

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[FRL-4877-5]

RIN 2060-AD81

Regulations Governing Awards Under Section 113(f)
of the Clean Air Act

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed rule.

SUMMARY: This proposed rule sets forth criteria and procedures for the granting of awards as authorized by an amendment to the Clean Air Act (the Act). The amendments added section 113(f), 42 U.S.C. 7413(f) to the Act, which authorizes the Administrator of the Environmental Protection Agency discretion to pay an award, not to exceed \$10,000, to any person who furnishes information or services which lead to a criminal conviction or a judicial or administrative civil penalty enforced under section 113 of the Act for a violation of titles I, III, IV, V, or VI of the Act, as amended. Section 113(f) also authorizes the Administrator to prescribe, by regulation, additional criteria for eligibility for such an award. This proposed rule sets forth such additional criteria for eligibility. In addition, this proposal establishes

procedures to petition the Agency for consideration for an award, including what information must be submitted in such petitions, and describes award criteria. This proposed rule also provides an assurance of confidentiality as to the identity of persons who

provide information or services on a confidential basis. Furthermore, to implement the goal of the program, this rule provides direction for providing information or services regarding potential violations.

DATES : Comments. Written comments on the proposed rule must be received on or before [Insert date 60 days from date of publication] .

Public Hearing. A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule. If anyone contacts EPA requesting to speak at a public hearing by June 6, 1994, a public hearing will be held June 8, 1994.

ADDRESSES . Comments. Comments should be submitted (in duplicate if possible) to: Air Docket (LE-131), Attention: Docket Number A-94-05, U.S. Environmental Protection Agency, Room M-1511, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Public Hearing. The public hearing will be held at the EPA Auditorium, 401 M Street, SW., Washington.

Docket. Materials relevant to this rulemaking are

contained in Docket Number A-94-05. The docket is available for public inspection and copying between 8 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, Room M-1500, 1st floor, Waterside Mall, 401 M Street, SW., Washington D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Clara Poffenberger, Office of Air and Radiation, Stationary Source Compliance Division (EN-341W), United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (703) 308-8709.

SUPPLEMENTARY INFORMATION:

I. Statutory Requirements Section 113(f) of the Clean Air Act, as amended, (the Act), 42 U.S.C. 7413(f), authorizes the Administrator discretion to pay awards to persons who provide information or services regarding potential violations of the Act. Pursuant to section 113(f), the information or services must result in a criminal conviction or a judicial or administrative civil penalty for a violation of titles I, III, IV, V, or VI of the Act, enforced under section 113 of the Act, before an award may be issued.

The statute specifically authorizes awards only for

enforcement actions brought under section 113 of the Act. Thus, information or services which assist actions brought under State law (e.g, enforcement of SIPs under State law or citizen suits brought under State law), under other sections of the Act (i.e., citizen suits under section 304), or under other statutes, do not qualify for an award under this provision. However, in cases where the Agency intervenes, overfiles, or otherwise takes over the enforcement action under the authority of section 113, the awards authority may become applicable.

Under section 113(f) of the Act, any officer or employee of the United States or any State or local government who furnishes information or renders services to the Agency in the performance of an official duty is ineligible for an award. Also, section 113(f) authorizes the Administrator to prescribe, by regulation, additional criteria for eligibility for an award. In response, the regulation proposed today prescribes additional criteria for eligibility. The regulation proposed today also prescribes general criteria for the Agency to consider in determining whether and how much of an award is appropriate and procedures to be followed by persons who want to be considered for an award. Additional authority for these provisions is provided by section 301(a) of the Act.

II. The Proposal

Today's proposed rule prescribes regulations for EPA's awards authority under section 113(f) of the Clean Air Act, as amended, 42 U.S.C. 7413(f). The proposed rule sets forth general eligibility criteria, criteria to be used in considering petitions for awards, the procedures for petitioning consideration for an award, and other matters designed to assist the Administrator in exercising her discretion in this area. The goal of this proposal is to

assist in the implementation of an awards program that would encourage citizens to cooperate with and voluntarily assist the EPA's Clean Air Act enforcement efforts and thereby deter violations. Inherent in a program for awards are concerns regarding the confidentiality of the identity of those who provide information or services and the need to evaluate the quality of such information or services. This proposal is intended to address those concerns.

