

(3) Balance the assessments conducted under paragraphs (e)(1) and (2) of this section.

\* \* \* \* \*

### Subpart I—Ex Parte Communications

52. Amend § 28.146 by revising the second sentence of paragraph (a) to read as follows:

#### § 28.146 Explanation and definitions.

(a) \* \* \* The only ex parte communications that are prohibited are those that involve the merits of the case or those that violate other rules requiring submissions to be in writing.

\* \* \*

\* \* \* \* \*

53. Add Subpart K, consisting of §§ 28.160 and 28.161 to read as follows:

#### Subpart K—Access to Records

Sec.

28.160 Request for records.

28.161 Denial of access to information—  
Appeals.

#### Subpart K—Access to Records

##### § 28.160 Request for records.

(a) Individuals may request access to records pertaining to them that are maintained as described in 4 CFR part 83, by addressing an inquiry to the PAB General Counsel either by mail or by appearing in person at the Personnel Appeals Board Office of General Counsel, 820 First Street, NE., Suite 580, Washington, DC 20002, during business hours on a regular business day. Requests in writing should be clearly and prominently marked “Privacy Act Request.” Requests for copies of records shall be subject to duplication fees set forth in 4 CFR 83.17.

(b) Individuals making a request in person shall be required to present satisfactory proof of identity, preferably a document bearing the individual’s photograph. Requests by mail or submitted other than in person should contain sufficient information to enable the General Counsel to determine with reasonable certainty that the requester and the subject of the record are one and the same. To assist in this process, individuals should submit their names and addresses, dates and places of birth, social security number, and any other known identifying information such as an agency file number or identification number and a description of the circumstances under which the records were compiled.

(c) *Exemptions from disclosure.* The Personnel Appeals Board General Counsel and the Personnel Appeals Board, in deciding what records are

exempt from disclosure, will follow the policies set forth in 4 CFR part 83.

##### § 28.161 Denial of Access to Information— Appeals.

(a) If a request for access to information under § 28.150 is denied, the General Counsel shall give the requester the following information:

(1) The General Counsel’s name and business mailing address;

(2) The date of the denial;

(3) The reasons for the denial, including citation of appropriate authorities; and

(4) The individual’s right to appeal the denial as set forth in paragraphs (b) and (c) of this section.

(b) Any individual whose request for access to records of the PAB General Counsel has been denied in whole or part by the General Counsel may, within 30 days of receipt of the denial, challenge that decision by filing a written request for review of the decision with the Personnel Appeals Board, 820 First Street, NE., Suite 560, Washington, DC 20002.

(c) The appeal shall describe:

(1) The initial request made by the individual for access to records;

(2) The General Counsel’s decision denying the request; and

(3) The reasons why that decision should be modified by the Board.

(d) The Board, en banc, may in its discretion render a decision based on the record, may request oral argument, or may conduct an evidentiary hearing.

#### PART 29—[REMOVED AND RESERVED]

54. Remove and reserve Part 29.

Anne M. Wagner,

Chair, Personnel Appeals Board, General  
Accounting Office.

[FR Doc. 03-17785 Filed 7-14-03; 8:45 am]

BILLING CODE 1610-02-P

## DEPARTMENT OF AGRICULTURE

### 7 CFR Part 2903

#### Office of Energy; Biodiesel Fuel Education Program—Administrative Provisions

**AGENCY:** Office of the Chief Economist, Office of Energy Policy and New Uses, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Energy Policy and New Uses (OEPNU) proposes to add new regulations for the purpose of administering the Biodiesel Fuel Education Program conducted under the authority of section 9004 of the Farm

Security and Rural Investment Act of 2002. This action establishes and codifies the administrative procedures to be followed in the solicitation of competitive proposals, the evaluation of such proposals, and the award and administration of grants under this Program.

**DATES:** The Agency must receive comments on or before August 14, 2003.

**ADDRESSES:** Comments should be sent to James Duffield, Economist, OEPNU/USDA, 300 7th Street SW., Reporters Building, Room 361, Washington, DC 20024. Comments may also be sent via electronic mail to [jduffield@oce.usda.gov](mailto:jduffield@oce.usda.gov).

