

and pests, Reporting and recordkeeping requirements.

Dated: March 12, 2002.

**Peter Caulkins,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

**§ 180.434 [Amended]**

2. In § 180.434, amend the table in paragraph (b) by revising the “Expiration/revocation date” “12/31/01” for the commodity “Blueberries” to read “12/31/03.”

[FR Doc. 02–7494 Filed 3–27–02; 8:45 am]

**BILLING CODE 6560–50–S**

**DEPARTMENT OF ENERGY**

**48 CFR Parts 902, 904, 909, 913, 914, 915, 916, 917, 925, 931, 933, 950, 952, and 970**

**RIN 1991–AB51**

**Acquisition Regulation: Technical and Administrative Amendments**

**AGENCY:** Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to make technical and administrative changes to the regulation. This rulemaking incorporates technical and administrative changes to the DEAR that include: expanding definitions to distinguish the National Nuclear Security Administration (NNSA) as an agency within the DOE; acknowledging the Administrator of the NNSA as an agency head; and recognizing the Senior Procurement Executives for DOE, the NNSA, and the Federal Energy Regulatory Commission (FERC). Additional changes include removing obsolete coverage; renumbering and updating certain parts of the regulation to conform with the Federal Acquisition Regulation (FAR); and correcting typographical errors. These changes have no significant impact on non-agency persons such as contractors or offerors.

**EFFECTIVE DATE:** This final rule will be effective April 29, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Denise P. Wright, Office of Procurement and Assistance Policy (ME–61), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone 202–586–6217.

**SUPPLEMENTARY INFORMATION:**

- I. Explanation of Revisions.
- II. Procedural Requirements.
  - A. Review Under Executive Order 12866
  - B. Review Under Executive Order 12988
  - C. Review Under the Regulatory Flexibility Act
  - D. Review Under the Paperwork Reduction Act
  - E. Review Under Executive Order 13132
  - F. Review Under the National Environmental Policy Act
  - G. Review Under the Unfunded Mandates Reform Act of 1995
  - H. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

**I. Explanation of Revisions**

1. Section 902.200, Definitions Clause, is amended to the definitions for “Head of Agency” and “DOE” and to add a definition for “Senior Procurement Executive.” These changes are made pursuant to the establishment of the NNSA under the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65), sections 3202 and 3212 of which provide that the Under Secretary for Nuclear Security shall serve as the Administrator for Nuclear Security and head of the NNSA and carry out the functions as specified in Section 3212. The clause is further amended to correct typographical errors.

2. Section 904.404, Contract clause, paragraph (4) is amended to correct typographical errors.

3. Section 904.7102, Waiver by the Secretary, is amended to reflect organizational changes within the DOE.

4-5. Part 909, Contractor Qualifications, 909.403 Definitions, is amended to revise the designation for “Debarring Official” and “Suspending Official” for DOE, the NNSA, and the FERC to be the Director, Office of Procurement and Assistance Management, DOE, or designee.

6. Part 913, Simplified Acquisition Procedures, 913.3 Fast Payment Procedure, 913.4 Imprest Fund, and 913.5 Purchase Orders, are amended to conform to the FAR.

7. Section 914.406, Mistake in bids, 914.406–3 Other mistakes disclosed before award, and 914.406–4 Mistakes after award, are amended. The changes are made to conform to current FAR numbering.

8. Section 915.606, Agency procedures. (DOE coverage-paragraph (b)) is amended. The location for

submission of unsolicited proposals is changed. The change is made to ensure consistency in current DOE procedure.

9. Section 916.6, Time and Materials, Labor Hour, and Letter Contracts, is amended to incorporate an approved class deviation to the requirement at 48 CFR 16.601, paragraph (c), for a determination and findings documenting the suitability of a time and materials contract.

10. Section 917.602, Policy, is amended to clarify that only the Secretary may authorize non-competitive awards and extensions of management and operating contracts pursuant to Section 301 of Public Law 106–377.

11. Section 925.901, Omission of the audit, is amended to reflect organizational changes within the DOE.

12. Section 931.205–19, Insurance and Indemnification, is amended to revise the reference to the prescribed contract clause.