A. Application of Proposal

The EPA intends that this proposed regulation will apply only after promulgation. Petitions for an award based on information or services provided to the EPA after the passage of the Clean Air Act Amendments of 1990 (the Amendments) but before the regulation is promulgated may be processed using the proposed criteria as nonbinding guidance. The EPA will not consider a petition for an award based on information or services provided entirely prior to enactment of the Amendments.

B. Eligibility Criteria

As discussed above, section 113(f) renders certain persons ineligible for an award, and also authorizes the Administrator to prescribe additional eligibility criteria. In response, this proposed rule categorically excludes EPA employees from

eligibility to receive an award. The proposed regulation further delineates eligibility limits for employees of, and others who have a contractual relationship with, federal, State, or local governments. Thus under the proposal, officers, employees, contractors, and grantees will be ineligible to receive an award if at the time they come into possession of the information or render services which constitute, in whole or in part, the basis of the award, they were performing an official duty. Furthermore, any members of the immediate family of those "performing their official duty" are likewise ineligible.

The EPA believes these provisions will help ensure that employees and others contractually obligated to the EPA or other governmental entities will fulfill their obligation and will not withhold information that they would otherwise provide to the government. The proposed provisions also address the concern that such persons could indirectly benefit by passing information obtained while performing their official duty to family members, who could then use that information to petition for an award. The concern addressed here is protection of the integrity of compliance and enforcement activities. By declaring such persons ineligible for an award, the proposed regulation seeks to ensure that the

awards program will not create an incentive for employees to abuse access to information and authority otherwise unavailable to the public. The term "immediate family member" is purposely not defined in the proposed regulation, as the EPA prefers to maintain its discretion in referencing other sources of law and otherwise evaluating the circumstances of the particular case in making its award determination.

So that persons who may receive awards are aware that certain persons are ineligible to be paid an award, the proposal requires that a certificate of eligibility be signed by the person before the Administrator may pay the award. This requirement assists the EPA in assuring that an award is not paid to ineligible persons.

C. Addresses for Tips

Tips from citizens to the U.S. EPA and State and local air pollution control agencies provide useful information on the possible existence or extent of a violation. Since the goal of the awards program is to encourage citizens to cooperate with and voluntarily assist EPA enforcement efforts, the proposal provides the addresses to which information may be sent. The information or services provided may or may not lead to eligibility for an award. Providing such information does not create an obligation on the Agency to issue an award,

or vest in any person a right to such award. Nevertheless, the Administrator encourages all persons to provide any information they have regarding violations of the Act to the appropriate persons listed in Appendix A. Such information improves the Agency's ability to enforce the Act. The EPA encourages persons to provide the information or services to State and local agencies as well. Although completion of an enforcement action by a State or local agency under authority other than section 113 of the Clean Air Act cannot lead to an award paid by the U.S. EPA under section 113(f), it is important that information be provided to State and local agencies. In most situations, the U.S. EPA will defer to State enforcement authorities to address violations in a timely and appropriate manner. However, persons who provide information or services to a State or local agency may become eligible for an award if the EPA overfiles or otherwise takes over the enforcement action.

D. Confidentiality

Because today's proposal contemplates the EPA receiving and using information and services from private sources for enforcement activities, the EPA is also proposing to maintain as confidential, upon request, the identity of persons providing information or services. The EPA believes this

assurance of confidentiality will encourage persons to assist the EPA in its efforts to enforce compliance with the Act. In this regard, the proposed rule provides, upon request, confidential treatment by the EPA consistent with this proposal, existing law and other EPA regulations. Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552 (b)(6) & (7), the confidentiality of the identity of those providing information and services will be protected from FOIA requests consistent with existing law. The assurance of confidentiality extends to petitions for awards submitted to the EPA. To ensure confidential treatment of such petitions, it is important that persons submitting petitions to the EPA specifically request confidentiality at or prior to the time of providing information or services, and to renew such request at the time of submitting a petition.

E. Petitions for Awards

Because the information or services provided would be instrumental to the successful prosecution of the EPA's enforcement action, in many cases EPA personnel will be aware of persons potentially eligible for an award, even without a petition being submitted. The EPA expects that in many such situations, award determinations may be made without submission of a petition.

Today's proposal recognizes, however, that a person may wish to petition the Agency for consideration for an award and authorizes such petitions. To ensure that such petitions contain sufficient information for the purpose of evaluation, and to ensure that petitions are directed to the appropriate EPA office, the proposal sets forth award petition procedures and requirements.

