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DEPARTMENT OF ENERGY

2 CFR Part 910

RIN 1991–AB94

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: This rule finalizes the Department of Energy (DOE)'s part of the Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards joint interim rule which was issued December 19, 2014 and makes several technical corrections to DOE's portion of the interim final rule.

DOE is not making new policy with either the interim final rule or this final rule. All regulatory language included here is consistent with either the policies in the Uniform Guidance or DOE's existing policies and practices.

DATES: *Effective:* October 26, 2015.

FOR FURTHER INFORMATION CONTACT: Ellen Colligan, Procurement Analyst, U.S. Department of Energy, Office of Acquisition Management, Contract and Financial Assistance Policy Division MA–611, Telephone: (202) 287–1776. Email: *ellen.colligan@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. Summary

The Department makes substantial use of financial assistance awards (grants and cooperative agreements) to meet its mission goals. To manage these awards, the Department added requirements specifying changes and additions to its Administrative Requirements for Grants and Cooperative Agreements.

On December 19, 2014, OMB published a rulemaking in the **Federal Register** finalizing the guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (79 FR 75867). As a part of the same rulemaking, OMB issued the interim final Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards which contained a separate section for each federal awarding agency. DOE's regulations are contained in 2 CFR part 910 (79 FR 76024).

DOE is finalizing this rule with technical corrections as detailed below.

DOE received no comments from members of the public in response to its section of the joint interim final rule. However, DOE has found areas where technical corrections are necessary. Corrections are included only where it has come to the attention of DOE that particular language in the final guidance did not match with DOE's intent and would result in an erroneous implementation of the guidance. The technical corrections include:

a. Adding the national interest exception from competition (consistent with the existing requirement in section 600.6(b)(8)). When carrying requirements forward from our current regulations, this section was inadvertently dropped from the regulations. We need this exception for instances where non-competitive awards are necessary to meet the national interest of the United States.

b. Clarifying that restricted eligibility needs to be approved one level above CO. In an attempt to clarify this section of the regulations when carrying the requirement forward to our new regulations, the approval level was omitted. We need to add this back since regulations as written do not require any higher level approval.

c. Adding section 910.127, Legal Authority and Effect which is consistent with 10 CFR 600.16. There is nothing in the new regulations to indicate what constitutes a legal award or exactly how the recipient acknowledges that they have agreed to the terms and conditions of the award. Therefore, we are carrying forward a section from our current regulations which clarifies this issue.

d. Clarifying sections 910.501 and 910.507 to update some references from ''program-specific'' to ''compliance'' audits. The major difference between program-specific audits and compliance audits is that program-specific audits require that the auditee prepare a financial statement and that the auditor perform an audit of the financial statements. The guidance provided in 2 CFR 910 corresponding to Compliance Audits by for-profit entities is consistent with prior DOE guidance. The requirements in 2 CFR 910 do not require an auditee to prepare financial statements and do not require an auditor to perform an audit of financial statements. Instead, the guidance in 2 CFR 910 specifies requirements to be met by the auditee and auditor that ensures the audit complies with Generally Accepted Government Auditing Standards (GAGAS), Federal statutes and regulations, and the terms and conditions of Federal award. The effect is that 2 CFR 910 does not ''create new policy or requirements . . .'' in accordance with OMB implementing guidance (consistent with the existing requirement in section 600.316). The corrections primarily replace the term ''Program-Specific'' Audit with the term ''Compliance'' Audit in order to eliminate potential confusion between the two types of audits.

e. Making a wording change to 910.502 to parallel a technical correction made by OMB December 19, 2014. Wording change is to say that ''. . . determination of when a Federal award is expended *must* be based on

when the activity related to the Federal award occurs . . .''. The previous wording said that it *should* be based on when the activity related to the Federal award occurs. Making this change clarifies that there are no other factors to consider when determining when an expenses are incurred under the Federal award.

II. Procedural Requirements

A. Review Under Executive Orders 12866 and 13563

The regulatory action today has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this rule is not subject to review under the Executive Order by the Office of Information and Regulatory Affairs within the Office of Management and Budget.

DOE has also reviewed the 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 NOPR 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 (RFA) requires an agency that is issuing a final rule to provide a final regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities. OMB determined that the common interim final rule implements OMB final guidance issued on December 26, 2013, and will not have a significant economic impact beyond the impact of the December 2013 guidance.

D. Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1) (PRA), DOE reviewed the interim final rule and determined that there are no new collections of information contained therein. DOE's procurement reporting and recordkeeping burdens have been approved under OMB Control No. 1910–4100.

