

# Rules and Regulations

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## DEPARTMENT OF ENERGY

### 2 CFR Part 910

RIN 1991-AC16

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

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) publishes a final rule to make technical and administrative changes as a result of the Office of Management and Budget (OMB) revisions to its regulations on Grants and Agreements. The changes are required in order to align DOE's regulations with the revised OMB regulations and to remove reference to an expired statutory cost share pilot program. The final rule also makes technical changes to correct pre-existing numbering errors in the regulatory text.

**DATES:** This rule is effective March 18, 2022.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Bonnell, U.S. Department of Energy, Office of Management, 950 L'Enfant Plaza SW, Washington, DC 20024; (202) 287-1747 or [Richard.Bonnell@hq.doe.gov](mailto:Richard.Bonnell@hq.doe.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Discussion of Final Rule
- III. Regulatory Review
- IV. Approval of the Office of the Secretary

#### I. Introduction

Title 2 CFR part 910 adopts OMB's guidance, which updated its regulations, in subparts A through F of 2 CFR part 200 as DOE's policies and procedures for uniform administrative requirements, cost principles, and audit requirement for Federal awards. DOE is amending 2 CFR part 910 to align with the OMB's recent revisions to its regulations on Grants and Agreements published on August 13, 2020, at 85 FR

49506, which became effective on November 12, 2020. DOE further amends its regulation at 2 CFR 910.130 to remove reference to an expired statutory cost share pilot program. This final rule also makes technical changes to correct pre-existing numbering errors in the regulatory text.

#### II. Discussion of Final Rule

DOE amends its Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 910 as follows:

1. Section 910.122, paragraph (a) is revised to change the reference to Non-Federal entity from 2 CFR 200.69 to 2 CFR 200.1.

2. Section 910.128, paragraph (f)(1)(i) is revised to change the reference to Specific Conditions from 2 CFR 200.207 to 2 CFR 200.208; paragraph (f)(1)(iv) is revised to change the reference to Remedies for Noncompliance from 2 CFR 200.338 to 2 CFR 200.339; paragraph (f)(1)(v) is revised to change the reference to Federal awarding agency or pass-through entity review from 2 CFR 200.324 to 2 CFR 200.325; and paragraph (f)(2)(iii) is revised to change the reference to Termination from 2 CFR 200.339 to 2 CFR 200.340.

3. Section 910.130, paragraph (b)(3) is deleted to implement the September 27, 2020, expiration of the Cost-Share Pilot Program enacted by Congress at section 108 of the Department of Energy Research and Innovation Act, Public Law 115-246; (e) is revised to change the references to the terms Development and Research from 2 CFR 200.87 to 2 CFR 200.1.

4. Section 910.350, paragraph (a) is revised to change the reference to Non-Federal entity from 2 CFR 200.69 to 2 CFR 200.1.

5. Section 910.352 is revised to change the reference to the General Provisions for Selected Items of Cost from 2 CFR 200.400 through 200.475 to 2 CFR 200.420 through 2 CFR 200.476.

6. Section 910.360, paragraph (c)(1) is revised to change the reference to Remedies for non-compliance from 2 CFR 200.338 to 2 CFR 200.339; and paragraph (c)(2) is revised to change the references to Federal awarding agency review of risk posed by applicants from 2 CFR 200.205 to 2 CFR 200.206 and the reference to Specific conditions from 2 CFR 200.207 and 2 CFR 200.208.

7. Section 910.370, paragraph (b) is revised to change the reference to all of the legally available remedies for non-compliance from 2 CFR 200.338 through 2 CFR 200.342 to 2 CFR 200.339 through 2 CFR 200.343.

8. Section 910.372, paragraph (a) is revised to change the reference to Federal awarding agency review of risk posed by applicants from 2 CFR 200.205 to 2 CFR 200.206 and the reference to Specific Conditions from 2 CFR 200.207 to 2 CFR 200.208.

9. Appendix A to Subpart D—Patent and Data Provisions, paragraph (1)(a) is revised to change the reference to the definition of “[n]onprofit organization” from 2 CFR 200.70 to 2 CFR 200.1.

