

500 yards east of the Acosta Bridge, and 500 yards west of the Hart Bridge.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Jacksonville, Florida.

(c) *Dates.* This rule is effective from 9:45 p.m. to 10:45 p.m. on February 3, 2005.

Dated: January 18, 2005.

**David L. Lepsch,**

*Captain, U.S. Coast Guard, Captain of the Port Jacksonville.*

[FR Doc. 05-1427 Filed 1-25-05; 8:45 am]

**BILLING CODE** 4910-15-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 30 and 31

[FRL-7863-3]

#### Notice of Availability of Class Deviation; Assistance Agreement Competition-Related Disputes Resolution Procedures

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** This document provides notice of the availability of a Class Deviation from EPA's assistance agreement dispute procedures and also sets forth the procedures that will apply to the resolution of competition-related disputes and disagreements that may arise in connection with the competition of EPA assistance agreements. Currently, assistance agreement competition-related disputes and disagreements are resolved in accordance with EPA assistance agreement dispute procedures that apply to financial assistance to institutions of higher education, hospitals, non-profit organizations, States, tribes, local governments and other eligible entities. EPA has determined, however, through a Class Deviation, that these procedures are not practicable to use for competition-related disputes and disagreements and that it is appropriate to replace those procedures with the procedures contained in this document. These new dispute resolution procedures will apply to competitive awards that are subject to applicable EPA assistance agreement procedures unless there are program specific statutory or regulatory dispute procedures that apply to such awards. The Class Deviation and this action only affect the dispute resolution

procedures for assistance agreement competition-related disputes and disagreements.

**DATES:** These procedures are effective upon January 26, 2005.

**FOR FURTHER INFORMATION CONTACT:** Bruce Binder, Associate Director for Grants Competition, Office of Grants and Debarment, 1200 Pennsylvania Avenue, NW., Mail Code 3901R, Washington, DC 20460. The telephone number is (202) 564-4935; facsimile number (202) 565-2469; and e-mail address is [binder.bruce@epa.gov](mailto:binder.bruce@epa.gov). Copies of the Class Deviation are available by contacting Bruce Binder as indicated above.

**SUPPLEMENTARY INFORMATION:** This action sets forth the dispute resolution procedures based on the Class Deviation that are to be used in lieu of the dispute procedures contained in 40 CFR 30.63 and 40 CFR part 31, subpart F, 40 CFR 31.70 for the resolution of EPA assistance agreement competition-related disputes and disagreements. These procedures will ensure that applicants are provided with a meaningful and effective dispute resolution process for assistance agreement competition-related disputes and disagreements. The procedures provide that unsuccessful applicants will receive timely notification that EPA determined that their application or proposal was either ineligible for an award or was not selected for an award. Applicants may then, upon request, obtain a timely debriefing on the basis for the Agency's decision. Debriefings may be oral or written but are mandatory if the applicant intends to file a dispute in order to minimize misunderstandings between the Agency and the applicant and provide an opportunity to expeditiously resolve differences without the need to file a formal dispute. The applicant may file a formal dispute within 15 calendar days after the debriefing.

In addition to establishing a nationally consistent assistance agreement competition disputes process, the procedures in this document clarify roles and responsibilities and specify the circumstances in which applicants may dispute EPA decisions. Agency Officials must appoint a Grants Competition Disputes Decision Official (GCDDO) to resolve the dispute; the GCDDO cannot be involved in the decision that is the subject of the dispute. The GCDDO determines whether the issues raised in the dispute warrant delaying the competitive process until the dispute is resolved. These procedures also generally limit disputes to eligibility-

type determinations made by EPA and generally do not allow an applicant to challenge a scoring or ranking determination, unless there is a compelling reason or an issue of national significance which would warrant EPA review of the dispute. The procedures also establish that the GCDDO's decision will constitute final agency action for the purposes of judicial review with no right to any further EPA review.

In addition, EPA headquarters and regional program offices may, with the approval of the EPA Grants Competition Advocate, adopt dispute resolution procedures that are "substantially the same" as the procedures contained in this document. Each EPA announcement for a competitive assistance agreement will either include or reference the applicable disputes procedure for that particular competition (if referenced, the announcement will indicate how applicants can obtain a copy of the dispute procedures).

**Regulated Entities:** The assistance agreement competition-related disputes procedures covered by this action apply to all entities which compete for competitive assistance agreement awards that are subject to the applicable EPA assistance agreement procedures found at 40 CFR parts 30, 31, and 35 unless the part 35 regulations contain specific dispute procedures that apply to such awards.