13. Section 933.103, Protests to the agency, is amended to reflect organizational changes within the DOE.

14. Section 950.104, Reports, is deleted current FAR coverage is sufficient.

15. Section 952.202–1, Definitions, is amended to revise the terms “Head of Agency” and “DOE,” and to add a definition for “Senior Procurement Executive.”

16. Sections 952.208–7, 952.217–70, 952.227–13, 952.233–2, 952.236–72, and 952.250–70 are revised to update incorrect references.

17. Section 952.231–71, Insurance-Litigation and Claims, is added to clarify coverage for certain non-management and operating contracts.

18. Section 952.236–70, Administrative terms for architect-engineer contracts, is removed in its entirety. The coverage is determined to be obsolete.

19. Section 952.249–70, Termination clause for cost-reimbursement architect-engineer contracts, is removed. The current FAR coverage at 52.249–6, Termination (Cost-Reimbursement), is sufficient.

20. Section 970.3102–05–53, Preexisting conditions, is amended to renumber as 970.3102–05–70 since the coverage is unique to DOE and does not supplement the FAR.

21. Section 970.5228–1, Insurance-litigation and claims, is amended to revise paragraphs (e)(2), (h), and (j)(4) to correct references.

**II. Procedural Requirements**

*A. Review Under Executive Order 12866*

Today’s 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, today’s action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

#### B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

#### 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 must be proposed for public comment and that is likely to have significant economic impact on a substantial number of small entities. There is no legal requirement to propose today’s rule for public comment, and, therefore, the Regulatory Flexibility Act does not apply to this rulemaking proceeding.

#### D. Review Under the Paperwork Reduction Act

No new collection of information or recordkeeping requirement is imposed by this rulemaking. Accordingly, no OMB clearance is required subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

#### E. 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. DOE has examined today’s 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.

#### F. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), the Department of Energy has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to appendix A of subpart D of 10 CFR part 1021, National Environmental Policy Act Implementing Procedures (57 FR 15122, 15152, April 24, 1992) (Categorical Exclusion A6), the Department of Energy has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

#### G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 requires each Agency to assess the effects of Federal regulatory action on State, local, and tribal governments and the private sector. The Department has determined that today’s regulatory action does not impose a Federal mandate on State, local, or tribal governments or on the private sector.

#### H. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department of Energy will report to Congress promulgation of the 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(3).

#### List of Subjects in 48 CFR Parts 902, 904, 909, 913, 914, 915, 916, 917, 925, 931, 933, 950, 952, and 970

Government procurement.

Issued in Washington, DC, on March 20, 2002.

**Spencer Abraham,**  
*Secretary of Energy.*

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

1. The authority citation for Parts 902, 904, 909, 914, 915, 916, 917, 925, 931, 933, 950, and 952 is revised to read as follows:

**Authority:** 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418(b); and 50 U.S.C. 2401 *et seq.*

#### PART 902—DEFINITIONS OF WORDS AND TERMS

2. Section 902.200 is revised to read as follows:

##### 902.200 Definitions clause.

As prescribed by FAR subpart 2.2, insert the clause at FAR 52.202–1, Definitions, but modify it to limit the definition at paragraph (a) of the clause, to encompass only the Secretary, Deputy Secretary, or the Under Secretaries of the Department of Energy, and the Chairman, Federal Energy Regulatory Commission. The contracting officer shall also add paragraphs (h) and (i) or (g) and (h) if Alternate I of the FAR clause is used. Paragraph (h) defines “DOE” as meaning the United States Department of Energy, “FERC” as meaning the Federal Energy Regulatory Commission, and “NNSA” as meaning the National Nuclear Security Administration. Paragraph (i) identifies the Senior Procurement Executive, DOE, as the Director, Office of Procurement and Assistance Management; the Senior Procurement Executive, NNSA, as the Administrator for Nuclear Security, NNSA; and the Senior Procurement Executive, FERC, as the Chairman, Federal Energy Regulatory Commission.

