[6450-01-P]

DEPARTMENT OF ENERGY

2 CFR Part 910

RIN 1991-AC13

Cost Sharing: Energy Policy Act of 2005

AGENCY: Office of Management, Department of Energy.

ACTION: Final rule; technical amendments.

SUMMARY: The Department of Energy (DOE) is publishing this final rule to amend its current regulations regarding cost share under the Energy Policy Act of 2005 (EPACT 2005). The content of these technical amendments correspond with the provisions enacted by Congress through the Department of Energy Research and Innovation Act of 2018.

DATES: The effective date of this rule is **[*INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.**

ADDRESSES: The docket, which includes *Federal Register* notices and other supporting documents/materials, is available for review at http://www.regulations.gov. All documents in the docket are listed in the http://www.regulations.gov index.

A link to the docket web page can be found at http://www.regulations.gov. The docket web page will contain simple instructions on how to assess all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Bonnell, U.S. Department of Energy, Office of Management, at (202)-287-1747 or by e-mail at *Richard.bonnell@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

Section 108 of the Department of Energy Research and Innovation Act, Pub. L. 115-246 (Innovation Act), amended section 988 of EPACT 2005, 42 U.S.C. 16352, instituting a two-year pilot program. This pilot program began on September 28, 2018 and will extend through September 27, 2020. It exempts a "research or development activity performed by an institution of higher education or nonprofit institution" from the requirement imposed by section 988 of EPACT 2005 that the Secretary require not less than 20 percent non-Federal cost sharing for research or development activities. Therefore, the two-year pilot program provides the opportunity for DOE to exclude mandatory cost sharing without having to execute a cost share waiver for institutions of higher education and nonprofit institutions, as was previously required by section 988 of EPACT 2005. Pursuant to the Innovation Act, DOE is modifying its regulation regarding cost share by amending the text to explicitly add the exemption for institutions of higher education and nonprofit institutions from the requirement that the Secretary requires a 20 percent non–Federal cost sharing for research or development activities.

II. Summary of This Action

Title 2 CFR 910.130 concerns the cost sharing requirements imposed by section 988 of EPACT 2005, 42 U.S.C. 16352. As a result of the change imposed by the Innovation Act, DOE amends §910.130 in paragraph (b)(1) by removing "or" at the end of the paragraph; paragraph (b)(2) by adding "; or" at the end of the paragraph; and adding a new paragraph (b)(3) to read as set out in the regulatory text below.

III. Final Action

DOE has determined, pursuant to 5 U.S.C. 553(b)(B), that prior notice and an opportunity for public comment on this final rule are unnecessary. This rule inserts into the CFR, for the benefit of the public, the Innovation Act two-year pilot program exemption to the requirement that DOE impose a 20 percent non-Federal cost sharing for research or development activities performed by institutions of higher education and nonprofit entities. The statutory exemption is for the two-year period beginning September 28, 2018 ending September 27, 2020. DOE exercises no discretion in amending its regulations to implement this statutory directive. DOE, therefore, finds that good cause exists to waive prior notice and an opportunity to comment for this rulemaking. For the same reasons, DOE, pursuant to 5 U.S.C. 553(d)(3), finds that good cause exists for making this final rule effective upon publication in the *Federal Register*.

IV. Procedural Requirements

A. Review Under Executive Order 12866, "Regulatory Planning and Review"

This final rule is a not a "significant regulatory action" under the criteria set out in section 3(f) of Executive Order 12866, "Regulatory Planning and Review." 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review by the Office of Information and Regulatory Affairs ("OIRA") in the Office of Management and Budget ("OMB").

B. Review Under Executive Orders 13771 and 13777.

On January 30, 2017, the President issued Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs." That Order stated the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. The Order stated it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. This final rule is expected to be an E.O. 13771 deregulatory action.

Additionally, on February 24, 2017, the President issued Executive Order 13777, "Enforcing the Regulatory Reform Agenda." The Order required the head of each agency designate an agency official as its Regulatory Reform Officer (RRO). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force must attempt to identify regulations that:

(i) Eliminate jobs, or inhibit job creation;

(ii) Are outdated, unnecessary, or ineffective;

(iii) Impose costs that exceed benefits;

(iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(v) Are inconsistent with the requirements of Information Quality Act, or the guidance issued pursuant to that Act, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or

(vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

DOE concludes that this final rule is consistent with the directives set forth in these executive orders. The Innovation Act amends EPACT 2005 to exempt certain entities from the 20 percent cost share requirement for a two-year period ending September 27, 2020. The changes reduce the requirements of EPACT 2005 by permitting DOE to exclude mandatory cost sharing for universities and nonprofit institutions. Therefore, this final rule is an Executive Order 13771 deregulatory action.

C. Review Under the 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.

The Department has made its procedures and policies available on the Office of General Counsel's website: *http://energy.gov/gc/office-general-counsel*. This rule revises the Code of Federal Regulations to incorporate, without substantive change, statutorily-imposed definitional changes affecting coverage under current energy conservation standards, applicable timelines related to certain rulemaking requirements, and related provisions prescribed by Public Law 115-78 and Public Law 115-115, along with a separate correction to reflect the current language found in the statute. Because this is a technical amendment for which a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply to this rulemaking.

D. Review Under the Paperwork Reduction Act of 1995

This rulemaking imposes no new information or record keeping requirements. Accordingly, Office of Management and Budget clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq*.)

E. Review Under the National Environmental Policy Act of 1969

In this rule, DOE is incorporating requirements prescribed by the Innovation Act. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq*.) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule is strictly procedural and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A6 under 10 CFR part 1021, subpart D, which applies to procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 13132, "Federalism"

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. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has determined that this rule does not limit the policymaking discretion of the States. No further action is required by Executive Order 13132.

G. Review Under Executive Order 12988, "Civil Justice Reform"

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 Federal 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. 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, this final rule meets the relevant standards of Executive Order 12988.

H. Review Under the 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 a proposed regulatory action 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)) The 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 proposed "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 small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov).* This final rule contains neither an intergovernmental mandate nor a

mandate that may result in the expenditure of $100 million or more in any year, so these requirements under the Unfunded Mandates Reform Act do not apply.

I. Review Under the 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 final 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.

J. Review Under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights"

The Department has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

K. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of 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 final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

L. Review Under Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use"

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 proposed 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 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 final rule, which incorporates recently-enacted statutory provisions into DOE's regulations, would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action.

M. 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).

V. 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.

Signed in Washington, DC, on March 26, 2019.

_____

John R. Bashista,
Director,
Office of Acquisition Management,
Department of Energy.

_____

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

For the reasons set forth in the preamble, DOE hereby amends chapter IX, subchapter B, of title 2 of the Code of Federal Regulations as set forth below:

PART 910 – UNIFORM ADMINISTRATION 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 910.130 is amended by:

a. Removing the word "or" at the end of paragraph (b)(1).

b. Removing the period at the end of paragraph (b)(2) and adding in its place "; or".

c. Adding paragraph (b)(3).

The addition reads as follows:

§910.130 Cost sharing (EPACT).

***** ***** ***** ***** *****

(b) * * *

(3) The research or development activity is to be performed by an institution of higher education or nonprofit institution (as defined in section 4 of the Stevenson–Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703)) during the two-year period ending September 27, 2020.

* * * * *

[FR Doc. 2019-06263 Filed: 3/29/2019 8:45 am; Publication Date: 4/1/2019]