**Background:** The regulatory disputes resolution coverage currently found at 40 CFR 31.70 was initially codified in the CFR on September 30, 1983 at 40 CFR 30.303(b) and 40 CFR part 30, subpart L (1983). 48 FR 4506 (September 30, 1983). At that time, EPA changed the assistance agreement disputes process from an adversarial, trial type process before the EPA Board of Assistance Appeals, to a more informal system administered by Agency program managers. The preamble to the final rule described the 1983 changes to the disputes process as follows:

The new process will:

1. Encourage cooperation between the Agency's officials and those applying for and receiving assistance.
2. Develop a good administrative record to support the Agency's final decisions.
3. Provide applicants and recipients high-level review of Agency decisions and a forum for resolving disputes informally, expeditiously, and inexpensively.
4. Provide applicants and recipients a written decision explaining the basis for the position.

Fair and consistent dispute resolution remains a central principle of administering EPA's assistance programs. The procedures in subpart L continue to give recipients and applicants the right to request a high level review of decisions concerning issues arising under the EPA assistance programs. 48 FR at 45060.

These same disputes provisions and processes were included in EPA regulations found at 40 CFR parts 30 and 31 implementing the "common rules" for OMB Circular A-102 in 1988 and OMB Circular A-110 in 1996. 53 FR 8034, 8076 (March 11, 1988); 61 FR 6066, 6081 (February 15, 1996). The dispute provisions were moved from 40 CFR part 30, subpart L to 40 CFR part 31, subpart F, 40 CFR 31.70, when EPA implemented OMB Circular A-102 through 40 CFR part 31. The Agency's rule implementing OMB Circular A-110 incorporates the 40 CFR 31.70 disputes procedures at 40 CFR 30.63. However, neither OMB Circular A-102 nor A-110 contains government-wide assistance agreement dispute provisions.

Based on the language in the preamble discussed above referencing the applicability of the disputes process to applicants, EPA concluded that the assistance agreement disputes process would apply if an applicant for a competitively awarded agreement chose to dispute a decision that it was either ineligible to compete for the agreement or that its application was not selected for funding based on the merits of the proposal. Consequently, EPA's September 2002 Policy for Competition in Assistance Agreements provided that the Agency would follow the 40 CFR 31.70 process for disputes and disagreements related to EPA assistance agreement competitions.

Notwithstanding the statements in the 1983 preamble regarding assistance agreement applicants, the 40 CFR 31.70 disputes provisions are geared to effectively resolve cost allowability or assistance agreement administration disputes rather than competition-related disputes and disagreements that may arise in connection with the award of assistance agreements. This disputes process does not specify any time frame for an applicant to dispute a decision or for EPA to issue a final decision. It does not provide Agency selection and award officials with nationally consistent policies and procedures for the resolution of assistance agreement competition-related disputes or for determining whether the application/proposal evaluation and award process needs to be delayed when an applicant files a dispute. The process is time consuming, particularly since it

includes two administrative appeal levels, and resource intensive for both EPA and aggrieved applicants and is not suitable for the resolution of competition-related disputes and disagreements.

In order to address these issues for assistance agreement competition-related disputes and disagreements, this action sets forth dispute resolution procedures that will provide applicants with a meaningful dispute resolution process that is better suited for competition-related disputes and disagreements than the 40 CFR part 30 and 40 CFR part 31, subpart F dispute procedures. Accordingly, pursuant to 40 CFR 31.6(d), the Director of the EPA Grants Administration Division has issued a Class Deviation approving the use of these procedures.

*Statutory and Executive Order Reviews:* Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Public Law 104-4). In addition, this action does not significantly or uniquely affect small governments. This action does not have tribal implications, as specified in Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this final grant action contains legally binding

requirements, it is subject to the Congressional Review Act, and EPA will submit this action in its report to Congress under the Act.

#### List of Subjects in 40 CFR Parts 30 and 31

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements.

Dated: January 12, 2005.

