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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
ADMINISTRATION
AND RESOURCE
MANAGEMENT

MEMORANDUM

SUBJECT: Class Exception from 40 CFR Part 40.150

FROM: Howard Corcoran, Director
Office of Grants and Debarment (3903R)

Denise A. Polk, Acting Director
National Policy, Training and Compliance Division
Office of Grants and Debarment

TO: Lek G. Kadeli, Senior Resource Official
Office of Research and Development (8101R)

I am responding to your request for a class exception, under the authority of 40 CFR Part 31.6(d), from 40 CFR Part 40.150, *Evaluation of Applications*, relating to the review process used by the Office of Research and Development's (ORD) National Center for Environmental Research (NCER) to review applications for research or demonstration grants. ORD requests that this exception, which is necessary in light of some recent issues identified concerning NCER's compliance with 40 CFR Part 40.150, apply to both past and future use by NCER of its application review process described below for research or demonstration grants subject to the regulation.

Background

The regulation in question states in part that:

§ 40.150 Evaluation of applications. Every application for a research or demonstration grant will be evaluated by appropriate EPA staff in terms of relevancy and the applicable criteria set forth in §40.140. Only applications considered relevant to EPA research and demonstration objectives will receive further consideration and be subjected to additional review. Relevancy will be measured by program needs and priorities as defined in the Agency's current planned objectives. Relevancy, coupled with the results of technical review, will provide the basis for funding recommendations.

(a) New applications. Applications considered relevant to EPA research and demonstration objectives will be reviewed for technical merit by at least one reviewer within EPA and at least two reviewers outside EPA.

The application review process conducted by NCER, in effect since approximately the mid-1990s, is initiated with an eligibility review by one or more EPA reviewers, followed by a technical merit review (also known as "peer reviews") by at least three reviewers from outside of EPA. A component of this

technical review includes an assessment of the relevance or responsiveness of the proposed research to the research needs identified in the solicitation. This process ensures that each eligible applicant receives an objective technical review of their application by their peers. Only those applications deemed scientifically meritorious (generally those evaluated as "excellent" or "very good") by the peer review panel proceed to an internal "programmatic" review performed by one or more EPA reviewers. The programmatic review assures an integrated research portfolio based on program needs and priorities including relevance and past performance. Following the programmatic review, final funding decisions are made by the NCER Director based on the results of the technical merit and programmatic reviews, as well as any other applicable factors identified in the solicitation.

This process is inconsistent with the regulatory language because not every application for a research or demonstration grant is reviewed by EPA staff for relevance.

It is ORD's opinion that, while arguably inconsistent with procedural aspects of 40 CFR Part 40.150, the NCER review process described above achieves the purposes, intent, and objectives of the regulation, which was developed in the 1970s. The NCER review process is rigorous and results in the funding of highly meritorious and relevant research and demonstration grants. The high quality of the NCER review process is noted in the National Research Council's, "The Measure of STAR" (see <http://search.nap.edu/napsearch.php?term=the+measure+of+star>).

Accordingly, ORD needs a class exception for the past, and to allow for the future, use by NCER of the application review process described above when reviewing applications for research or demonstration grants.

OGC Recommendation

The Office of General Counsel concurs that the exception request be approved. The Office of General Counsel has determined that this class exception addresses a procedural matter and publication of a Federal Register Notice announcing the availability of this exception is not necessary.

ACTION

I have carefully reviewed the exception request and agree with the Program's assessment that an exception is necessary for ORD/NCER's past, and future, use of the above-referenced review process for applications for research or demonstrations grants. Accordingly, I approve the request for a class exception for the NCER review process.

cc: Ellen O'Boyle
Bronda Harrison
James Drumond
Deborah Heckman
Roberto Perez
Khanna Johnston