

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 600

RIN 1991-AB57

Grants and Agreements With For-Profit Organizations

AGENCY: Department of Energy.

ACTION: Notice of inquiry and opportunity for public comment.

SUMMARY: The Department of Energy (the "Department" or "DOE") is seeking comments on whether to initiate a rulemaking that prescribes administrative requirements for financial assistance awards tailored specifically to for-profit organizations. DOE is also requesting comments on the specific changes proposed in the **SUPPLEMENTARY INFORMATION** section. Comments received in response to this document should contain no proprietary or confidential business information.

DATES: Written comments must be received by July 9, 2001.

ADDRESSES: Comments (3 copies) should be addressed to: Trudy Wood, U.S. Department of Energy, Office of Procurement and Assistance Management, MA-51, 1000 Independence Avenue, SW., Washington, DC 20585.

If possible a copy should also be E-mailed to fanotice@pr.doe.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Trudy Wood, Office of Procurement and Assistance Policy, Department of Energy, at (202) 586-5625.

SUPPLEMENTARY INFORMATION:

I. Background

Currently, DOE is engaged in the Government-wide effort to streamline and simplify the application, administrative, and reporting procedures for Federal financial assistance programs pursuant to Public Law 106-107, the Federal Financial Assistance Management Improvement Act of 1999 (henceforth "the Act"). As part of its initiative to consult with non-Federal entities, the Department

solicited comments and suggestions from the grant community. In response, DOE received comments from for-profit organizations relating to issues that were unique to DOE and that were not being addressed in the Government-wide effort to implement the Act. Therefore, DOE is considering creating a new subpart to 10 CFR part 600 that contains administrative requirements for grants and cooperative agreements that are tailored to for-profit organizations with the goal of eliminating barriers which prevent these organizations from participating in the Department's financial assistance programs.

II. Current Regulations

The DOE assistance regulations are contained in 10 CFR part 600. As a matter of discretion, these regulations provide that the Office of Management and Budget (OMB) administrative requirements for grants and cooperative agreements with institutions of higher education, hospitals, and other non-profit organizations also apply to for-profit organizations.

III. Rulemaking Under Consideration

DOE is considering initiating a rulemaking that provides administrative requirements for grants and cooperative agreements that are specifically tailored to for-profit organizations. The changes under consideration would: (1) eliminate unnecessary requirements; and (2) maximize the effectiveness with which the Department's financial assistance programs support the accomplishment of their purposes, consistent with good stewardship of public funds and statutory requirements.

IV. Proposed Changes

DOE is considering the following major changes to 10 CFR part 600:

1. Create a new subpart that provides administrative requirements for grants and cooperative agreements that are specifically tailored to for-profit organizations, similar to the Department of Defense Grant and Agreement Regulations, 32 CFR part 34, Administrative Requirements for Grants and Agreements with For-Profit Organizations. Among other things, the new subpart would allow DOE to apply less restrictive requirements to small awards and to awards made pursuant to the Small Business Innovation Research

or Small Business Technology Transfer Research programs.

2. Eliminate the requirement for incorporation of the following intellectual property clauses in awards with for-profit organizations:

- a. FAR 52.227-1 Authorization and Consent
- b. FAR 52.227.2 Notice and Assistance Regarding Patent and Copyright Infringement
- c. FAR 52.227-3 Patent Indemnity
- d. FAR 52.227-23 Rights in Proposal Data

3. Revise the Rights in Data and Patent Rights Provisions for financial assistance awards with large for-profit organizations. The new provisions would incorporate the following changes:

- a. Eliminate DOE's routine use of clauses that grant to DOE the right to require recipients, under certain circumstances, to license background data and patents to third parties, to assure commercialization (see DEAR 952.227-13(k) and 952.227-14). DOE would require such third party licensing rights only when it is necessary to satisfy the needs of the program; and
- b. Eliminate the requirement that the recipient obtain the Contracting Officer's approval prior to copyrighting computer software developed under the assistance award.

4. Simplify the advanced patent waiver petition process by making advanced waiver approval automatic if the awardee agrees to the conditions specified in the solicitation. This simplified process would eliminate the detailed 20 question waiver petition. The conditions specified in the solicitation would include:

- a. Providing a one paragraph summary of a business plan for commercializing the technology;
- b. Non-Federal cost sharing of at least 20 percent to establish a corporate commitment to commercializing the technology;
- c. Agreement to statutory requirements attaching to the subject inventions, such as subject invention disclosure to DOE, Government purpose license rights, march-in rights, and a preference for United States industries; and
- d. A U.S. competitiveness requirement dealing with substantial manufacturing in the U.S.

