

# Rules and Regulations

Federal Register

Vol. 80, No. 171

Thursday, September 3, 2015

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## DEPARTMENT OF ENERGY

### 2 CFR Part 910

RIN 1991-AC02

#### Administrative Requirements for Grants and Cooperative Agreements

**AGENCY:** Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) is adopting, a rule amending the administrative requirements for grants and cooperative agreements with for-profit organizations. The regulations modify title provisions, and requirements related to the handling of real property and equipment acquired with federal funds. The regulations also add provisions related to export control requirements and supporting U.S. manufacturing, reporting on utilization of subject inventions, novation of financial assistance agreements, and changes of control of recipients.

**DATES:** *Effective:* October 5, 2015.

**FOR FURTHER INFORMATION CONTACT:**

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#### I. Summary

The Department makes substantial use of financial assistance awards (grants and cooperative agreements) to for-profit organizations to meet its mission goals. To manage these awards, the Department added requirements specifying changes and additions to its Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. On May 15, 2014, a Notice of Proposed Rulemaking (NPR) was published in the *Federal Register* (79 FR 27795) that detailed changes to the rules for for-profit recipients.

DOE is amending the rule by adding provisions concerning: (1) The Department's title to and interest in property purchased by financial assistance recipients with Federal funds; (2) the Department's ability to monitor and control the use of Federal funds, property purchased with those funds, and any intellectual property developed with such funds; (3) the related issues of novation (that is, the transfer of a financial assistance agreement from one recipient entity to another) and of change of control of a recipient (that is, a transfer of control of the recipient entity from one individual, group of individuals or entity, to another); (4) reporting by recipients regarding the utilization of inventions developed with Federal funds; and (5) export controls applicable to inventions and technology developed with Federal funds, and support for U.S. manufacturing of inventions and technology developed with Federal funds.

DOE received no comments from members of the public in response to the NPR. Nevertheless, DOE made the following technical changes to the text of the rule to address the codification of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards at 2 CFR part 200 and the relocation of the Department's Administrative Requirements for Grants and Cooperative Agreements from 10 CFR part 600 to 2 CFR part 910 (79 FR

76024). As a result, the regulatory text proposed as amendments to part 600 are adopted unchanged as amendments to part 910.

- (1) The text proposed as § 600.304 is renumbered and adopted as § 910.372.
- (2) The text proposed as § 600.321 is renumbered and adopted as § 910.360.
- (3) The text proposed as § 600.326 is renumbered and adopted as § 910.364.
- (4) The text proposed as § 600.327 is renumbered and adopted as § 910.366.
- (5) The text proposed as § 600.354 is renumbered and adopted as § 910.368.
- (6) The text proposed as § 600.355 is renumbered and adopted as § 910.370.

#### III. Procedural Requirements

##### A. Review Under Executive Orders 12866 and 13563

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, this rule was reviewed by the Office of Information and Regulatory Affairs within the Office of Management and Budget.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281 (Jan. 21, 2011)). Executive Order 13563 is supplemental to, and explicitly reaffirms the principles, structures, and definitions governing, regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct

regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. DOE believes that today's Final Rule is consistent with these principles, including the requirement that, to the extent permitted by law, agencies adopt a regulation only upon a reasoned determination that its benefits justify its costs and, in choosing among alternative regulatory approaches, those approaches maximize net benefits.

#### *B. 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 Executive 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.

With regard to the review required by section 3(a), 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; these

regulations meet the relevant standards of Executive Order 12988.

#### *C. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a 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. This rule will not have a significant impact on small entities as it applies to only for-profit entities (excluding small non-profits, individuals or other small entities not set up as a for-profit.) This rule also excludes small for-profit entities receiving awards through SBIR and STTR programs from many requirements. Historically the awards made by DOE under Subchapter D are to businesses considered large in their industry or field. Accordingly, DOE certifies that this rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

#### *D. Review Under the Paperwork Reduction Act*

This rule would require the preparation and submission of a UCC financing statement for awards where the Federal share exceeds \$1 million. This collection of information is required for the Department to protect the taxpayers by clarifying the rights to real property and equipment purchased under financial assistance awards.

