

not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by June 7, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2006-0314, by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. E-mail: [morris.makeba@epa.gov](mailto:morris.makeba@epa.gov).

C. Mail: EPA-R03-OAR-2006-0314, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R03-OAR-2006-0314. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the

<http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Catherine L. Magliocchetti, (215) 814-2174, or by e-mail at [magliocchetti.catherine@epa.gov](mailto:magliocchetti.catherine@epa.gov).

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the title, "Approval and Promulgation of Air Quality Implementation Plans; Maryland; Amendments to Stage II Vapor Recovery at Gasoline Dispensing Facilities," that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: April 24, 2006.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. 06-4198 Filed 5-5-06; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF ENERGY

### 48 CFR Part 970

#### RIN 1991-AB67

#### Acquisition Regulation: Implementation of DOE's Cooperative Audit Strategy for Its Management and Operating Contracts

**AGENCY:** Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Energy (DOE) is proposing to amend the Department of Energy Acquisition Regulation (DEAR) to revise and expand

policy and requirements for contractor internal audits, through the use of DOE's Cooperative Audit Strategy. The amendments would ensure that internal contractor audits are conducted in a manner that ensures reliability.

**DATES:** Comments should be submitted on or before July 7, 2006.

**ADDRESSES:** You may submit comments, identified by RIN number 1991-AB67, by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **E-mail:** [helen.oxberger@hq.doe.gov](mailto:helen.oxberger@hq.doe.gov). Include RIN number 1991-AB67 in the subject line of the message.

- **Mail:** Helen Oxberger, Mail Code MA-61, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Helen Oxberger, (202) 287-1332.

#### SUPPLEMENTARY INFORMATION:

I. Background

II. Section-by-Section Analysis

III. Procedural Requirements

A. Review Under Executive Order 12866

B. Review Under the Regulatory Flexibility Act

C. Review Under the Paperwork Reduction Act

D. Review Under the National Environmental Policy Act

E. Review Under Executive Order 13132

F. Review Under Executive Order 12988

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 Treasury and General Government Appropriations Act, 2001

J. Review Under Executive Order 13211

K. Approval by the Office of the Secretary

#### I. Background

The Department contracts for the management and operation of its Government owned or controlled research, development, special production, or testing facilities through the use of management and operating (M&O) contracts. The Department historically expends approximately 80% of its annual appropriations through these M&O prime contracts. Thus, it is imperative for the Department to develop approaches which permit oversight of M&O expenditures in order for the Department to satisfy its oversight responsibility and to ensure that DOE funds are expended on allowable and reasonable costs.

The creation and maintenance of rigorous business, financial, and accounting systems by contractors are crucial to assuring the integrity and reliability of the cost data used by the DOE's Chief Financial Officer (CFO), the Inspector General (IG), and contracting

officers (COs). To ensure the reliability of these systems, DOE requires some of its contractors to maintain an internal audit activity, that is, an internal audit organization, which is responsible for: (i) Performing operational and financial audits including incurred cost audits, and (ii) assessing the adequacy of management control systems.

The Cooperative Audit Strategy is a program that the IG, partnering with contractors' internal audit groups, the CFO, and the Office of DOE Procurement and Assistance Management, developed and implemented in October 1992 to maximize the overall audit coverage of M&O contractors' operations and to fulfill the IG's responsibility for auditing the costs incurred by major facilities contractors. The Cooperative Audit Strategy enhances the DOE's efficient use of available audit resources by allowing the IG to rely on the work of contractors' internal audit organization. The IG has adopted the Cooperative Audit Strategy at most major contractor locations.

The success of the Cooperative Audit Strategy depends on the IG and contractor internal audit groups working closely with DOE. The contractor internal audit groups are committed to a continuing evaluation of the process and have established the Steering Committee for Quality Auditing to address current issues and implement on-going improvements.

Currently, the Cooperative Audit Strategy is implemented under an alternative clause in the Accounts, records, and inspection contract clause at 970.5232-3. The proposed rule would eliminate the alternative and amend the contract clause to require the use of the Cooperative Audit Strategy in all M&O contracts.

## II. Section-by-Section Analysis

DOE is proposing to amend the DEAR as follows:

1. Section 970.5203-1, Management controls, paragraph (a)(4) would be amended by adding a sentence which requires the contractor to annually, or at other times as directed by the contracting officer, provide copies of reports on the status of audit recommendations.