5. Simplify the financial and program management requirements by:
 - a. Encouraging recipients to use existing financial management systems

established for conducting business in the commercial marketplace to the extent that the systems comply with Generally Accepted Accounting Practices (GAAP) and certain minimum standards (i.e., effective control of funds, accurate records that document the source and application of the Federal funds and the recipient's required cost share, and a system to support charges to Federal awards for salaries and wages);

b. Establishing a preference for the reimbursement method of payment; and

c. Requiring recipients that expend \$300,000 or more in a year under Federal awards to have an audit for that year by an independent auditor. The audit generally would be made a part of the regularly scheduled, annual audit of the recipient's financial statements.

6. Clarify and simplify the property standards. The revised property standards would encourage recipients to use existing property management systems to the extent that the systems meet certain minimum requirements.

7. Significantly reduce requirements imposed on recipient procurement activities in favor of best commercial practices. DOE is considering establishing minimum procurement requirements, such as:

a. Requiring recipients' procurement procedures to use effective competition techniques or other means that ensure reasonable cost for procured goods and services;

b. Requiring pre-award review of procurements only when the contracting officer judges that there is a compelling need to do so and then only if a provision in the award states the requirement; and

c. Encourage the use of best commercial practices in the procurement of commercial items.

Issued in Washington, D.C. on April 30, 2001.

Richard H. Hopf,

Acting Director, Office of Management and Administration, U.S. Department of Energy.
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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 552

[No. 2001-35]

RIN 1550-AB46

Conversion From Stock Form Depository Institution to Federal Stock Association

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to amend its regulation on conversions from stock form depository institutions to federal stock savings associations. This proposed rule would clarify that the resulting federal stock savings association in such transactions succeeds to all the rights, property, and obligations of the converting institution. This amendment merely codifies OTS's interpretation of its existing regulation.

DATES: Comments must be received on or before June 7, 2001.

ADDRESSES: *Mail:* Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2001-35.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days, Attention Regulation Comments, Chief Counsel's Office, Docket No. 2001-35.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906-6518, Attention Docket No. 2001-35.

E-Mail: Send e-mails to regs.comments@ots.treas.gov, Attention Docket No. 2001-35, and include your name and telephone number.

Public Inspection: Comments and the related index will be posted on the OTS Internet Site at www.ots.treas.gov. In addition, you may inspect comments at the Public Reading Room, 1700 G St. N.W., by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) Appointments will be scheduled on business days between 10:00 a.m. and 4:00 p.m. In most cases, appointments will be available the next business day following the date a request is received.

FOR FURTHER INFORMATION CONTACT:

Aaron B. Kahn, (202) 906-6263, Special Counsel, or Kevin A. Corcoran, (202) 906-6962, Assistant Chief Counsel, Business Transactions Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW, Washington DC 20552.

SUPPLEMENTARY INFORMATION:

Background

OTS regulations at 12 CFR 552.2-6 provides that, with OTS approval, any stock depository institution that is, or is eligible to become, a member of a Federal Home Loan Bank may convert to a federal stock savings association if the converting institution has deposits insured by the Federal Deposit Insurance Corporation (FDIC) at the time of conversion, and complies with all applicable statutes and regulations, including section 5(d) of the Federal Deposit Insurance Act.¹ This regulation does not explicitly address the succession of the federal association resulting from such a conversion to the rights, obligations and property of the converting institution. However, as a matter of practice OTS treats federal stock associations that have resulted from direct conversions pursuant to 12 CFR 552.2-6 as the corporate successors of the converting institutions.

OTS regulations addressing similar transactions explicitly provide that the resulting federal association succeeds to the rights, obligations, and property of a converted or disappearing entity. This is true, for example, for conversions of mutual depository institutions to federal mutual savings associations² and the merger or consolidation of stock institutions that result in a federal stock association.³

To clarify the legal consequences of direct conversions under 12 CFR 552.2-6, OTS is proposing to amend that regulation to provide explicitly that a converted federal stock association succeeds to all the rights, obligations and property of its corporate predecessor.

This action will not change the existing treatment accorded federal stock associations that have converted from a stock depository institution. Rather, the amendment merely codifies the agency's existing interpretation of its regulation. The text of the amendment has been derived from a comparable provision pertaining to the merger and consolidation of federal stock associations that appears at 12 CFR 552.13(l).

¹ 12 U.S.C. 1815(d).

² 12 CFR 543.14 (2000).

³ See 12 CFR 552.13(l) (2000).