The collection of information for DOE financial assistance awards has been approved by OMB under control number 1910-0400. Collection of the UCC-1 form is covered by this control number.

#### *E. Review Under the National Environmental Policy Act*

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR are strictly procedural (categorical exclusion A6). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

#### *F. 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 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.

#### *G. Review Under the Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of \$100 million or more. This rulemaking 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 rule or policy that may affect family well-being. This rule will have no impact on family well-being. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

#### *I. 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), Office of Management and Budget, a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgates 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 rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

*J. 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 guidelines 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 under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*K. Review Under Executive Order 13609*

Executive Order 13609 of May 1, 2012, "Promoting International Regulatory Cooperation," requires that, to the extent permitted by law and consistent with the principles and requirements of Executive Order 13563 and Executive Order 12866, each Federal agency shall:

(a) If required to submit a Regulatory Plan pursuant to Executive Order 12866, include in that plan a summary of its international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations, with an explanation of how these activities advance the purposes of Executive Order 13563 and this order;

(b) Ensure that significant regulations that the agency identifies as having significant international impacts are designated as such in the Unified Agenda of Federal Regulatory and Deregulatory Actions, on RegInfo.gov, and on Regulations.gov;

(c) In selecting which regulations to include in its retrospective review plan, as required by Executive Order 13563, consider:

(i) Reforms to existing significant regulations that address unnecessary differences in regulatory requirements

between the United States and its major trading partners, consistent with section 1 of this order, when stakeholders provide adequate information to the agency establishing that the differences are unnecessary; and

(ii) Such reforms in other circumstances as the agency deems appropriate; and

(d) For significant regulations that the agency identifies as having significant international impacts, consider, to the extent feasible, appropriate, and consistent with law, any regulatory approaches by a foreign government that the United States has agreed to consider under a regulatory cooperation council work plan.

DOE has reviewed this rule under the provisions of Executive Order 13609 and determined that the rule complies with all requirements set forth in the order.

*L. Approval by the Office of the Secretary of Energy*

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

*M. Congressional Notification*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this 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. 804(2).

**List of Subjects in 2 CFR Part 910**

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

Issued in Washington, DC, on: August 21, 2015.

**Patrick M. Ferraro**

*Director, Office of Acquisition Management.*

**Joseph F. Waddell,**

*Director, Office of Acquisition Management, National Nuclear Security Administration.*

For the reasons stated in the preamble, the Department of Energy is amending part 910 of chapter II, title 2 of the Code of Federal Regulations to read as follows:

**PART 910—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**

■ 1. The authority citation for part 910 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.*; 2 CFR part 200.

■ 2. Revise § 910.360 to read as follows:

**§ 910.360 Real property and equipment.**

(a) *Prior approvals for acquisition with Federal funds.* Recipients may purchase real property or equipment with an acquisition cost per unit of \$5,000 or more in whole or in part with Federal funds only with the prior written approval of the contracting officer or in accordance with express award terms.

(b) *Title.* Unless a statute specifically authorizes and the award specifies that title to property vests unconditionally in the recipient, title to real property or equipment vests in the recipient, subject to all terms and conditions of the award and that the recipient shall:

(1) Use the real property or equipment for the authorized purposes of the project until funding for the project ceases, or until the real property or equipment is no longer needed for the purposes of the project, as may be determined by the contracting officer;

(2) Not encumber or permit any encumbrance on the real property or equipment without the prior written approval of the contracting officer;

(3) Use and dispose of the real property or equipment in accordance with paragraphs (e), (f), and (g) of this section; and

(4) Properly record, and consent to the Department's ability to properly record if the recipient fails to do so, UCC financing statement(s) for all equipment purchased with Federal funds (Financial assistance awards made under the Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR) program are exempt from this requirement unless otherwise specified within the grant agreement); such a filing is required when the Federal share of the financial assistance agreement is more than \$1,000,000, and the Contracting Officer may require it in his or her discretion when the Federal share is less than \$1,000,000. These financing statement(s) must be approved in writing by the contracting officer prior to the recording, and they shall provide notice that the recipient's title to all equipment (not real property) purchased with Federal funds under the financial assistance agreement is conditional pursuant to the terms of this section, and that the Government retains an undivided reversionary interest in the equipment. The UCC financing statement(s) must be filed before the contracting officer may reimburse the recipient for the Federal share of the equipment unless otherwise provided for in the relevant financial assistance agreement. The recipient shall further make any amendments to the financing statements or additional recordings,

including appropriate continuation statements, as necessary or as the contracting officer may direct.