10. Section 910.501, paragraph (f) is revised to change the reference to Subrecipient and contractor determinations from 2 CFR 200.330 to 2 CFR 200.331; and paragraph (h) is revised to change the reference to Requirements for pass-through entities from 2 CFR 200.331 to 2 CFR 200.332.

11. In section 910.502, the following redesignations are made in order to correct numbering errors in the initial publication of 2 CFR part 910 and are made in order to improve clarity and readability of the section. Paragraph (b) *Not applicable*. is deleted; paragraph (a) *Loan and loan guarantees (loans)* is redesignated as paragraph (b); The introductory text beginning *“Determining Federal awards expended”* is designated as paragraph (a); Paragraphs (d), (e), (f), (g), (h), and (i) are redesignated as paragraphs (e), (f), (g), (h), (i), and (j); and paragraph (d) *See Paragraph (b)* is added.

12. Section 910.505 is revised to change the reference to Remedies for noncompliance from 2 CFR 200.338 to 2 CFR 200.339.

13. Section 910.507, paragraph (a) pertaining to auditor guidance when a program-specific audit guide is available is revised to incorporate the language changes in 2 CFR 200.507. The following redesignations are due to numbering errors at time of initial publication of 2 CFR part 910 and made in order to improve clarity and readability of the section. Paragraphs (a)(1), (2), (3), and (4) pertaining to auditor requirements when a program-specific audit guide is not available are redesignated as paragraphs (b)(1), (2), (3), and (4). Paragraph (a)(5) pertaining to report submissions for program-

specific audits is redesignated as paragraph (c)(1). In this final rule, additional conforming changes are made to paragraphs (a)(6) and (7) which are redesignated as (c)(2) and (3) and paragraph (b) redesignated as (d).

14. Section 910.513, paragraph (c) is revised to change the reference to Information contained in a Federal award from 2 CFR 200.210 to 2 CFR 200.211; and paragraph (c)(3)(iii) is revised to change the reference to Cooperative audit resolution from 2 CFR 200.25 to 2 CFR 200.1.

15. In section 910.514, the following redesignations are made in order to correct numbering errors in the initial publication of 2 CFR part 910 and made in order to improve clarity and readability of the section. Paragraph (b)(1) *Internal control*, is redesignated as paragraph (c); the paragraph that begins 'The compliance supplement provides guidance . . .' is designated as paragraph (c)(1); Paragraph (3)(i) is revised to remove the period and add '; and' at the end; Paragraph (5) *Compliance*, is redesignated as paragraph (d); the paragraph that begins 'In addition to the requirements of GAGAS, . . .' is designated as paragraph (d)(1); Paragraphs (6), (7), and (8) are redesignated as paragraphs (d)(2), (d)(3), and (d)(4); Paragraph (c) "Audit follow-up." is redesignated as paragraph (e); and paragraph (f) *Not applicable* is added to correspond with 2 CFR 200 formatting.

16. In section 910.515, the following redesignations are made in order to correct numbering errors in the initial publication of 2 CFR part 910 and made in order to improve clarity and readability of the section. Paragraph (d)(2)(i) is redesignated as paragraph (d)(3); and the sentence beginning 'Audit findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) . . .' is designated as paragraph (d)(3)(i).

17. In section 910.519, the following redesignations are made in order to correct numbering errors in the initial publication of 2 CFR part 910 and made in order to improve clarity and readability of the section. Paragraph (a)(1) *Current and prior audit experience*, is redesignated as paragraph (b); the text that begins 'Weaknesses in internal control over DOE programs . . .' is designated as paragraph (b)(1); Paragraph (a)(4) *Oversight exercised by DOE*, is redesignated as paragraph (c); the text that begins 'Oversight exercised by DOE could be used . . .' is designated as paragraph (c)(1); paragraph (a)(5) is redesignated as paragraph (c)(2); paragraph (a)(6) *Inherent risk of the Federal program*, is

redesignated as paragraph (d); the text that begins 'The nature of a Federal program . . .' is designated as paragraph (d)(1); and paragraphs (a)(7), (a)(8), and (a)(9) are redesignated as paragraphs (d)(2), (d)(3) and (d)(4).