**David J. O'Connor,**

*Acting Assistant Administrator for the Office of Administration and Resources Management.*

EPA establishes assistance agreement competition-related dispute resolution procedures as follows:

1. The authority citation for the assistance agreement competition-related disputes resolution procedures in this document is the Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301(3).
2. The disputes resolution procedures that will apply to EPA assistance agreement competition-related disputes and disagreements will be referenced or included in competitive announcements and are as follows:

#### Dispute Resolution Procedures

- a. Whenever practicable, disputes and disagreements relating to assistance agreement competition-related decisions and actions must be resolved at the lowest level possible.
- b. The procedures and time frames specified below are designed to provide for an efficient, effective, and meaningful dispute resolution process. EPA Program Offices may use "substantially the same" dispute procedures as those specified herein if they are approved by the EPA Grants Competition Advocate (GCA) and provide applicants with a meaningful dispute resolution process. A meaningful dispute resolution process is one that affords unsuccessful applicants the opportunity for an effective remedy if they succeed on their dispute.
- c. *Notification:* (1) The Program Office conducting the competition must provide applicants with timely written or e-mail notification that they were (i) determined to be ineligible for award consideration as a result of the threshold eligibility review of their application/proposal (*e.g.*, the application/proposal failed to meet the threshold eligibility criteria in the announcement), or (ii) not selected for award based on their ranking/scoring after an evaluation of their application/proposal against the ranking and

selection factors in section V of the announcement.

(2) Notification of ineligibility must be provided by the Program Office to the applicant within fifteen calendar days of the decision finding that the applicant was not eligible for award consideration because of a failure to meet the threshold eligibility criteria in the announcement; notification to applicants that they were not selected for award based on the ranking/scoring of their proposal/application must be provided by the Program Office to the applicant within fifteen calendar days of the final selections for award.

(3) The notification letter or e-mail must indicate, as appropriate, that the applicant and/or its application/proposal was not eligible for award consideration based on the threshold eligibility review, or not selected for award based on the ranking/scoring of its application/proposal, and generally explain the reasons why. It must also advise the applicant that it may request a fuller debriefing (and notify the applicant that it must make its debriefing request within fifteen calendar days of receiving the notification letter or e-mail) of the basis for the ineligibility determination or selection decision. Debriefings, however, are not required when an applicant's proposal/application is rejected solely because it failed to meet a submission deadline date specified in section IV of the announcement (e.g., it was received, postmarked, etc., after the deadline established in the announcement making it a late proposal/application).

d. *Debriefings:* (1) Debriefings may be done orally (e.g., face to face, telephonically) or in writing at the discretion of the Program Office, although oral debriefings are strongly preferred because they provide a better opportunity to resolve questions and issues in an expedited manner. For oral debriefings, the Program Office will conduct the debriefing of the unsuccessful applicant at a mutually agreeable time and place as soon as practicable after receiving the debriefing request; for written debriefings, the Program Office will provide the unsuccessful applicant with a written debriefing as soon as practicable after receiving the debriefing request. All debriefings, but particularly those for applicants that were deemed ineligible for award consideration for failure to meet the threshold eligibility factors in the announcement, must be conducted in a timely manner so that the applicant has the opportunity to obtain a meaningful remedy if they successfully

challenge the ineligibility determination.

(2) Upon receiving a debriefing request from an unsuccessful applicant, the Program Office must promptly notify the Director, Office of Grants and Debarment, or regional award official, as appropriate, so that a Grants Competition Dispute Decision Official (GCDDO) can be designated.

(3) The oral or written debriefing will be limited to explaining why the applicant was found ineligible for award consideration or why it was not selected for award and must not disclose any information protected from disclosure by applicable law or regulation (e.g., the Freedom of Information Act, Privacy Act), including trade secrets, privileged or confidential commercial, financial or other information exempt from disclosure under the Freedom of Information Act, or the identity of review panel members or other reviewers. The Program Office should consult with Office of General Counsel/Office of Regional Counsel (OGC/ORC) attorneys before any oral debriefing and allow them to review any written debriefing response before it is sent. Further, any questions relating to what type of information may be disclosed at a debriefing must be directed to OGC/ORC attorneys or the Grants Competition Advocate.

(4) The debriefing explanation will, as appropriate:

(A) Identify the threshold eligibility criteria that the applicant failed to meet and specify the basis for the Agency's determination that the proposal/application or applicant was not eligible for award consideration because of failure to meet the threshold eligibility criteria.

(B) Provide the applicant with the numerical (e.g., points) or other basis for scoring/ranking its proposal/application under the evaluation criteria used in the competition.

(C) Provide the applicant with information on the strengths and weaknesses of its proposal/application in terms of the specific evaluation criteria used in the competition.

(D) Provide responses to relevant questions regarding whether the evaluation and selection procedures contained in the announcement were followed and why the applicant was not selected for award. However, the debriefing must not include point by point comparisons of the applicant's proposal/application to other proposals/applications.