**FOR FURTHER INFORMATION CONTACT:** James Duffield at (202) 401-0523 or via electronic mail at [jduffield@oce.usda.gov](mailto:jduffield@oce.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Purpose

The Office of Energy Policy and New Uses (OEPNU) proposes a new rule to provide administrative provisions for the Biodiesel Fuel Education Program, which was authorized in Sec. 9004 of the Farm Security and Rural Investment Act of 2002 (“2002 Farm Bill”) (7 U.S.C. 8104). The rule describes the policies and procedures OEPNU proposes to apply to this Program. These policies are consistent with those used by other USDA agencies, particularly the Cooperative State Research, Education, and Extension Service (CSREES). The rules are consistent with the basic parameters by which most Federal agencies operate competitive grants programs and will be revised as needed to conform with Federal streamlining efforts.

The goals of the Biodiesel Fuel Education Program are to stimulate biodiesel consumption and to accelerate the development of a biodiesel infrastructure. Increasing biodiesel production will increase the demand for farm commodities, which in turn will raise farm prices and net farm income, and lower government program payments. The development of a biodiesel industry would increase employment and stimulate economic growth in rural areas.

##### Agencies’ Roles

Section 9004 of the 2002 Farm Bill (7 U.S.C. 8104) requires that the Secretary make competitive grants to eligible entities to educate governmental and private entities that operate vehicle fleets, other interested entities (as determined by the Secretary), and the public about the benefits of biodiesel

fuel use. In the Joint Explanatory Statement of the Committee of Conference accompanying the 2002 Farm Bill, the Managers encouraged the Secretary of Agriculture to utilize the expertise of OEPNU in carrying out the purposes of this section. The Secretary delegated this authority to the Chief Economist, who is implementing this authority through OEPNU. The USDA Farm Bill Implementation Task Force acknowledged that OEPNU would provide technical oversight for the Program and utilize the services of CSREES in administering the Program.

#### **Memorandum of Understanding**

OEPNU and CSREES recognize the need for coordination and collaboration between the agencies to carry out the intent of the law. A memorandum of understanding has been signed by each agency which specifies the manner in which OEPNU and CSREES will collaborate in the administration of the Program. OEPNU will utilize the services of CSREES, pursuant to the Economy Act, 31 U.S.C. 1535, to administer the Program grants, as recommended by the Farm Bill Implementation Task Force. The Task Force recommended CSREES because of the Agency's experience conducting education-related grant programs and to take advantage of CSREES staff specialists who are familiar with administering grants.

#### **Role of Oversight Committee**

In implementing the Program, OEPNU has formed an oversight committee, including representatives with relevant expertise from the USDA Forest Service, Office of Procurement and Property Management, Agricultural Research Service, Rural Utilities Service, OEPNU, and CSREES and the Department of Energy Office of Biomass. Expertise of committee members includes research, development and demonstration of alternative fuels, production of alternative fuels, and procurement of alternative fuels.

#### **Request for Applications**

The committee has recommended guidelines for the Program, which are included in the Notice of Request for Applications published elsewhere in this issue of the **Federal Register**. Awards made pursuant to the Request for Applications for the Biodiesel Fuel Education Program will be made in accordance with the final rule published for this Program, including any changes that may be made in this Proposed Rule as necessary to address public comments submitted in response to this document.

#### **Participating Agencies' Experience and Interaction With Stakeholders**

In designing the guidelines for the Program, committee members relied on their past experiences with biodiesel education and outreach. For over a decade, USDA has been involved in biodiesel outreach programs. USDA's Office of Energy Policy and New Uses (OEPNU) coordinates activities related to biodiesel and other renewable fuels for the Department. Since 1993, OEPNU has been involved with producer and consumer stakeholder groups interested in developing a biodiesel industry in the United States. One of the Department's first efforts to bring biodiesel stakeholders together took place in September 1995 when OEPNU and the Department of Energy organized a stakeholder meeting in Washington, DC. The purpose of the meeting was to develop a life cycle inventory of biodiesel. This life cycle inventory furthered knowledge about the benefits of biodiesel. Several groups were represented at the meeting, including biodiesel producers, the oilseed processing industry, the rendering industry, engine manufacturers, state and local governments, and environmental groups.

