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DEPARTMENT OF ENERGY

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: Final rule.

SUMMARY: The Department of Energy is amending its Financial Assistance Rules by adding a final statement of policy, including procedures and interpretations, to guide DOE officials in making determinations required by section 2306 of the Energy Policy Act of 1992 (EPACT) concerning eligibility to receive financial assistance under DOE programs authorized by Titles XX through XXIII of EPACT.

EFFECTIVE DATE: January 19, 1996.

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, S.W., Washington, D.C. 20585, (202) 586–2440.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Public Comments
III. Procedural Requirements

I. Background

This notice sets forth a final general statement of policy, including procedures and interpretations, concerning implementation of the requirements of section 2306 of EPACT (42 U.S.C. 13525). This general statement of policy 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.

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 of financial assistance 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 to participate in 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 of intellectual property rights owned by United States-owned companies.

The current list of covered programs is set forth below. This list will be updated as appropriate and published in the Federal Register to account for changes in activities undertaken in relation to Titles XX through XXIII of EPACT.

Covered programs	EPACT sections
Fossil energy R & D Petroleum: All Programs	§ 2011, 2012
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
Mid-continent Energy Research Center	§ 2013, 2015
Fuel cells:	§ 2115
All Programs, including:	
Advanced Research	§ 2115
Molten Carbonate Systems	§ 2115
Advanced Concepts	§ 2115
Energy conservation:	
Transportation	§ 2021–2025, 2027, 2028, 2112
Alternative Fuels Utilization	§ 2021, 2023
Materials Development	§ 2021

Covered programs	EPACT sections
Heat Engine Development	§ 2021, 2112
Electric & Hybrid Propulsion	§ 2021, 2025
Development Implementation & Deployment	§ 2021
Management	§ 2021
Capital Equipment	§ 2021
Advanced Automotive Fuel Economy	§ 2021, 2022
Biofuels User Facility	§ 2021, 2024
Advanced Diesel Emissions 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 & Deployment	§ 2101
Management	§ 2101
Capital Equipment	§ 2101
National Advanced Manufacturing Tech	§ 2101, 2202
Initiative Pulp & Paper	§ 2101, 2103
Steel, Aluminum, and Metal Research	§ 2101, 2106
Energy Efficient Environmental Program	§ 2101, 2108
Buildings	§ 2101–2108
All Programs, including:	
Federal Energy Management Program	§ 2101
Implementation & Deployment	§ 2101
Management and Planning	§ 2101
Capital Equipment	§ 2101
Advanced Buildings for 2005	§ 2101, 2104
Building Systems	§ 2101
Building Envelope	§ 2101
Building Equipment	§ 2101
Codes and Standards	§ 2101
Energy Supply R & D: Energy Research:.	
Fusion Energy	§ 2114
All Programs, including:	
Confinement Systems	§ 2114
Development & Technology	§ 2114
Applied Plasma Physics	§ 2114
Planning & Projects	§ 2114
Inertial Fusion Energy	§ 2114
Program Direction-Op Exp	§ 2114
Capital Equipment & Construction	§ 2114
Basic Energy Sciences	§ 2203
All Activities, including:	
Materials Sciences	§ 2203
Chemical Sciences	§ 2203
Energy Biosciences	§ 2203
Engineering & Geosciences	§ 2203
Applied Math Sciences	§ 2203, 2204
Advanced Energy Projects	§ 2203
Program Direction	§ 2203
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
All Programs, including:	
Photovoltaics	§ 2111
Biofuels	§ 2021, 2013, 2024, 2111
Solar Technology Transfer	§ 2111

Covered programs	EPACT sections
Program Direction—Other Solar Energy	§ 2111
Solar Building Technology Research	§ 2111, 2104
Solar Thermal Energy Systems	§ 2111
Wind Energy Systems	§ 2111
Ocean Energy Systems	§ 2111
International Solar Energy Program	§ 2111
Resource Assessment	§ 2111
Program Support	§ 2111
Geothermal	§ 2111
Hydrogen Research	§ 2026
Electric Energy Systems including: Superconductivity	§ 2117, 2111
Energy Storage Systems	§ 2111
Environmental Rest & Waste Management:	
Facility Transition—Fast Flux Test Facility	§ 2116
Civilian Waste R & D	§ 2113
Electric & Magnetic Fields Research and Public Dissemination Program	§ 2118
Spark M. Matsunaga Renewable Energy & Ocean Technology Center	§ 2111, 2119

On February 23, 1995, DOE published a proposed statement of policy for public comment in the Federal Register (60 FR 10296). The public comment period ended April 24, 1995. The Department received seven comments. In addition, a public hearing was held on April 19, 1995, in Washington, DC. Comments were received from the Delegation of the European Commission, individual corporations, and associations representing corporations and commercial interests. The official rulemaking record is available in the Department's Freedom of Information reading room.