18. In section 910.520, the following redesignations are made in order to correct numbering errors in the initial publication of 2 CFR part 910 and made in order to improve clarity and readability of the section. Paragraph (a) designation is moved to the second sentence beginning 'Compliance audits were performed on an annual . . .'.

### III. Regulatory Review

#### A. Administrative Procedure Act

DOE finds good cause to waive notice and comment on these regulations pursuant to 5 U.S.C. 553(b)(B) and the 30-day delay effective date pursuant to 5 U.S.C. 553(d). Notice and comment are unnecessary and contrary to the public interest because this final rule merely adopts recent amendments made by OMB to its rule on Grants and Agreements that published on August 13, 2020, at 85 FR 49506 and that became effective on November 12, 2020. DOE has concluded that there is good cause to publish this rule without prior opportunity for public comment because the action aligns DOE's regulations with OMB's, for which OMB solicited comment with a 60-day public comment period (85 FR 3766, Jan. 22, 2020). OMB, received over 2,500 comments from the public, federal agencies, and the Council of the Inspectors General on Integrity and Efficiency Grant Reform Workgroup, which OMB reviewed and addressed (85 FR 49506, Aug. 13, 2020). As part of that process, OMB reconvened agency representatives, including DOE, to review the comments and make changes to the proposed revisions as appropriate. This final rule aligns DOE's regulations with OMB's revised regulations. A delay in effective date is unnecessary and contrary to the public interest for these same reasons. In addition, this rule makes a non-discretionary change to remove a reference to an expired cost-share program and it makes technical changes to correct numbering errors. Therefore, these regulations are being published as final regulations and are effective March 18, 2022.

#### B. Executive Order 12866

This final rule has been determined to not be a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993).

Accordingly, this action was not subject to review under that Executive order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget.

#### C. National Environmental Policy Act

DOE has determined that the rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A5 of appendix A to subpart D, 10 CFR part 1021, which applies to a rulemaking that amends an existing rule or regulation and that does not change the environmental effect of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

#### D. 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). DOE has made its procedures and policies available on the Office of General Counsel's website: <https://www.gc.doe.gov>.

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. As discussed previously, DOE has determined that providing notice and opportunity for public comment on this rule is unnecessary and contrary to the public interest. Therefore, no regulatory flexibility analysis has been prepared for this rule.

#### E. Paperwork Reduction Act

This final rule imposes no new information or recordkeeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*). The information collection necessary to administer DOE financial assistance under 2 CFR part 910 is subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The information

collection provisions of this part were previously approved by OMB under OMB Control No. 1910–0400.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

*F. 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 regulatory actions 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)). 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 “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 them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (This policy is also available at <https://energy.gov/gc/office-general-counsel>.) DOE examined this rule according to UMRA and has determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and tribal government, in the aggregate, or by the private sector, of \$100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

*G. 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 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.

*H. Executive Order 13132*

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. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

*I. 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), Executive Order 12988 specifically requires that Federal 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 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 rule meets the relevant standards of Executive Order 12988.

*J. 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 OMB a Statement of Energy Effects for any significant energy action. A “significant energy action” is defined as any action by an agency that promulgated 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 regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant regulatory action. Accordingly, DOE has not prepared a Statement of Energy Effects.

*K. 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 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 rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*L. Congressional Review*

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of this final rule prior to the effective date set forth at the outset of this document. The report will state that it has been determined that the rule is not a “major rule” as defined by 5 U.S.C. 801(2).

#### IV. Approval of the Office of the Secretary

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

#### List of Subjects in 2 CFR Part 910

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

#### Signing Authority

This document of the Department of Energy was signed on February 10, 2022, by John R. Bashista, Director, Office of Acquisition Management and Senior Procurement Executive, Department of Energy and S. Keith Hamilton, Deputy Associate Administrator for Acquisition and Project Management and Senior Procurement Executive, National Nuclear Security Administration, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 24, 2022.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S. Department of Energy.*

For the reasons set forth in the preamble, the Department of Energy amends part 910 of chapter IX, title 2 of the Code of Federal Regulations as set forth below.

