

Statutory Restrictions on Indirect Costs in EPA Financial Assistance Programs

1. Clean Water Act 319

Under CWA 319(h)(12) and 40 CFR 35.268(c) and 35.638(c), there is a 10% limit on administrative costs (including indirect costs). The statutory 10% limit on administrative costs applies to the amount of CWA 319 funding a state or tribe receives from EPA on an annual basis. Also, the statute and regulations exempt “[t]he cost of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs . . .” from the 10% limit on administrative costs.

Note: As provided by 40 CFR 35.134(c) and 40 CFR 35.532(b), the 10% limit on administrative costs does not apply when CWA 319 funds are included in a Performance Partnership Grant.

2. Brownfields

a. Grants Awarded Prior to March 23, 2018

Under CERCLA 104(k)(4)(B)(i) no part of a Brownfields grant awarded under CERCLA 104(k) prior to March 23, 2018 may be used for an administrative cost absent an amendment to the cooperative agreement. The statute does not define the term administrative cost. EPA interprets the prohibition to encompass all indirect costs. Note, however, that the administrative cost prohibition does not apply to Brownfields response program grants awarded under CERCLA 128, with the exception of any funding used to capitalize a Brownfields Revolving Loan Fund under CERCLA 128(a)(1)(B)(ii)(I) and CERCLA 104(k)(3).

b. Grants Awarded After March 23, 2018

The Brownfields Utilization, Investment, and Local Development Act (BUILD Act) enacted on March 23, 2018 amended the Brownfields Law to remove the administrative cost prohibition on 104(k) grant funds. Eligible entities are authorized to use up to 5% of grant awards on administrative costs as provided at CERCLA 104(k)(5)(E). EPA interprets this limitation to apply to all indirect costs and the agency may allow indirect costs (subject to the 5% limitation) to be distributed to disbursements of program income through a term and condition of the award.

To ensure equitable treatment of all Brownfields grantees EPA will also allow nonprofits that are not eligible entities for the purposes of CERCLA 104(k)(1) to use up to 5% of grant awards for administrative costs. The 5% indirect cost limitation does not apply to Brownfields response program and small community technical assistance grants awarded under CERCLA 128 with the exception of any funding used to capitalize a Brownfields Revolving Loan Fund under CERCLA 128(a)(1)(B)(ii)(I) and CERCLA 104(k)(3).

3. Clean Water and Drinking Water State Revolving Funds

Under 33 U.S.C. 1383(d)(7) and 42 U.S.C. 300j-12(g)(2), there are limitations on the amount of funds states may use for administration of State Clean Water (CW) and Drinking Water (DW) revolving fund capitalization grants. These administration costs include indirect charges and, therefore, the limitations may affect the indirect cost rate a state applies to the grant. Moreover, because the CW State Revolving Fund (SRF) and DW SRF allow for administrative costs to be charged to the capitalization grant or the state revolving loan fund, recipients intending to charge indirect costs to the capitalization grant must

charge administrative costs to the capitalization grant and include indirect costs in the grant budget. Refer to the CW SRF and DW SRF program guidance for additional information.

4. Senior Environmental Employment (SEE) Program

Administrative costs, including both indirect cost rates and direct administrative charges, may not exceed 15% of the amount of the EPA cooperative agreement. Only organizations that are eligible for funding under the Older Americans Act (which has a 15% cost-cap for all administrative fees) are eligible for the EPA SEE program.

5. State and Tribal Indoor Radon Grants

Under section 306(i)(3) of the Toxic Substances Control Act and 40 CFR 35.298(d) and 40 CFR 35.708(d) the costs of general overhead for and program administration shall not exceed 25 percent of the amount of any grant awarded (i.e., 25% of the federal amount) to a state or tribe in a fiscal year. This limitation applies to both direct EPA funding and the recipient's cost share. EPA program guidance provides that “. . . in general, most of the total indirect cost dollar amount is by definition one type of program overhead/administration cost that must be limited to 25 percent of the total . . .” amount of the EPA award. However, depending on the base used to calculate indirect costs, the eligible indirect costs may be less than 25% of the award even if the recipient is using an indirect cost rate that is higher than 25%.

Note: As provided by 40 CFR 35.134(c) and 40 CFR 35.532(b), the 25% limitation on general overhead and program administration for state and tribal indoor radon grants does not apply when this program is included in a Performance Partnership Grant.

6. Lead Contamination in School and Child Care Drinking Water Program

Under section 1464(d)(4) of the Safe Drinking Water Act, recipients may use up to 4% of the amount of federal funding for their grants for testing of lead contamination in school drinking water or child care facilities for administrative costs, including indirect costs under 2 CFR 200.414. As indicated in the terms and conditions for SDWA 1464(d)(4) assistance agreements, EPA interprets the term “administrative costs” for this program to include both indirect costs and specified direct administrative costs.