

DEPARTMENT OF ENERGY**Office of Policy****10 CFR Part 600**

[Docket No. PO-RM-95-101]

Financial Assistance Rules: Eligibility Determination for Certain Financial Assistance Programs**AGENCY:** Department of Energy.**ACTION:** Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy (Department or DOE) today gives notice of a proposed general statement of policy to guide DOE officials in making eligibility determinations required by section 2306 of the Energy Policy Act of 1992. The proposed general statement of policy includes procedures and interpretations related to the statutory limits placed by section 2306 on eligibility to receive financial assistance under DOE programs authorized by Titles XX through XXIII of that Act.

DATES: Written comments (9 copies) must be received by DOE on or before April 24, 1995. A public hearing will be held on April 19, 1995 beginning at 9:30 a.m. at the address listed below. Requests to speak must be received by April 17, 1995, by calling (202) 586-3012.

ADDRESSES: Written comments and requests to speak must be submitted to: Dr. Robert C. Marlay, Office of Science Policy, Office of Policy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586-3012.

Telecopied comments will not be accepted. The public hearing will be held in Room 1E-245, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585. See Section V. for additional information concerning public comment procedures.

FOR FURTHER INFORMATION CONTACT: Dr. Robert C. Marlay, Office of Science Policy (Mail Stop PO-81), Office of Policy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586-3900. Paul Sherry, Esq., Office of General Counsel (Mail Stop GC-61), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586-2440.

SUPPLEMENTARY INFORMATION:**I. Background**

This notice sets forth a proposed general statement of policy, including

procedures and interpretations, concerning implementation of the requirements of section 2306 of the Energy Policy Act of 1992 (EPAct) (42 U.S.C. 13525). The general statement of policy, when finalized, will guide implementing DOE officials in making a special eligibility determination prerequisite to a financial assistance award to a company under Titles XX through XXIII of EPAct. Those titles relate to research, development, demonstration and commercialization programs in diverse areas of energy efficiency, energy supply, and related basic research.

The Department has decided to adopt a general statement of policy and to codify that policy in the part of the Code of Federal Regulations containing the Department's financial assistance regulations. Such a codified policy statement is needed to communicate guidance on these implementation issues to Departmental officials and potential DOE program applicants. This policy statement applies only to DOE's implementation of section 2306 of EPAct; it is not intended to apply to any other agency or to the implementation of any other statutory eligibility requirement.

The eligibility restrictions addressed in this policy statement apply to a broad range of DOE programs (see list of covered programs below), many of which pre-dated enactment of EPAct. These programs are conducted by a large number of program and contracting officials located in regional and field offices as well as DOE headquarters. This policy statement provides uniform guidance for DOE officials and for applicants to the broad array of covered programs.

Section 2306 does not require the Department to conduct a rulemaking. Further, notice and comment rulemaking is not required by law for general statements of policy. However, DOE has chosen to publish the proposed general statement of policy in the **Federal Register** in order to ensure a full opportunity for public comment and input prior to finalizing the policy.

Section 2306 provides for a two-part determination. An applicant must be found to satisfy the conditions of both parts in order to be eligible.

The first part, set out in section 2306(1), involves a finding with regard to whether an award to the applicant would be in the economic interest of the United States. 42 U.S.C. 13525(1). The statute provides some illustrative examples of the kinds of evidence that would support such a finding: Investments in the United States in research, development, and

manufacturing; significant contributions to employment in the United States; and agreements, with respect to any technology arising from financial assistance provided, to promote the manufacture within the United States of products resulting from that technology and to procure parts and materials for such manufacture from competitive suppliers.

The second part of the determination, section 2306(2), involves two subparts, one of which must be satisfied. 42 U.S.C. 13525(2). The first subpart is satisfied if the applicant is a "United States-owned company." The second subpart is satisfied if the applicant is found to be incorporated in the United States and the applicant's parent company is incorporated in a foreign country that: (a) Affords opportunities to United States-owned companies comparable to those afforded to any other company with regard to access to government-supported joint ventures in energy research and development; (b) affords opportunities to United States-owned companies comparable to those afforded to any other company with regard to general investment opportunities; and (c) affords adequate and effective protection to intellectual property rights owned by United States-owned companies.

None of the statutory terms used in section 2306 is defined by EPAct, and the legislative history sheds no light on the intended meaning of such terms. Consequently, the Department's proposed interpretations are based on the common usage of these terms, as informed by their usage in similar contexts.