#### 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.

#### § 910.122 [Amended]

■ 2. Section 910.122 is amended in paragraph (a) by removing “Part 910” and “2 CFR 200.69” and adding in their places “this part” and “2 CFR 200.1”, respectively.

#### § 910.128 [Amended]

- 3. Section 910.128 is amended:
  - a. In paragraph (f)(1)(i) by removing “2 CFR 200.207” and adding in its place “2 CFR 200.208”;
  - b. In paragraph (f)(1)(iv) by removing “2 CFR 200.338” and adding in its place “2 CFR 200.339”;
  - c. In paragraph (f)(1)(v) by removing “2 CFR 200.324” and adding in its place “2 CFR 200.325”; and
  - d. In paragraph (f)(2)(iii) by removing “2 CFR 200.339 (a)(1)–(2)” and adding in its place “2 CFR 200.340(a)(1) and (2)”.

#### § 910.130 [Amended]

- 3. Section 910.130 is amended:
  - a. In paragraph (b)(1) by adding at the end of the paragraph “or”;
  - b. In paragraph (b)(2) by removing “; or” and adding in its place a period;
  - c. By removing paragraph (b)(3); and
  - d. In paragraph (e):
    - i. In the definition for “Development” by removing “2 CFR 200.87” and adding in its place “2 CFR 200.1”; and
    - ii. In the definition for “Research” by removing “2 CFR 200.87” and adding in its place “2 CFR 200.1”.

#### § 910.350 [Amended]

- 4. Section 910.350 is amended in paragraph (a) by removing “2 CFR 910.122”, “part 910”, and “2 CFR 200.69” and adding in their places “§ 910.22”, “this part”, and “2 CFR 200.1”, respectively.

#### § 910.352 [Amended]

- 5. Section 910.352 is amended by removing “2 CFR 200.400 through 200.475” and adding in its place “2 CFR 200.400 through 200.476”.

#### § 910.360 [Amended]

- 6. Section 910.360 is amended:
  - a. In paragraph (c)(1) by removing “2 CFR 200.338” and adding in its place “2 CFR 200.339”; and
  - b. In paragraph (c)(2) by removing “2 CFR 200.205 and 200.207” and “2 CFR 910.372” and adding in their places “2 CFR 200.206 and 200.208” and “§ 910.372”, respectively.

#### § 910.370 [Amended]

- 7. Section 910.370 is amended in paragraph (b) by removing “2 CFR 200.338 through 200.342” and adding in its place “2 CFR 200.339 through 200.343”.

#### § 910.372 [Amended]

- 8. Section 910.372 is amended in paragraph (a) introductory text by removing “2 CFR 200.205” and adding in its place “2 CFR 200.206” and

removing “2 CFR 200.207” and adding in its place “2 CFR 200.208”.

#### Appendix A to Subpart D of Part 910 [Amended]

- 9. Appendix A to subpart D of part 910 is amended in section 1., paragraph (a), in the definition of “Nonprofit organization”, by removing “2 CFR 200.70” and adding in its place “2 CFR 200.1”.

#### § 910.501 [Amended]

- 10. Section 910.501 is amended:
  - a. In paragraph (e) by removing “Part” and adding in its place “part”;
  - b. In paragraph (f) by removing “Part” and “Section 2 CFR 200.330 Subrecipient and contractor determinations” and adding in their places “part” and “The provisions of 2 CFR 200.331, Subrecipient and contractor determinations”, respectively; and
  - c. In paragraph (h) by removing “Part” and “2 CFR 200.331” and adding in their places “part” and “2 CFR 200.332”.
- 11. Section 910.502 is revised to read as follows:

#### § 910.502 Basis for determining DOE awards expended.

(a) *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. Generally, the activity pertains to events that require the non-Federal entity to comply with Federal statutes, regulations, and the terms and conditions of DOE awards, such as: Expenditure/expense transactions associated with awards including grants, cost-reimbursement contracts under the FAR, compacts with Indian Tribes, cooperative agreements, and direct appropriations; the disbursement of funds to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or use of food commodities; the disbursement of amounts entitling the for-profit entity to an interest subsidy; and the period when insurance is in force.