The Agricultural Research Service (ARS) leads the Department's efforts on biodiesel research and demonstration. Since the summer of 1999, the Beltsville Agricultural Research Center (BARC) has been conducting a biodiesel demonstration project that has become a working model for others interested in using biodiesel. All of the Center's 150 pieces of diesel equipment and trucks were converted to a fuel blend of 20 percent biodiesel and 80 percent petroleum diesel (B20). Vehicles from BARC that run on biodiesel and educational materials have been displayed and distributed throughout the country. In January 2000, ARS conducted a workshop to highlight the BARC biodiesel demonstration project. The workshop's 75 attendees represented a broad range of potential users, including Federal Agencies, such as the Departments of Energy, Defense, Interior, and the U.S. Postal Service. Officials from nearby cities, counties, and states were also in attendance, as well as private industry groups, farmers and biodiesel suppliers. The biodiesel demonstration project has been highlighted at the BARC Public Day, an annual event that provides an opportunity for ARS scientists to describe their research projects to the public.

A biodiesel outreach program has also been established to introduce biodiesel

to USDA and other Federal agencies that operate motor fleets. Beginning in July of 2000, USDA's Office of Procurement and Property Management (OPPM) has been conducting a series of informational meetings at various locations around the United States to educate Federal fleet managers and other stakeholders on the benefits of biodiesel. Meetings have been held in Orlando, FL, San Antonio, TX, Minneapolis, MN, Washington, DC, Kansas City, MI, and Salt Lake City, UT. These meetings are used as a platform to educate motor fleet personnel, postal workers and the public about the major advantages of biodiesel. OPPM has also teamed with other entities interested in the environmental and health effects of biodiesel, such as the American Lung Association and the National Biodiesel Board, to conduct biodiesel education meetings for Federal fleet managers, postal workers, and other interested stakeholders.

#### **Proposal Review**

In collaboration with external reviewers, the Oversight Committee will review proposals and recommend awards. The Committee will monitor the Program's performance and provide guidance to OEPNU to insure that the Program objectives are being achieved. The Committee will review progress reports submitted by the grantees and, on a yearly basis, recommend whether the awards should be renewed. Also, on a yearly basis, the Committee will recommend whether to reissue the RFA and award new grants.

CSREES will compile application reviews and recommend awards to OEPNU. OEPNU will make award decisions.

#### **Awards**

The proposed Program would fund Biodiesel Fuel Education Program grants in each of FYs 2003 through 2007. Because of the scope of this Program and the limited funds available to support it, OEPNU plans to award one or two continuation grants in FY 2003. A continuation grant is a grant instrument by which the Department agrees to support a specified level of effort for a predetermined project period with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support would be in the best interest of the Federal government and the public. If these three elements are met, OEPNU plans to provide additional support to the funded projects in each of FYs 2004 through 2007.

OEPNU's plan to award only one or two continuation grants should facilitate a national education program with a consistent message. It should also ease the implementation process and allow OEPNU to monitor the Program more effectively. If the Agency were to make numerous smaller awards, this could result in multiple education programs with different emphases and goals, as well as competition for program participants and human resources to conduct the Program.

Continuation grants are necessary to ensure that the program follows an orderly and consistent transition from one year to the next over the five-year funding period. A successful Biodiesel Fuel Education Program will be sequential in nature, *i.e.*, conducted in several dependent work phases. For example, phase one might focus on identifying program participants and designing educational tools. Phase 2 might develop a strategy for putting a system and infrastructure in place to reach the targeted audience. Phase 3 could focus on scheduling and travel logistics. The work phases are interdependent, so selecting new grantees each year would cause disruptions and create the potential for repetitive efforts. Authorizing continuation grants will allow the grantees to develop and conduct long-term plans, preserve program continuity, and benefit from learning experiences over the funding period.

