

RAIN-2022-G01

Class Exception to the Cost Share Requirements for Tribal and Intertribal Consortia Performance Partnership Grants (PPGs) at 40 CFR 35.536

Notification Date: September 30, 2021

Effective Date: October 1, 2021

Purpose: This Recipient/Applicant Information Notice (RAIN) informs recipients and applicants of the approved class exception that waives cost share requirements for Tribal and intertribal consortia PPGs at [40 CFR 35.536](#).

Summary: EPA has approved a class exception to 40 CFR 35.536 which required cost share percentages based on each environmental program grant included in the PPG.

Background: Under 40 CFR 35.536, the cost share requirement for Tribal and intertribal consortia PPGs is as follows:

- **For grant programs with cost share of 5% or less**, the PPG cost share for that program is identified in 40 CFR 35.540 through 35.718.
- **Grant programs with a cost share requirement of more than 5%** are required to cap cost share to 5% for the first two years of the PPG. Cost share can then be increased up to 10% after the first two years based on a Regional Administrator's objective assessment of socioeconomic indicators.
- **Any cost share requirement for grant programs under 40 CFR Subpart B** can be waived at any time by a Regional Administrator based on an objective assessment of socioeconomic indicators at the request of the tribe or intertribal consortium.

Due to the potential cost share increase after the first two years of a PPG, the cost share regulations have disincentivized Tribes and intertribal consortia from applying for multiyear grants beyond two years, limiting the efficiencies and flexibilities they are designed to provide, thus undermining the goal of PPGs. Some PPG-eligible programs require five years for completion, and the additional cost share percentage may discourage Tribes and intertribal consortia from including some programs in PPGs.

For Tribes or intertribal consortia to seek a socioeconomic-based waiver from a Regional Administrator, they must submit documentation supporting the waiver. Available documentation to support a waiver can vary widely among the Tribes and intertribal consortia, which limits the information available to Regional Administrators to make an objective assessment. Additionally, a Tribe's socioeconomic indicators are not static and can change rapidly, thus impacting the Tribe's ability to provide the required cost share. For example, socioeconomic indicators have been impacted by the ongoing COVID-19 pandemic. Therefore, the level of effort required to determine Tribal cost share is not commensurate with the small amount of cost share some Tribes and intertribal consortia contribute.

EPA has determined that the most efficient and beneficial solution to address these challenges is to provide a class exception from 40 CFR 35.536. This class exception waives the required cost share from Tribal and intertribal consortia PPGs and better aligns PPGs with their intended purpose. Elimination of cost share requirements will ensure financial assistance to Tribes, foster partnerships, and

increase the ability for EPA and Tribes to work together.

Action: The Office of Grants and Debarment (OGD) is approving the class exception from 40 CFR 35.536 with the following conditions:

- The class exception is effective October 1, 2021 and applies only to new Tribal or intertribal consortia PPGs and new funding awarded via supplemental amendments to Tribal or intertribal consortia PPGs awarded on or after October 1, 2021.
- The class exception is in place until EPA can revise or remove cost share requirements from 40 CFR 35.536.

If cost share was included in the budget of a new award or supplemental amendment to a Tribal or intertribal consortia PPG made on or after October 1, 2021, the recipient is required to comply with the cost share contribution and reporting requirements; however, the recipient can request removal of the voluntary cost share. Recipients should email their request to their Grant Specialist and Project Officer for the PPG. The PPG agreement must be amended to remove the voluntary cost share. Cost share associated with funds approved and/or awarded prior to October 1, 2021 remain unaffected by this regulatory exception.

Related Resources:

[40 CFR Part 35, Subpart B](#)