II. Discussion of Public Comments

A. Applicability of Eligibility Requirements

One commenter questioned the Department's overall approach of implementing section 2306 through a ''general statement of policy'' which allows DOE officials considerable flexibility. The commenter noted that § 2306 is mandatory, not advisory, and that the Department's interpretation of what constitutes compliance with this provision should also be mandatory in the form of a final binding rule. In addition, the commenter expressed the view that allowing discretion in applying section 2306 will lead to arbitrary and inconsistent results.

The policy statement recognizes the limitations of DOE's discretion by announcing that ''Department officials must, in all cases, comply with the requirements of the statute.'' The Department has decided to adopt a general statement of policy which provides uniform guidance for DOE officials and potential DOE program applicants, but allows implementing officials discretion in applying this policy to a large number of programs in diverse energy areas.

Most importantly, the Department's general statement of policy sets forth a reasonable decisionmaking framework for the purpose of allowing full compliance with—not avoidance of—section 2306. This decisionmaking framework has been designed to avoid arbitrary decisionmaking by ensuring that all implementation actions under section 2306 comply with the requirements of that provision.

Several comments were received concerning the ''retroactive'' application of section 2306 by the Department. One commenter asserted that the Department should not retroactively impose conditions on program participants granted awards prior to the enactment of EPACT.

Section 2306, which governs the award of financial assistance covered by Titles XX to XXIII of EPACT, became effective on October 24, 1992. The eligibility requirements will not be applied to financial assistance awards made prior to the effective date of the Act. This policy statement will apply to any new financial assistance awards or renewals of such awards under covered programs made after the effective date stated in this notice.

Several commenters also raised retroactivity issues with respect to which programs are covered. One commenter asserted that section 2306 applies to programs authorized by EPACT but commenced prior to the passage of that Act. Another commenter disagreed and asserted that DOE improperly proposed to apply section 2306 to programs that pre-date the enactment of EPACT. Departmental programs that pre-date EPACT but are referenced in Titles XX through XXIII of the Act will be considered covered programs as of the effective date of the Act.

Two commenters expressed opposing views with respect to the scope of programs ''under Titles XX through XXIII'' of EPACT. One commenter asserted that the requirements of section 2306 should be applied broadly. Another commenter asserted that it would be inappropriate to apply section 2306 to programs not specifically authorized under titles XX through XXIII of EPACT. The Department has developed the list of covered programs set forth above to include both activities specifically authorized by Titles XX through XXIII of EPACT and other activities that are reasonably judged to be undertaken pursuant to program directions set out in those titles.

B. Definitions

Two comments were received concerning the proposed definition of ''financial assistance.'' One commenter agreed with the Department's proposal to define ''financial assistance'' to include grants and cooperative agreements and not contracts, subcontracts, and cooperative research and development agreements (CRADAs). Another commenter argued that the exclusion of contracts and subcontracts from the definition thwarts the intent of Congress and reduces the applicability of the statute to ''near zero.''

The term ''financial assistance'' is not defined in EPACT, and the legislative history to that Act is silent as to its intended meaning. The Department has chosen to apply its pre-existing definition of the term ''financial assistance'', found at 10 CFR 600.3, which includes grants and cooperative agreements but does not include contracts, subcontracts or CRADAs. This definition is consistent with the usual connotations of the term.

The Department invited comment on the definition of ''company'' in order to assess whether it was appropriate to exclude all non-profit organizations

from that definition, or whether it would be more appropriate to exclude a narrower class of non-profit educational and charitable organizations. One commenter expressed the view that excluding all non-profit organizations from the definition of that term would invite efforts to circumvent the purpose of section 2306.

The Department has concluded that the definition of ''company'' should not exclude all not-for-profit organizations, but should instead exclude educational or charitable organizations.

