



**6450-01-P**

**DEPARTMENT OF ENERGY**

**10 CFR Part 600**

**RIN 1991-AC02**

**Administrative Requirements for Grants and Cooperative Agreements**

**AGENCY:** Department of Energy.

**ACTION:** Notice of proposed rulemaking and opportunity for public comment.

**SUMMARY:** The Department of Energy (DOE) is proposing to revise existing regulations covering the administrative requirements for grants and cooperative agreements with for-profit organizations. The proposed regulations would modify title provisions, and requirements related to the handling of real property and equipment acquired with federal funds. They would also add provisions related to export control requirements and supporting U.S. manufacturing, reporting on utilization of subject inventions, novation of financial assistance agreements, and changes of control of recipients.

**DATES:** DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NPR) no later than **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION]** IN THE FEDERAL REGISTER].

**ADDRESSES:** Any comments submitted must identify this NPR on Administrative Requirements for Grants and Cooperative Agreements, and provide regulatory

information number (RIN) 1991–AC02. Comments may be submitted using any of the following methods:

1. Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.
2. Email: [DEARrulemaking@hq.doe.gov](mailto:DEARrulemaking@hq.doe.gov). Include RIN 1991–AC02 in the subject line of the message.
3. Mail: U.S. Department of Energy, Office of Acquisition and Program Management, MA–611, 1000 Independence Avenue, SW., Washington, DC 20585. Comments by e-mail are encouraged.

No faxes will be accepted.

**FOR FURTHER INFORMATION CONTACT:** Ellen Colligan, Procurement Analyst, U.S. Department of Energy, Office of Acquisition and Project Management, Contract and Financial Assistance Policy Division MA-611, Telephone: (202) 287-1776. Email: [ellen.colligan@hq.doe.gov](mailto:ellen.colligan@hq.doe.gov)

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**I. Background**

The Department makes substantial use of financial assistance awards (grants and cooperative agreements) to for-profit organizations to meet its mission goals. To manage these awards, the Department issued a rule adding subpart D, Administrative Requirements for Grants and Cooperative Agreements with For-Profit Organizations, to Title 10 of the Code of Federal Regulations effective October 1, 2003, published August 21, 2003 (68 FR 50646). Today the Department is proposing to add certain requirements found in subpart D, and to revise others.

This proposed rule would add provisions concerning: (1) The Department's title to and interest in property purchased by financial assistance recipients with Federal funds; (2) the Department's ability to monitor and control the use of Federal funds, property purchased with those funds, and any intellectual property developed with such funds; (3) the related issues of novation (that is, the transfer of a financial assistance agreement from one recipient entity to another) and of change of control of a recipient (that is, a transfer of control of the recipient entity from one individual, group of individuals or entity, to another); (4) reporting by recipients regarding the utilization of inventions developed with Federal funds; and (5) export controls applicable to inventions and technology developed with Federal funds, and support for U.S. manufacturing of inventions and technology developed with Federal funds.

In particular, the Department's proposed revision to 10 CFR 600.321, which governs the title, use, and disposition of real property, as defined at 10 CFR 600.302, and equipment purchased by the recipient of Federal funds, would add clarity for both the Department and recipients. The meanings of portions of 10 CFR 600.321 have been questioned by parties to bankruptcy proceedings and in other contexts. Those questions have concerned the Government's title to and interest in property, or the proceeds from the sale of property purchased in whole or in part with Federal funds. In particular, recipients of the Department's financial assistance that later declare bankruptcy and acquirers of those recipients' real property and equipment have questioned whether the Department's claim to real property and equipment purchased with the Department's funding is an unsecured claim as opposed to either a secured claim or a right in title to a portion of the proceeds generated from any sale of the real property and equipment. This revision seeks to provide more clarity with regard to this issue, not only for purposes of efficiency in bankruptcy, but for any disposition of real property and equipment purchased with federal funds.

In addition, the Department's proposed revisions would better enable it to understand and influence the use and manufacture of inventions developed with Federal funds. The Department's proposed revisions also make clear its discretion to (a) continue funding a recipient that undergoes a change of control as that term is defined in this regulation (which may thereby affect the entity's ability to carry out the project funded by the financial assistance agreement), and (b) consent to a request from a recipient to transfer its financial assistance agreement to a third party. These revisions will increase the

Department's ability to manage its disbursements and to exercise discretion with regard to both the entities to which funding is provided and domestic manufacturing.

