

DEPARTMENT OF ENERGY

10 CFR Part 600

RIN 1991-AB66

Financial Assistance Rules

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its Assistance Regulations to make changes in the solicitation requirements and the way the public is notified of funding opportunities that result in the award of grants and cooperative agreements. The Department's Assistance Regulations currently require that solicitations or notices of solicitations be published in the **Federal Register**. Since March 2003, DOE has also been posting synopses of solicitations on the Grants.gov FIND module at <http://www.Grants.gov>. This is the government-wide Internet site for Federal agencies' announcements of financial assistance funding opportunities. DOE will continue providing notices of announcements of funding opportunities in both the **Federal Register** and at the Grants.gov FIND module until the effective date of this rule. After that date, DOE will no longer publish separate notices in the **Federal Register**, because the information is provided at the Grants.gov FIND Internet site.

EFFECTIVE DATE: This rule becomes effective on March 22, 2004.

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

SUPPLEMENTARY INFORMATION:

I. Background

II. Explanation of Changes

III. Procedural Requirements

- A. Review Under Executive Order 12866
- B. Review Under the Regulatory Flexibility Act
- C. Review Under the Paperwork Reduction Act
- D. Review Under the National Environmental Policy Act
- E. Review Under Executive Order 13132
- F. Review Under Executive Order 12988
- G. Review Under the Unfunded Mandates Reform Act of 1995
- H. Review Under the Treasury and General Government Appropriations Act, 1999
- I. Review Under the Treasury and General Government Appropriations Act, 2001
- J. Review Under Executive Order 13211
- K. Review Under the Small Business Regulatory Enforcement Fairness Act
- IV. Approval of the Office of the Secretary of Energy

I. Background

The Federal Financial Assistance Management Improvement Act of 1999

(Pub. L. 106-107) directed agencies to work together to simplify and streamline Federal grant-making processes. As a result of the government-wide streamlining initiative, the Office of Federal Financial Management (OFFM), Office of Management and Budget (OMB), recently published several notices and policy directives. The first notice, published at 68 FR 37370 (June 23, 2003), issued a policy directive to establish a standard format for Federal agency announcements of funding opportunities under programs that award discretionary grants or cooperative agreements. The policy directive required Federal agencies to organize announcement information in this standard format to make it easier for potential applicants to quickly find the information they needed. The second OFFM notice, published at 68 FR 37379 (June 23, 2003), established standard data elements for electronically posting synopses of Federal agencies' announcements of funding opportunities. The third notice, published at 68 FR 58146 (October 8, 2003), issued a policy directive to require Federal agencies to post synopses of their discretionary grant and cooperative agreement funding opportunity announcements on the Grants.gov Find module at <http://www.Grants.gov>.

The purposes of the Grants.gov FIND module are to provide potential applicants with: (1) Enough information about any funding opportunity to decide whether they are interested in viewing the full announcement; (2) information on how to obtain the full announcement; and (3) one common Web site for all Federal grant opportunities searchable by key word, date, Catalog of Federal Domestic Assistance number, or specific agency name.

This rule establishes the government-wide announcement format as the DOE format for announcements of financial assistance funding opportunities and the Grants.gov Internet site as the means of notifying the public of these opportunities. As part of its grants streamlining and simplification efforts, DOE began posting synopses of solicitations on the Grants.gov FIND module in March 2003. In accordance with the Department's financial assistance requirements, DOE has continued publishing notices of financial assistance solicitations in the **Federal Register** and will continue to publish such notices until the effective date of this regulation. This should provide adequate time for the financial assistance community to become

acclimated to the Grants.gov Internet site. The ability to realize efficiencies through the use of electronic processes justifies DOE's reliance upon them. Therefore, after the effective date of this regulation, DOE will no longer provide duplicative notices in the **Federal Register** and instead will rely exclusively on notices posted on the Grants.gov Internet site to inform the public of DOE financial assistance funding opportunities.

II. Explanation of Changes

1. In section 600.8, "Solicitation," we have changed the title to "Program announcements" to be consistent with the OFFM policy guidance.

2. In section 600.8, paragraph (a) is revised to define program announcements.

3. In section 600.8, paragraph (a)(2), we deleted the requirement to publish either a copy or a notice of availability of a financial assistance solicitation in the **Federal Register** and in the Commerce Business Daily if potential applicants include for-profit organizations and there is potential for significant contracting opportunities. We also added a requirement to post synopses of announcements of funding opportunities at the Grants.gov Internet site.

4. In section 600.8, we have changed the title of paragraph (c) to "Announcement format" and added a requirement that DOE announcements comply with the government-wide standard announcement format. We have also deleted the list of items that must be included in a program announcement since OFFM policy guidance sets forth the format and content for each announcement.

5. Section 600.9, "Notice of program interest," is removed because the requirements for notices of program interest are now covered in section 600.8.

6. In section 600.10, paragraph (b), "program announcement" is substituted for the word "solicitation" to ensure consistency with the revisions to section 600.8.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Because DOE is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other law to propose financial assistance rules for public comment, DOE did not prepare a regulatory flexibility analysis for this rule.

C. Review Under the Paperwork Reduction Act

This regulatory action does not impose any new information collections subject to the Paperwork Reduction Act.