(E) Identify the GCDDO.

e. *Filing of a Dispute:* (1) After receiving a debriefing, an unsuccessful applicant or their representative may

file a written dispute with the appropriate GCDDO. When there was an oral debriefing, the written dispute must be received by the GCDDO within fifteen calendar days of the debriefing date; when there was a written debriefing, the written dispute must be received by the GCDDO within fifteen calendar days of when the applicant received the written debriefing letter. The written dispute must include a detailed statement of the legal and/or factual basis for the dispute, the remedy that the applicant is seeking, information on how to communicate with the applicant or its representative (e.g., phone and fax numbers, e-mail address), and any documentation relevant to the dispute. Disputes may only be filed with the GCDDO after a debriefing; disputes filed before, or in the absence of, a debriefing will be dismissed. Furthermore, the GCDDO is only required to consider disputes on the following grounds:

(A) Where an applicant challenges the EPA determination that it and/or its proposed project is ineligible for funding based on the applicable statute, regulation, or announcement requirements; or

(B) Where the applicant challenges the decision that it is not eligible for award consideration because EPA determined that its proposal/application did not meet the threshold eligibility requirements contained in the announcement.

(2) Unsuccessful applicants whose proposal/application was rejected solely because it was received late, or who were not selected for award based on the ranking/scoring of its proposal/application after a full evaluation by EPA based on the ranking and selection criteria in section V of the announcement (e.g., challenges to the Agency's technical evaluation or ranking/scoring of the applicant based on the ranking and selection factors in section V of the announcement), are not entitled to file disputes with the GCDDO. Such disputes will be dismissed by the GCDDO except as may be provided for in paragraph (3) below. In addition, the GCDDO may dismiss any dispute that is clearly untimely filed, raises issues that the GCDDO will not consider, or that fails to set forth a detailed statement of the legal and/or factual basis for the dispute.

(3) The GCDDO, for good cause shown and where there are compelling reasons, or where he/she determines that a dispute raises significant issues of widespread interest to the assistance agreement community, may consider an untimely filed dispute or any other dispute filed by an unsuccessful

applicant. The GCDDO will invoke this discretion sparingly.

f. If a dispute is filed, the GCDDO must consult with the Program Office, OGC/ORC, and the GCA, and then determine whether it is in the Agency's best interest to delay the award process pending resolution of the dispute, particularly for disputes involving threshold eligibility issues.

g. Unsuccessful applicants must be provided with reasonable access to Agency records relevant to the dispute in a manner consistent with the standards contained in the Freedom of Information Act. EPA will not disclose materials exempt from disclosure under the Freedom of Information Act.

h. Upon receiving a dispute, the GCDDO will establish a process and schedule for resolving the dispute and communicate this to the applicant and affected Program Office. At his or her discretion, the GCDDO may (i) request additional information from the applicant or Program Office and/or (ii) meet by phone or in person with the unsuccessful applicant and/or Program Office.

i. After reviewing all of the information relevant to the dispute, the GCDDO, after consultation with the GCA, and with the concurrence of the OGC/ORC, will timely issue a final written decision regarding the dispute. The GCDDO's decision will constitute final agency action and is not subject to further review within the Agency.

[FR Doc. 05-1371 Filed 1-25-05; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R04-OAR-2004-SC-0002/0003-200421(a); FRL-7863-5]

#### Approval and Promulgation of Implementation Plans South Carolina: Definitions and General Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving revisions to the State Implementation Plan (SIP) submitted by the South Carolina Department of Health and Environmental Control (SC DHEC) on November 14, 2003, for the purpose of clarifying current regulations and ensuring consistency between State and Federal regulations. The revisions consist of those published in the South Carolina State Register on August 28, 1998 and June 25, 1999, revising

Regulation 61-62.1 Definitions and General Requirements.

**DATES:** This direct final rule is effective March 28, 2005 without further notice, unless EPA receives adverse comment by February 25, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04-OAR-2004-SC-0002 or R04-OAR-2004-SC-0003, by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. Agency Web site: <http://docket.epa.gov/rmepub/> RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: [ward.nacosta@epa.gov](mailto:ward.nacosta@epa.gov).

4. Fax: 404-562-9019.

5. Mail: "R04-OAR-2004-SC-0002 or R04-OAR-2004-SC-0003", Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

6. Hand Delivery or Courier. Deliver your comments to: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**Instructions:** Direct your comments to RME ID No. R04-OAR-2004-SC-0002 or R04-OAR-2004-SC-0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you

consider to be CBI or otherwise protected through RME, [regulations.gov](http://regulations.gov), or e-mail. The EPA RME website and the federal [regulations.gov](http://regulations.gov) website are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the RME index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9140. Ms. Ward can also be reached via electronic mail at [ward.nacosta@epa.gov](mailto:ward.nacosta@epa.gov).

**SUPPLEMENTARY INFORMATION:**