



[6450-01-P]

**DEPARTMENT OF ENERGY**

**48 CFR Part 970**

**RIN 1991-AC14**

**Inclusion of Early Stage Technology Demonstration in Authorized Technology Transfer Activities**

**AGENCY:** Office of Management, Department of Energy.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Department of Energy (DOE) is publishing this final rule to amend its current acquisition regulations regarding allowability of costs associated with technology transfer activities pursuant to the Stevenson-Wydler Technology Innovation Act of 1980, as amended. The content of these technical amendments correspond with the provisions enacted by Congress through the Department of Energy Research and Innovation Act.

**DATES:** This rule is effective [*INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

**ADDRESSES:** The docket, which includes *Federal Register* notices and other supporting documents/materials, is available for review at <https://www.regulations.gov>. All documents in the docket are listed in the <https://www.regulations.gov> index.

A link to the docket web page can be found at <https://www.regulations.gov>. The docket web page will contain simple instructions on how to assess all documents, including public comments, in the docket.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jason Taylor, U.S. Department of Energy, Office of Management, at (202)-287-1560 or by e-mail at [Jason.Taylor@hq.doe.gov](mailto:Jason.Taylor@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:**

Table of Contents

- I. Background
- II. Summary of This Action
- III. Final Action
- IV. Procedural Requirements
- V. Approval of the Office of the Secretary

**I. Background**

Section 102 of the Department of Energy Research and Innovation Act, Pub. L. 115-246 (Research and Innovation Act), amended section 1001 of EPACT 2005, 42 U.S.C. 16391 to require DOE to permit specified National Laboratories owned by DOE to use funds authorized to support technology transfer within DOE to carry out early stage and precommercial technology demonstration activities to remove technology barriers that limit private sector interest and demonstrate potential commercial applications of any research and technologies arising from National Laboratory activities.

The Technology Transfer Mission clause at 48 CFR 970.5227-3 (paragraph (c)(1)) currently limits the use of funds used to support Office of Research and Technology Applications

(ORTAs) to three categories: (1) obtaining, maintaining, licensing, and assigning Intellectual Property rights; (2) increasing the potential for the transfer of technology; and (3) providing widespread notice of technology transfer opportunities. Pursuant to the Research and Innovation Act, DOE is modifying its acquisition regulation by amending the text of the Technology Transfer Mission clause to add (as a fourth category) early stage and precommercial technology demonstration activities to paragraph (c)(1), “Allowable costs”.

## **II. Summary of This Action**

As a result of the change imposed by the Research and Innovation Act, DOE amends §970.5227-3(c)(1) by revising the second sentence to add “early stage and precommercial technology demonstration to remove barriers that limit private sector interest and demonstrate potential commercial applications of any research and technologies arising from Laboratory activities.” DOE welcomes information on the early stage and precommercial technology demonstration activities that may be enabled at the DOE National Laboratories through the use of funds available for technology transfer.

## **III. Final Action**

DOE has determined, pursuant to 5 U.S.C. 553(b)(B), that prior notice and an opportunity for public comment on this final rule are unnecessary. This rule inserts into the CFR, for the benefit of the public, the Research and Innovation Act requirement that DOE permit the directors of the National Laboratories to use funds authorized to support technology transfer within the Department to carry out early stage and precommercial technology demonstration activities to remove technology barriers that limit private sector interest and demonstrate potential

commercial applications of any research and technologies arising from National Laboratory activities. DOE exercises no discretion in amending its regulations to implement this statutory requirement. DOE, therefore, finds that good cause exists to waive prior notice and an opportunity to comment for this rulemaking. For the same reasons, DOE, pursuant to 5 U.S.C. 553(d)(3), finds that good cause exists for making this final rule effective upon publication in the *Federal Register*.

#### **IV. Procedural Requirements**

##### *A. Review Under Executive Order 12866, "Regulatory Planning and Review"*

This final rule is not a "significant regulatory action" under the criteria set out in section 3(f) of Executive Order 12866, "Regulatory Planning and Review." 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review by the Office of Information and Regulatory Affairs ("OIRA") in the Office of Management and Budget ("OMB").

##### *B. Review Under Executive Orders 13771 and 13777*

On January 30, 2017, the President issued Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs." That Order stated the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. The Order stated it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. This final rule is expected to be an E.O. 13771 deregulatory action.

