and non-federal total) then either the recipient must raise its contribution to at least a 40% level or EPA must lower the federal contribution so that it is no more than 60% of the combined federal/non-federal total for the affected grant period.

Guidelines for Regions

Regions should use the following guidelines to help determine whether a non-selective reduction is appropriate:

(a) Reductions in the expenditures of the air program should be part of an across-the-board or general reduction in the programs of executive branch agencies of a state or local jurisdiction;

(b) For general reductions, those where not every executive branch agency or its programs need be reduced or reduced as proportionally as the clean air program as with an across the board reduction, it must be clear that the clean air program is not being singled out for cuts or being disproportionately impacted;

(c) Programs that are critical for the protection of public health and safety (e.g., police and fire) can be completely excepted;

(d) Executive branch agencies and programs with budgets that are not subject to executive level budget control or limitation can be excepted (e.g., programs completely supported by dedicated funds or a dedicated revenue stream);

(e) Executive branch agencies with a multi-year budget period supported by an approved multi-year appropriation that is impacted by a non-selective reduction, can adjust their funding over the affected multi-year period;

(f) Reductions may take the form of a percentage or dollar level reduction in expenditures or their equivalent, including personnel actions which may include, but are not limited to: hiring freezes, layoffs, furloughs, hiring caps, etc.;

(g) Reductions in the recipient's contribution to the section 105 air program must be attributable to an across-the-board or general reduction in the budget affecting executive branch agencies and may not simply be a discretionary action by the recipient to supplant its funds with federal funds; and

(h) Expenditures for clean air programs should not be reduced in order to increase funding for programs or activities that clearly degrade air quality and jeopardize the public's health.

Expediting the Waiver Review Process

⁴ Note that the level of funds that constitutes the 40% minimum is determined by counting a grantee's contribution towards both its recurrent and non-recurrent expenditures. The MOE is calculated considering only the grantee's recurrent expenditures.

Clear and timely communication and documentation between the affected jurisdiction and EPA are essential in order to expedite the determination of whether a non-selective reduction has occurred, if the required MOE level can be waived, and what the revised MOE level should be. As soon as it is evident to the grantee that it may not be able to meet its cost sharing obligations due to executive and/or legislative budgetary action, the grantee should alert its EPA Regional Office. Since federal and non-federal budget and grant cycles may not coincide, this discovery could occur prior to closeout and before the next grant period, or after a new grant period has begun.

Once a recipient agency knows its final budget circumstances and believes that it may qualify for a waiver due to a non-selective reduction, it should share this information in writing, with supporting documentation, with the EPA Region as soon as possible. Prompt action will help facilitate the Agency's determination. It is recommended that the initial communication occur not only between the recipient's project manager and the EPA regional project officer but also between the state/local air director and the EPA regional air division director. It may also be helpful for the grantee to enlist the assistance of its chief budget agency and its legal counsel.

In addition to notifying its Regional grants office, the Regional air program should also alert OAR and the Office of General Counsel (OGC) and share the documentation it receives from the affected jurisdiction as soon as possible so that these offices can assist in the waiver review.⁵ The Headquarters review should largely focus on appropriate legal interpretation and application of the updated non-selective reduction guidance and the assurance of national consistency.

Once EPA informs the grantee that it has received all the background information and documentation necessary from the affected state or local jurisdiction, the Agency should take no more than 60 days to reach an initial determination on whether it will grant a waiver and allow a re-setting of the MOE. The Regional Administrator, after consulting within the Region and with OAR and OGC, will inform the jurisdiction in writing of its determination. If the determination does not support the jurisdiction's request, a re-consideration can be pursued following the dispute procedures outlined in 40 CFR 31.70.

If EPA's determination supports the state/local jurisdiction's request for a waiver, the Regional Administrator must still provide prior notification to the public and the opportunity for a public hearing through publication of a notice in the Federal Register. The notice should explain the non-selective reduction requirements, the specifics of the recipient's request and its fiscal situation, and EPA's determination. A minimum of 30 days for public comment will be allowed. If no written request for a public hearing or no significant comment is received within that period, the Agency's determination will become final. The determination and any public comment received must be available to the public upon request.