The Department is of the view that the proposed general statement of policy sets forth a reasonable decisionmaking framework for the guidance of implementing officials. If any of the provisions of the policy would be unreasonable as applied, those officials would have the discretion to depart from its terms based upon particular facts and circumstances. Department officials must, in all cases, comply with the requirements of the statute.

II. Applicability of Eligibility Requirements

Section 2306's eligibility requirements apply to applicants for "financial assistance under Titles XX through XXIII of this Act." 42 U.S.C. 13525. EPAct does not define "financial assistance." Consistent with the Federal Grant and Cooperative Agreement Act of 1977, 31 U.S.C. 6301-6308, and the practices of other Executive agencies, DOE currently defines financial assistance instruments to include grants

and cooperative agreements, but not contracts and subcontracts. 10 CFR 600.3 ("financial assistance instruments are grants and cooperative agreements and subawards"). Contracts and subcontracts do not constitute financial assistance but instead provide for payment in exchange for procured products or services. See 31 U.S.C. 6303. Thus, the Department concludes that contracts and subcontracts, including cost-shared contracts and subcontracts, fall outside the scope of financial assistance and does not propose modifying the current definition of financial assistance in 10 CFR 600.3 for purposes of this subpart.

The Department's current definition of financial assistance also excludes cooperative research and development agreements (CRADAs). The Stevenson-Wydler Technology Innovation Act, 15 U.S.C. 3710a, which authorizes the use of CRADAs, does not authorize the transfer of funds to a CRADA participant and specifically distinguishes CRADAs from cooperative agreements. Thus any assistance provided under CRADAs would not be "financial" assistance as the term ordinarily is understood. We note as well that existing law governing the use of CRADAs contains a set of considerations for the selection of CRADA participants that address similar policy objectives. 15 U.S.C. 3710a(c)(4).

Section 2306 applies to financial assistance "under Titles XX through XXIII" of EPAct. The intended effect of this statutory phrase is ambiguous. The Department proposes to interpret the range of activities covered by section 2306 to include all Department of Energy research and development programs either mentioned specifically in the text of Titles XX through XXIII or suggested by references to similar and related research and development activities in the conference reports on the Appropriations Acts for Energy and Water Development and for Interior and Related Agencies. This includes many programs and program activities that were initiated prior to the enactment of EPAct under authority of pre-existing law. Thus, for many programs, there are now two or more authorities. Comment is requested on this interpretation.

A list of covered programs for fiscal year 1995 (FY95) is set forth in the discussion of the term "covered program" in section III below. This list will be updated each fiscal year and published in the **Federal Register** to account for changes in appropriated activities undertaken under Titles XX through XXIII of EPAct.

III. Section-By-Section Analysis

Today's proposed policy statement would be codified as a new subpart F in 10 CFR part 600 where the Department's general financial assistance regulations are codified. The following is a discussion of the new sections that would make up subpart F.

§ 600.500 Purpose and scope.

This section states that the subpart provides procedures and interpretations to guide DOE officials in making eligibility determinations under section 2306 of the EPAct.

§ 600.501 Definitions.

The definition section begins by alerting readers that the existing definitions in § 600.3 of the general subpart are applicable to the new subpart F. Section 600.3 contains definitions of "applicant," "cooperative agreement," "financial assistance," "grant," and "State."

The term "company" is defined to mean any for-profit business entity. The eligibility requirements of section 2306 would apply only to companies. This definition, based on common usage of the term company, is intended to include for-profit corporations, general or limited partnerships, sole proprietorships, and other forms of business entities. It is also intended to cover joint ventures involving one or more such entities. The definition does not include governmental entities, and thus such entities would not be subject to this restriction on eligibility to receive financial assistance. Moreover, the definition does not include non-profit organizations. The Department invites comment on whether it is appropriate to exclude all non-profit organizations from this definition, or whether it would be more appropriate to exclude a narrower class of educational and charitable organizations, such as organizations exempted from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The term "covered program" is defined in order to have a convenient term for referring to the list of activities under Titles XX through XXIII of the Energy Policy Act of 1992 to which the section 2306 eligibility restrictions apply. Set out below is the proposed list of covered programs for FY95:

COVERED PROGRAMS—FY 95

Fossil energy R & D	EPACT sections
Petroleum: All Programs	§ 2011, 2012

COVERED PROGRAMS—FY 95—Continued

Fossil energy R & D	EPACT sections
Gas: Natural Gas Research	§ 2013–2015, 2112
All programs, including: Resource & Extraction	§ 2013, 2014
Delivery & Storage	§ 2013, 2014
Utilization	§ 2013, 2014
Turbines	§ 2112
Environmental Research & Regulatory Analysis.	§ 2013, 2014
Midcontinent Energy Re- search Center.	§ 2013, 2015
Fuel cells: All Programs, including: Advanced Research	§ 2115
Molten Carbonate Sys- tems.	§ 2115
Advanced Concepts	§ 2115
Energy conservation: Transportation	§ 2021–2025, 2027, 2028, 2112
Alternative Fuels Utiliza- tion.	§ 2021, 2023
Materials Development	§ 2021
Heat Engine Development	§ 2021, 2112
Electric & Hybrid Propul- sion Development.	§ 2021, 2025
Implementation & Deploy- ment.	§ 2021
Management	§ 2021
Capital Equipment	§ 2021
Advanced Automotive Fuel Economy.	§ 2021, 2022
Biofuels User Facility	§ 2021, 2024
Advanced Diesel Emis- sions Program.	§ 2021, 2027
Telecommuting Study	§ 2021, 2028
Utility: All programs.	§ 2101
Industry	§ 2101–2108
All Programs, Including: Industrial Wastes	§ 2101
Municipal Solid Wastes .	§ 2101
Cogeneration	§ 2101
Electric Drives	§ 2101, 2105
Materials and Metals Processing.	§ 2101, 2107
Other Process Efficiency	§ 2101
Process Heating & Cooling.	§ 2101, 2102
Implementation & De- ployment.	§ 2101
Management	§ 2101
Capital Equipment	§ 2101
National Advanced Man- ufacturing Tech Initia- tive.	§ 2101, 2202
Pulp & Paper	§ 2101, 2103
Steel, Aluminum, and Metal Research.	§ 2101, 2106
Energy Efficient Envi- ronmental Program.	§ 2101, 2108
Buildings	§ 2101–2108
All Programs, including: Federal Energy Man- agement Program.	§ 2101
Implementation & De- ployment.	§ 2101

COVERED PROGRAMS—FY 95—Continued		COVERED PROGRAMS—FY 95—Continued	
Fossil energy R & D	EPACT sections	Fossil energy R & D	EPACT sections
Management and Planning.	§ 2101	All Programs, including:	
Capital Equipment	§ 2101	Photovoltaics	§ 2111
Advanced Buildings for 2005.	§ 2101, 2104	Biofuels	§ 2021, 2013, 2024, 2111
Building Systems	§ 2101	Solar Technology Transfer.	§ 2111
Building Envelope	§ 2101	Program Direction—Other Solar Energy.	§ 2111
Building Equipment ...	§ 2101	Solar Building Technology Research.	§ 2111, 2104
Codes and Standards	§ 2101	Solar Thermal Energy Systems.	§ 2111
Energy Supply R & D		Wind Energy Systems ..	§ 2111
Energy Research		Ocean Energy Systems	§ 2111
Fusion Energy	§ 2114	International Solar Energy Program.	§ 2111
All Programs, including:		Resource Assessment ..	§ 2111
Confinement Systems.	§ 2114	Program Support	§ 2111
Development & Technology.	§ 2114	Geothermal	§ 2111
Applied Plasma Physics.	§ 2114	Hydrogen Research	§ 2026
Planning & Projects.	§ 2114	Electric Energy Systems including:	§ 2117, 2111
Inertial Fusion Energy.	§ 2114	Superconductivity.	
Program Direction—Op Exp.	§ 2114	Energy Storage Systems ..	§ 2111
Capital Equipment & Construction.	§ 2114	Environmental Rest & Waste Management:	
Basic Energy Sciences	§ 2203	Facility Transition—Fast Flux Test Facility.	§ 2116
All Activities, including: Materials Sciences.	§ 2203	Civilian Waste R & D	§ 2113
Chemical Sciences.	§ 2203	Electric & Magnetic Fields Research and Public Dissemination Program.	§ 2118
Energy Biosciences.	§ 2203	Spark M. Matsunaga Renewable Energy & Ocean Technology Center.	§ 2111, 2119
Engineering & Geosciences.	§ 2203		
Applied Math Sciences.	§ 2203, 2204	The term “parent company” is defined as a company that exercises ultimate ownership of the applicant company. The parent company would be identified by first determining whether any company owns a majority of the applicant company’s voting securities. If so, then the same test would be applied to that company, <i>i.e.</i> , does any company own a majority of that company’s voting securities? The parent company would be the company that exercises control over the applicant company by means of this chain of majority stock ownership, and which itself is not subject to the majority stock ownership of any other company.	
Advanced Energy Projects.	§ 2203	DOE would interpret the term “parent company” to mean the ultimate parent company as just described in order to avoid confusion in cases where an applicant company and its immediate parent are both organized in the U.S., but where the immediate parent is, in turn, owned by a company organized abroad.	
Program Direction.	§ 2203	The Department recognizes that there may be situations in which one company effectively controls the actions of another without owning a majority of	
Capital Equipment.	§ 2203		
Advisory & Oversight/Program Direction.	§ 2203		
Advanced Neutron Source			
§ 2203.			
Energy Research Analysis	§ 2203		
University & Science Education Programs.	§ 2203		
Experimental Program to Stimulate Competitive Research.	§ 2203		
Laboratory Technology Transfer.	§ 2203		
Multi-Program Laboratory Support.	§ 2203		
Nuclear Energy:			
Light Water Reactor	§ 2123, 2126		
Advanced Reactor R & D .	§ 2121, 2122, 2124, 2126		
Facilities	§ 2126		
Solar & Renewables:			
Solar & Other Energy	§ 2021, 2026, 2111, 2117		