Additionally, on February 24, 2017, the President issued Executive Order 13777, "Enforcing the Regulatory Reform Agenda." The Order required the head of each agency

designate an agency official as its Regulatory Reform Officer (RRO). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force must attempt to identify regulations that:

- (i) Eliminate jobs, or inhibit job creation;
- (ii) Are outdated, unnecessary, or ineffective;
- (iii) Impose costs that exceed benefits;
- (iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
- (v) Are inconsistent with the requirements of Information Quality Act, or the guidance issued pursuant to that Act, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or
- (vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

DOE concludes that this final rule is consistent with the requirements set forth in these executive orders. The Research and Innovation Act amends EPIACT 2005 to require DOE to permit the directors of the National Laboratories to use funds authorized to support technology transfer within the Department to carry out early stage and precommercial technology demonstration activities to remove technology barriers that limit private sector interest and

demonstrate potential commercial applications of any research and technologies arising from National Laboratory activities. The current regulatory language does not permit such use of these funds. Therefore, this final rule is an Executive Order 13771 deregulatory action.

### *C. 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. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. The Department has made its procedures and policies available on the Office of General Counsel’s website: <http://energy.gov/gc/office-general-counsel>. This rule revises the Code of Federal Regulations to incorporate, without substantive change, a statutorily-required change to permit use of funds authorized to support technology transfer to carry out early stage and precommercial technology demonstration activities to remove technology barriers that limit private sector interest and demonstrate potential commercial applications of any research and technologies arising from National Laboratory activities. Because this is a technical amendment for which a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply to this rulemaking.

*D. Review Under the Paperwork Reduction Act of 1995*

This rulemaking imposes no new information or record keeping requirements. Accordingly, Office of Management and Budget clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

*E. Review Under the National Environmental Policy Act of 1969*

In this rule, DOE is incorporating requirements prescribed by the Research and Innovation Act. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule is strictly procedural and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A6 under 10 CFR part 1021, subpart D, which applies to procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

*F. Review Under Executive Order 13132, "Federalism"*

Executive Order 13132, "Federalism," 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. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have

federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations.

65 FR 13735. DOE has determined that this rule does not limit the policymaking discretion of the States. No further action is required by Executive Order 13132.

*G. Review Under Executive Order 12988, "Civil Justice Reform"*

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 final rule meets the relevant standards of Executive Order 12988.



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

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. (Public Law 104-4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at <http://www.gc.doe.gov>). This final rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of \$100 million or more in any year, so these requirements under the Unfunded Mandates Reform Act do not apply.

#### *I. 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 that may affect family well-being. This final 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.

*J. Review Under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights"*

The Department has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

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

Section 515 of 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 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 this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*L. Review Under Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use"*

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 proposed 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. This final rule, which incorporates recently-enacted statutory provisions into DOE’s regulations, would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action.

#### *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).

## **V. Approval of the Office of the Secretary**

The Secretary of Energy has approved publication of this final rule.

### **List of Subjects in 48 CFR Part 970**

Government procurement.

Signed in Washington, DC, July 24, 2019

---

John R. Bashista  
Director,  
Office of Acquisition Management,  
Department of Energy .

---

S. Keith Hamilton,  
Deputy Associate Administrator,  
Acquisition and Project Management,  
National Nuclear Security Administration.

For the reasons set forth in the preamble, DOE hereby amends chapter 9, subchapter I, of title 48 of the Code of Federal Regulations as set forth below:

**PART 970 – DOE MANAGEMENT AND OPERATING CONTRACTS**

1. The authority citation for part 970 continues to read as follows:

**Authority:** 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

2. Section 970.5227-3 is amended by revising the clause date and the second sentence of paragraph (c)(1) to read as follows:

**970.5227-3 Technology transfer mission.**

\* \* \* \* \*

**Technology Transfer Mission ([INSERT ABBREVIATED MONTH AND YEAR OF DATE OF PUBLICATION IN THE FEDERAL REGISTER])**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \* The costs associated with the conduct of technology transfer through the ORTA including activities associated with obtaining, maintaining, licensing, and assigning Intellectual Property rights, increasing the potential for the transfer of technology, widespread notice of technology transfer opportunities, and early stage and precommercial technology demonstration to remove barriers that limit private sector interest and demonstrate potential commercial

applications of any research and technologies arising from Laboratory activities, shall be deemed allowable provided that such costs meet the other requirements of the allowable cost provisions of this Contract.\* \* \*

\* \* \* \* \*

[FR Doc. 2019-18297 Filed: 8/26/2019 8:45 am; Publication Date: 8/27/2019]