Essential Documentation

The recipient seeking a MOE waiver and adjustment is responsible for explaining why it believes a nonselective reduction is warranted. The recipient must provide the rationale and the documentation necessary to enable EPA to make a determination that a non-selective reduction has occurred. In order to expedite EPA's determination, the recipient should provide details on the budget action and its comparative fiscal impacts on: the jurisdiction's executive branch agencies, the affected agency itself, and the agency's air program. The recipient should identify any executive branch agencies or programs that

⁵ See "Consistent Nationwide Administration of Section 105 Maintenance of Effort (MOE) Requirements;" Deputy Assistant Administrator Beth Craig to EPA Regional Air Division Directors; December 1, 2008.

should be excepted from comparison and explain why. The recipient must provide evidence that the air program is not being singled out for a reduction or being disproportionately reduced. Documentation in two key areas will be needed: budget data specific to the recipient's air program and comparative budget data between the recipient's air program, the agency containing the air program and the other executive branch agencies. To assist the recipient and EPA in the non-selective determination, the documentation must address the following questions.

Budget Data

- (1) When does the fiscal year begin and end for the governmental jurisdiction containing the affected state/local air agency?
- (2) What is the budget (funding) period specified in the section 105 assistance agreement for which the state/local agency has not, or will not, meet its MOE requirement – i.e., the MOE shortfall period? (If the fiscal and grant periods are different, the dollar amounts need to be reconciled to enable appropriate analysis and comparison of executive branch agencies over the same MOE shortfall period.)
- (3) How much in non-federal funds did the state/local agency expend on section 105 expenditures over the budget period that preceded the budget shortfall period? What portion of these expenditures was non-recurrent? What portion was recurrent? [Note that question refers to the level of recurrent expenditures and not to their source of support. An agency's program can be supported by not only general fund revenues but other sources such as permit and user fees. All sources of support for recurrent §105 air program expenditures should be shown.]⁶
- (4) What was the state/local agency's proposed MOE level for the budget shortfall period? (This should meet or exceed the level of expenditures for recurrent program activity for the prior grant budget period.)
- (5) a. If the period with the shortfall has expired, and the state/local agency has submitted a final financial status report for that grant, what was the actual recurrent expenditure level for that budget period?
b. If that budget period has not expired, or the state/agency has not submitted a final financial status report for the grant, what is the expected recurrent expenditure level for that budget period?
c. What is the amount of the actual or anticipated shortfall in the level of recurrent expenditures below the required MOE level due to the executive branch agency budget reduction for the budget shortfall period?
- (6) What MOE level is the state/local agency planning (or proposing) to use in its application for a section 105 grant in the year following the budget shortfall period? What will be the source of funding for the non-federal, recurrent section 105 expenditures?

Funding Actions

- (7) What were the budgets or the expenditure levels for all the departments or programs within the state/local environmental agency containing the air program for the affected MOE shortfall period? For the prior funding period?
- (8) What were the budgets or the expenditure levels for all the executive branch agencies within the state/local jurisdiction for the affected MOE shortfall period? For the prior funding period?

⁶ Note that Title V operating permit fees cannot be used to cover §105 grant expenses and should not be included in any cost share determination.

(9) What are the comparative differences in budget totals for the two periods when comparing the affected air program to other programs within its overall environmental agency (if applicable) and when comparing the air program budget and its agency's budget to those of other executive branch agencies? (Please show aggregate totals, dollar differences, and percentage changes by agency and/or program.)

(10) If the budgets of all executive branch agencies were not reduced, or were reduced in different ways (e.g., dollars vs. positions), or were not reduced proportionally relative to the section 105 air program, please provide a thorough explanation.

For More Information

Additional information for Regions and recipients on examples of administrative adjustments to the maintenance of effort requirement, including a non-selective reduction, is contained in Appendix 1. Appendix 2 includes frequently asked questions (with responses) addressing the non-selective reduction. For direct questions and comments on this guidance please contact William Houck in the Office of Program Management Operations at 202-564-1234.

