



National Tribal Air Association's Fact Sheet for Tribes Regarding Funding and Treatment as a State under the Clean Air Act Sections 103 & 105

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This fact sheet describes two sources of grant funding under the Clean Air Act (CAA) for Tribes to establish and implement their Tribal air programs: Section 103(b), which is based on specific projects, and Section 105, which is program based.

Section 103 funding is typically related to the initial development of a Tribal air program. As a program gets started, certain projects are undertaken to identify the quality of the air affecting the Tribal land, and to increase the understanding and ability of the Tribal air professionals and the Tribal government to whom they report. These projects can consist of data collection through air quality monitoring, emission inventories, air quality assessments, and other accomplishments.

Section 105 affirms that it is for “implementing programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards.” Typically, actions associated with §105 funding are usually predicated on previous data acquired and actions taken by a Tribal air program. These activities may include continuing an established air-monitoring network, data collection and submittal, permit reviews, and establishing and enforcing rules and requirements.

Under the Tribal Authority Rule (TAR), CAA §301(d)40 CFR 35.575,¹ Tribes may also receive Treatment as a State (TAS) for §105. Tribes can obtain a §105 grant without TAS, but there are several advantages by going through the eligibility determination. Eligibility requires that a Tribe:

- 1) Is federally recognized;
- 2) Has a governing body carrying out substantial governmental duties and powers;
- 3) Has appropriate authority; and
- 4) Is capable of carrying out the functions of the program.

One of the benefits of having TAS is that it defines a process for decreasing or discontinuing §105 grants, including a requirement that the Tribe is provided notification. Another immense advantage of obtaining TAS is that it reduces the necessary Tribal match from 40% to 5% for the first 2 years of the grant. Afterwards, the Regional Administrator may require a 10% match, unless the Tribe can demonstrate the increased match would impose undue hardship.²

Tribes can seek a §105 grant without having prior §103 grants if they successfully validate their capability, commitment, and program development. However, many times this demonstration is evidenced by work conducted with prior §103 funding. It is important to note that §105 funding is not constrained to a certain amount of time, unlike §103 funding where EPA policy limits the project grants to 5 years (40 CFR 40.125-13)³

¹ <https://www.gpo.gov/fdsys/pkg/USCODE-2013-title42/pdf/USCODE-2013-title42-chap85-subchapIII-sec7601.pdf>

² https://www.ecfr.gov/cgi-bin/text-idx?SID=0179488491631d11d7f70d5e51f81222&mc=true&node=sg40.1.35_1548.sg30&rgn=div7

³ https://www.ecfr.gov/cgi-bin/text-idx?SID=6ef35357528bce17b8b144f4741b0141&mc=true&node=se40.1.40_1125_61&rgn=div8

It is possible to have both a §105 and §103 grant, or even multiple §103 grants, since §103 grants can be given for separate, non-overlapping projects. Section 105 grants, unlike §103, are eligible to be combined into a Performance Partnership Grant, providing another option for a reduced match and highlighting another benefit to both §105 funding and §105 TAS.

Grant	§103(b)	§105
Basis of award	Project based	Program based
Examples of activities	<i>Initiation</i> of activities including, but not limited to: emissions inventories, air quality monitoring, training, capacity building, data collection, air quality assessment, identifying air toxics, and associated quality assurance activities.	<i>Implementation</i> of activities including, but not limited to: air quality monitoring, data collection and analysis, policy and regulation development, permit review, air toxics monitoring, and associated air quality activities.
Performance period	5 years per project	None specified
Considerations	Multiple §103 grants can be obtained, provided that the projects do not overlap with each other or §105 grants.	1) Continued funding is anticipated, but not guaranteed. With TAS, a reduction or revocation of funding requires prior notice and a public hearing. 2) TAS determination requires delineation of Tribal boundary. 3) If TAS eligibility has been established under another EPA program, the Tribe only needs to provide information not previously submitted.
Performance Partnership Grant	Unable to be included in PPG	Can be included in PPG
Tribal match	None required	1) 5%-10% if TAS eligibility is determined. 2) 5% if included in PPG (with or without TAS). 3) 40% with no TAS and not in PPG. 4) Waived if tribe demonstrates undue hardship to Regional Administrator
Competitive	No	No