(b) *Loan and loan guarantees (loans).* Loan and loan guarantees issued by the DOE Loan Program Office corresponding to Title XVII of the Energy Policy Act of 2005, as amended, 42 U.S.C. 16511–16516 (“Title XVII”) are exempt from these provisions.

- (1) Not applicable.
- (2) Not applicable.
- (3) Not applicable.
- (c) Not applicable.

(d) *Prior loan and loan guarantees (loans).* See paragraph (b) of this section.

(e) *Endowment funds.* The cumulative balance of DOE awards for endowment funds that are federally restricted are considered DOE awards expended in each audit period in which the funds are still restricted.

(f) *Free rent.* Free rent received by itself is not considered a DOE award expended under this Part. However, free rent received as part of a DOE award to carry out a DOE program must be included in determining DOE awards expended and subject to audit under this part.

(g) *Valuing non-cash assistance.* DOE non-cash assistance, such as free rent, food commodities, donated property, or donated surplus property, must be valued at fair market value at the time of receipt or the assessed value provided by DOE.

(h) Not applicable.

(i) Not applicable.

(j) Not applicable.

#### **§ 910.505 [Amended]**

■ 12. Section 910.505 is amended by removing “Part” and “2 CFR 200.338” and adding in their places “part” and “2 CFR 200.339,” respectively.

■ 13. Section 910.507 is revised to read as follows:

#### **§ 910.507 Compliance audits.**

(a) *Program-specific audit guide available.* In some cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal controls, compliance requirements, suggested audit procedures, and audit reporting requirements. A listing of current program-specific audit guides can be found on the OMB website in the compliance supplement, in part 8, appendix VI, Program-Specific Audit Guides, which includes a website where a copy of the guide can be obtained. When a current program-specific audit guide is available, the auditor must follow generally accepted government auditing standards (GAGAS) and the guide when performing a compliance audit.

(b) *Program-specific audit guide not available.* (1) When a program-specific audit guide is not available, the auditee and auditor must conduct the compliance audit in accordance with GAAS and GAGAS.

(2) If audited financial statements are available, for-profit recipients should submit audited financial statements to DOE as a part of the compliance audit. (If the recipient is a subsidiary for which separate financial statements are not available, the recipient may submit

the financial statements of the consolidated group.)

(3) The auditor must:

(i) Not applicable;

(ii) Obtain an understanding of internal controls and perform tests of internal controls over the DOE program consistent with the requirements of § 910.514 Scope of audit;

(iii) Perform procedures to determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of DOE awards that could have a direct and material effect on the DOE program consistent with the requirements of § 910.514 Scope of audit;

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of § 910.511 Audit findings follow-up, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding; and

(v) Report any audit findings consistent with the requirements of § 910.516 Audit findings.

(4) The auditor’s report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor’s report(s) must state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) (if available) of the DOE program is presented fairly in all material respects in accordance with the stated accounting policies;

(ii) A report on internal control related to the DOE program, which must describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the terms and conditions of DOE awards which could have a direct and material effect on the DOE program; and

(iv) A schedule of findings and questioned costs for the DOE program that includes a summary of the auditor’s results relative to the DOE program in a format consistent with § 910.515 Audit reporting, paragraph (d)(1) and findings and questioned costs consistent with the requirements of § 910.515 Audit reporting, paragraph (d)(3).

(c) *Report submission for program-specific audits.* (1) The audit must be completed and the reporting required by

paragraph (c)(2) or (3) of this section submitted within the earlier of 30 calendar days after receipt of the auditor’s report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide. Unless restricted by Federal law or regulation, the auditee must make report copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(2) When a program-specific audit guide is available, the compliance audits must be submitted (along with audited financial statements if audited financial statements are available), to the appropriate DOE Contracting Officer as well as to the DOE Office of the Chief Financial Officer.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit must consist of, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor’s report(s) described in paragraph (b)(4) of this section. The compliance audit must be submitted (along with audited financial statements if audited financial statements are available), to the appropriate DOE Contracting Officer as well as to the DOE Office of the Chief Financial Officer.