The Proposed Rule is divided into subparts. Subpart A contains general information about the Program prescribed by the authorizing legislation, including the purpose of the Program and eligibility restrictions established by the legislation. Subpart A limits indirect costs to the rate that an applicant has negotiated with the cognizant Federal negotiating agency, and explains that there are no matching funds requirements for the Program. Subpart B describes the continuation grant instrument that OEPNU plans to use and outlines objectives for projects funded by the Program. Subpart C provides information about the publication of program announcements, instructs applicants regarding the minimum content requirements for applications, and directs them to the program announcement for specific instructions regarding application requirements and the order of application contents. Subpart C also lists the application submission information that will appear in program announcements and describes the process for acknowledging the receipt of applications. In Subpart D of the rule, the process for selecting reviewers is

described, and the evaluation criteria applied to applications are enumerated. Subpart D also contains a discussion of the measures employed by OEPNU to protect against conflicts of interest and safeguard applicant and reviewer confidentiality. General award administration guidelines are outlined in Subpart E. Subpart E also delineates the one-time requirement that applicants submit organizational management information and lists the minimum contents of the award document. The last subpart of the rule, Section F, includes supplementary information. This subpart tells grantees how they can obtain review information, what uses of funds and changes to projects are permissible, where they can find instructions about reporting requirements, and other Federal statutes and regulations that apply to the Biodiesel Fuel Education Program. It describes the process for handling confidential aspects of applications and awards and defines terms that are used elsewhere in the rule.

#### **Paperwork Reduction Act of 1995— Information Collection**

OEPNU currently is using the services of CSREES to administer this Program. CSREES obtained information collection approval for the "Generic Application Kit" (OMB Approval No. 0524-0039), which encompasses the use of required forms to administer another USDA agency's grant program. Should OEPNU decide to administer this program directly in the future, OEPNU will comply independently with information collection requirements.

#### **Regulatory Flexibility Act**

USDA certifies that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law 96-354, as amended (5 U.S.C. 601, *et seq.*) because it is a Federal assistance program, not a regulatory regime, and awards will be made to fewer than ten entities.

#### **Executive Order 12866**

This rule has been reviewed under Executive Order 12866 and has been determined to be nonsignificant as it will not create a serious inconsistency or otherwise interfere with an action planned by another agency; will not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or rights and obligations of the recipients thereof; and will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in this

Executive Order. This rule will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health, or safety, or State, local, or tribal governments or communities.

#### **Unfunded Mandates Reform Act**

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), the Department assessed the effects of this rulemaking action on State, local, and Tribal government, and the public. This action does not compel the expenditure of \$100 million or more by any State, local, or Tribal governments, or anyone in the private sector. Therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

#### **Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with that Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings are required before bringing any judicial action regarding this rule.

#### **Executive Order 13132**

In accordance with Executive Order 13132, this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies contained in this rule do not have any substantial direct effect on the policymaking discretion of the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments.

#### **Executive Order 12372**

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

#### **Executive Order 13175**

The policies contained in this rulemaking do not have tribal implications and thus no further action is required under Executive Order 13175.

**List of Subjects in 7 CFR Part 2903**

Agricultural commodities, Energy, Fuel, Fuel additives.

For the reasons set forth in the preamble, it is proposed to amend title 7, subtitle B, chapter 29, of the Code of Federal Regulations by adding part 2903 to read as follows:

**PART 2903—BIODIESEL FUEL EDUCATION PROGRAM****Subpart A—General Information**

- Sec.  
2903.1 Applicability of regulations.  
2903.2 Purpose of the program.  
2903.3 Eligibility.  
2903.4 Indirect costs.  
2903.5 Matching requirements.

**Subpart B—Program Description**

- 2903.6 Project types.  
2903.7 Project objectives.