Contracting officers, as defined at 10 CFR 600.3, would be required to include the changes of this proposed rule in all announcements of opportunities for Federal funding issued by DOE on or after the effective date of any final rule. Contracting officers may include the changes of any final rule in funding opportunity announcements issued before the effective date of that final rule at their discretion, provided award of the resulting financial assistance agreement(s) is planned on or after the effective date. All financial assistance agreements currently subject to 10 CFR part 600, subpart D would be affected. As such, contracting officers would incorporate the changes of this proposed rule into affected financial assistance agreements before making continuation or renewal awards, obligating funds in future budget periods, as defined at 10 CFR 600.3, or adding additional terms or conditions to the award.

## **II. Summary of the Proposed Rule**

Subpart D of 10 CFR part 600 contains the administrative requirements for financial assistance agreements with for-profit organizations.

This proposed rule would add a paragraph to § 600.304(a) to list change of control and noncompliance with real property or equipment requirements as circumstances that would allow the Department to impose special award conditions.

The changes proposed to § 600.321 would update the provisions describing Government title to and interest in real property and equipment purchased with Federal funds, and amend certain provisions regarding the use of such property. The revised section would require, among other things, recipients of awards with a Federal share exceeding \$1,000,000 to file a Uniform Commercial Code (UCC) financing statement for equipment purchased under the financial assistance agreement, and would state the Department's discretion to require such a filing for equipment purchased by a recipient of less than \$1,000,000. Small Business Innovation Research and Small Business Technology Transfer programs would be excluded from this requirement pursuant to § 600.321. Such a statement would provide public notice of the conditional nature of the recipient's title to such property, and the Government's continuing interest in such property. Any real property or equipment offered as cost share would be subject to the same requirements as property purchased directly with Federal funds. The proposed rule would also modify § 600.321(a) to change written approval requirements for the purchase of real property. Prior written approval is required under the current regulations only if the Federal funds used to acquire the property exceed \$5,000. The updated rule also adds language to §§ 600.321(b)(1) and 600.321(g) to reflect that the contracting officer may make the determination as to whether property is no longer needed for the purposes of the project. The updated rule adds language at § 600.321(b)(2) to clarify that contracting officer approval must be in writing for the recipient to encumber property. The rule would also add a new paragraph at § 600.321(c) specifying remedies for failure to comply with the terms of § 600.321 and new language at § 600.321(d) to clarify the government's interest in property purchased under the award. The rule currently states

that the government has an “interest” in property; it now says that the government has “an undivided reversionary interest in the share of the property equal to the federal participation in the project.”

The proposed rule would add a new § 600.326 requiring recipients to report on the utilization of subject inventions, as defined at 35 U.S.C. 201(e). The new section would require recipients to submit periodic reports on the use and manufacture of subject inventions at the request of DOE or at least annually for ten years after the initial reporting subject inventions to DOE.

The proposed rule also would add a new § 600.327 setting forth requirements to comply with existing export controls and to support DOE manufacturing goals. This new section would require that any technology transfer must be consistent with U.S. export laws. These export laws are as described at 78 FR 35195 (June 12, 2013). This section would also give DOE authority to require U.S. Manufacturing Plans, which are voluntary commitments by awardees to meet a certain level of U.S. manufacture, as part of proposals to the extent permissible under the law, for financial assistance agreements for research, development, and/or demonstration projects. The section also would provide that a waiver or modification of these commitments may be sought, and would describe the considerations that DOE may weigh in considering whether to approve such a request. Depending on the level of technological or commercial readiness of a particular technology, and the desire to develop a U.S. manufacturing presence for that technology,

a DOE funding Program may place more or less weight on U.S. manufacture commitments in connection with technology development plans.

The proposed rule would add a new § 600.354 establishing procedures for change of control of a recipient of an award with a Federal share of more than \$10,000,000. This amount was chosen to focus on demonstration project and large R&D projects, without necessarily including smaller assistance agreements. The new section would require the recipient to notify the contracting officer within 30 days of its knowledge of a change of control as defined in the proposed rule. When a change of control occurs, the contracting officer would have authority to impose special award conditions pursuant to 10 CFR 600.304.