(d) *Other sections of this part may apply.* Compliance audits are subject to:

(1) Section 910.500 Purpose through § 910.503 Relation to other audit requirements, paragraph (d);

(2) Section 910.504 Frequency of audits through § 910.506 Audit costs;

(3) Section 910.508 Auditee responsibilities and § 910.509 Auditor selection;

(4) Section 910.511 Audit findings follow-up;

(5) Section 910.512 Report submission, paragraphs (e) through (h);

(6) Section 910.513 Responsibilities;

(7) Section 910.516 Audit findings and § 910.517 Audit documentation;

(8) Section 910.521 Management decision; and

(9) Other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program statutes and regulations.

#### **§ 910.513 [Amended]**

■ 14. Section 910.513 is amended:

■ a. In paragraph (c) introductory text by removing “2 CFR 200.210” and adding in its place “2 CFR 200.211”; and

- b. In paragraph (c)(3)(iii) by removing “2 CFR 200.25” and adding in its place “2 CFR 200.1.”.
- 15. Section 910.514 is revised to read as follows:

**§ 910.514 Scope of audit.**

(a) *General.* The audit must be conducted in accordance with GAGAS. The audit must cover the entire operations of the auditee, or, at the option of the auditee, such audit must include a series of audits that cover departments, agencies, and other organizational units that expended or otherwise administered DOE awards during such audit period, provided that each such audit must encompass the schedule of expenditures of DOE awards for each such department, agency, and other organizational unit, which must be considered to be a for-profit entity. The financial statements (if available) and schedule of expenditures of DOE awards must be for the same audit period.

(b) *Financial statements.* If financial statements are available, the auditor must determine whether the schedule of expenditures of DOE awards is stated fairly in all material respects in relation to the auditee’s financial statements as a whole.

(c) *Internal control.* (1) The compliance supplement provides guidance on internal controls over Federal programs based upon the guidance in Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States and the Internal Control—Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(2) In addition to the requirements of GAGAS the auditor must perform procedures to obtain an understanding of internal control over DOE programs sufficient to plan the audit to support a low assessed level of control risk of noncompliance for major programs.

(3) Except as provided in paragraph (c)(4) of this section, the auditor must:

(i) Plan the testing of internal control over compliance to support a low assessed level of control risk for the assertions relevant to the compliance requirements; and

(ii) Perform testing of internal control as planned in paragraph (c)(3)(i) of this section.

(4) When internal control over some or all of the compliance requirements are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements. However, the

auditor must report a significant deficiency or material weakness in accordance with § 910.516 Audit findings, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) *Compliance.* (1) In addition to the requirements of GAGAS, the auditor must determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that may have a direct and material effect.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor must determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor should follow the compliance supplement’s guidance for programs not included in the supplement.

(4) The compliance testing must include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient appropriate audit evidence to support an opinion on compliance.

(e) *Audit follow-up.* The auditor must follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with § 910.511 Audit findings follow-up paragraph (b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor must perform audit follow-up procedures.

(f) Not applicable.

- 16. Section 910.515 is revised to read as follows:

**§ 910.515 Audit reporting.**

The auditor’s report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor’s report(s) must state that the audit was conducted in

accordance with this part and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements (if available) are presented fairly in all material respects in accordance with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of DOE awards is fairly stated in all material respects in relation to the financial statements (if available) as a whole.