**PART 904—ADMINISTRATIVE MATTERS****904.4 [Amended]**

3. Section 904.404 is amended as follows:

a. In paragraph (4) remove “should” and add in its place “may”.

**904.7102 [Amended]**

4. Section 904.7102 is amended in paragraph (b) by removing “Office of Clearance and Support” and adding in its place “Office of Contract Management”

**PART 909—CONTRACTOR QUALIFICATIONS**

5.–6. Section 909.403 is revised to read as follows:

**909.403 Definitions.**

In addition to the definitions set forth at FAR 9.403, the following definitions apply to this subpart:

*Debarring Official.* The Debarring Official for both DOE and NNSA is the Director, Office of Procurement and Assistance Management, DOE, or designee.

*Suspending Official.* The Suspending Official for both DOE and NNSA is the Director, Office of Procurement and Assistance Management, DOE, or designee.

7. Revise Part 913 to read as follows:

**PART 913—SIMPLIFIED ACQUISITION PROCEDURES****Subpart 913.3—Simplified Acquisition Methods**

Sec.  
913.307 Forms

**Subpart 913.4—Fast Payment Procedure**

913.402 General.

**Authority:** 42 U.S.C. 7101 *et seq.*, 41 U.S.C. 418(b); 50 U.S.C. 2401 *et seq.*

**Subpart 913.3—Simplified Acquisition Methods****913.307 (b)**

(b) Optional Forms 347 and 348, or DOE F 4250.3, may be used for purchase orders using simplified acquisition procedures. These forms shall not be used as the contractor’s invoice. See 48 CFR 12.204 regarding the use of SF-1449 for the acquisition of commercial items using simplified acquisition procedures.

**Subpart 913.4—Fast Payment Procedure****913.402 General.**

The fast payment procedure delineated in FAR subpart 13.4 is not to be used by DOE.

**PART 914—SEALED BIDDING****914.4 [Amended]**

8. Redesignate sections 914.406, 914.406–3, and 914.406–4 as sections 914.407, 914.407–3, and 914.407–4, respectively.

9. Redesignated section 914.407–3 is amended in paragraph (e) as follows:

a. In first sentence remove “14.406–3(e)” and “14.406–3” and add in their place “14.407–3(e)” and “14.407–3,” respectively.

b. In the second sentence remove “14.406–3” and add in its place “14.407–3.”

10. Redesignated section 914.407–4 is amended as follows:

a. In the first sentence remove “14.406–4” and add in its place “14.407–4”

b. In the second sentence remove “14.406–4(e)” and add in its place “14.407–4(e).”

**PART 915—CONTRACTING BY NEGOTIATION**

11. Section 915.606 is amended by removing “Office of Procurement and Assistance, Washington, DC 20585”, and adding in its place “U.S. Department of Energy, National Energy Technology Laboratory (PGH), Pittsburgh, PA 15236–0940.”

**PART 916—TYPES OF CONTRACTS**

12. Subpart 916.6 is added to read as follows:

**Subpart 916.6—Time and Materials, Labor Hour, and Letter Contracts****916.601 Time and Materials (DOE coverage (c)).**

(c) Limitations. The Contracting Officer is not required to execute a separate Determination and Findings as required by FAR 16.601 3(c) if other file documentation adequately justifies contract actions.

13. Section 917.602 is amended in paragraph (c) by removing “Head of the Agency” and adding in its place “Secretary.”

**PART 925—FOREIGN ACQUISITION****925.901 [Amended]**

14. Section 925.901 is amended in paragraph (c) by removing “Office of

Clearance and Support” and adding in its place “Office of Contract Management.”

**PART 931—CONTRACT COST PRINCIPLES AND PROCEDURES**

15. Section 931.205–19, paragraph (h) is revised to read as follows:

**931.205–19 Insurance and Indemnification. (DOE coverage-paragraph (h)).**

(h) The contracting officer shall insert the clause at 48 CFR 952.231–71 in non-management and operating cost reimbursement contracts involving work performed at facilities owned or leased by the Department exceeding \$100,000,000.

