

DEPARTMENT OF ENERGY**10 CFR Part 600****RIN 1991-AB57****Financial Assistance Regulations****AGENCY:** Department of Energy.**ACTION:** Final rule.

SUMMARY: The Department of Energy (DOE) is amending its Assistance Regulations by adding a new subpart, making minor amendments to existing subparts to reflect this change, and eliminating a section that contains internal procedures for DOE officials or requirements that are contained in other sections. The new subpart establishes administrative requirements for awards to for-profit organizations and eliminates the need to apply existing uniform administrative requirements, applicable to institutions of higher education, hospitals, and other nonprofit organizations, to awards with for-profit organizations.

EFFECTIVE DATE: This rule will become effective October 1, 2003.

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

SUPPLEMENTARY INFORMATION:

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I. Background

Office of Management and Budget (OMB) Circular A-110 provides uniform requirements for the administration of grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations. OMB Circular A-110 also states that "Federal agencies may apply the provisions of this Circular to commercial organizations. * * *" Consistent with this guidance,

when DOE implemented the requirements of Circular A-110 in its financial assistance regulations at 10 CFR part 600, subpart B, the Department, as a matter of discretion, also applied the provisions of the Circular to commercial organizations.

This rulemaking began with DOE publishing a notice in the **Federal Register** on May 8, 2001, 66 FR 23197, requesting comments on whether DOE should initiate a rulemaking to establish administrative requirements for financial assistance awards tailored specifically to for-profit organizations. Respondents strongly endorsed the concept of administrative requirements specifically tailored to for-profit organizations.

DOE published a Notice of Proposed Rulemaking (NPR) in the **Federal Register** on August 26, 2002, 67 FR 54850. The NPR proposed adding a new subpart D—Uniform Administrative Requirements for Grants and Cooperative Agreements With For-Profit Organizations. This subpart contained provisions similar to those in subpart B—Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, Other Nonprofit Organizations and Commercial Organizations, but the provisions had been tailored specifically for awards to for-profit organizations. The NPR also proposed that for-profit organizations subject to subpart D be relieved of obligations that would otherwise apply under subpart B.

The following section presents a summary of the major comments grouped by subject, and the responses to the comments. Where appropriate, the responses explain how we have changed the proposed subpart D in the final rule.

I. Discussion of Public Comments*Comments on Audit Requirements*

Comment: The proposed section 600.316 is helpful from the point of view of publicly held firms but may be an additional and unnecessary burden for non-publicly held companies. The benefit in terms of assurance of proper use of the public funds might not be produced in a way that is proportional to the cost and effort involved. The contracting officer should be empowered to require the recipient to have an independent auditor arrange for a precise checking of the financial details and non-financial activities needed to assure the proper use of the public funds. For example, if the recipient is working under a cost-share arrangement, where the contractor is

furnishing service for which a price per hour or day has been agreed, an audit of costs and general accounting practices would return no value but an audit of whether the services had been provided as reported would be of high value. The requirement should be revised to allow this type of practice rather than a full scale audit.

Response: Proposed section 600.316 would not require a full scale audit. It would require a recipient that expends \$500,000 or more in a year under Federal awards to have an audit made for that year by an independent auditor in accordance with the requirements in paragraph (b) of that section. These requirements are similar to the requirements of the Single Audit Act, as implemented by the Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non-profit Organizations." In addition, the recipient may elect to have the award separately audited if it is more economical, unless the award terms and conditions or Federal laws or regulations specify otherwise. For both cost shared and non-cost shared awards, the Government needs reasonable assurance that the recipient has an effective internal control structure (e.g., control over and accountability for cash and property) and is complying with Federal laws and regulations and the terms and conditions of the award (e.g., whether the services have been provided as reported).

Comment on Property Management Requirements

Comment: The requirements under proposed section 600.323, "Property management system," appear to be the same as the property requirements for assistance agreements with institutions of higher education, hospitals, and other non-profit organizations. These requirements would involve special record keeping that is similar to the Federal Acquisition Regulation (FAR) property clauses. It is requested that these requirements be further aligned with the voluntary standard that commercial organizations already follow.

Response: The voluntary standard for customer property management systems, established by the International Organization for Standardization (commonly referred to as the ISO), merely provides that organizations: (1) Exercise care with customer property; (2) identify, verify, protect and safeguard customer property; and (3) if property is lost, damaged or found unsuitable for use, report to the customer and maintain records. To