The proposed rule would also add a § 600.355 establishing procedures for, and clarifying the Department's discretion with regard to, novation of financial assistance agreements. The new section would explicitly provide that financial assistance agreements are not assignable absent written consent from the contracting officer. The new regulation would state that if the contracting officer determines that it is not in the best interests of the Government to consent to a novation, then the original recipient would remain subject to the terms of the financial assistance agreement.

### **III. Procedural Requirements**

#### **A. Review Under Executive Orders 12866 and 13563.**

This regulatory action has been determined to be a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, 58 FR 51735, October 4, 1993.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3821, Jan. 21, 2011). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. DOE believes that today's NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, agencies adopt a regulation only upon a reasoned determination that its benefits justify its costs and, in choosing among alternative regulatory approaches, those approaches maximize net benefits.

#### **B. Review Under Executive Order 12988.**

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, Civil Justice Reform, 61 FR 4729, February 7, 1996, imposes on executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other

important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or that it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, these regulations meet the relevant standards of Executive Order 12988.

### **C. Review Under the Regulatory Flexibility Act.**

This proposed rule has been reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and is likely to have a significant economic impact on a substantial number of small entities. This proposed rule will not have a significant impact on small entities as it applies to only for-profit entities (eliminating small non-profits, individuals or other small entities not set up as a for-profit). It also eliminates small for-profit entities receiving awards through SBIR and STTR programs. Historically the awards made by DOE under subchapter D are to businesses considered large in their industry or field. Accordingly, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

### **D. Review Under the Paperwork Reduction Act.**

The proposed rule would require the preparation and submission of a UCC financing statement for awards where the Federal share exceeds \$1 million. This collection of information is required for the Department to protect the taxpayers by clarifying the rights to real property and equipment purchased under financial assistance awards.

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection has been reviewed and assigned a control number by Office of Management and Budget (OMB).

The collection of information for DOE financial assistance awards has been approved by OMB under control number 1910-0400. Public reporting burden for the approved collection of information is estimated to average 13.88 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The Department is submitting to the Office of Management and Budget (OMB), simultaneously with the publication of this proposed rule, information explaining the proposed amendments to the current collection of information for review and approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

#### **E. Review Under the National Environmental Policy Act.**

DOE has concluded that promulgation of this proposed rule falls into a class of actions which would not individually or cumulatively have significant impact on the human

environment, as determined by DOE's regulations, 10 CFR part 1021, subpart D, implementing the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.* Specifically, this proposed rule is categorically excluded from NEPA review because the amendments to 10 CFR part 600 subpart D would be strictly procedural (categorical exclusion A6). Therefore, this proposed rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

#### **F. Review Under Executive Order 13132.**

Executive Order 13132, 64 FR 43255, August 4, 1999, imposes certain requirements on agencies formulating and implementing policies or regulations that preempt state law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the states and carefully assess the necessity for such actions. DOE has examined today's proposed rule and has determined that it would not preempt state law and would not have a substantial direct effect on 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. No further action is required by Executive Order 13132.

#### **G. Review Under the Unfunded Mandates Reform Act of 1995.**

The Unfunded Mandates Reform Act of 1995, Public Law 104-4, requires a federal agency to perform a detailed assessment of costs and benefits of any rule imposing a federal mandate with costs to state, local or tribal governments, or to the private sector, of

\$100 million or more in any single year. This rulemaking does not impose a federal mandate on state, local or tribal governments or on the private sector.

#### **H. Review Under the Treasury and General Government Appropriations Act, 1999.**

Section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105-277, requires federal agencies to issue a Family Policymaking Assessment for any rule or policy that may affect family well-being. This proposed rule would have no impact on family well-being.

#### **I. Review Under Executive Order 13211.**

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, 66 FR 28355, May 22, 2001, requires federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), OMB, a Statement of Energy Effects for any significant energy action. A “significant energy action” is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This proposed rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

**J. Review Under the Treasury and General Government Appropriations Act, 2001.**

The Treasury and General Government Appropriations Act, 2001, 44 U.S.C. 3516, note, provides for agencies to review most disseminations of information to the public under implementing guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452, February 22, 2002, and DOE's guidelines were published at 67 FR 62446, October 7, 2002. DOE has reviewed today's proposed rulemaking under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

**List of Subjects in 10 CFR Part 600**

Accounting, Administrative practice and procedure, Grant programs, Reporting and recordkeeping requirements.

Issued in Washington, D.C. on May 7, 2014.