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.*).

F. Review Under Executive Order 13132

OMB determined that the joint interim final rule does not have any Federalism implications, as required by Executive Order 13132

G. Review Under the Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that covered agencies prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in 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. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires covered agencies to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OMB has determined that this joint interim final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, the Federal agencies participating in this joint interim final rule have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

H. 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 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.

I. 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.

J. Review Under the Administrative Procedure Act

An agency may find good cause to exempt a rule from the requirement for a notice of rulemaking and the opportunity for public under the Administrative Procedure Act (APA) if the requirement is determined to be unnecessary, impracticable, or contrary to the public interest under *5 U.S.C. 533*(b)(3)(B). Today's rule finalizes DOE portion of issued the interim final Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (79 FR 75867; DOE's portion begins at 76024). In addition DOE is publishing as final certain technical amendments which were omitted from the interim final rule. These amendments address internal agency practices concerning how DOE administers and have effect on members of the public in general or on financial assistance applicants in particular. Consequently, good cause exists for issuing these amendments as a final rule as notice and comment is unnecessary.

K. 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).

L. Approval by the Office of the Secretary of Energy

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

List of Subjects in 2 CFR Part 910

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

Issued in Washington, DC, on September 17, 2015.

Patrick Ferraro,

Director, Office of Acquisition Management.

Joseph Waddell,

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

Accordingly, the interim rule amending 2 CFR part 910 which was published at 79 FR 75867 on December 19, 2014, is adopted as a final rule with the following changes:

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. Section 910.126 is amended by:
■ a. Removing ''and'' at the end of paragraph (b)(1);
■ b. Removing the punctuation at the end of paragraph (b)(2), and adding in its place ''; and''; and
■ c. Adding paragraphs (b)(3) and (c)(8).

The additions read as follows:

§ 910.126 Competition.

* * * * *

(b) * * *

(3) Approved, prior to award, by an approver at least one level above the Contracting Officer.

(c) * * *

(8) The responsible program Assistant Secretary, Deputy Administrator, or other official of equivalent authority has determined that making the award non-competitively is in the public interest. This authority cannot not be delegated.

* * * * *

■ 3. Section 910.127 is added to read as follows:

§ 910.127 Legal authority and effect.

(a) A DOE financial assistance award is valid only if it is in writing and is signed, either in writing or electronically, by a DOE Contracting Officer.

(b) Recipients are free to accept or reject the award. A request to draw down DOE funds constitutes the Recipient's acceptance of the terms and conditions of this Award.

■ 4. Section 910.501 is amended by revising paragraphs (b)(1) and (2) to read as follows:

§ 910.501 Audit requirements.

* * * * *

(b) *Compliance audit.* (1) If a for-profit entity has one or more DOE awards with expenditures of $750,000 or more during the for-profit entity's fiscal year, they must have a compliance audit for each of the awards with $750,000 or more in expenditures. A compliance audit should comply with the applicable provisions in § 910.514—Scope of Audit. The remaining awards do not require, individually or in the aggregate, a compliance audit.

(2) If a for-profit entity receives more than one award from DOE with a sum total of expenditures of $750,000 or more during the for-profit entity's fiscal year, but does not have any single award with expenditures of $750,000 or more; the entity must determine whether any or all of the awards have common compliance requirements (*i.e.,* are considered a cluster of awards) and determine the total expenditures of the awards with common compliance requirements. A compliance audit is required for the largest cluster of awards (if multiple clusters of awards exist) or the largest award not in a cluster of awards, whichever corresponding expenditure total is greater. A compliance audit should comply with the applicable provisions in § 910.514—Scope of Audit. The remaining awards

do not require, individually or in the aggregate, a compliance audit;

* * * * *

■ 5. Section 910.507 is amended by:
■ a. Revising the section heading;
■ b. Removing the second occurrence of ''program-specific audit'' in the last sentence in paragraph (a) introductory text and adding in its place ''compliance audit'';
■ c. Removing ''Program-specific audits'' in the second sentence in paragraph (b) introductory text and adding in its place ''Compliance audits''.

The revision reads as follows:

§ 910.507 Compliance audits.

* * * * *

■ 6. In § 910.502 introductory text, revise the subject heading and the first sentence to read as follows:

§ 910.502 Basis for determining DOE awards expended.

Determining Federal awards expended. The determination of when a Federal award is expended must be based on when the activity related to the DOE award occurs. * * *

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[FR Doc. 2015–24276 Filed 9–23–15; 8:45 am]

BILLING CODE 6450–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 791

RIN 3133–AE45

Promulgation of NCUA Rules and Regulations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule and Interpretive Ruling and Policy Statement 15–1.