**PART 933—PROTESTS, DISPUTES, AND APPEALS****Subpart 933.1—Protests****933.103 [Amended]**

16. Section 933.103 is amended in paragraphs (f)(2), (j), and (k) by removing “Office of Clearance and Support” and adding in its place “Office of Contract Management.”

**PART 950—EXTRAORDINARY CONTRACTUAL ACTIONS****950.104 [Removed]**

17. Section 950.104 is removed.

**PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

18. Section 952.202–1 is revised to read as follows:

**952.202–1 Definitions.**

(a) As prescribed in 902.200, insert the clause at FAR 52.202–1 in all contracts. The contracting officer shall substitute the following for paragraph (a) of the clause.

(a) *Head of Agency* means: (i) The Secretary; (ii) Deputy Secretary; (iii) Under Secretaries of the Department of Energy and (iii) the Chairman, Federal Energy Regulatory Commission.

(b) The following shall be added as paragraphs (h) and (i) except that they will be designated paragraphs (g) and (h) if Alternate I of the FAR clause is used.

(h) The term DOE means the Department of Energy, FERC means the Federal Energy Regulatory Commission, and NNSA means the National Nuclear Security Administration.

(i) The term Senior Procurement Executive means, for DOE:

Department of Energy—Director, Office of Procurement and Assistance Management, DOE;

National Nuclear Security Administration—Administrator for Nuclear Security, NNSA; and

Federal Energy Regulatory Commission—Chairman, FERC.

language indicated in the middle column and add in its place the language in the right column.

19. In the table below, for each section indicated in the left column remove the

Section	Remove	Add
952.208–7, Introductory Text .....	908.7101–7 .....	908.1104
952.217–70, Introductory Text .....	917.7403(c) .....	917.7403
952.227–13, Introductory Text .....	927.303(c) .....	927.303(a)(1)
952.233–2, Introductory Text .....	Clause .....	Provision
952.236–72, Introductory Text .....	936.202(j) .....	936.202(h)
952.250–70, Note II .....	(date to be that of the Final Rule resulting from the proposed rule herein.	June 12, 1996

20. Section 952.231–71 is added to read as follows:

**952.231–71 Insurance-litigation and claims.**

As prescribed in 48 CFR 931.205–19, insert the following clause in applicable non-management and operating contracts:

**Insurance-Litigation and Claims (APRIL 2002)**

(a) The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(b) The contractor shall give the contracting officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract. Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action. The contractor, with the prior written authorization of the contracting officer, shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(c)(1) Except as provided in paragraph (c)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the contracting officer.

(2) The contractor may, with the approval of the contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.

(3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the contracting officer may require or approve and with sureties and insurers approved by the contracting officer.

(d) The contractor agrees to submit for the contracting officer's approval, to the extent and in the manner required by the contracting officer, any other bonds and insurance that are maintained by the

contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the contracting officer.

(e) Except as provided in paragraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed—

(1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and

(2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or limitation of funds clause of this contract.

(f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(g) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)—

(1) Which are otherwise unallowable by law or the provisions of this contract; or

(2) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the contracting officer.

(h) In addition to the cost reimbursement limitations contained in 48 CFR part 31, as supplemented in 48 CFR part 931, and notwithstanding any

other provision of this contract, the contractor's liabilities to third persons, including employees but excluding costs incidental to workers' compensation actions (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements), shall not be reimbursed if such liabilities were caused by contractor managerial personnel's—

- (1) Willful misconduct,
- (2) Lack of good faith, or
- (3) Failure to exercise prudent

business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.

(i) The burden of proof shall be upon the contractor to establish that costs covered by paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the contracting officer challenges a specific cost or informs the contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by contractor managerial personnel.

(j)(1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the contractor so as to be separately identifiable. If the contracting officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.

(2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

(3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities

referred to in paragraph (g)(1) of this clause is not allowable.

(4) The term "contractor's managerial personnel" is defined in the Property clause in this contract.

(k) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.