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Paul Bosco,  
Director  
Office of Acquisition and  
Project Management  
Department of Energy

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Barbara H. Stearrett,  
Director  
Office of Acquisition Management  
National Nuclear Security Administration

For the reasons stated in the preamble, the Department of Energy proposes to amend part 600 of chapter II, title 10 of the Code of Federal Regulations to read as follows:

**PART 600---FINANCIAL ASSISTANCE RULES**

1. The authority citation for part 600 continues to read as follows:

**Authority:** 42 U.S.C. 7101 et seq.; 31 U.S.C. 6301-6308; 50 U.S.C. 2401 et seq.

2. Amend § 600.304 by revising paragraphs (a)(4) and (5) and adding paragraphs (a)(6) and (7) to read as follows:

**§600.304 Special award conditions.**

(a) \*\*\*

(4) Has not conformed to the terms and conditions of a previous award;

(5) Has a change of control as defined in § 600.354;

(6) Fails to comply with real property and equipment requirements at § 600.321(b); or

(7) Is not otherwise responsible.

\* \* \* \* \*

3. Revise § 600.321 to read as follows:

**§ 600.321 Real property and equipment.**

(a) Prior approvals for acquisition with Federal funds. Recipients may purchase real property or equipment with an acquisition cost per unit of \$5,000 or more in whole or in part with Federal funds only with the prior written approval of the contracting officer or in accordance with express award terms.

(b) Title. Unless a statute specifically authorizes and the award specifies that title to property vests unconditionally in the recipient, title to real property or equipment vests in the recipient, subject to all terms and conditions of the award and that the recipient shall:

(1) Use the real property or equipment for the authorized purposes of the project until funding for the project ceases, or until the real property or equipment is no longer needed for the purposes of the project, as may be determined by the contracting officer;

(2) Not encumber or permit any encumbrance on the real property or equipment without the prior written approval of the contracting officer;

(3) Use and dispose of the real property or equipment in accordance with paragraphs (e), (f) and (g) of this section; and

(4) Properly record, and consent to the Department's ability to properly record if the recipient fails to do so, UCC financing statement(s) for all equipment purchased with Federal funds (Financial assistance awards made under the Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR) program are

exempt from this requirement unless otherwise specified within the grant agreement); such a filing is required when the Federal share of the financial assistance agreement is more than \$1,000,000, and the Contracting Officer may require it in his or her discretion when the Federal share is less than \$1,000,000. These financing statement(s) must be approved in writing by the contracting officer prior to the recording, and they shall provide notice that the recipient's title to all equipment (not real property) purchased with Federal funds under the financial assistance agreement is conditional pursuant to the terms of this section, and that the Government retains an undivided reversionary interest in the equipment. The UCC financing statement(s) must be filed before the contracting officer may reimburse the recipient for the Federal share of the equipment unless otherwise provided for in the relevant financial assistance agreement. The recipient shall further make any amendments to the financing statements or additional recordings, including appropriate continuation statements, as necessary or as the contracting officer may direct.

(c) Remedies. If the recipient fails at any time to comply with any of the conditions or requirements of paragraph (b) of this section, then the contracting officer may:

- (1) Notify the recipient of noncompliance in accordance with § 600.352, which may lead to suspension or termination of the award;
- (2) Impose special award conditions pursuant to § 600.304;
- (3) Issue instructions to the recipient for disposition of the property in accordance with paragraph (g) of this section;

(4) In the case of a failure to properly record UCC financing statement(s) in accordance with paragraph (b)(4) of this section, effect such a recording; and

(5) Apply other remedies that may be legally available.

(d) Title to and Federal interest in real property or equipment offered as cost-share. As provided in § 600.313, a recipient may offer the fair market value of real property or equipment that is purchased with recipient's funds or that is donated by a third party to meet a portion of any required cost sharing or matching. If a resulting award includes such property as a portion of the recipient's cost share, the recipient holds conditional title to the property and the Government has an undivided reversionary interest in the share of the property value equal to the Federal participation in the project. The property is treated as if it had been acquired in part with Federal funds, and is subject to the provisions of paragraph (b) of this section and to the provisions of § 600.323.

(e) Insurance. Recipients must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient.