Recent Examples of Approved Adjustments in a §105 Recipient's Cost Share

Situation	Explanation	Example
Non-Selective Reduction	Section 105(c)(2) contains a provision that enables EPA to make a grant to an agency that does not meet its MOE if, after notice and opportunity for public hearing, EPA determines the reduction in expenditures is attributable to a nonselective reduction in the expenditures in the programs of all Executive Branch agencies of the applicable unit of government. A new MOE level can be reset based upon the amount of reduction attributable to the non-selective reduction.	Washoe County, Nevada (2009) Sacramento APCD (2005) San Joaquin Valley APCD (1999)
Correction of Recurring/ Nonrecurring Expenditures	While both nonrecurring and recurring costs figure in determining whether a recipient meets the 40% minimum match, only recurring costs count towards the maintenance of effort (MOE) determination. If a recipient can document to EPA's satisfaction that it incorrectly included nonrecurring costs in prior year MOE calculations, it can amend and re-file its financial status reports to correct its MOE level.	Clark County, Nevada (2008)
Dissolution of Agency/Assumption of Responsibilities	There have been instances where an existing section 105 recipient agency must cease operations and its CAA responsibilities must be assumed by another existing or new agency. In this case the successor agency can negotiate an updated MOE level (reflecting its increased responsibilities but not necessarily the full level of costs of the defunct agency) with the EPA.	El Paso ESD/ El Paso HED (2009) Ohio EPA/Cleveland DPH (1999)
Declination of Federal Award	Due to an economic downturn, a recipient may be unable to maintain its historically high contribution level to its air program and the recipient may not be able to demonstrate that reductions across all its executive branch agencies. A recipient may decline its federal award for one year in order to establish a new grant relationship (and a new MOE level) with EPA the next grant year.	New York DEC (2004) Kentucky (2011)
Migration of Activity to Title V Operating Permit Program	Due to delayed approval of its Title V operating permit program the recipient's differentiation of its Title V and air grant program expenses was also delayed. [Note that if a recipient legitimately amends the applicable coverage of its Title V program and fees to cover more of its air program activity, the recipient can refine its remaining air program and hence adjust its MOE.	Tennessee DEC (1999)
Inclusion of §105 Air Program in a Performance Partnership Grant (PPG)	A state which places its section 105 program within a PPG can take advantage of state funds that exceed the cost share requirements of other EPA environmental categorical grant programs included in the PPG and count those funds toward its required section 105 cost share.	Washington DOE (2001)

* Note: The Clean Air Act contains 2 interrelated cost-sharing provisions that must be complied with in order to receive, and remain eligible for, a continuing air program grant under section 105. Section 105(a)(1)(A) requires that a recipient provide no less than 2/5 (40%) of the cost of implementing its approved air program ('match'), while section 105(c)(1) requires a recipient to expend annually at least as much in recurring expenditures as it did in the prior year (maintenance of effort or 'MOE'). While there is a waiver provision for a reduction in a recipient's dollar level of non-federal recurrent expenditures, there is no provision for a reduction below the required 2/5 (40%) minimum non-federal percentage contribution. If a recipient's percentage contribution falls below 40% (relative to the combined federal and non-federal total) then either the recipient needs to raise its contribution to at least a 40% level or the EPA needs to lower the federal award amount so that it is no more than 60% of the combined total. Note that calculation of the match includes both recurrent and non-recurrent costs.

Appendix 2

Frequently Asked Questions

(1) What is the Clean Air Act maintenance of effort requirement?

The Clean Air Act states that no agency shall receive any section 105 grant during any fiscal year when its level of expenditures of non-federal funds for recurrent activities within its approved section 105 air pollution control program will be less than the level for such expenditures in the preceding fiscal year. The prospective recipient's grant application should identify the required maintenance of effort level. The recipient's final section 105 grant financial status report includes the final level of expenditures (including those that were recurrent) and hence documents whether the maintenance of effort requirement was met.

(2) Is the maintenance of effort (MOE) the same as the continuing eligibility level (CEL)?

Section 105 contains two statutory cost-sharing provisions: (a) a minimum 2/5 (40%) match; and (b) a maintenance of effort requirement. While the terms MOE and CEL have been used interchangeably over the years, for purposes of a section 105 grant, the CEL consists of both the minimum match and the maintenance of effort (MOE) requirements, and both must be met to remain eligible for section 105 grant funds.

(3) What is a non-selective reduction?

CAA section 105(c)(2) allows EPA to grant a section 105 recipient a waiver from meeting its required MOE level if the recipient demonstrates that its reduced level of expenditures for recurrent activities is attributable to a non-selective reduction in the budgets of all the executive branch agencies of that agency's applicable unit of government (e.g., state government, local government, or single-purpose local air district). EPA's most recent guidance interprets a non-selective reduction as being one where not all executive branch agencies' budgets need be reduced (e.g., exceptions for public health and safety agencies) but that the weight of evidence must indicate that the section 105 air program is not incurring a singular or disproportionate reduction.

(4) What is meant by the term 'executive branch agency'?

