colleges, and other non-profit institutions and commercial organizations. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

§ 600.4 Deviations.

- (a) General. (1) A deviation is the use of any policy, procedure, form, standard, term, or condition which varies from a requirement of this part, or the waiver of any such requirement, unless such use or waiver is authorized or precluded by Federal statute. The use of optional or discretionary provisions of this part, including special restrictive conditions used in accordance with Sections 600.114 and 600.212, are not deviations. The waiver provisions of the patent requirements of Section 600.27 and awards to foreign entities are not subject to the requirements of this section.
- (2) A single-case deviation is a deviation which applies to one financial assistance transaction and one applicant, recipient, or subrecipient only.
- (3) A class deviation is a deviation which applies to more than one financial assistance transaction, applicant, recipient, or subrecipient.
- (b) The DOE officials specified in paragraph (c) of this section may authorize a deviation only upon a written determination that the deviation is—
- (1) Necessary to achieve program objectives;
- (2) Necessary to conserve public funds;
- (3) Otherwise essential to the public interest: or
 - (4) Necessary to achieve equity.
- (c) Approval procedures. (1) Å deviation request must be in writing and must be submitted to the responsible DOE Contracting Officer. An applicant for a subaward or a subrecipient shall submit any such request through the recipient.
- (2) Except as provided in paragraph (c)(3) of this section—

- (i) A single-case deviation may be authorized by the responsible Head of Contracting Activity (HCA). Any proposed single-case deviation from the requirements of Section 600.27 concerning patents or data shall be referred to the DOE Patent Counsel for review and concurrence prior to submission to the HCA.
- (ii) A class deviation may be authorized by the Deputy Assistant Secretary for Procurement and Assistance Management or his or her
- (3) Whenever the approval of OMB, other Federal agency, or other DOE office is required to authorize a deviation, the proposed deviation must be submitted to the Deputy Assistant Secretary for Procurement and Assistance Management or designee for concurrence prior to submission to the authorizing official. Any proposed class deviation from the requirements of Section 600.27 concerning patents or data shall be forwarded through the Assistant General Counsel for Technology Transfer and Intellectual Property or designee.
- (d) Notice. Whenever a request for a class deviation is approved, DOE shall publish a notice in the **Federal Register** at least 15 days before the class deviation becomes effective. Whenever a class deviation is contained in a proposed program rule, the preamble to the proposed rule shall describe the purpose and scope of the deviation.
- (e) Subawards. A recipient may use a deviation in a subaward only with the prior written approval of a DOE Contracting Officer.

§ 600.5 Selection of award instrument.

- (a) If DOE has administrative discretion in the selection of the award instrument, the DOE decision as to whether the relationship is principally one of procurement or assistance shall be made pursuant to the Federal Grant and Cooperative Agreement Act as codified at 31 U.S.Č. 6301-6306. A grant or cooperative agreement shall be the appropriate instrument, in accordance with this part, when the principal purpose of the relationship is the transfer of money or property to accomplish a public purpose of support or stimulation authorized by Federal statute. DOE shall limit involvement between itself and the recipient in the performance of a project to the minimum necessary to achieve DOE program objectives.
- (b) When it is anticipated that substantial involvement will be necessary between DOE and the recipient during performance of the contemplated activity, the award

- instrument shall be a cooperative agreement rather than a grant. Substantial involvement exists if:
- (1) Responsibility for the management, control, or direction of the project is shared by DOE and the recipient, or
- (2) Responsibility for the performance of the project is shared by DOE and the recipient, or
- (3) DOE has the right to intervene in the conduct or performance of project activities for programmatic reasons. Intervention includes the interruption or modification of the conduct or performance of project activities. Suspension or termination of the cooperative agreement under Sections 600.162 and 600.243 does not constitute intervention in the conduct or performance of project activities.
- (4) Providing technical assistance or guidance of a programmatic nature to a recipient does not constitute substantial involvement if the recipient is not required to follow such guidance or if the technical assistance or guidance is not expected to result in continuing DOE involvement in the performance of the project.
- (5) Technical assistance or guidance which pertains to the administrative requirements of the award does not constitute substantial involvement.
- (c) Every cooperative agreement shall explicitly state the substantial involvement anticipated between DOE and the recipient during performance of the project.

§ 600.6 Eligibility.

- (a) General. DOE shall solicit applications for financial assistance in a manner which provides for the maximum amount of competition feasible.
- (b) Restricted eligibility. If DOE restricts eligibility, an explanation of why the restriction of eligibility is considered necessary shall be included in the solicitation, program rule, or published notice. If the aggregate amount of DOE funds available for award under such a solicitation or published notice is \$1,000,000 or more such restriction of eligibility shall be supported by a written determination initiated by the program office and approved by an official no less than two levels above the initiating program official and concurred in by the Contracting Officer and legal counsel. If the amount of DOE funds is less than \$1,000,000, the cognizant HCA and the Contracting Officer may approve the determination.
- (c) DOE may award a grant or cooperative agreement on a noncompetitive basis only if the