its voting securities. However, given that the sole purpose of this inquiry into corporate lineage would be to identify the foreign country with which a non-U.S.-owned applicant can be most directly associated, this approach is felt to be both adequate and appropriate.

The definition of “United States” is a standard definition used in many of the Department’s programs. It includes the 50 States, the District of Columbia, and all commonwealths, territories and possessions of the United States.

The term “United States-owned company” is a key part of section 2306(2). The Department proposes to permit an applicant to use either of two alternative definitions of this term: (1) A company that has majority ownership by individuals who are citizens of the United States, or (2) a company organized under the laws of a State that either has no parent company or has an ultimate parent company that is organized under the laws of a State.

The first alternative is based on the statutory definition of the term “United States-owned company” used in a similar eligibility limitation, which defines United States-owned company in terms of majority ownership or control by citizens of the United States. 15 U.S.C. 278n(j)(2). This test of ownership is based on the citizenship of individual owners or shareholders. Where an applicant company is a wholly- or majority-owned subsidiary of a parent company, or a majority of its stock is held by other corporations or institutional investors rather than individuals, the ownership analysis would be applied to these corporations or institutional investors to determine whether they are owned by individuals who are citizens of the United States.

The second alternative definition of United States-owned company is a company organized under the laws of a State that either has no parent company or has an ultimate parent organized under the laws of a State. This alternative is based on a presumption that companies incorporated or organized in the U.S. that are not majority-owned by a foreign company will not have sufficiently strong connection to any foreign country to justify using the section 2306(2)(B) reciprocity determinations. The Department will request applicants claiming to be U.S.-owned companies to make a certification to that effect.

The term “voting security,” which is used in the definition of parent company, is defined by reference to the statutory definition in the Public Utility Holding Company Act. 15 U.S.C. 15b(17). This broad definition includes any security that gives the holder a vote

in the direction or management of the company, such as common stock in a corporation and partnership interests in a partnership.

§ 600.502 What DOE Must Determine

This section follows the sequence of provisions of section 2306 which provide for the two mandatory elements of the eligibility determination. The first mandatory element is a finding that the applicant's participation in a particular program is in the economic interest of the United States. The second mandatory element has two alternative subparts—either (a) the company is a U.S.-owned company; or (b) the company is found to be incorporated in the U.S. and the government of the parent company's country of incorporation affords U.S.-owned companies local investment opportunities comparable to those offered to any other company on investment and access to energy research and development, and protects U.S.-owned intellectual property in that country.

In order to avoid seemingly unintended consequences in interpreting section 2306(2)(B), the Department proposes interpreting the statutory phrase "company * * * incorporated in the United States" to include both corporations incorporated in the U.S. and other companies, defined as for-profit business entities, organized under the laws of any State in the U.S. Thus, for example, a partnership organized under State law in the U.S. would be included. Similarly, the Department proposes interpreting the statutory phrase "parent company which is incorporated" in a foreign country to include both corporations and other for-profit business entities organized under foreign law.