(b) A report on internal control over financial reporting and compliance with Federal statutes, regulations, and the terms and conditions of the DOE award, noncompliance with which could have a material effect on the financial statements. This report must describe the scope of testing of internal control and compliance and the results of the tests, and, where applicable, it will refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance and report and internal control over compliance. This report must describe the scope of testing of internal control over compliance, include an opinion or modified opinion as to whether the auditee complied with Federal statutes, regulations, and the terms and conditions of DOE awards which could have a direct and material effect and refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which must include the following three components:

(1) A summary of the auditor’s results, which must include:

(i) The type of report the auditor issued (if applicable) on whether the financial statements (if available) audited were prepared in accordance with GAAP (i.e., unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control were disclosed by the audit of the financial statements (if available);

(iii) A statement (if applicable) as to whether the audit disclosed any noncompliance that is material to the financial statements (if available) of the auditee;

(iv) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control over major programs were disclosed by the audit;

(v) The type of report the auditor issued on compliance (i.e., unmodified

opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings that the auditor is required to report under § 910.516 Audit findings, paragraph (a);

(vii) Not applicable.

(viii) Not applicable.

(ix) Not applicable.

(2) Findings relating to the financial Statements (if available) which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for DOE awards which must include audit findings as defined in § 910.516 Audit findings, paragraph (a).

(i) Audit findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) that relate to the same issue should be presented as a single audit finding.

(ii) Audit findings that relate to both the financial statements (if available) and DOE awards, as reported under paragraphs (d)(2) and (3) of this section, respectively, should be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

(e) Nothing in this part precludes combining of the audit reporting required by this section with the reporting required by § 910.512 Report submission, paragraph (b), when allowed by GAGAS.

■ 17. Section 910.519 is revised to read as follows:

#### **§ 910.519 Criteria for Federal program risk.**

(a) *General.* The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring that could be material to the DOE program. The auditor must consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular DOE program with auditee management and DOE.

(b) *Current and prior audit experience.* (1) Weaknesses in internal control over DOE programs would indicate higher risk. Consideration should be given to the control environment over DOE programs and such factors as the expectation of management's adherence to Federal statutes, regulations, and the terms and conditions of DOE awards and the competence and experience of personnel who administer the DOE programs.

(i) A DOE program administered under multiple internal control

structures may have higher risk. The auditor must consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the entity.

(ii) When significant parts of a DOE program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a DOE program or have not been corrected.

(3) DOE programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

(c) *Oversight exercised by DOE.* (1) Oversight exercised by DOE could be used to assess risk. For example, recent monitoring or other reviews performed by an oversight entity that disclosed no significant problems would indicate lower risk, whereas monitoring that disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs that are higher risk. OMB will provide this identification in the compliance supplement.

(d) *Inherent risk of the Federal program.* (1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have high risk for noncompliance with requirements of 2 CFR 200.430 Compensation—personal services, but otherwise be at low risk.

(2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, statutes, regulations, or the terms and conditions of Federal awards may increase risk.

(3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.

(4) Programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

■ 18. Section 910.520 is revised to read as follows:

#### **§ 910.520 Criteria for a low-risk auditee.**

An auditee that meets all of the following conditions for each of the preceding two audit periods may qualify as a low-risk auditee and be eligible for reduced audit coverage.

(a) Compliance audits were performed on an annual basis in accordance with the provisions of this Subpart, including submitting the data collection form to DOE within the timeframe specified in § 910.512 Report submission. A for-profit entity that has biennial audits does not qualify as a low-risk auditee.

(b) The auditor's opinion on whether the financial statements (if available) were prepared in accordance with GAAP, or a basis of accounting required by state law, and the auditor's in relation to opinion on the schedule of expenditures of DOE awards were unmodified.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS.

(d) The auditor did not report a substantial doubt about the auditee's ability to continue as a going concern.

(e) None of the DOE programs had audit findings from any of the following in either of the preceding two audit periods:

(1) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control as required under § 910.515 Audit reporting, paragraph (c);

(2) Not applicable.

(3) Not applicable.

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## **DEPARTMENT OF THE TREASURY**

### **Office of the Comptroller of the Currency**

#### **12 CFR Parts 21 and 163**

[Docket No. OCC-2020-0037]

RIN 1557-AE77

#### **Exemptions to Suspicious Activity Report Requirements**

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Final rule.

**SUMMARY:** This final rule modifies the requirements for national banks and