**Subpart C—Preparation of an Application**

- 2903.8 Program application materials.  
2903.9 Content of an application.  
2903.10 Submission of an application.  
2903.11 Acknowledgment of applications.

**Subpart D—Application Review and Evaluation**

- 2903.12 Application review.  
2903.13 Evaluation criteria.  
2903.14 Conflicts of interest and confidentiality.

**Subpart E—Award Administration**

- 2903.15 General.  
2903.16 Organizational management information.  
2903.17 Award document and notice of award.

**Subpart F—Supplementary Information**

- 2903.18 Access to review information.  
2903.19 Use of funds; changes.  
2903.20 Reporting requirements.  
2903.21 Applicable Federal statutes and regulations.  
2903.22 Confidential aspects of applications and awards.  
2903.23 Definitions.

**Authority:** 7 U.S.C. 8104; 5 U.S.C. 301.

**Subpart A—General Information****§ 2903.1 Applicability of regulations.**

(a) The regulations of this part only apply to Biodiesel Fuel Education Program grants awarded under the provisions of section 9004 of the Farm Security and Rural Investment Act of 2002 (FSRIA) (7 U.S.C. 8104) which authorizes the Secretary to award competitive grants to eligible entities to educate governmental and private entities that operate vehicle fleets, other interested entities (as determined by the Secretary), and the public about the benefits of biodiesel fuel use. Eligibility is limited to nonprofit organizations and institutions of higher education (as

defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) that have demonstrated both knowledge of biodiesel fuel production, use, or distribution and the ability to conduct educational and technical support programs. The Secretary delegated this authority to the Chief Economist, who in turn delegated this authority to the Director of OEPNU.

(b) The regulations of this part do not apply to grants awarded by the Department of Agriculture under any other authority.

**§ 2903.2 Purpose of the program.**

The Biodiesel Fuel Education Program seeks to familiarize public and private vehicle fleet operators, other interested entities, and the public, with the benefits of biodiesel, a relatively new fuel option in the United States. It will also address concerns previously identified by fleet operators and other potential users of this alternative fuel, including the need to balance the positive environmental, social and human health impacts of biodiesel utilization with the increased per gallon cost to the user. It is the Program's goal to stimulate biodiesel demand and encourage the further development of a biodiesel industry in the United States.

**§ 2903.3 Eligibility.**

(a) Eligibility is limited to nonprofit organizations and institutions of higher education that have demonstrated both knowledge of biodiesel fuel production, use, or distribution and the ability to conduct educational and technical support programs.

(b) Award recipients may subcontract to organizations not eligible to apply provided such organizations are necessary for the conduct of the project.

**§ 2903.4 Indirect costs.**

(a) For the Biodiesel Fuel Education Program, applicants should use the current indirect cost rate negotiated with the cognizant Federal negotiating agency. Indirect costs may not exceed the negotiated rate. If no indirect cost rate has been negotiated, a reasonable dollar amount for indirect costs may be requested, which will be subject to approval by USDA. In the latter case, if a proposal is recommended for funding, an indirect cost rate proposal must be submitted prior to award to support the amount of indirect costs requested.

(b) A proposer may elect not to charge indirect costs and, instead, charge only direct costs to grant funds. Grantees electing this alternative will not be allowed to charge, as direct costs, indirect costs that otherwise would be in the grantee's indirect cost pool under

the applicable Office of Management and Budget cost principles. Grantees who request no indirect costs will not be permitted to revise their budgets at a later date to charge indirect costs to grant funds.

**§ 2903.5 Matching requirements.**

There are no matching funds requirements for the Biodiesel Fuel Education Program and matching resources will not be factored into the review process as evaluation criteria.

**Subpart B—Program Description****§ 2903.6 Project types.**

OEPNU intends to award continuation grants to successful Biodiesel Fuel Education Program applicants. A continuation grant is a grant instrument by which the Department agrees to support a specified level of effort for a predetermined project period with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued government support would be in the best interest of the Federal government and the public. If these three elements are met, OEPNU plans to provide additional support to the funded project(s).