(l) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall—

(1) Immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Department representatives to collaborate with: in-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and

(3) Authorize Department representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department contractor, the Department may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's own expense, be associated with the Department representatives in any such claim or litigation. (End of Clause)

#### 952.236-70 [Removed]

21. Section 952.236-70 is removed.

#### 952.249-70 [Removed]

22. Section 952.249-70 is removed.

### PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

23. The authority citation for part 970 continues to read as follows:

**Authority:** 42 U.S.C. 2201; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

24. 970.3102-05-53 is redesignated as 970.3102-05-70.

25. 970.5228-1 is amended by revising paragraphs (e)(2), (h) introductory language, and (j)(4) to read as follows:

#### 970.5228-1 Insurance-litigation and claims.

\* \* \* \* \*

(e) \* \* \*

(2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the clause of this contract entitled, "Obligation of Funds."

\* \* \* \* \*

(h) In addition to the cost reimbursement limitations contained in 48 CFR part 31, as supplemented by 48 CFR 970.31, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons, including employees but excluding costs incidental to worker's compensation actions, (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements) shall not be reimbursed if such liabilities were caused by contractor managerial personnel's—

\* \* \* \* \*

(j) \* \* \*

(4) The term "contractor's managerial personnel" is defined in clause paragraph (j) of 48 CFR 970.5245-1.

\* \* \* \* \*

[FR Doc. 02-7300 Filed 3-27-02; 8:45 am]

BILLING CODE 6450-01-P

### DEPARTMENT OF ENERGY

#### 48 CFR Parts 904, 952, and 970

RIN 1991-AB42

#### Acquisition Regulation: Security Amendments to Implement Executive Order 12829, National Industrial Security Program

**AGENCY:** Department of Energy (DOE).

**ACTION:** Interim final rule.

**SUMMARY:** The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to implement Executive Order 12829, National Industrial Security Program, dated January 6, 1993, and Section 828 of the National Defense Authorization Act for Fiscal Year 1997, and to bring the DEAR into conformance with existing practices. DOE is making these changes to its security system to ensure a uniform and simplified security system for contractors and others requiring access authorization for classified national security or restricted atomic energy information. The changes also include a provision to allow the Secretary of Energy to waive the prohibition on award of a national security contract to an entity controlled by a foreign government if an environmental restoration requirement is involved.

**EFFECTIVE DATE:** This interim final rule will be effective May 28, 2002.

**Comment date:** Comments should be submitted on or before April 29, 2002.

**ADDRESSES:** Mail comments to Richard Langston, Office of Procurement and Assistance Policy (MA-51), U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585.

Submit electronic comments to richard.langston@pr.doe.gov.

#### FOR FURTHER INFORMATION CONTACT:

Richard B. Langston, Office of Procurement and Assistance Policy (MA-51), 202-586-8247 or by electronic mail addressed as above.

#### SUPPLEMENTARY INFORMATION:

I. Background

II. Explanation of Revisions

III. Procedural Requirements

A. Review Under Executive Order 12866.

B. Review Under Executive Order 12988.

C. Review Under the Regulatory Flexibility Act.

D. Review Under the Paperwork Reduction Act.

E. Review Under the National Environmental Policy Act.

F. Review Under Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995.

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

I. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996.

J. Review Under Executive Order 13211.

#### I. Background

Executive Order 12829, National Industrial Security Program (January 6, 1993), requires a uniform system for classifying, safeguarding, and declassifying national security information. DOE is making these changes to its security system to ensure a uniform and simplified security system for contractors and others requiring access authorization for classified national security or restricted atomic energy information. The Federal agencies are adopting the National Industrial Security Program (NISIP) as the uniform Federal industrial security program within the limitations of their separate statutory requirements. Among the more significant features of the new rule is the use of a Standard Form 328, Certificate Pertaining to Foreign Interests, to gather information relative to foreign ownership, control or influence. Previously, DOE used a separate questionnaire of its own with more and somewhat different questions. Now all agencies will collect the same information. This feature will result in the greatest savings for both contractors and Federal agencies because agencies