(f) Additional Uses During and After the Project Period. Unless a statute and the award terms expressly provide for the vesting of unconditional title to real property or equipment with the recipient, the real property or equipment acquired wholly or in part with Federal funds is subject to the following:

(1) During the Project Period, the recipient must make real property and equipment available for use on other projects or programs, if such other use does not interfere with the work on the project or program for which the real property or

equipment was originally acquired. Use of the real property or equipment on other projects is subject to the following order of priority:

- (i) Activities sponsored by DOE grants, cooperative agreements, or other assistance awards;

- (ii) Activities sponsored by other Federal agencies' grants, cooperative agreements, or other assistance awards;

- (iii) Activities under Federal procurement contracts or activities not sponsored by any Federal agency. If so used, use charges must be assessed to those activities. For real property or equipment, the use charges must be at rates equivalent to those for which comparable real property or equipment may be leased.

- (2) After Federal funding for the project ceases, or if, as may be determined by the contracting officer, the real property or equipment is no longer needed for the purposes of the project, or if the recipient suspends work on the project, the recipient may use the real property or equipment for other projects, if:

- (i) There are Federally sponsored projects for which the real property or equipment may be used;

- (ii) The recipient obtains written approval from the contracting officer to do so. The contracting officer must ensure that there is a formal change of accountability for the real property or equipment to a currently funded Federal award; and

- (iii) The recipient's use of the real property or equipment for other projects is in the same order of priority as described in paragraph (e)(1) of this section.

(iv) If the only use for the real property or equipment is for projects that have no Federal sponsorship, the recipient must proceed with disposition of the real property or equipment in accordance with paragraph (g) of this section.

(g) Disposition. (1) If, as determined by the contracting officer, an item of real property or equipment is no longer needed for Federally sponsored projects, or if the recipient has suspended work on the project, the recipient has the following options:

(i) If the property is equipment with a current per unit fair market value of less than \$5,000, it may be retained, sold, or otherwise disposed of with no further obligation to DOE.

(ii) If the property is equipment (rather than real property) and with the written approval of the contracting officer, the recipient may replace it with an item that is needed currently for the project by trading in or selling to offset the costs of the replacement equipment.

(iii) The recipient may elect to retain title, without further obligation to the Federal Government, by compensating the Federal Government for that percentage of the current fair market value of the real property or equipment that is attributable to the Federal participation in the project.

(iv) If the recipient does not elect to retain title to real property or equipment or does not request approval to use equipment as trade-in or offset for replacement equipment, the recipient must request disposition instructions from the responsible agency.

(2) If a recipient requests disposition instructions, the contracting officer must:

(i) For either real property or equipment, issue instructions to the recipient for disposition of the property no later than 120 calendar days after the recipient's request.

The contracting officer's options for disposition are to direct the recipient to:

(A) Transfer title to the real property or equipment to the Federal Government or to a third party designated by the contracting officer provided that, in such cases, the recipient is entitled to compensation for its attributable percentage of the current fair market value of the real property or equipment, plus any reasonable shipping or interim storage costs incurred; or

(B) Sell the real property or equipment and pay the Federal Government for that percentage of the current fair market value of the property that is attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sale proceeds). If the recipient is authorized or required to sell the real property or equipment, the recipient must use competitive procedures that result in the highest practicable return.

(3) If the contracting officer fails to issue disposition instructions within 120 calendar days of the recipient's request, the recipient must dispose of the real property or equipment through the option described in paragraph (g)(2)(i)(B) of this section.

4. Add § 600.326 to subpart D to read as follows:

**§ 600.326 Reporting on utilization of subject inventions.**

(a) Unless otherwise instructed, a recipient that obtains title to an invention made under an award shall submit annual reports on the utilization or efforts to obtain utilization of the invention for at least 10 years from the date the invention was first disclosed to DOE (Utilization Reports). Utilization Reports shall include at least the following information:

- (1) Status of development;
- (2) Date of first commercial sale or use;
- (3) Gross royalties received by the recipient;
- (4) The location of any manufacture of products embodying the subject invention; and

(5) Any such other data and information as DOE may reasonably specify.

(b) To the extent data or information supplied in a Utilization Report is considered by the recipient to be privileged and confidential and is so marked by the recipient, DOE agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.

5. Add § 600.327 to subpart D to read as follows:

**§ 600.327 Export Control and U.S. Manufacturing and Competitiveness.**

(a) Export Control. Any recipient of any award for research, development and/or demonstration must comply with all applicable U.S. laws regarding export control.