The Department invites comment on how to make the required determination in the context of relatively small financial assistance awards. Under the proposed rule, all applicants would need to submit the same types of information and the Department would undertake the same type of determination. One possible alternative is to ask applicants for awards below \$100,000 to certify that they satisfy all the eligibility requirements of section 2306(1) and (2)(a), if applicable, and to rely on such a certification unless the Department has reason to believe that further investigation is warranted. This approach would permit the Department to target its administrative resources to making eligibility determinations for larger awards, and at the same time preserve the Department's appropriate

role in reviewing eligibility for smaller awards where there is reason to question an applicant's eligibility. The Department invites comment on such an alternative for small awards.

§ 600.503 Determining the economic interest of the United States.

This section provides guidelines as to information that may support an affirmative determination that a financial assistance award would be in the economic interest of the United States. Section 600.503 describes examples, based on the statute, of the type of evidence that may be considered. Section 600.503 of the general statement of policy makes it clear that any other evidence that shows that an award would be in the economic interest of the United States can be considered. Determinations concerning the economic interest of the United States will be based on consideration of all available evidence.

The evidence to be considered concerning investments or employment in the U.S. may include evidence related to affiliates of the applicant company (e.g., the parent company of an applicant corporation, the general partners in an applicant partnership). DOE will consider the facts relating to each applicant in context.

Where the applicant for financial assistance is a joint venture, DOE would apply the economic interest test of section 2306(1) to the joint venture as a whole. Under section 2306(2), however, DOE would apply the relevant tests to each company participating in the joint venture.

In evaluating whether an applicant's participation is in the economic interest of the United States, DOE may consider the activities of the applicant's contractors or suppliers or other companies that would have a significant role in the government-supported work. In determining which contractors, suppliers or other companies may be considered in assessing an applicant's eligibility, DOE would consider whether the company's participation is a factor advanced by the applicant for consideration in evaluating the merits of the application. For example, where an applicant chooses to rely on the qualifications of named component suppliers or other contractors in making an application to a covered program, the activities of any such named contractors or suppliers may be evaluated in determining whether the applicant's participation is in the economic interest of the United States.

§ 600.504 Information an applicant must submit.

This section makes clear that the burden of producing information to support an affirmative determination concerning the economic interest of the United States and the ownership status of the applicant would rest on the applicant. The allocation of this burden to the applicant is appropriate because the applicant will usually be in the best position to provide relevant information. The Department may request that information needed to make an eligibility determination be submitted with the application for financial assistance, or may specify, in the solicitation, a later stage in the process for submission of such information.

If an applicant for financial assistance proposes to demonstrate that an award is in the economic interest of the United States by asserting that it will undertake future action, such as promoting manufacture of products in the United States or procuring parts and materials from competitive suppliers, DOE will require it to provide an appropriate certification concerning such future action. In support of such certifications, the applicant should also provide a brief commercialization plan for the technology that is expected to result from the program-supported research and development. The Department expects to give considerable weight to these plans in assessing whether the applicant's participation is in the economic interest of the United States.

In order to be treated as a "United States-owned company" for eligibility purposes, an applicant would be required to submit an appropriate certification that it satisfies the definition in § 600.501.

The section concludes with a paragraph providing for DOE requests for information in addition to that submitted with the application for financial assistance, if necessary.

§ 600.505 Other information DOE may consider.

This section identifies certain kinds of information, in addition to the information provided by the applicant, that may be relevant in making the required findings. DOE, in making the findings required under section 2306(2)(B), intends to consult with and seek information from a number of sources, including, but not limited to, appropriate agencies of the federal government as well as publicly available information.

With respect to whether a foreign government "affords to United States-owned companies opportunities,

comparable to those afforded to any other company, to participate in any joint venture similar to those authorized by the Act," DOE expects to consider the regime that governs eligibility of U.S.-owned companies seeking to participate in research and development sponsored by that government.

The DOE analysis of this issue would consider discrimination against foreign subsidiaries of U.S.-owned companies relative to any other company in providing access to research and development programs. DOE would consider both discriminatory policies and discriminatory practices. Where a foreign government does not have research and development programs comparable to those authorized by EPAct, the absence of such programs would not preclude companies headquartered in that country from participating in DOE programs.