Accordingly, § 600.501 defines ''company'' as ''any business entity other than an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)(3)).'' This definition is intended to include corporations, general or limited partnerships, sole proprietorships, joint ventures, and other forms of business entities. It is not intended to include governmental entities. Not-for-profit corporations and associations are included unless they are educational or other institutions qualified under section 501(c)(3) of the Internal Revenue Code.

One commenter noted that the term ''affiliates'' is not defined in the proposed rule and suggested that a definition be added. Section 600.503, in which the term is used, simply provides that investment and employment in the U.S. by affiliates may be considered in assessing whether the applicant's participation is in the economic interests of the U.S. Accordingly, the Department does not believe that a technical definition of ''affiliates'' is necessary.

Another commenter suggested a change to the definition of ''parent company'' to clarify that, in the case of indirect control, each company in a series must have a majority control of its subsidiary. Such a rigid approach could permit use of organizational structures designed to circumvent effective review under section 2306. Therefore, the definition has not been modified.

C. Economic Interest Determination

Several comments were received concerning the scope of Departmental discretion in determining whether a company's participation is in the economic interest of the United States. One commenter, asserting that DOE has substantial discretion in this area, suggested that this determination should include a comparison of the records of applicant companies in particular areas, for example, in the area of providing U.S. jobs. A second commenter asserted that economic interest assessments must not be based simply on static comparisons among applicants. This same commenter emphasized that the Department should be flexible in the factors it considers in every case and should consider all available evidence in making its economic interest determination. A third commenter agreed, taking the position that the Department's economic interest determination should not be too narrowly focused. As an example, the third commenter noted that in certain cases there could be a clear economic benefit to the United States even though some prospective awardees have no presence in the United States and could not be expected to have any in the future.

Determinations concerning the economic interest of the United States will be based on consideration of all available evidence. The statement of policy provides that any evidence that shows that an award would be in the economic interest of the United States can be considered. The Department also agrees with the position that economic interest assessments should not be based on comparisons among applicants.

Several commenters cautioned that, in applying the economic interest criteria, DOE should not impose performance requirements or other similar conditions on applicants, directly or indirectly. Some of these comments refer to U.S. Government obligations under the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures and the WTO Agreement on Trade-Related Investment Measures, which prohibit import substitution requirements and local purchasing requirements, respectively. The policy statement does not impose performance requirements or other similar conditions on applicants.

D. Section 2306(2)(B) Determination

One commenter recommended that the sole basis for DOE's finding should be the outcome of proceedings conducted by the Office of the United States Trade Representative under section 301 of the Trade Act of 1974, as amended. This commenter notes that the Congress and the Executive Branch have established a comprehensive system of identifying, evaluating and eliminating foreign trade barriers under section 301. This commenter argues that such an approach would ensure that all concerned parties have an opportunity to express views; would ensure predictable results; and would ensure that DOE's finding supports U.S. market-opening efforts. Another commenter argued that DOE should consider evidence of compliance or non-compliance with laws and international agreements affecting trade, and should not limit its analysis to the outcome of section 301 proceedings. DOE agrees that section 301 proceedings are an important factor in making the necessary finding, but consideration of relevant evidence that is not produced as a result of a section 301 proceeding also is appropriate.

One commenter urged DOE to consider whether U.S.-owned firms have non-discriminatory market access in making its determinations. The criteria contained in section 2306(2)(B) of EPACT address comparable access to research opportunities, comparable investment opportunities and adequate and effective intellectual property protections. Section 2306(2)(B) does not provide for DOE to consider whether U.S.-owned firms have access to comparable trade opportunities in the relevant foreign country.

E. Comparable Access to Research Opportunities

One commenter stated that it would defy common sense to find that a parent company incorporated in a country with no similar research program satisfies the requirements of section 2306. At the public hearing, the same commenter stated that section 2306 of EPACT requires DOE to disqualify any applicant if the applicant is headquartered in a country that has no comparable research program.

Section 2306(2)(B) directs DOE to consider whether a foreign country affords U.S. companies ''opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under this Act.'' 42 U.S.C. 13525(2)(B). This finding relates to whether there is discrimination against U.S.-owned firms relative to other firms with regard to access to any foreign-government-sponsored programs comparable to those covered under EPACT. The law does not provide for a finding that a foreign country has comparable energy research and development programs.