(c) *Remedies.* If the recipient fails at any time to comply with any of the conditions or requirements of paragraph (b) of this section, then the contracting officer may:

(1) Notify the recipient of noncompliance in accordance with 2 CFR 200.338, which may lead to suspension or termination of the award;

(2) Impose special award conditions pursuant to 2 CFR 200.205 and 200.207 as amended by 2 CFR 910.372;

(3) Issue instructions to the recipient for disposition of the property in accordance with paragraph (g) of this section;

(4) In the case of a failure to properly record UCC financing statement(s) in accordance with paragraph (b)(4) of this section, effect such a recording; and

(5) Apply other remedies that may be legally available.

(d) *Title to and Federal interest in real property or equipment offered as cost-share.* As provided in 2 CFR 200.306(h), depending upon the purpose of the Federal award, a recipient may offer the fair market value of real property or equipment that is purchased with recipient's funds or that is donated by a third party to meet a portion of any required cost sharing or matching. If a resulting award includes such property as a portion of the recipient's cost share, the recipient holds conditional title to the property and the Government has an undivided reversionary interest in the share of the property value equal to the Federal participation in the project. The property is treated as if it had been acquired in part with Federal funds, and is subject to the provisions of paragraph (b) of this section and to the provisions of 2 CFR 200.311 and 200.313.

(e) *Insurance.* Recipients must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient.

(f) *Additional uses during and after the project period.* Unless a statute and the award terms expressly provide for the vesting of unconditional title to real property or equipment with the recipient, the real property or equipment acquired wholly or in part with Federal funds is subject to the following:

(1) During the Project Period, the recipient must make real property and equipment available for use on other projects or programs, if such other use does not interfere with the work on the project or program for which the real property or equipment was originally

acquired. Use of the real property or equipment on other projects is subject to the following order of priority:

(i) Activities sponsored by DOE grants, cooperative agreements, or other assistance awards;

(ii) Activities sponsored by other Federal agencies' grants, cooperative agreements, or other assistance awards;

(iii) Activities under Federal procurement contracts or activities not sponsored by any Federal agency. If so used, use charges must be assessed to those activities. For real property or equipment, the use charges must be at rates equivalent to those for which comparable real property or equipment may be leased.

(2) After Federal funding for the project ceases, or if, as may be determined by the contracting officer, the real property or equipment is no longer needed for the purposes of the project, or if the recipient suspends work on the project, the recipient may use the real property or equipment for other projects, if:

(i) There are Federally sponsored projects for which the real property or equipment may be used;

(ii) The recipient obtains written approval from the contracting officer to do so. The contracting officer must ensure that there is a formal change of accountability for the real property or equipment to a currently funded Federal award; and

(iii) The recipient's use of the real property or equipment for other projects is in the same order of priority as described in paragraph (e)(1) of this section.

(iv) If the only use for the real property or equipment is for projects that have no Federal sponsorship, the recipient must proceed with disposition of the real property or equipment in accordance with paragraph (g) of this section.

(g) *Disposition.* (1) If, as determined by the contracting officer, an item of real property or equipment is no longer needed for Federally sponsored projects, or if the recipient has suspended work on the project, the recipient has the following options:

(i) If the property is equipment with a current per unit fair market value of less than \$5,000, it may be retained, sold, or otherwise disposed of with no further obligation to DOE.

(ii) If the property is equipment (rather than real property) and with the written approval of the contracting officer, the recipient may replace it with an item that is needed currently for the project by trading in or selling to offset the costs of the replacement equipment.

(iii) The recipient may elect to retain title, without further obligation to the Federal Government, by compensating the Federal Government for that percentage of the current fair market value of the real property or equipment that is attributable to the Federal participation in the project.

(iv) If the recipient does not elect to retain title to real property or equipment or does not request approval to use equipment as trade-in or offset for replacement equipment, the recipient must request disposition instructions from the responsible agency.