The statutory phrase "joint venture similar to those authorized under this Act" has uncertain meaning given that EPAct authorizes a number of government-supported programs, but the Department has not, to date, used joint ventures per se. Given the apparent intent of the statute to promote opportunities comparable to those afforded to any other company in energy research and development programs, DOE would construe this phrase to mean government-supported research and development programs similar to those covered by section 2306.

With regard to whether a foreign country "affords to United States-owned companies local investment opportunities comparable to those afforded to any other company," DOE expects to consider a review of applicable international obligations to provide to U.S. investors opportunities comparable to those offered to other companies.

With regard to protection of intellectual property rights in foreign countries, DOE expects to consider certain lists that contain relevant information prepared by other Executive agencies, such as the "Special 301 Priority Foreign Country List," issued by the U.S. Trade Representative.

In making the determinations required under section 2306(2)(B), the Department expects to seek the advice of other appropriate federal agencies.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Today's 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).

Accordingly, today's action was reviewed by the Office of Information and Regulatory Affairs.

The draft of today's action and any other documents submitted to OIRA for review have been made a part of the rulemaking record and are available for public review as provided in the **ADDRESSES** section of this notice.

B. Review Under Paperwork Reduction Act

No new information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, are imposed by today's regulatory action.

C. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of Energy has established regulations for its compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to appendix A of subpart D of 10 CFR part 1021, the Department has determined that today's regulatory action is categorically exempt as a procedural rule for implementation of statutory requirements.

D. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that rules be reviewed for any substantial direct effect on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. Today's action interprets the section 2306 eligibility requirements to be inapplicable to State applications for financial assistance. Therefore, the Department has determined that they will not have a substantial direct effect on the institutional interests or traditional functions of States.

E. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in section 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden

reduction. Agencies are also instructed to make every reasonable effort to ensure that regulations define key terms and are clear on such matters as exhaustion of administrative remedies and preemption. The Department certifies that today's regulatory action meets the requirements of section 2(a) and (b)(2) of Executive Order 12778.

V. Opportunity for Public Comment

A. Written Comments

Interested persons are invited to participate in this proceeding by submitting data, views, or comments with respect to today's notice.

Nine copies of written comments should be submitted to the address indicated in **ADDRESSES** section of this notice. Comments should be identified on the outside of the envelope and on the documents themselves with the designation "Financial Assistance Rules: Eligibility Determination for Certain Financial Assistance Programs, Docket No. PO-RM-95-101." In the event any person wishing to provide written comments cannot provide nine copies, alternative arrangements can be made in advance with the Department.

All comments received will be available for public inspection as part of the administrative record on file for this rulemaking in the Department of Energy Freedom of Information Office Reading Room, 1E-090, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202-586-6020, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. The Department reserves the right to determine the confidential status of the information and to treat it accordingly under 10 CFR 1004.11.

B. Public Hearing

One public hearing will be held pursuant to this notice at the time, date and place indicated above in the **DATES** and **ADDRESSES** sections of this notice. Any person who has an interest in making an oral presentation should make a written request to speak. Such a request should be sent to the address given in the **ADDRESSES** section of this notice and must be received by 4:30 p.m. on the date specified in the **DATES** section. The person also should provide a daytime phone number where the person may be reached. Those persons requesting an opportunity to make an

oral presentation should bring nine (9) copies of their statement to the hearing.

DOE will establish the procedures governing the conduct of the hearing. The length of each presentation will be limited to ten (10) minutes. A DOE official will preside at the hearing, and may ask questions. Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

If DOE must cancel the hearing, DOE will make every effort to give advance notice of the cancellation. The hearing may be cancelled in the event no requests to speak are received by the deadline for submission of such a request.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure, Grant programs.

Issued in Washington, D.C., on this 17th day of February 1995.

Susan F. Tierney,

Assistant Secretary, Policy, Planning, and Program Management.

For the reasons stated in the preamble, part 600 of title 10, Subchapter H of the Code of Federal Regulations is proposed to be amended as set forth below:

Part 600—FINANCIAL ASSISTANCE RULES

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

Authority: 42 U.S.C. 7254, 7256; 31 U.S.C. 6301–6308, unless otherwise noted.

2. New subpart F, consisting of §§ 600.500 through 600.505, is added to read as follows:

Subpart F—Eligibility Determination for Certain Financial Assistance Programs—General Statement of Policy

Sec.

