

Interim Administrative Appeal Procedures  
for Agency Actions under a Patent Rights Clause  
IAW 37 CFR § 401.11(c)

**§ 1 Purpose, Scope and Applicability.**

- (a) This Interim Procedure establishes the administrative appeal process of the DOE for the DOE actions listed in 37 CFR § 401.11(b).
- (b) This Interim Procedure does not apply to any action appealable to the Patent Compensation Board pursuant to 10 CFR Part 780 or the DOE Contract Appeal Board pursuant to 10 CFR Part 1023.
- (c) This Interim Procedure does not apply to any determination made by DOE on whether to waive all or any parts of its rights or to retain all of its rights pursuant to 10 CFR Part 784. This Interim Procedure does apply to any action under a Patent Rights Clause regarding the terms and conditions of any patent waiver that was granted by DOE pursuant to 10 CFR Part 784.
- (d) This Interim Procedure is implemented in accordance with 37 CFR §§ 401.11(c) and (d).
- (e) The availability of the appeal process under this Interim Procedure is limited to the Contractor or the assignee of the Contractor impacted by the DOE action.
- (f) This Interim Procedure utilizes the delegation of authority by the Secretary to the Director of HG to “[c]onduct adjudicatory proceedings and issue orders in any instance in which a statute vesting authority in the Secretary requires an adjudication or appellate procedure and express Departmental procedures do not specify the manner in which the statutory authority is to be exercised.” Delegation Order No. 00-016.00, Dec. 6, 2001.

**§ 2 Definitions.**

*Contractor* means any party to a DOE Agreement, including any contractor, sub-contractor, recipient, sub-recipient, awardee, sub-awardee or other person, in which obligations are created between the party and DOE due to the existence of the DOE agreement.

*DOE* means the Department of Energy, established by the Department of Energy Organization Act (42 U.S.C. § 7101).

*DOE Agreement* means any funding agreement with DOE as defined by the Bayh-Dole Act (35 U.S.C. § 201), any contract of the Secretary as defined by the Nonnuclear Energy Act (42 U.S.C. § 5908), and any contract, subcontract, or arrangement entered into with or for the benefit of DOE as such terms are used in the Atomic Energy Act (42 U.S.C. § 2182), including any sub-agreements to any of the forgoing, when the contract, subcontract, arrangement, or sub-agreement includes a Patent Rights Clause.

*DOE Official* means the Contracting Officer, DOE Patent Counsel or Field Patent Counsel, or other DOE employee who approved the DOE action being appealed.

*GC-62* means the DOE Office of the Assistant General Counsel for Technology Transfer and Intellectual Property.

*HG* means the Office of Hearings and Appeals of the Department of Energy, the entity responsible for hearing appeals under this interim procedure.

*Patent Rights Clause* means the Patent Rights Clause at 37 § CFR 401.14 and/or any clause in a DOE Agreement or required to be a part of a DOE Agreement due to applicable federal statutes, regulations, or policies regarding the ownership, licensing or other rights to any invention related to or made under the DOE Agreement, including, but not limited to, the right to patent said invention.

*Secretary* means the Secretary of Energy.

### **§ 3 Interim Process.**

A Contractor may appeal an action listed in 37 CFR § 401.11(b) by a DOE Official to HG. The appeal will be initiated, conducted, and decided pursuant to the existing HG general procedures set forth in 10 CFR 1003. Any notice to DOE required by the provisions of 10 CFR 1003 must be directed to the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue SW, 6F-048, Washington, DC 20585.