(2) If a recipient requests disposition instructions, the contracting officer must:

(i) For either real property or equipment, issue instructions to the recipient for disposition of the property no later than 120 calendar days after the recipient's request. The contracting officer's options for disposition are to direct the recipient to:

(A) Transfer title to the real property or equipment to the Federal Government or to a third party designated by the contracting officer provided that, in such cases, the recipient is entitled to compensation for its attributable percentage of the current fair market value of the real property or equipment, plus any reasonable shipping or interim storage costs incurred; or

(B) Sell the real property or equipment and pay the Federal Government for that percentage of the current fair market value of the property that is attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sale proceeds). If the recipient is authorized or required to sell the real property or equipment, the recipient must use competitive procedures that result in the highest practicable return.

(3) If the contracting officer fails to issue disposition instructions within 120 calendar days of the recipient's request, the recipient must dispose of the real property or equipment through the option described in paragraph (g)(2)(i)(B) of this section.

■ 3. Add § 910.364 to subpart D to read as follows:

**§ 910.364 Reporting on utilization of subject inventions.**

(a) Unless otherwise instructed, a recipient that obtains title to an invention made under an award shall submit annual reports on the utilization or efforts to obtain utilization of the invention for at least 10 years from the date the invention was first disclosed to DOE (Utilization Reports). Utilization

Reports shall include at least the following information:

- (1) Status of development;
- (2) Date of first commercial sale or use;
- (3) Gross royalties received by the recipient;
- (4) The location of any manufacture of products embodying the subject invention; and
- (5) Any such other data and information as DOE may reasonably specify.

(b) To the extent data or information supplied in a Utilization Report is considered by the recipient to be privileged and confidential and is so marked by the recipient, DOE agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.

■ 4. Add § 910.366 to subpart D to read as follows:

**§ 910.366 Export Control and U.S. Manufacturing and Competitiveness.**

(a) *Export Control.* Any recipient of any award for research, development and/or demonstration must comply with all applicable U.S. laws regarding export control.

(b) *U.S. Manufacturing and Competitiveness.* It is the policy of DOE to ensure that DOE-funded research, development, and/or demonstration projects foster domestic manufacturing. Funding opportunity announcements (FOAs), therefore, may require that applicants submit a “U.S. Manufacturing Plan” in their applications. Such FOAs may encourage U.S. Manufacturing Plans to include proposals by recipients and any sub-recipients to manufacture DOE-funded technologies in the United States; however, the FOAs will also state that these plans should not include requirements regarding the source of inputs used during the manufacturing process. Regardless of whether such plans will be part of the merit review criteria or a program policy factor, and to the extent legally permissible, all awards subject to this subpart, including subawards, for research, development, and/or demonstration, must include a provision that provides plans by the recipient and any subrecipients to support manufacturing in the United States of technology developed under the award. The recipient and any subrecipients must agree to make those plans binding on any assignee or licensee or any entity otherwise acquiring rights to any subject invention or developed technology covered under the award. A recipient, subrecipient, assignee, licensee, or any entity otherwise acquiring the rights to any

subject invention or developed technology may request a waiver or modification of U.S. manufacturing plans from DOE. DOE will determine whether to approve such a waiver in light of equitable considerations, including, for example, whether the requester satisfactorily shows that the planned support is not economically feasible and whether there is a satisfactory alternative net benefit to the U.S. economy if the requested waiver or modification is approved.

■ 5. Add § 910.368 to subpart D to read as follows:

**§ 910.368 Change of control.**

(a) Change of control is defined as any of the following:

(1) Any event by which any individual or entity other than the recipient becomes the beneficial owner of more than 50% of the total voting power of the voting stock of the recipient;

(2) The recipient merges with or into any entity other than in a transaction in which the shares of the recipient's voting stock are converted into a majority of the voting stock of the surviving entity;

(3) The sale, lease or transfer of all or substantially all of the assets of the recipient to any individual or entity other than the recipient in one or a series of related transactions;

(4) The adoption of a plan relating to the liquidation or dissolution of the recipient; or

(5) Where the recipient is a wholly-owned subsidiary at the time of award or novation, and the recipient's parent entity undergoes a change of control as defined in this section.