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule deals only with agency procedures, and, therefore, is covered under the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's final rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and tribal governments, and the private sector. The Department has determined that today's regulatory action does not impose a Federal mandate on State, local or tribal governments or on the private sector.

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has

concluded that it is not necessary to prepare a Family Policymaking Assessment.

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

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

J. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA) of OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under the Small Business Regulatory Enforcement Fairness Act

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

IV. Approval of the Office of the Secretary of Energy

The Office of the Secretary has approved the issuance of this rule.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure.

Issued in Washington, DC on February 11, 2004.

Richard H. Hopf,

Director, Office of Procurement and Assistance, Management/Office of Management, Budget and Evaluation, Department of Energy.

Robert C. Braden,

Director, Office of Procurement and Assistance Management, National Nuclear Security Administration.

■ Part 600 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as follows:

PART 600—FINANCIAL ASSISTANCE RULES

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

Authority: 42 U.S.C.7101 *et seq.*; 31 U.S.C. 6301–6308; 50 U.S.C. 2401 *et seq.* unless otherwise noted.

§ 600.8 [Amended]

■ 2. Section 600.8 is amended by revising:

- a. The section title.
- b. Paragraph (a) introductory text.
- c. Paragraph (a)(2).
- d. Paragraph (c).

The revisions read as follows:

§ 600.8 Program announcements.

(a) *General.* Program announcements include any issuance used to announce funding opportunities that would result in the award of a discretionary grant or cooperative agreement, whether it is called a program announcement, program notice, solicitation, broad agency announcement, research announcement, notice of program interest, or something else.

(a)(1) * * *

(a)(2) DOE must post synopses of its program announcements and modifications to the announcements at the Grants.gov Internet site, using the standard data elements/format, except for:

(i) Announcements of funding opportunities for awards less than \$25,000 for which 100 percent of eligible applicants live outside of the United States.

(ii) Single source announcements of funding opportunities which are specifically directed to a known recipient.

* * * * *

(c) Announcement format. DOE must use the government-wide standard format to publish program announcements of funding opportunities.

§ 600.9 [Removed and Reserved]

■ 3. Section 600.9 is removed and reserved.

§ 600.10 [Amended]

■ 4. Section 600.10 is amended in paragraph (b) by removing the word “solicitation” from the first sentence and adding the words “program announcement” in their place.

[FR Doc. 04–3608 Filed 2–19–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 764 and 766

[Docket No. 030909226–4048–02]

RIN 0694–AC92

Export Administration Regulations: Penalty Guidance in the Settlement of Administrative Enforcement Cases

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: On September 17, 2003, the Bureau of Industry and Security (BIS) published a proposed rule regarding penalty guidance in the settlement of administrative enforcement cases (68 FR 54402). After considering public comments on that proposed rule, BIS is issuing this final rule, which discusses the comments received and the extent to which they were adopted. This final rule amends the Export Administration Regulations by incorporating guidance on how BIS makes penalty determinations when settling administrative enforcement cases under the Export Administration Regulations (EAR). This guidance also addresses related aspects of how BIS responds to violations of the EAR, such as charging decisions. This rule also amends other parts of the EAR to conform to this guidance.

DATES: This rule is effective February 20, 2004.

FOR FURTHER INFORMATION CONTACT: Roman W. Sloniewsky, Deputy Chief Counsel for Industry and Security, Room 3839, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 482–5301.

SUPPLEMENTARY INFORMATION:

Background

As an essential part of its administration of the export control system, BIS brings administrative enforcement actions for violations of the Export Administration Regulations (EAR). Many administrative enforcement cases are resolved through settlements between BIS and the respondent.

This rule incorporates guidance in the EAR—specifically, in a new Supplement No. 1 to part 766—on how BIS determines what penalty is appropriate for the settlement of an administrative enforcement case. This guidance identifies both general factors, such as the destination for the export and degree of willfulness involved in violations, and specific mitigating and aggravating factors which BIS typically takes into account in determining an appropriate penalty. The guidance also describes factors that BIS's Office of Export Enforcement (OEE) typically considers in describing whether a violation should be addressed in a warning letter, rather than in an administrative enforcement case. The guidance does not apply to antiboycott matters arising under part 760 of the EAR.

The rule also amends section 764.5(e) of the EAR to state that Supplement No. 1 to part 766 describes how BIS typically exercises its discretion regarding whether to pursue an administrative enforcement case regarding violations reported in a voluntary self-disclosure under section 764.5, and what administrative sanctions to seek in settling such a case.

In part 766, the rule amends section 766.3(a) to state that Supplement No. 1 to part 766 describes how BIS typically exercises its discretion regarding the issuance of charging letters, other than in antiboycott matters under part 760. The rule amends section 766.18 to add a new paragraph (f), stating that Supplement No. 1 to part 766 describes how BIS typically exercises its discretion regarding the terms under which it is willing to settle particular cases, other than antiboycott matters under part 760.

This guidance is consistent with the objectives of section 223 of the Small Business Regulatory Enforcement Fairness Act (Title II, Pub. Law 104–121).

Response to Comments

BIS received five comments on the notice of proposed rulemaking published in the **Federal Register** on September 17, 2003 (68 FR 54402). BIS revised the final rule in various respects