in the direction or management of the company, such as common stock in a corporation and partnership interests in a partnership.

§ 600.502 What DOE Must Determine

This section follows the sequence of provisions of section 2306 which provide for the two mandatory elements of the eligibility determination. The first mandatory element is a finding that the applicant's participation in a particular program is in the economic interest of the United States. The second mandatory element has two alternative subparts—either (a) the company is a U.S.-owned company; or (b) the company is found to be incorporated in the U.S. and the government of the parent company's country of incorporation affords U.S.-owned companies local investment opportunities comparable to those offered to any other company on investment and access to energy research and development, and protects U.S.-owned intellectual property in that country.

In order to avoid seemingly unintended consequences in interpreting section 2306(2)(B), the Department proposes interpreting the statutory phrase "company * * incorporated in the United States" to include both corporations incorporated in the U.S. and other companies, defined as for-profit business entities, organized under the laws of any State in the U.S. Thus, for example, a partnership organized under State law in the U.S. would be included. Similarly, the Department proposes interpreting the statutory phrase "parent company which is incorporated" in a foreign country to include both corporations and other for-profit business entities organized under foreign law.

The Department invites comment on how to make the required determination in the context of relatively small financial assistance awards. Under the proposed rule, all applicants would need to submit the same types of information and the Department would undertake the same type of determination. One possible alternative is to ask applicants for awards below \$100,000 to certify that they satisfy all the eligibility requirements of section 2306(1) and (2)(a), if applicable, and to rely on such a certification unless the Department has reason to believe that further investigation is warranted. This approach would permit the Department to target its administrative resources to making eligibility determinations for larger awards, and at the same time preserve the Department's appropriate

role in reviewing eligibility for smaller awards where there is reason to question an applicant's eligibility. The Department invites comment on such an alternative for small awards.

§ 600.503 Determining the economic interest of the United States.

This section provides guidelines as to information that may support an affirmative determination that a financial assistance award would be in the economic interest of the United States. Section 600.503 describes examples, based on the statute, of the type of evidence that may be considered. Section 600.503 of the general statement of policy makes it clear that any other evidence that shows that an award would be in the economic interest of the United States can be considered. Determinations concerning the economic interest of the United States will be based on consideration of all available evidence.

The evidence to be considered concerning investments or employment in the U.S. may include evidence related to affiliates of the applicant company (e.g., the parent company of an applicant corporation, the general partners in an applicant partnership). DOE will consider the facts relating to each applicant in context.

Where the applicant for financial assistance is a joint venture, DOE would apply the economic interest test of section 2306(1) to the joint venture as a whole. Under section 2306(2), however, DOE would apply the relevant tests to each company participating in the joint venture.

In evaluating whether an applicant's participation is in the economic interest of the United States, DOE may consider the activities of the applicant's contractors or suppliers or other companies that would have a significant role in the government-supported work. In determining which contractors, suppliers or other companies may be considered in assessing an applicant's eligibility, DOE would consider whether the company's participation is a factor advanced by the applicant for consideration in evaluating the merits of the application. For example, where an applicant chooses to rely on the qualifications of named component suppliers or other contractors in making an application to a covered program, the activities of any such named contractors or suppliers may be evaluated in determining whether the applicant's participation is in the economic interest of the United States.

§ 600.504 Information an applicant must submit.

This section makes clear that the burden of producing information to support an affirmative determination concerning the economic interest of the United States and the ownership status of the applicant would rest on the applicant. The allocation of this burden to the applicant is appropriate because the applicant will usually be in the best position to provide relevant information. The Department may request that information needed to make an eligibility determination be submitted with the application for financial assistance, or may specify, in the solicitation, a later stage in the process for submission of such information.

If an applicant for financial assistance proposes to demonstrate that an award is in the economic interest of the United States by asserting that it will undertake future action, such as promoting manufacture of products in the United States or procuring parts and materials from competitive suppliers, DOE will require it to provide an appropriate certification concerning such future action. In support of such certifications, the applicant should also provide a brief commercialization plan for the technology that is expected to result from the program-supported research and development. The Department expects to give considerable weight to these plans in assessing whether the applicant's participation is in the economic interest of the United States.

In order to be treated as a "United States-owned company" for eligibility purposes, an applicant would be required to submit an appropriate certification that it satisfies the definition in § 600.501.

The section concludes with a paragraph providing for DOE requests for information in addition to that submitted with the application for financial assistance, if necessary.

§ 600.505 Other information DOE may consider.

This section identifies certain kinds of information, in addition to the information provided by the applicant, that may be relevant in making the required findings. DOE, in making the findings required under section 2306(2)(B), intends to consult with and seek information from a number of sources, including, but not limited to, appropriate agencies of the federal government as well as publicly available information.

With respect to whether a foreign government "affords to United Statesowned companies opportunities,