**§ 2903.7 Project objectives.**

(a) Successful projects will develop practical indicators or milestones to measure their progress towards achieving the following objectives:

(1) Enhance current efforts to collect and disseminate biodiesel information;

(2) Coordinate with other biodiesel educational or promotional programs, and with Federal, State and local programs aimed at encouraging biodiesel use, including the EPA Act program;

(3) Create a nationwide networking system that delivers biodiesel information to targeted audiences, including users, distributors and other infrastructure-related personnel;

(4) Identify and document the benefits of biodiesel (e.g., lifecycle costing); and

(5) Gather data pertaining to information gaps and develop strategies to address the gaps.

(b) [Reserved]

**Subpart C—Preparation of an Application****§ 2903.8 Program application materials.**

OEPNU will publish periodic program announcements to notify potential applicants of the availability of funds for competitive continuation grants. The

program announcement will provide information about obtaining program application materials.

**§ 2903.9 Content of an application.**

(a) Applications should be prepared following the guidelines and the instructions in the program announcement. At a minimum, applications shall include: A proposal cover page, project summary, project description, information about key personnel, documentation of collaborative arrangements, information about potential conflicts-of-interest, budget forms and a budget narrative, information about current and pending support, and assurance statements.

(b) Proper preparation of applications will assist reviewers in evaluating the merits of each application in a systematic, consistent fashion. Specific instructions regarding additional application content requirements and the ordering of application contents will be included in the program announcement. These will include instructions about paper size, margins, font type and size, line spacing, page numbering, the inclusion of illustrations, and electronic submission.

**§ 2903.10 Submission of an application.**

The program announcement will provide the deadline date for submitting an application, the number of copies of each application that must be submitted, and the address to which proposals must be submitted.

**§ 2903.11 Acknowledgment of applications.**

The receipt of all applications will be acknowledged. Applicants who do not receive an acknowledgment within 60 days of the submission deadline should contact the program contact indicated on the program announcement. Once the application has been assigned a proposal number, that number should be cited on all future correspondence.

**Subpart D—Application Review and Evaluation**

**§ 2903.12 Application review.**

(a) Reviewers will include government and non-government individuals. All reviewers will be selected based upon training and experience in relevant scientific, extension, or education fields, taking into account the following factors:

(1) The level of relevant formal scientific, technical education, or extension experience of the individual, as well as the extent to which an individual is engaged in relevant research, education, or extension activities; and

(2) The need to include as reviewers experts from various areas of specialization within relevant scientific, education, or extension fields.

(b) In addition, when selecting non-government reviewers, the following factors will be considered:

(1) The need to include as reviewers other experts (*e.g.*, producers, range or forest managers/operators, and consumers) who can assess relevance of the applications to targeted audiences and to program needs;

(2) The need to include as reviewers experts from a variety of organizational types (*e.g.*, colleges, universities, industry, state and Federal agencies, private profit and non-profit organizations) and geographic locations;

(3) The need to maintain a balanced composition of reviewers with regard to minority and female representation and an equitable age distribution; and

(4) The need to include reviewers who can judge the effective usefulness to producers and the general public of each application.

(c) Authorized departmental officers will compile application reviews and recommend awards to OEPNU. OEPNU will make final award decisions.

**§ 2903.13 Evaluation criteria.**

(a) The following evaluation criteria will be used in reviewing applications submitted for the Biodiesel Fuel Education Program:

(1) Relevance of proposed project to current and future issues related to the production, use, distribution, fuel quality, and fuel properties of biodiesel, including:

(i) Demonstrated knowledge about markets, state initiatives, impacts on local economies, regulatory issues, standards, and technical issues;

(ii) Demonstrated knowledge about issues associated with developing a biodiesel infrastructure; and

(iii) Quality and extent of stakeholder involvement in planning and accomplishment of program objectives.

(2) Reasonableness of project proposal, including:

(i) Sufficiency of scope and strategies to provide a consistent message in keeping with existing standards and regulations;

(ii) Adequacy of Project Description, suitability and feasibility of methodology to develop and implement program;

(iii) Clarity of objectives, milestones, and indicators of progress;

(iv) Adequacy of plans for reporting, assessing and monitoring results over project's duration; and

(v) Demonstration of feasibility, and probability of success.