F. Comparable Access to Investment Opportunities

One commenter stated that DOE should not limit its review to whether U.S.-owned firms have a legal right to foreign investment opportunities under international agreements. The commenter stated that DOE should not find an affected applicant eligible to participate in a DOE covered program unless U.S. firms have actual investment opportunities in the country of the applicant's parent company that are comparable to the opportunities

available to foreign investors in the United States. Another commenter stated that DOE's main source of information on investment barriers should be the National Trade Estimates Report on Foreign Trade Barriers published annually by the Office of the United States Trade Representative.

Section 2306(2)(B) provides that DOE must determine whether the country ''affords to United States-owned companies local investment opportunities comparable to those afforded to any other company.'' 42 U.S.C. 13525(2)(B). DOE will consider available information on the legal regimes and de facto practices governing foreign investment in relevant countries. The statement of policy states that DOE may consider obligations of the country involved and local investment opportunities afforded to U.S.-owned companies in that country. DOE will consult with other Federal government agencies, as appropriate.

G. Protection of Intellectual Property Rights

One commenter stated that DOE should use the annual National Trade Estimate Reports on Foreign Trade Barriers published by the Office of the U.S. Trade Representative as a main source of information concerning foreign government practices related to the protection of the intellectual property rights of U.S.-owned companies. The commenter recommended that DOE use the reports to allow foreign-owned companies to know whether or not they are likely to be eligible to participate in such programs prior to submitting an application. Two commenters recommended that DOE work with other federal agencies to ensure that DOE's policy is implemented in a manner that is predictable and consistent with U.S. Government trade policies, including intellectual property rights protection. Section 600.505 allows DOE to consider any information related to the protection of intellectual property rights of U.S.-owned companies and to seek and consider advice from other federal agencies concerning such information, as appropriate. To promote consistency, DOE has considered information on intellectual property rights protection developed by other federal agencies and has consulted with appropriate federal agencies in applying the section 2306(2)(B) standards. DOE intends to continue this practice.

H. Administrative Issues

DOE received several comments concerning the ''burden'' of requirements established in the proposed rulemaking imposed on applicants. One commenter expressed the view that DOE should avoid the imposition of requirements which divert scarce research and development resources to purposes of administration. This commenter also took issue with the proposed certification procedures including those set forth at § 600.504(d) calling for a certification of status as a ''United States-owned company.'' The commenter viewed these requirements as overly legalistic and creating an unnecessary administrative burden and expense. The Department agrees that the administrative burden on applicants in complying with the requirements of section 2306 should be minimized wherever possible. The Department has modified § 600.504 (b) and (c) to provide for representations as opposed to certifications concerning ownership status and other factors. This approach will allow the applicant to demonstrate eligibility while minimizing any administrative burden or added expense.

Another commenter, also urging that the administrative burden of complying with section 2306 should be minimized, argued that there is no reason to impose section 2306 requirements on firms meeting the definition of ''small business'' under the regulations of the Small Business Administration (SBA) because such firms, to be approved as a small business by SBA, must already meet most of the requirements of section 2306. The Department does not agree that qualifying for small business status is equivalent to satisfying the eligibility criteria of section 2306. *Compare* 13 CFR § 121.403 with 42 U.S.C. 13525. However, DOE sought comment on how it should make the required section 2306 determination in the context of relatively small financial assistance awards. DOE suggested that one possible alternative would be to ask applicants for awards below $100,000 to certify that they satisfy all the eligibility requirements of section 2306 (1) and (2)(A). The Department, in implementing this policy statement, expects to establish such self-certification procedures to minimize the compli-ance burden for awards of less than $100,000. Guidance on the procedures for establishing eligibility is available from the DOE Office of Procurement and Assistance Management (202–586–8613).

III. 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. 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 Supplementary Information section of this rule.

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.

Issued in Washington, DC, on this 13th day of December 1995.

Dan W. Reicher,

Acting Assistant Secretary for Policy.

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

PART 600—FINANCIAL ASSISTANCE RULES

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

Authority: 42 U.S.C. 7254, 7256, 13525; 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, including the definition of the term ''financial assistance,'' are applicable to this subpart. In addition, as used in this subpart:

Act means the Energy Policy Act of 1992.

Company means any business entity other than an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. § 501 (c)(3)).

Covered program means a program under Titles XX through XXIII of the Act. (A list of covered programs, updated periodically as appropriate, is maintained and published by the Department of Energy.)