600.500 Purpose and scope.

600.501 Definitions.

600.502 What must DOE determine.

600.503 Determining the economic interest of the United States.

600.504 Information an applicant must submit.

600.505 Other information DOE may consider.

Subpart F—Eligibility Determination for Certain Financial Assistance Programs—General Statement of Policy

§ 600.500 Purpose and scope.

This subpart implements section 2306 of the Energy Policy Act of 1992, 42 U.S.C. 13525, and sets forth a general statement of policy, including procedures and interpretations, for the guidance of implementing DOE officials

in making mandatory pre-award determinations of eligibility for financial assistance under Titles XX through XXIII of that Act.

§ 600.501 Definitions.

The definitions in § 600.3 of this part are applicable to this subpart, and in addition, as used in this subpart:

Act means the Energy Policy Act of 1992.

Company means any for-profit business entity.

Covered program means a program under Titles XX through XXIII of the Act, as listed separately and updated annually by the Department of Energy for each fiscal year.

Parent company means a company that:

(1) Exercises ultimate ownership of the applicant company either directly, by ownership of a majority of that company's voting securities, or indirectly, by control over a majority of that company's voting securities through a series of one or more intermediate subsidiary companies, and

(2) Is not itself subject to the ultimate ownership control of another company.

United States means the several States, the District of Columbia, and all commonwealths, territories, and possessions of the United States.

United States-owned company means:

(1) A company that has majority ownership by individuals who are citizens of the United States, or

(2) A company organized under the laws of a State that either has no parent company or has a parent company organized under the laws of a State.

Voting security has the meaning given the term in the Public Utility Holding Company Act (15 U.S.C. 15b(17)).

§ 600.502 What must DOE determine.

A company shall be eligible to receive financial assistance only if DOE finds that—

(a) Consistent with § 600.503, the company's participation in a covered program would be in the economic interest of the United States; and

(b) The company is either—

(1) A United States-owned company; or

(2) Incorporated or organized under the laws of any State and has a parent company which is incorporated or organized under the laws of a country which—

(i) Affords to the United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under the Act;

(ii) Affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and

(iii) Affords adequate and effective protection for the intellectual property rights of United States-owned companies.

§ 600.503 Determining the economic interest of the United States.

In determining whether participation of an applicant company in a covered program would be in the economic interest of the United States under paragraph (a) of § 600.502, DOE may consider any evidence showing that a financial assistance award would be in the economic interest of the United States including, but not limited to—

(a) Investments by the applicant company and its affiliates in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States);

(b) Significant contributions to employment in the United States by the applicant company and its affiliates; and

(c) An agreement by the applicant company, with respect to any technology arising from the financial assistance being sought—

(1) To promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry); and

(2) To procure parts and materials from competitive suppliers.

§ 600.504 Information an applicant must submit.

(a) Any applicant for financial assistance in a covered program shall submit with the application for financial assistance, or at such later time as may be specified by DOE, evidence for DOE to consider in making findings required under § 600.502(a) and findings concerning ownership status under § 600.502(b).

(b) The applicant for financial assistance has the burden of producing sufficient information to warrant making each required finding under § 600.502.

(c) If an applicant for financial assistance is submitting evidence relating to future undertakings, such as an agreement under paragraph (c) of § 600.503 to promote manufacture in the United States of products resulting from a technology developed with financial assistance or to procure parts and materials from competitive suppliers, the applicant shall submit a certification affirming acceptance of these undertakings. The applicant should also

briefly describe its plans, if any, for any manufacturing of products arising from the program-supported research and development, including the location where such manufacturing is expected to occur.

(d) If an applicant for financial assistance is claiming to be a United States-owned company, the applicant must submit a certification affirming that it falls within the definition of that term provided in § 600.501.

(e) DOE may require submission of additional information deemed necessary to make any portion of the determination required by § 600.502.

§ 600.505 Other information DOE may consider.

In making the determination under paragraph (b)(2) of § 600.502, DOE may—

(a) consider information on the relevant international and domestic law obligations of the country of incorporation of the parent company of an applicant;

(b) consider information relating to the policies and practices of the country of incorporation of the parent company of an applicant with respect to:

(1) The eligibility criteria for, and the experience of United States-owned company participation in, energy-

related research and development programs;

(2) Local investment opportunities afforded to United States-owned companies; and

(3) Protection of intellectual property rights of United States-owned companies;

(c) seek and consider advice from other federal agencies, as appropriate; and

(d) consider any publicly available information in addition to the information provided by the applicant.

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