EPA defines an executive branch agency, or a sub-unit of such an agency, generally as an agency which prepares its budget for the approval of the chief executive of the applicable unit of government prior to its submission for funding to the legislative branch or other fiscal decision-making body. In the case of the state, for example, the chief executive is generally the governor; for the county, the chief executive is generally the county executive or county commissioners; and for a local single purpose air quality district, the chief executive is generally the executive director or board of directors.

(5) What evidence or documentation is necessary for the affected section 105 agency or its jurisdiction to provide to EPA in support its request for a non-selective reduction determination and reduction of its maintenance of effort level?

EPA interprets the statute to require a review of state or local jurisdiction budgetary information because the Agency must determine whether a nonselective reduction in the air program has occurred relative to overall budget action. As such, budget and expenditure data from the impacted budget period, the prior budget period, and in some cases the prospective budget period, of executive branch agencies is needed. In the case of the air program, recurrent and non-recurrent expenditures need to be differentiated, as well as the originally required MOE level, the actual recurrent expenditure level, the amount of shortfall, and the requested new MOE level. The jurisdiction should supply information that clearly shows how the air program's funding levels compare to

funding levels (i.e., approved budgets or actual expenditures) of the other executive branch agencies and programs over the same time period. While information should be provided on all executive branch agencies' budgets, not all such agencies need show reductions or proportionate reductions relative to the air program. However, the weight of evidence to EPA must indicate that the section 105 air program is not being singled out for disproportionate reductions. Note that the budgets of Executive Branch agencies may be supported by sources other than, or in addition to, general funds (e.g., user fees, dedicated funds, etc.) and that all sources of support funding recurring expenses should be included.

(6) Must the non-selective budget action be reflected only in terms of expenditure levels?

While the statute refers to reductions in 'expenditures,' EPA will not base its determination strictly on dollar for dollar comparisons. The Agency will consider various indicators of jurisdiction-wide budget stresses including, for example - personnel cuts and hiring freezes, furloughs, changes in work days, reductions in services, etc.

(7) What is considered to be a disproportionate reduction?

The Agency will rely upon an objective weight of evidence determination rather than a strict dollar level or percentage differential. For example, differences of a few percentage points across many agencies would certainly be reasonable while targeted cuts to the air program and a handful of other programs would likely not be sufficient. Further, expenditures for clean air programs should not be reduced in order to increase funding for programs or activities that would clearly degrade air quality and/or jeopardize the public's health.

(8) What is the difference between recurrent and non-recurrent expenditures?

Recurrent expenditures are those expenses associated with activities of a continuing environmental program. All expenditures are considered recurrent unless justified by the applicant as non-recurrent and approved by EPA as such in the grant agreement or an amendment thereto. See Per 40 CFR 35.141. Non-recurrent expenditures are those expenses which are shown by the recipient to be of a non-repetitive, unusual, or singular nature and that would not reasonably be expected to recur in the foreseeable future. Examples might be: investigative one-time monitoring, a special purpose or geographically targeted study of finite duration, a pilot project for a new type of control measure, or recipient contributions in support of a limited duration, non-recurring activity initiated by EPA.

(9) What happens if the non-selective reduction results in a lowering of the §105 agency's cost share below the Clean Air Act's required 2/5 (40%) minimum contribution?

Per CAA §105(a)(1)(a) and 40 CFR 35.145(a), if a recipient receives a non-selective reduction and the resulting level of non-federal expenditures falls below the 40% minimum of the remaining total program cost, then the recipient must increase its share to comply with the statutory match requirement or EPA will reduce the federal share so that it is no greater than 60% of the new total combined non-federal and federal amount.

(10) In seeking a non-selective reduction, can a jurisdiction lower its air program's maintenance effort by an amount beyond the level required by the across the board reduction in the budgets of the affected executive branch agencies? For example, can a recipient automatically re-set its MOE contribution level to the statutory minimum of 40%?

The Agency interprets the section 105(c)(2) non-selective reduction provision as authorizing a recipient's MOE to be reduced only by an amount equal to the reduction precipitated by the non-selective reduction.

(11) If the MOE level is reduced in one year due an approved non-selective reduction, must it go back up to its previous level in the next year whether or not additional federal funding becomes available?