Timing of Petitions. The proposed rule requires petitions for consideration to be submitted in writing no later than one year after the judgment of conviction or assessment of a civil penalty. Petitions may be submitted at any time prior to the judgment or assessment, but no award determination will be made before the judgment of conviction is entered or a judicial or administrative civil penalty is finally assessed, agreed, or ordered. Again, payment and the amount of any award granted is within the Administrator's unfettered discretion. The granting of an award is a gratuity, and not an entitlement.

Certification of Eligibility. The proposed regulation also requires that the petition contain a certification of compliance with the eligibility criteria set forth in the regulation. A statement signed by the person to be considered for an award attesting to having read the eligibility

requirements and attesting that the person to be considered for an award is not ineligible to receive an award would meet this requirement. This certification is important to the award determination process because the EPA recognizes that it may be difficult for the Administrator to determine with certainty whether a person meets all eligibility criteria. However, the Act prohibits payment of an award to certain persons. Therefore, the proposal requires a certification of eligibility be signed before the Administrator may pay an award.

F. Criteria for Awards

Under the Act, the Administrator has discretionary authority whether to pay an award and to determine the amount of an award. The proposed regulation does not constrain this discretion. Although the proposed rule permits petitions for consideration for an award, whether an award is ultimately granted will turn on the exercise of the Administrator's unfettered discretion, including the application of factors described in this proposed regulation. These factors include whether the information or services constituted the initial, unsolicited notice of the violation to the government, whether the government would have obtained knowledge of the violation in a timely manner absent the information or services, the

importance of the case, the severity of the violation, the potential for or existence of actual or threatened harm to persons or the environment, the willingness to assist in the government's enforcement action(s) regarding the violation(s), the value of the assistance in comparison to that given by any other persons or sources of information or services and, in part, the amount of money available to the EPA through appropriations.

Furthermore, the rule is not intended to discourage self-auditing within facilities nor is it intended to encourage concealment of information about violations or problems within a facility by an employee from an employer. Thus, the regulation sets forth the additional criterion of whether payment of the award would improperly create incentives against the timely and appropriate identification of such a violation to either the employer or the government.

G. Timing of Award Consideration

As mandated by section 113(f), persons may not be considered for an award unless and until such time as the information or services provided leads to a judicial or administrative civil penalty or a criminal conviction under section 113 of the Act.

H. Prepayment Offers

The proposed regulation makes clear the distinction between the Awards program and paid informant programs or contractual relationships that may be created by the Agency. The EPA's employees do not have the authority under this proposal or this statutory provision to promise that an award will be paid nor to promise consideration or recommendation for an award.

I. Request for Public Comment

The EPA is interested in public comment on all aspects of this proposed rule. The EPA is particularly interested in comments on: (1) The provision for confidentiality of identity for persons who provide information or services; (2) the eligibility exclusions and eligibility criteria for an award; (3) petitions for consideration; and (4) the criteria for awards determinations.

III. Administrative Requirements

A. Executive Order 12866 Under Executive Order 12866, (58 Federal Register 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) 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;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action". As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in public record.

B. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have an economic impact on small entities because no additional costs will be incurred.

C. Paperwork Reduction Act

Since this proposed rule does not create any new information requirements or contain any new information collection activities, no clearance is necessary from OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et. seq..

List of Subjects 40 CFR Part 65

Air pollution control, Awards, Clean Air Act,
Confidentiality, Enforcement, Environmental protection,
Natural resources.
Carol M. Browner ,
Administrator.

40 CFR part 65 is proposed to be amended as follows:

PART 65 - [AMENDED]

1. The authority citation for part 65 is revised to read as follows:

Authority: Sections 113,(a), Clean Air Act, as amended,
(42
U.S.C. 7413, 7601(a)).

2. Part 65 is proposed to be amended by adding subpart BBB
to

to read as follows:

Subpart BBB - Awards

Sec.

65.571 Purpose and scope.

65.572 Definitions.

65.573 Eligibility.

65.574 Information or tips regarding possible violations.

65.575 Confidentiality.

65.576 Petitions for consideration.

65.577 Criteria for awards.

65.578 Prepayment offers.

Appendix A to Subpart BBB - Addresses for Petitions for
Consideration and for Tips or Information

Subpart BBB - Awards

§65.571 Purpose and scope .

