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DEPARTMENT OF ENERGY

2 CFR Part 910

RIN 1991–AC15

Financial Assistance Regulations—Deviation Authority

AGENCY: Office of Acquisition Management, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is adopting the interim final rule published on June 1, 2020 as final, without change. This final rule amends DOE's Financial Assistance Regulations to authorize deviations, when necessary to achieve program objectives; necessary to conserve public funds; otherwise essential to the public interest; or necessary to achieve equity.

DATES: This rulemaking is effective on October 14, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. John Harris, U.S. Department of Energy, Office of Acquisition Management, at (202) 287–1471 or by email at *John.Harris@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of the Final Rule

This final rule amends DOE's Financial Assistance Regulations at 2 CFR part 910, to add deviation authority to provide the Director for the Office of Acquisition Management, for DOE actions, and the Deputy Associate Administrator for the Office of Acquisition and Project Management for the National Nuclear Security Administration (NNSA), for NNSA actions, or designee the authority to authorize deviations, when (1) necessary to achieve program objectives; (2) necessary to conserve public funds; (3) otherwise essential to the public interest; or (4) necessary to achieve equity.

The Department of Energy (DOE) published an interim final rule making the same amendments finalized in this final rule, and provided an opportunity for public comment, on June 1, 2020, 85 FR 32977. DOE received no public comments on the interim final rule. In this final rule, DOE adopts the interim final rule as final, without change.

This final rule reinstates deviation authority in 2 CFR part 910 to give DOE the authority to deviate from its financial assistance regulations. This deviation authority was originally in 10 CFR 600.4 but was not carried over in 2 CFR part 910 when DOE amended its Financial Assistance Regulations by adopting the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as provided in OMB Guidance in 2 CFR part 200. 79 FR 75867, 76024 (Dec. 19, 2014). In addition to adopting these requirements in its regulations, DOE amended its regulations to supplement the OMB Guidance. DOE did not, however, include in its supplementary amendments authority for the Department to deviate or approve exceptions to its regulations in 2 CFR part 910.

Previous to the adoption and addition of the regulations above, DOE had the authority to deviate from its financial assistance regulations. See 10 CFR 600.4(c)(2)(i) and (ii). This final rule reinstates deviation authority that was originally in 10 CFR 600.4 to give DOE/NNSA authority to approve a deviation when the conditions above have been met and as authorized by the designated officials.

II. Procedural Requirements

A. Review Under Executive Orders 12866 and 13563

This regulatory action 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 action was not subject to review under that Executive order 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 that 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 that it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.

Additionally, on February 24, 2017, the President issued Executive Order 13777, ''Enforcing the Regulatory Reform Agenda.'' The order required the head of each agency to 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 the Information Quality Act, or the guidance issued pursuant to that Act, particularly 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. This final rule reinstates DOE's authority under 2 CFR part 910 to deviate from its financial assistance regulations under specified circumstances as was originally provided under 10 CFR 600.4.

C. Review Under 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. Because a notice of proposed rulemaking is not required for this action pursuant to 5 U.S.C. 553, or any other law, no regulatory flexibility analysis has been prepared for this final rule.

D. Review Under the Paperwork Reduction Act

This final rule imposes no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR part 1320 Appendix A.1) (PRA). DOE's associated information collection has been approved under OMB Control No. 1910–4100.

E. Review Under the National Environmental Policy Act

DOE has determined that this final rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act (42 U.S.C. 4321 *et seq.*)(NEPA) at paragraphs A5 and A6 of Appendix A to Subpart D, 10 CFR part 1021. Categorical exclusion A5 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. Categorical exclusion A6 applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. 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.

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 United States 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 if 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.

G. Review Under Executive Order 13132

Executive Order 13132, (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. The Executive Order requires agencies to have an accountability 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 examined this final rule and has determined that it does not preempt State law and does 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.

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 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 ''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. DOE's policy statement is also available at *http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.* UMRA sections 202 and 205 do not apply to this action because they apply only to rules for which a general notice of proposed rulemaking is published. Nevertheless, DOE has determined that this final rule does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by the private sector.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Public Law 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rulemaking or policy that may affect family well-being. This rulemaking will

have no 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 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), of the Office of Management and Budget (OMB), 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, (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 is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. 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 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 the Administrative Procedure Act

In accordance with 5 U.S.C. 553(b), the Administrative Procedure Act, DOE generally publishes a proposed rule and solicits public comment on it before issuing the rule in final. DOE also generally provides at least a 30-day delay in effective date for final rules pursuant to 5 U.S.C. 553(d). This rulemaking, as a matter relating to grants, is exempt from the requirement to publish a notice of proposed rulemaking under 5 U.S.C. 553(a)(2).

DOE, however, published this rule as an interim final rule on June 1, 2020 and allowed for public comments sixty (60) days after date of publication in the **Federal Register**. DOE received no comments in response to its publication of the interim final rule. DOE is waiving the 30-day delay in effective date pursuant to 5 U.S.C. 553(a)(2).

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this final rule prior to its effective date. The report will state that it has been determined that this final rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

N. Approval by the Office of the Secretary of Energy

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 August 28, 2020, by 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 Administrator, National Nuclear Security Administration, and John R. Bashista, Director, Office of Acquisition Management and Senior Procurement Executive, Department of Energy, pursuant to delegated authority from the Secretary of Energy. These documents with the original signature and date are maintained by DOE/NNSA. 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 September 8, 2020.

Treena V. Garrett,

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

Accordingly, the interim rule amending Chapter 9 of Title 2 of the Code of Federal Regulations which was published at 85 FR 32977 on June 1, 2020, is adopted as final without change.

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BILLING CODE 6450–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 722

RIN 3133–AF17

Real Estate Appraisals

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is adopting as final an interim final rule to temporarily amend its regulations requiring all federally insured credit unions to provide appraisals of real estate for certain real estate related transactions. The final rule defers the requirement to obtain an appraisal or written estimate of market value for up to 120 days following the closing of certain residential and commercial real estate transactions, excluding transactions for acquisition, development, and construction of real estate. Credit unions should make best efforts to obtain a credible estimate of the value of real property collateral before closing the loan, and otherwise underwrite loans consistent with safety and soundness principles. The final rule allows credit unions to expeditiously extend liquidity to creditworthy households and businesses in light of recent strains on the U.S. economy as a result of the coronavirus disease 2019 (COVID event). The final rule adopts the interim final rule without change. The final rule is similar to a recent final rule issued by the Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (FRB); and Federal Deposit Insurance Corporation (FDIC) (collectively, the other banking agencies) that also defers the requirement to obtain an appraisal or evaluation for up to 120 days following the closing of a transaction for certain residential and commercial real estate transactions.