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 one or more intermediate subsidiary companies or otherwise, 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 an award of financial assistance under a covered program 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 § 600.502(a), 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 under 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) If an applicant for financial assistance is submitting evidence relating to future undertakings, such as an agreement under § 600.503(c) 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 representation 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.

(c) If an applicant for financial assistance is claiming to be a United States-owned company, the applicant

must submit a representation affirming that it falls within the definition of that term provided in § 600.501.

(d) 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 § 600.502(b)(2), 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.

[FR Doc. 95–30752 Filed 12–19–95; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL ELECTION COMMISSION

[Notice 1995–24]

11 CFR Part 110

Communications Disclaimer Requirements

AGENCY: Federal Election Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On Oct. 5, 1995 (60 FR 52069), the Commission published the text of revised regulations governing disclaimers on campaign communications. On Nov. 29, 1995, the Commission published a correction to the preamble of the revised regulations. (60 FR 61199) 11 CFR Part 110. These regulations implement a provision of the Federal Election Campaign Act of 1971, as amended. The Commission announces that these rules are effective as of December 20, 1995.

EFFECTIVE DATE: December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, 999 E Street NW., Washington, DC 20463, (202) 219–3690 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 438(d) of Title 2, United States Code, requires that any rule or regulation prescribed by the Commission to implement Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. The revisions to 11 CFR Part 110 were transmitted to Congress on Oct. 2, 1995. Thirty legislative days expired in the Senate on Nov. 28, 1995, and in the House of Representatives on Dec. 5, 1995.

The Commission subsequently published a corrections notice to the preamble of these rules. The Speaker of the House of Representatives and the President of the Senate were notified of the correction notice on Nov. 27, 1995. The correction did not affect the text of the rules.

The rules address the circumstances under which a disclaimer must be included on campaign communications, as well as what information must be included in the disclaimer. The correction notice deleted a potentially misleading reference to phone bank activity that had inadvertently been included in the Explanation and Justification to the revised rules.

Announcement of Effective Date: 11 CFR 110.11, as published at 60 FR 52069, is effective as of December 20, 1995.

Dated: December 15, 1995.

Lee Ann Elliot,

Vice Chairman, Federal Election Commission.

[FR Doc. 95–30940 Filed 12–19–95; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 934

[No. 95–74]

Repeal of the Charitable Contribution Limitation Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) has determined that the making of charitable donations is within the corporate power of the Federal Home Loan Banks (FHLBanks) and that issues of safety and soundness to which excessive donations might give rise can be adequately addressed through the Finance Board's FHLBank examination process. Therefore, the Finance Board is repealing the regulation that requires that FHLBanks obtain the approval of the Board of Directors of the Finance Board before making charitable donations in excess of $5,000 to one organization, or $25,000 total, during one calendar year. The repeal of this regulation is intended to allow the FHLBanks to use their own discretion in making such donations, subject only to the Finance Board's power to enforce standards of safety and soundness in FHLBank operations. This result is in keeping with the Finance Board's continuing effort to devolve corporate governance authority to the FHLBanks.

EFFECTIVE DATE: December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Ellen E. Hancock, Assistant Director, Office of Policy and Financial Reporting, (202) 408–2906, or Janice A. Kaye, Attorney-Advisor, Office of General Counsel, (202) 408–2505, Federal Housing Finance Board, 1777 F Street NW., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 934.11 of the Finance Board's regulations requires prior approval of the Board of Directors of the Finance Board, or its designee, for charitable contributions by a FHLBank that exceed $5,000 to one organization, or $25,000 in total during a calendar year. 12 CFR 934.11. As a result of an ongoing internal review of its regulations, the Finance Board, for the reasons set forth below, has determined that this regulation is unnecessary. Accordingly, the Finance Board is repealing section 934.11.

The substance of section 934.11 originally appeared at section 524.11 of the regulations of the Finance Board's predecessor, the Federal Home Loan Bank Board (FHLBB). In 1959, the FHLBB promulgated a regulation prohibiting the FHLBanks from making charitable donations. See 12 CFR 524.11 (1959) (amended). The FHLBB had determined that a FHLBank did not have the legal authority to make charitable donations and, further, wanted to prevent FHLBanks from favoring some communities in their districts over others.

In 1975, the FHLBB reconsidered its position and concluded that charitable donations, within reasonable limits, would further the corporate interests of the FHLBanks. See 40 FR 46302 (Oct. 7, 1975). Therefore, the FHLBB amended