Once the affected recipient's MOE level is adjusted due to a non-selective reduction, it becomes the new MOE level. A recipient is not required to restore an approved MOE reduction in the following grant budget period. It is also important to note that additional federal funds can subsequently be added to the recipient's award level - up to a maximum of 3/5 (60%) of the overall combined federal and non-federal funds - in an ensuing grant period without triggering a corresponding non-federal increase. However, if the recipient's acceptance of these increased federal funds lowers their contribution percentage below the required 40% minimum cost share, then the recipient must raise their contribution to the 40% minimum in order to qualify for the increased federal funds. If the recipient's increased contribution also increases its recurrent expenditures then this would raise and re-set its MOE since MOE is based on recurrent expenditures.

(12) What are the requirements for public notification when determining whether a non-selective reduction applies?

The Regional Administrator may grant an exception to the required MOE level if, after notice and opportunity for a public hearing, the Regional Administrator determines that a reduction in expenditures is attributable to a non-selective reduction. See CAA §105(c)(2) and 40 CFR 35.146(d). The notice should explain the non-selective reduction requirements, EPA's proposed determination, and the specifics of the recipient's request and fiscal situation. A minimum of 30 days for public comment will be allowed. If a written request for a public hearing is not received, EPA's determination will become final. This determination, and any comment received, must be made available upon request from the public.

(13) What happens in a situation where there is a budget reduction in the overall jurisdiction's budget period but the timing of the budget period and the recipient agency's section 105 grant period do not coincide meaning multiple grant periods may be affected?

Typically, the periods of time for which a recipient agency/ jurisdiction must compare the air program to the other executive branch agencies are the periods of the MOE shortfall year and the preceding grant year. The recipient must assess the impacts of the funding reduction on the affected grant periods and seek the appropriate waiver or waivers based on the appropriately re-calculated MOE level per affected grant period. The non-selective reduction test must be met for each affected grant period. Similarly if, the recipient agency must alter its grant budget period because its jurisdiction changes the time period of its fiscal/budget year then the required cost share amount should be discussed with EPA though typically it would be calculated on a pro-rated basis.

(14) Who makes the determination at EPA that a non-selective reduction is warranted?

The determination is reached through a shared, consultative process. EPA Regional Offices have the delegated authority for general grants administration and as such deal directly with the recipient in assessing the MOE situation and implementing corrective actions. The decision to grant a waiver is delegated to the Regional Administrator but the Regional determination, which should be coordinated with Regional Counsel, of a non-selective reduction affecting a section 105 recipient's MOE must be coordinated with the Office of the General Counsel (OGC), the Office of Air and Radiation (OAR), and the Grants Administration Division. Coordination is critical to maintaining consistency in non-selective reduction determinations. It is recommended that the EPA Region designate a contact, such as the EPA project officer, to be responsible for coordinating the activities necessary to make the determination.

(15) How are adjustments in air cost sharing requirements treated within a performance partnership grant (PPG)?

Numerous states have combined their §105 air program and other media grant programs within a performance partnership grant (PPG). Several of these states have done so to take advantage of the flexible cost sharing

provisions available under a PPG particularly as available resources to meet their air cost sharing requirements have declined. Under a PPG, the minimum cost share requirements of the included categorical grant programs constitute the aggregate cost share for the PPG. See 40 CFR 35.136. The minimum non-federal cost share dollar contribution for the §105 program in the first year and subsequent years that it is in a PPG, is the minimum non-federal match or the maintenance of effort level, whichever is greater. The term MOE then is no longer applicable under a PPG.

Resources that a recipient contributes above the minimum match requirements for other grant programs included within the PPG may also be used to meet a shortfall in the required minimum contribution of the §105 air program under a PPG. In the unlikely circumstance where a recipient's minimum required air contribution (i.e., initial year MOE or 40% minimum, whichever is greater) to its PPG is being reduced by a non-selective reduction and the recipient does not have overmatch available from other grant programs within the PPG to make up the required air minimum, the PPG recipient can follow the procedures in 40 CFR 35.146, 40 CFR 35.147, and this guidance to seek an adjustment of its minimum air cost share. However, the resulting recipient air contribution based on an approved non-selective reduction can be no lower than the required CAA statutory minimum of 40% relative to the federal §105 award level.

(16) What happens if EPA does not complete its review within a 60 day period from the point that complete documentation is received from the affected jurisdiction?

The sixty day period is meant to be a performance metric for EPA and not a procedural requirement. Nevertheless, EPA takes the review and action period seriously and commits to expeditious attention and processing of recipient requests that are accompanied by all the necessary documentation.