(b) When the Federal share of the financial assistance agreement is more than \$10,000,000 or DOE requests the information in writing, the recipient must provide the contracting officer with documentation identifying all parties who exercise control in the recipient at the time of award.

(c) When there is a change of control of a recipient, or the recipient has reason to know a change of control is likely, the recipient must notify the contracting officer within 30 days of its knowledge of such change of control. Such notification must include, at a minimum, copies of documents necessary to reflect the transaction that resulted or will result in the change of control, and identification of all entities, individuals or other parties to such transaction. Failure to notify the contracting officer of a change of control is grounds for suspension or termination of the award for failure to comply with the terms and conditions of the award.

(d) The contracting officer must authorize a change of control for the purposes of the award. Failure to receive the contracting officer's authorization for a change of control may lead to a suspension of the award, termination for failure to comply with the terms and conditions of the award, or imposition of special award conditions pursuant to 2 CFR 910.372. Special award conditions may include but are not limited to:

- (1) Additional reporting requirements related to the change of control; and
- (2) Suspension of payments due to the recipient.

■ 6. Add § 910.370 to subpart D to read as follows:

**§ 910.370 Novation of financial assistance agreements.**

(a) Financial assistance agreements are not assignable absent written consent from the contracting officer. At his or her sole discretion, the contracting officer may, through novation, recognize a third party as the successor in interest to a financial assistance agreement if such recognition is in the Government's interest, conforms with all applicable laws and the third party's interest in the agreement arises out of the transfer of:

- (1) All of the recipient's assets; or
- (2) The entire portion of the assets necessary to perform the project described in the agreement.

(b) When the contracting officer determines that it is not in the Government's interest to consent to the novation of a financial assistance agreement from the original recipient to a third party, the original recipient remains subject to the terms of the financial assistance agreement, and the Department may exercise all legally available remedies under 2 CFR 200.338 through 200.342, or that may be otherwise available, should the original recipient not perform.

(c) The contracting officer may require submission of any documentation in support of a request for novation, including but not limited to documents identified in 48 CFR Subpart 42.12. The contracting officer may use the format in 48 CFR 42.1204 as guidance for novation agreements identified in paragraph (a) of this section.

■ 7. Add § 910.372 to subpart D to read as follows:

**§ 910.372 Special award conditions.**

(a) In addition to the requirements of 2 CFR 200.205, the following actions may require the use of Specific Conditions as identified in 2 CFR 200.207:

- (1) Has not conformed to the terms and conditions of a previous award;
- (2) Has a change of control as defined in § 910.368;
- (3) Fails to comply with real property and equipment requirements at § 910.360; or
- (4) Is not otherwise responsible.

[FR Doc. 2015-21693 Filed 9-2-15; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 271, 273, 274, and 275

RIN 0584-AE48

#### Supplemental Nutrition Assistance Program (SNAP): Agricultural Act of 2014 Nondiscretionary Provisions

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Final rule.

**SUMMARY:** The Food and Nutrition Service (FNS) of the Department of Agriculture (USDA) is amending Supplemental Nutrition Assistance Program (SNAP or Program) regulations to codify certain nondiscretionary provisions of the Agricultural Act of 2014 (the “2014 Farm Bill”).

This final rule excludes medical marijuana from being treated as an allowable medical expense for the purposes of determining the excess medical expense deduction under SNAP. This rule also amends multiple SNAP regulations pursuant to nondiscretionary changes under the 2014 Farm Bill related to Quality Control (QC). This rule updates the QC error tolerance threshold to no more than \$37 for Fiscal Year (FY) 2014. For FY 2015 and thereafter, the QC tolerance level will be set annually based on an adjustment in the Thrifty Food Plan (TFP). In addition, this rule eliminates USDA’s ability to waive any portion of a State’s QC liability amount, except as provided in SNAP regulations that requires State agencies to use SNAP High Performance Bonus Payments only for SNAP administrative expenses including investments in technology, improvements in administration and distribution, and actions to prevent fraud, waste and abuse. Finally, this rule amends SNAP regulations pertaining to the use of SNAP benefits to pay for container deposit fees. The 2014 Farm Bill prohibits SNAP benefits from being used to pay for container deposit fees in excess of any State fee reimbursement required to purchase food in a returnable bottle or can.