(b) U.S. Manufacturing and Competitiveness. It is the policy of DOE to ensure that DOE-funded research, development, and/or demonstration projects foster domestic manufacturing. Funding opportunity announcements (FOAs), therefore, may

require that applicants submit a “U.S. Manufacturing Plan” in their applications. Such FOAs may encourage U.S. Manufacturing Plans to include proposals by recipients and any sub-recipients to manufacture DOE-funded technologies in the United States; however, the FOAs will also state that these plans should not include requirements regarding the source of inputs used during the manufacturing process. Regardless of whether such plans will be part of the merit review criteria or a program policy factor, and to the extent legally permissible, all awards subject to this subpart, including subawards, for research, development, and/or demonstration, must include a provision that provides plans by the recipient and any subrecipients to support manufacturing in the United States of technology developed under the award. The recipient and any subrecipients must agree to make those plans binding on any assignee or licensee or any entity otherwise acquiring rights to any subject invention or developed technology covered under the award. A recipient, subrecipient, assignee, licensee, or any entity otherwise acquiring the rights to any subject invention or developed technology may request a waiver or modification of U.S. manufacturing plans from DOE. DOE will determine whether to approve such a waiver in light of equitable considerations, including, for example, whether the requester satisfactorily shows that the planned support is not economically feasible and whether there is a satisfactory alternative net benefit to the U.S. economy if the requested waiver or modification is approved.

6. Add § 600.354 to subpart D under the undesignated center heading “Post-Award Requirements” to read as follows:

**§ 600.354 Change of control.**

(a) Change of control is defined as any of the following:

(1) Any event by which any individual or entity other than the recipient becomes the beneficial owner of more than 50% of the total voting power of the voting stock of the recipient;

(2) The recipient merges with or into any entity other than in a transaction in which the shares of the recipient's voting stock are converted into a majority of the voting stock of the surviving entity;

(3) The sale, lease or transfer of all or substantially all of the assets of the recipient to any individual or entity other than the recipient in one or a series of related transactions;

(4) The adoption of a plan relating to the liquidation or dissolution of the recipient; or

(5) Where the recipient is a wholly-owned subsidiary at the time of award or novation, and the recipient's parent entity undergoes a change of control as defined in this section.

(b) When the Federal share of the financial assistance agreement is more than \$10,000,000 or DOE requests the information in writing, the recipient must provide the contracting officer with documentation identifying all parties who exercise control in the recipient at the time of award.

(c) When there is a change of control of a recipient, or the recipient has reason to know a change of control is likely, the recipient must notify the contracting officer within 30 days of its knowledge of such change of control. Such notification must

include, at a minimum, copies of documents necessary to reflect the transaction that resulted or will result in the change of control, and identification of all entities, individuals or other parties to such transaction. Failure to notify the contracting officer of a change of control is grounds for suspension or termination of the award for failure to comply with the terms and conditions of the award.

(d) The contracting officer must authorize a change of control for the purposes of the award. Failure to receive the contracting officer's authorization for a change of control may lead to a suspension of the award, termination for failure to comply with the terms and conditions of the award, or imposition of special award conditions pursuant to 10 CFR 600.304. Special award conditions may include but are not limited to:

- (1) Additional reporting requirements related to the change of control; and
- (2) Suspension of payments due to the recipient.

7. Add § 600.355 to subpart D under the undesignated center heading "Post-Award Requirements" to read as follows:

**§ 600.355 Novation of Financial Assistance Agreements.**

(a) Financial assistance agreements are not assignable absent written consent from the contracting officer. At his or her sole discretion, the contracting officer may, through novation, recognize a third party as the successor in interest to a financial assistance agreement if such recognition is in the Government's interest, conforms with

all applicable laws and the third party's interest in the agreement arises out of the transfer of:

- (1) All of the recipient's assets; or
- (2) The entire portion of the assets necessary to perform the project described in the agreement.

(b) When the contracting officer determines that it is not in the Government's interest to consent to the novation of a financial assistance agreement from the original recipient to a third party, the original recipient remains subject to the terms of the financial assistance agreement, and the Department may exercise all legally available remedies under 10 CFR 600.25, or that may be otherwise available, should the original recipient not perform.

(c) The contracting officer may require submission of any documentation in support of a request for novation, including but not limited to documents identified in 48 CFR Subpart 42.12. The contracting officer may use the format in 48 CFR 42.1204 as guidance for novation agreements identified in paragraph (a) of this section.

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