(3) Technical quality of proposed project, including:

(i) Suitability and qualifications of key project personnel;

(ii) Institutional experience and competence in providing alternative fuel education, including:

(A) Demonstrated knowledge about programs involved in alternative fuel research and education;

(B) Demonstrated knowledge about other fuels, fuel additives, engine performance, fuel quality and fuel emissions;

(C) Demonstrated knowledge about Federal, State and local programs aimed at encouraging alternative fuel use;

(D) Demonstrated ability in providing educational programs and developing technical programs; and

(E) Demonstrated ability to analyze technical information relevant to the biodiesel industry.

(iii) Adequacy of available or obtainable resources; and

(iv) Quality of plans to administer and maintain the project, including collaborative efforts, evaluation and monitoring efforts.

(b) [Reserved]

**§ 2903.14 Conflicts of interest and confidentiality.**

(a) During the peer evaluation process, extreme care will be taken to prevent any actual or perceived conflicts of interest that may impact review or evaluation. Determinations of conflicts of interest will be based on the academic and administrative autonomy of an institution. The program announcement will specify the methodology for determining such autonomy.

(b) Names of submitting institutions and individuals, as well as application content and peer evaluations, will be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of peer reviewers will remain confidential throughout the entire review process. Therefore, the names of the reviewers will not be released to applicants. At the end of the fiscal year, names of reviewers will be made available in such a way that the reviewers cannot be identified with the review of any particular application.

**Subpart E—Award Administration**

**§ 2903.15 General.**

Within the limit of funds available for such purpose, the Authorized Departmental Officer (ADO) shall make grants to those responsible, eligible applicants whose applications are judged most meritorious under the

procedures set forth in this program. The date specified by the ADO as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by OEPNU under this program shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (parts 3015 and 3019 of this title).

**§ 2903.16 Organizational management information.**

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this program, if such information has not been provided previously. Copies of forms recommended for use in fulfilling these requirements will be provided as part of the preaward process.

**§ 2903.17 Award document and notice of award.**

(a) The award document will provide pertinent instructions and information including, at a minimum, the following:

- (1) Legal name and address of performing organization or institution to whom OEPNU has issued an award under this program;
- (2) Title of project;
- (3) Name(s) and institution(s) of PDs chosen to direct and control approved activities;
- (4) Identifying award number assigned by the Department;
- (5) Project period;
- (6) Total amount of Departmental financial assistance approved by OEPNU during the project period;
- (7) Legal authority(ies) under which the award is issued;
- (8) Appropriate Catalog of Federal Domestic Assistance (CFDA) number;
- (9) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the award; and
- (10) Other information or provisions deemed necessary by OEPNU and the authorized departmental officer to carry out the awarding activities or to accomplish the purpose of a particular award.

(b) [Reserved]

**Subpart F—Supplementary Information**

**§ 2903.18 Access to review information.**

Copies of reviews, not including the identity of reviewers, and a summary of the comments will be sent to the applicant PD after the review process has been completed.

**§ 2903.19 Use of funds; changes.**

(a) Delegation of fiscal responsibility. Unless the terms and conditions of the award state otherwise, the awardee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of award funds.

(b) Changes in project plans. (1) The permissible changes by the awardee, PD(s), or other key project personnel in the approved project shall be limited to changes in methodology, techniques, or other similar aspects of the project to expedite achievement of the project's approved goals. If the awardee or the PD(s) is uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination. The ADO is the signatory of the award document, not the program contact.

(2) Changes in approved goals or objectives shall be requested by the awardee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the awardee and approved in writing by the ADO prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the awardee and approved in writing by the ADO prior to effecting such transfers, unless prescribed otherwise in the terms and conditions of the award.

