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(6) Used or copies for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the agreement.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice

Use, reproduction, or disclosure is subject to restrictions set forth in Agreement No. _____ (and subaward/contract _____, if appropriate) with _____ (name of Recipient and subrecipient/contractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Recipient includes the following statement with such copyright notice: “Unpublished—rights reserved under the Copyright Laws of the United States.”

(End of clause)

[79 FR 76024, Dec. 19, 2014, as amended at 87 FR 15320, Mar. 18, 2022]

Subpart E—Cost Principles

§ 910.401 Application to M&O's.

In accordance with 48 CFR 970.3002-1 and 970.3101-00-70, a Federally Funded Research Center (FFRDC) which is also a designated DOE Management and Operating (M&O) contract must follow the cost accounting standards (CAS) contained in 48 CFR part 30 and must follow the appropriate Cost Principles contained in 48 CFR part 31.

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Subpart F—Audit Requirements for For-Profit Entities

GENERAL

§ 910.500 Purpose.

This Part follows the same format as 2 CFR 200.500. We purposely did not renumber the paragraphs within this part so that auditors and recipients can compare this to the single audit requirements contained in 2 CFR 200.500.

AUDITS

§ 910.501 Audit requirements.

(a) *Audit required.* A for-profit entity that expends \$750,000 or more during the non-Federal entity's fiscal year in DOE awards must have a compliance audit conducted for that year in accordance with the provisions of this Part.

(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;

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(3) If a for-profit entity receives one or more awards from DOE with a sum total of expenditures less than \$750,000, no compliance audit is required;

(4) If the for-profit entity is a sub-recipient, 2 CFR 200.501(h) requires that the pass-through entity establish appropriate monitoring and controls to ensure the sub-recipient complies with award requirements. These compliance audits must be conducted in accordance with 2 CFR 200.514 Scope of audit

(c) *Program-specific audit election.* Not applicable.

(d) *Exemption when Federal awards expended are less than \$750,000.* A for-profit entity that expends less than \$750,000 during the for-profit's fiscal year in DOE awards is exempt from DOE audit requirements for that year, except as noted in §910.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(e) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

(f) *Subrecipients and Contractors.* An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. The provisions of 2 CFR 200.331, Subrecipient and contractor determinations should be considered in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

(g) *Compliance responsibility for contractors.* In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are struc-

tured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

(h) *For-profit subrecipient.* Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients to DOE Federal award requirements. The agreement with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also 2 CFR 200.332, Requirements for pass-through entities.

[79 FR 76024, Dec. 19, 2014, as amended at 80 FR 57511, Sept. 24, 2015; 87 FR 15320, Mar. 18, 2022]

§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

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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.

[87 FR 15320, Mar. 18, 2022]

§910.503 Relation to other audit requirements.

(a) An audit conducted in accordance with this Part must be in lieu of any financial audit of DOE awards which a for-profit entity is required to undergo under any other Federal statute or regulation. To the extent that such audit provides DOE with the information it requires to carry out its responsibilities under Federal statute or regulation, DOE must rely upon and use that information.

(b) Notwithstanding paragraph (a) of this section, DOE, Inspectors General, or GAO may conduct or arrange for additional audits which are necessary to

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carry out its responsibilities under Federal statute or regulation. The provisions of this Part do not authorize any for-profit entity to constrain, in any manner, DOE from carrying out or arranging for such additional audits, except that DOE must plan such audits to not be duplicative of other audits of DOE. Any additional audits must be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed, by other auditors.

(c) The provisions of this Part do not limit the authority of DOE to conduct, or arrange for the conduct of, audits and evaluations of DOE awards, nor limit the authority of any Federal agency Inspector General or other Federal official.

(d) DOE to pay for additional audits. If DOE conducts or arranges for additional audits it must, consistent with other applicable Federal statutes and regulations, arrange for funding the full cost of such additional audits.

(e) Not applicable.

§910.504 Frequency of audits.

Audits required by this Part must be performed annually.

(a) Not applicable.

(b) Not applicable.

§910.505 Sanctions.

In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, DOE and pass-through entities must take appropriate action as provided in 2 CFR 200.339, Remedies for noncompliance.

[79 FR 76024, Dec. 19, 2014, as amended at 87 FR 15321, Mar. 18, 2022]

§910.506 Audit costs.

See 2 CFR 200.425 Audit services.

§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