(a) This regulation implements section 113(f), 42 U.S.C. 7413(f), the "citizen award" provision of the Clean Air Act, as amended (the Act). As authorized in section 113(f), the Administrator of the U.S. Environmental Protection Agency (the Agency) is authorized to pay up to \$10,000, as may be available from appropriations, to any person who provides information or services leading to a criminal conviction or a judicial or administrative civil penalty, enforced under section 113, for any violation of Titles I, III, IV, V, or VI of the Act. The goal of the program is to encourage citizens to cooperate with and voluntarily assist the Agency's enforcement efforts and thereby deter noncompliance.

(b) Providing information or services to the Agency by any person does not create any obligation on the Administrator to issue an award or to pay compensation for such assistance.

Neither the Act nor these regulations create an entitlement to the payment of an award. The determinations whether to pay an award, and in what amount, are matters which remain by statute in the exclusive and unfettered discretion of the Administrator.

§65.572 **Definitions** .

The terms used in this part are defined in the Act or in this section as follows:

(a) Administrative penalty . Any amount finally assessed, agreed or ordered to be paid into the U.S. Treasury pursuant to an administrative enforcement action under section 113 of the Act.

(b) Certification of Eligibility . A statement signed by the person to be considered for an award attesting to having read the eligibility requirements and attesting that the person is not ineligible to receive an award.

(c) Criminal conviction . A judgment of conviction entered in U.S. District Court on a verdict or finding of guilty, or by a plea of guilty, including a plea of nolo contendere, in an action brought under section 113 (as defined at 28 U.S.C. 2901(f)).

(d) Judicial penalty . Any amount finally assessed,

agreed or ordered to be paid into the U.S. Treasury by a court of the United States pursuant to a judicial enforcement action under section 113.

§65.573 **Eligibility** .

(a) Any person who provides information or services which leads to a criminal conviction or a judicial or administrative civil penalty, enforced under section 113, for any violation of titles I, III, IV, V, or VI of the Act, except those persons identified in paragraph (b) of this section, shall be eligible to receive an award under this subpart.

(b) The following persons are not eligible to receive an award:

(1) Persons convicted of or found liable for the violation(s) that are the subject of the award,

(2) Officers or employees of the United States Environmental Protection Agency,

(3) Any of the following persons who, at the time he or she came into possession of the information or rendered the service which constitutes in whole or in part the basis for an award, was performing his or her official duty:

(i) Officers or employees of the United States Government;

(ii) Contractors or grantees of the United States Government;

(iii) Officers or employees of a State or local

government; (iv) Contractors or grantees of a State or local government;

(4) Any members of the immediate family of persons who would be ineligible under subsection (b)(3); and

(5) Such other persons as the Administrator may determine to be ineligible who are not otherwise ineligible under the law.

(c) Before the Administrator may pay an award, a certification of eligibility must be signed by the person receiving the award.

§65.574 Information or tips regarding possible
violations.

(a) Persons having knowledge of violations of the Act may provide such information to the Regional Administrators listed in appendix A of this subpart.

(b) Information regarding violations of the Act should also be provided to State and local agencies, although not required by this regulation. The USEPA, in many cases, defers to State enforcement authorities to address violations in a timely and appropriate manner.

§65.575 Confidentiality.

(a) Any person providing information or services under this subpart may request confidentiality as to his or her identity.

(b) To the extent permitted by law, the EPA will not disclose the identity of, or information which could reasonably be expected to disclose the identity of, a person who has requested confidentiality prior to or at the time of

providing information or services under this subpart, except in exceptional circumstances under appropriate restrictions with the approval of the Office of General Counsel or a Regional Counsel.

§65.576 Petitions for consideration .

(a) Any person may petition the Agency to consider paying an award.

(b) Addresses. (1) Petitions for consideration must be submitted in writing to the Regional Administrator in the Region(s) bearing a substantial relationship to the violation(s) that are the subject of the petition.

(2) The appropriate addresses for the Regional Administrators are provided in appendix A of this subpart.

(c) Timing. (1) Petitions may be submitted at any time prior to the judgment of conviction or assessment of a civil penalty but must be submitted no later than one year after the judgment of conviction or assessment of a civil penalty.

(2) No award determination will be made before a judgment of conviction is entered or judicial or administrative civil penalty is assessed, agreed, or ordered to be paid.