**DATES:** This rule will become effective on November 2, 2015.

**FOR FURTHER INFORMATION CONTACT:** Vicky T. Robinson, FNS, 3101 Park Center Drive, Room #418, Alexandria, VA 22302, 703-305-2476.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### General

On February 7, 2014, the President signed the 2014 Farm Bill. Amendments exclude medical marijuana from allowable medical expense deductions for SNAP purposes, update the QC error tolerance threshold for Fiscal Year (FY) 2014 and index this amount for FY 2015 and thereafter based on an adjustment in the Thrifty Food Plan (TFP), eliminate the Department’s ability to waive any portion of a State’s QC Liability amount except as provided in SNAP regulations at 7 CFR 275.23(f), ensure that State agencies may use High Performance Bonus Payments only for SNAP administrative expenses, and prohibit SNAP benefits from being used to pay for container deposit fees in excess of the State fee reimbursement.

###### Medical Marijuana

USDA is amending SNAP regulations at 7 CFR part 273 in accordance with Section 4005 of the 2014 Farm Bill. Under Section 4005, USDA is instructed to promulgate regulations to explicitly prohibit States from utilizing the excess medical deduction to deduct medical marijuana costs from a household’s income for SNAP purposes.

Under the Controlled Substances Act, 21 U.S.C. 801 *et seq.*, marijuana is a Schedule I controlled substance that has no currently accepted medical use and cannot be prescribed for medicinal purposes. 21 U.S.C. 812(b)(1)(C). SNAP is a Federal program and must conform to Federal law regarding illegal substances. Therefore, marijuana and other Schedule I controlled substances are not allowable medical expenses under SNAP. USDA is incorporating this requirement into the regulations at new subsection 7 CFR 273.9(d)(3)(iii)(B).

###### Error Tolerance Threshold

Section 16 (c)(1)(A)(ii)(I) of the Food and Nutrition Act of 2008 was amended by Section 4019 of the 2014 Farm Bill to require that the Secretary set the tolerance level for excluding small errors for fiscal year 2014, at an amount not greater than \$37. Until that point in time, the QC tolerance level was at \$50, meaning only variances that exceed \$50 were included in the calculation of the payment error rate. This threshold does

not excuse a State from following correction or claims procedures for any over or under issuance that is under the tolerance level. Typically, changes that affect the QC review period are made effective the upcoming fiscal year so that State and Federal QC reviewers can prepare for the procedural and systematic changes required. However, since the QC review period for FY 2014 had already begun when the Act was signed, the Department was required to take immediate action at that point on announcement of a new threshold, and established the new \$37 threshold through an implementing memorandum on March 21, 2014. This rule codifies what was put in place via that implementing memorandum.

Section 4019 of the 2014 Farm Bill also requires USDA to adjust FY 2014’s threshold by the percentage by which the Thrifty Food Plan (TFP) is adjusted under Section 3(u)(4) of the Food and Nutrition Act of 2008. The Department uses three TFPs to establish benefit levels, one for the 48 contiguous States and District of Columbia, one for Alaska, and one for Hawaii. Although there are different TFPs used in SNAP benefit calculation, the Department is required to have one national performance measure for State payment error rates. For that reason, the Department has concluded that it has no discretion in using a single TFP-related adjustment mechanism for all States.

For FY 2015, the Department adjusted the threshold amount by using the TFP for the 48 contiguous States and District of Columbia as the TFP baseline for all 53 State agencies, resulting in a tolerance level of \$38 for FY 2015. In this final rule, the Department is establishing that the threshold will be adjusted each year by using the TFP for the 48 contiguous States and District of Columbia. A policy memo will be issued to States notifying them of the adjustment to the threshold amount at the start of each QC review period.

###### Liability Amount Determinations

After each fiscal year, in accordance with regulatory requirements, a determination is made for each State agency as to whether or not that FY’s QC Error Rate would lead to the State being assessed a liability amount. State agencies assessed liabilities are given the opportunity to pay their liabilities in full or designate 50 percent of the liability amount as at-risk for repayment if a liability amount for an excessive payment error rate is established for the following FY. State agencies must then designate the other 50 percent of the liability amount to be used for new investment in approved activities to