SUMMARY: The NCUA Board (Board) is issuing a final rule to amend Interpretive Ruling and Policy Statement (IRPS) 87–2, as amended by IRPS 03–2 and 13–1. The amended IRPS increases the asset threshold used to define the term ''small entity'' under the Regulatory Flexibility Act (RFA) from $50 million to $100 million and, thereby, provides transparent consideration of regulatory relief for a greater number of credit unions in future rulemakings. The final rule and IRPS also makes a technical change to NCUA's regulations in connection with procedures for developing regulations.

DATES: This rule and IRPS are effective November 23, 2015.

FOR FURTHER INFORMATION CONTACT: Kevin Tuininga, Lead Liquidations Counsel, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6543.

SUPPLEMENTARY INFORMATION:

I. Background

A. What changes does this final rule and IRPS make?

The RFA, as amended, generally requires federal agencies to determine and consider the impact of proposed and final rules on small entities. Since adopting IRPS 13–1 in 2013, the Board has defined ''small entity'' in this context as a federally insured credit union (FICU) with less than $50 million in assets.[1] This final rule and IRPS 15–1 redefines ''small entity'' as a FICU with less than $100 million in assets. In addition, the final rule amends § 791.8(a) of NCUA's regulations to reference IRPS 15–1. Section 791.8(a) governs NCUA's procedures for developing regulations and incorporates IRPS 87–2 and each of its amendments.

B. What changes were proposed?

On February 19, 2015, the Board issued a proposed rulemaking and IRPS with a 60-day comment period.[2] In doing so, the Board proposed to increase from $50 million to $100 million the asset threshold used to define small entity under the RFA. In support of proposing to double, rather than incrementally increase, the RFA threshold, the Board weighed competitive disadvantages within the credit union industry, relative threats to the National Credit Union Share Insurance Fund (Insurance Fund), and the need for broader regulatory relief. The proposed increase would provide an additional 733 small FICUs with special consideration of the economic impact of proposed and final regulations, bringing the total number of FICUs covered by the RFA to approximately 4,690. The proposed rule and IRPS 15–1 retained the three-year review cycle the Board adopted in 2013. Finally, the proposal referenced IRPS 15–1 in § 791.8(a) of NCUA's regulations governing regulatory procedures.

C. What is the history and purpose of the RFA?

Congress enacted the RFA in 1980, Public Law 96–354, and amended it with the Small Business Regulatory Enforcement Fairness Act of 1996.[3] The RFA, in part, requires federal agencies to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities.[4] If so, the RFA requires agencies to engage in a small entity impact analysis, known as an initial regulatory flexibility analysis (IRFA) for proposed rules and a final regulatory flexibility analysis (FRFA) for final rules.[5] The IRFA and FRFA (or a summary of them) must be published in the **Federal Register**.[6] If an agency determines that a proposed or final rule will not have a ''significant economic impact on a substantial number of small entities,'' the agency may certify as much in the **Federal Register** and forego the IRFA and FRFA.[7]

For an IRFA, the procedural requirements include, among other things, ''a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply,'' a description of reporting, recordkeeping, and other compliance burden, and an identification of any overlapping or conflicting federal rules.[8] In addition, the IRFA must ''contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives . . . and which minimize any significant economic impact of the proposed rule on small entities.'' [9] This discussion must include alternatives such as allowing ''differing compliance or reporting requirements or timetables,'' ''the clarification, consolidation, or simplification of compliance and reporting requirements,'' ''the use of performance rather than design standards,'' and a full or partial exemption for small entities.[10]

The FRFA must meet requirements similar to that of the IRFA, but must also discuss and respond to public comments and describe ''the steps the agency has taken to minimize the significant economic impact on small entities . . . , including a statement of factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other

[1] IRPS 13–1, 78 FR 4032 (Jan. 18, 2013).

[2] 80 FR 11954 (Mar. 5, 2015).

[3] Public Law 104–121. A principal purpose of the 1996 amendment was to provide an opportunity for judicial review of agency compliance with the RFA. Id.

[4] 5 U.S.C. 603, 604, 605(b).

[5] 5 U.S.C. 603, 604.

[6] Id.

[7] 5 U.S.C. 605(b).

[8] 5 U.S.C. 603(b). The IRFA must also include a description of why the agency is considering action and ''a succinct statement of the objectives of, and legal basis for, the proposed rule. . . .'' Id.

[9] 5 U.S.C. 603(c).

[10] Id.