

seq.), as implemented by OMB Circular A-133. That government-wide policy applies to audits of State and local governments and other nonprofit recipients of Federal assistance and cost-type procurement contracts. The OMB just increased that threshold to \$500,000. We increased the threshold for for-profit recipients in this rule to \$500,000 to parallel the OMB change, so that the requirement for for-profit participants is consistent with requirements for the other types of organizations that also may participate in the performance of research projects under TIAs.

*Award Terms Related to Other Administrative Requirements (Subpart G)*

*Comment:* One commenter noted that the proposed rule contained general guidance for agreements officers to consider on the scope of intellectual property (IP) rights, but recommended adding a paragraph 37.840(c). The new paragraph would say that agreements officers should consider the core principles in the DoD document entitled "Intellectual Property: Navigating Through Commercial Waters" when dealing with industry regarding IP and that any overall IP strategy the agreements officer develops for a TIA should be consistent with the core principles and guidance in that document. The commenter noted that the document focused on procurement contracts subject to the Federal Acquisition Regulation, but thought that it provided background on IP issues and stakeholder positions, as well as a consistent agency position.

*Response:* No change. As noted by the commenter, the document entitled "Intellectual Property: Navigating Through Commercial Waters" is written specifically for procurement contracts. Moreover, we prepared the guidance for agreements officers in §§ 37.840 through 37.875 to contain the substance of that document's five core principles, in language more appropriate for research projects carried out under TIAs.

*Comment:* One commenter disagreed with the language in the proposed paragraph 37.875(b)(2). This paragraph about foreign access to technology says that a TIA must provide that any transfer of the exclusive right to use or sell technology in the United States must, unless the Federal Government grants a waiver, require that products embodying the technology or produced through the use of the technology will be manufactured substantially in the United States. The commenter stated that the agreement should not impose conditions in this area beyond the

requirement to comply with U.S. export laws, regulations and policies, as described in paragraph 37.875(b)(1).

*Response:* No change. The substance of paragraph (b)(2) parallels a national policy that is codified in what is known as the Bayh-Dole Act (35 U.S.C. chapter 18). That act governs patent rights in inventions made under Federally supported research or development performed by small businesses or nonprofit organizations under grants, cooperative agreements, or procurement contracts. One section of the act (35 U.S.C. 204) establishes the preference for substantial domestic manufacture in conjunction with any transfer of the exclusive right to use or sell an invention in the United States.

The same policy makes sense for access to technology generated under TIAs. As we seek to enhance national security by increasing DoD reliance on the commercial sectors of the U.S. technology and industrial bases, a legitimate concern is that we not preclude, through exclusive licensing, domestic sources that can provide ready and reliable access to defense technology. We do retain in paragraph (b)(2) the same flexibility as the Bayh-Dole Act to waive the requirement for substantial manufacture in individual cases where doing so is warranted.

*Executing the Award (Subpart H)*

*Comment:* One commenter recommended that the rule require the agreements officer to include documentation in the award file of any fixed-support TIA to describe the process and methods used to estimate expenditures, the recipient's minimum cost share, and the fixed level of Federal support. The purpose of this documentation would be to ensure that information is available to measure DoD Component's program implementation and use of funds.

*Response:* We revised paragraph 37.1020(d) to include the additional documentation requirement.

**Executive Order 12866**

This regulatory action is not a significant regulatory action, as defined by Executive Order 12866.

**Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))**

This regulatory action will not have a significant adverse impact on a substantial number of small entities. Under part 37, small entities are subject either to requirements that parallel government-wide requirements that OMB Circular A-110 establishes for other assistance awards, or to less burdensome requirements that enable

firms from the commercial marketplace to participate in DoD research.

**Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104-4)**

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of \$100 million or more in any one year.

**Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)**

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act. Participant reporting and recordkeeping requirements in part 37 either are parallel to, or less burdensome than, government-wide requirements already established in OMB Circular A-110.

**Federalism (Executive Order 13132)**

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects 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.

**List of Subjects**

*32 CFR Part 21*

Grant programs, Grants administration.

*32 CFR Part 22*

Accounting, Grant programs, Grants administration, Reporting and recordkeeping requirements.

*32 CFR Part 32*

Accounting, Colleges and universities, Grant programs, Grants administration, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

*32 CFR Part 34*

Accounting, Business and industry, Grant programs, Grants administration, Reporting and recordkeeping requirements.

*32 CFR Part 37*

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