(d) Content. A petition for consideration shall contain the following information:

(1) Whether a request for confidentiality was made prior to or at the time of providing the information or services, and whether such request is still in effect; the petition envelope should also specify whether the information or

services were provided under a request for confidentiality;

(2) Name, address, and telephone number of the petitioner;

(3) A brief description of the federal enforcement action (whether the action was a criminal conviction or judicial or administrative civil penalty) which resulted (if known) from the information or services;

(4) Name, title, agency and office affiliation, city, and telephone number of person(s) to whom the information and services was provided (to the extent known);

(5) Name(s) and address(es) of the violator(s) and (to the extent relevant) the names and/or locations of any sites or facilities involved;

(6) Description of the information or services that led to the federal enforcement action;

(7) Date(s) the information or services were provided;

(8) Description of any other involvement by the petitioner in the enforcement action;

(9) Certification of eligibility stating that the petitioner meets the requirements for eligibility for an award set forth in §65.575 of this subpart (if the petitioner is the person who provided the information or services); and

(10) Any other relevant information in support of the

petition.

§65.577 Criteria for award .

In deciding whether to make an award, and in what amount, the Administrator shall consider relevant criteria, giving such weight and importance to each separate criterion as appears warranted in his or her judgment alone. Relevant criteria shall include, but not be limited to, one or more of the following:

(a) Whether the information or services constituted the initial, unsolicited and full disclosure to a governmental entity with jurisdiction over the violation,

(b) Whether the governmental entity would readily have obtained knowledge of the violation in a timely manner absent the information or services;

(c) The importance of the case, severity of the violation, and potential for or existence of actual or threatened harm to persons or the environment;

(d) The willingness to assist as necessary in the Government's resulting or related enforcement action(s) regarding the violation(s), including providing further information or services, participating in hearing or trial preparation and appearing as a witness at or in connection

with any hearings or trial(s) of the matter, to the extent consistent with a reasonable claim of need for confidentiality, if any;

(e) Value of the assistance in comparison to that given to the government in the resulting enforcement action by any other persons or sources of information or services;

(f) Value of the assistance in comparison to that given by other petitioners or others in similar circumstances in other enforcement actions brought by the government; and

(g) Whether such payment would result in a conflict of interest, present an appearance of impropriety, or improperly create incentives against the timely and appropriate identification of such a violation to either the employer or the government.

§65.578 **Prepayment offers** .

Prior to the actual payment of an award under section 113(f), no employee of the United States Government, including any person purporting to act on behalf of the United States Government, is authorized by these regulation to make any promise, offer, or representation with respect to the Agency's grant of such an award.

Appendix A to Subpart BBB - Addresses for Petitions for Consideration and for Tips or Information

For Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont:

Regional Administrator, Region I
U.S. Environmental Protection Agency
John F. Kennedy Building, Room 2203
Boston, MA 02203

For New Jersey, New York, Puerto Rico, and Virgin Islands:

Regional Administrator, Region II
U.S. Environmental Protection Agency
26 Federal Plaza, Room 930
New York, NY 10278

For Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia:

Regional Administrator, Region III
U.S. Environmental Protection Agency
841 Chestnut Street
Philadelphia, PA 19107

For Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee:

Regional Administrator, Region IV
U.S. Environmental Protection Agency
345 Courtland Street, N.E.
Atlanta, GA 30365

For Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin:

Regional Administrator, Region V
U.S. Environmental Protection Agency
230 South Dearborn Street
Chicago, IL 60604

For Arkansas, Louisiana, New Mexico, Oklahoma, and Texas:

Regional Administrator, Region VI
U.S. Environmental Protection Agency
1445 Ross Avenue
12th Floor, Suite 1200
Dallas, TX 75202-2733

For Iowa, Kansas, Missouri, and Nebraska:

Regional Administrator, Region VII
U.S. Environmental Protection Agency
726 Minnesota Avenue
Kansas City, KS 66101

For Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming:

Regional Administrator, Region VIII
U.S. Environmental Protection Agency
999 18th Street
Suite 500
Denver, CO 80202-2405

For Arizona, California, Hawaii, Nevada, American Samoa, and
Guam:

Regional Administrator, Region IX
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

For Alaska, Idaho, Oregon, and Washington:

Regional Administrator, Region X
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, WA 98101

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