(5) Changes in project period. The project period may be extended by OEPNU without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project, but in no case shall the total project period exceed five years. Any extension of time shall be conditioned upon prior request by the awardee and approval in writing by the

ADO, unless prescribed otherwise in the terms and conditions of award.

(6) Changes in approved budget. Changes in an approved budget must be requested by the awardee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or award.

**§ 2903.20 Reporting requirements.**

The award document will give instructions regarding the submission of progress reports, including the frequency and required contents of the reports.

**§ 2903.21 Applicable Federal statutes and regulations.**

Several Federal statutes and regulations apply to grant applications considered for review and to project grants awarded under this program. These include, but are not limited to:

- 7 CFR Part 1, subpart A—USDA implementation of the Freedom of Information Act.
- 7 CFR Part 3—USDA implementation of OMB Circular No. A-129 regarding debt collection.
- 7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.
- 7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (*i.e.*, OMB Circular Nos. A-21 and A-122) and incorporating provisions of 31 U.S.C. 6301-6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Public Law 95-224), as well as general policy requirements applicable to recipients of Departmental financial assistance.
- 7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).
- 7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.
- 7 CFR Part 3019—USDA implementation of OMB Circular A-110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.
- 7 CFR Part 3052—USDA implementation of OMB Circular No. A-

133, Audits of States, Local Governments, and Non-profit Organizations. 29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR Part 15b (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs. 35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

#### **§ 2903.22 Confidential aspects of applications and awards.**

When an application results in an award, it becomes a part of the record of USDA transactions, available to the public upon specific request. Information that the Secretary determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked within the application. The original copy of an application that does not result in an award will be retained by the Agency for a period of one year. Other copies will be destroyed. Such an application will be released only with the consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to the final action thereon.

#### **§ 2903.23 Definitions.**

*For the purpose of this program, the following definitions are applicable:*

*Authorized departmental officer or ADO* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

*Authorized organizational representative or AOR* means the president or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

*Biodiesel* means a monoalkyl ester that meets the requirements of an appropriate American Society for Testing and Materials Standard.

*Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

*Department or USDA* means the United States Department of Agriculture.

*Education activity* means an act or process that imparts knowledge or skills through formal or informal training and outreach.

*Grant* means the award by the Secretary of funds to an eligible recipient for the purpose of conducting the identified project.

*Grantee* means the organization designated in the award document as the responsible legal entity to which a grant is awarded.

*Institution of higher education*, as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001), means an educational institution in any State that:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of preaccreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

*OEPNU* means the Office of Energy Policy and New Uses.

*Peer review* is an evaluation of a proposed project performed by experts with the scientific knowledge and technical skills to conduct the proposed work whereby the technical quality and relevance to the program are assessed.

*Project director or PD* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project, also known as a principal investigator for research activities.

*Prior approval* means written approval evidencing prior consent by an

authorized departmental officer (as defined in this section).

*Program* means the Biodiesel Fuel Education Program as set forth in this part.

*Project* means the particular activity within the scope of the program supported by a grant award.

*Project period* means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

*Secretary* means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

**Roger Conway,**

*Director, Office of Energy Policy and New Uses.*

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## **NUCLEAR REGULATORY COMMISSION**

### **10 CFR Part 34**

**[Docket No. PRM-34-5]**

#### **Amersham Corporation (Now Known as AEA Technology QSA, Inc.); Denial of Petition for Rulemaking**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM-34-5) submitted by Amersham Corporation (now known as AEA Technology QSA, Inc.). The petitioner requested that the NRC amend its regulations that specify performance requirements for industrial radiography equipment by removing the reference to associated equipment, clarifying provisions in the current regulations that the petitioner believes are not clearly defined, and by requiring routine inspection and maintenance of associated equipment.

The NRC reviewed the petitioner's request and concluded that rulemaking is not necessary to achieve the intent of the petitioner's request to remove associated equipment from the sealed source and device (SSD) evaluation and registration process for manufacturers of industrial radiography equipment in 10 CFR 32.210, "Registration of product information." The NRC also explored rulemaking to amend its regulations for self-certification of associated equipment to authorize manufacturers