2. Section 970.5232-3, Accounts, records, and inspection, would be amended by removing Alternative II and by adding a new paragraph (i) which would establish requirements that:

A. Upon contract award, exercise of any contract option, or the extension of the contract, the contractor shall submit to the contracting officer an internal audit implementation design. The audit

implementation design would describe (i) the internal audit activity's placement within the contractor's organization and reporting requirements; (ii) the size, experience, and educational standards of the internal audit staff; (iii) the relationship of the internal audit activity to corporate entities; if any; (iv) the standards to be used for conducting the audits; (v) the overall internal audit strategy for the performance period of the contract, considering particularly the method of auditing costs incurred; (vi) the intended use of external audit resources; (vii) the plan for internal audits of subcontracts, both pre- and post-award; and (viii) the schedule for peer reviews.

B. Annually, the contractor shall submit a summary of the previous fiscal year's internal audits, reflecting the results of those audits, and actions, proposed or taken to resolve any identified weaknesses.

C. Annually, the contractor shall submit an audit plan for internal audits for the next fiscal year.

D. All such documents shall be satisfactory to the contracting officer.

3. Section 970.5232-3 is amended by adding a new paragraph (j) which states that upon discovery the contractor has claimed unallowable costs, the contracting officer may (i) direct the contractor to cease using, in whole or in part, the DOE special financial institution account, (ii) require a refund, (iii) reduce the contractor's fee, or (iv) take any other action authorized in law, regulations, or this contract.

## III. Procedural Requirements

### A. Review Under Executive Order 12866

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 proposed rule is not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget.

### B. 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 to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process (68 FR 7990, February 19, 2003), and has made them available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>. DOE has reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The proposed rule would amend procurement policies that apply only to DOE M&O contracts and would impact only DOE's M&O contractors none of whom are small entities. This rule would not have a significant economic impact on small entities. On the basis of the foregoing, DOE certifies that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking.

### C. Review Under the Paperwork Reduction Act

Any additional information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, reflected by today's regulatory action are insignificant. Existing burdens associated with the collection of certain contractor compensation data have been previously cleared under OMB control number 1910-4100 which expires on April 30, 2008.

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

DOE has concluded that promulgation of this proposed rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this proposed rule deals only with agency procedures, and; therefore, is covered under the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

### E. Review Under 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. The Executive Order also 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 today's proposed 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 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 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 proposed rule meets the relevant standards of Executive Order 12988.

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

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to assess the effects of a 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 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 proposed 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.

#### I. 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 guideline 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 today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

#### 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), 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 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. Today's regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

#### K. Approval by the Office of the Secretary

The Office of the Secretary has approved issuance of this proposed rule.

#### List of Subjects in 48 CFR Part 970

Government procurement.

Issued in Washington, DC, on April 27, 2006.

#### Edward R Simpson,

Director, Office of Procurement and Assistance Management, Department of Energy.

#### Robert C. Braden, Jr.,

Director, Office of Procurement and Assistance Management, National Nuclear Security Administration.

For the reasons set forth in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

### PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

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

**Authority:** 42 U.S.C. 2201, 2282a, 2282b, 2282c; 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

2. Section 970.5203-1 is amended by adding a sentence to the end of paragraph (a)(4).

#### 970.5203-1 Management controls.

\* \* \* \* \*

(a) \* \* \*

(4) \* \* \* Annually, or at other intervals directed by the contracting officer, the contractor shall supply to the contracting officer copies of the reports reflecting the status of recommendations resulting from management audits performed by its internal audit activity and any other audit organization. This requirement may be satisfied in part by the reports required under paragraph (i) of DEAR 970.5232-3, Accounts, records, and inspection.

\* \* \* \* \*

3. Section 970.5232-3 is amended by revising the date of the clause, adding new paragraphs (i) and (j), and removing

Alternative II, and adding new paragraphs (i) and (j) to read as follows:

**970.5232–3 Accounts, records, and inspection.**

**\* \* \* Accounts, Records, and Inspection (XX XXXX)**

\* \* \* \* \*

(i) *Internal audit.* The contractor agrees to design and maintain an internal audit plan and an internal audit organization.

(1) Upon contract award, the exercise of any contract option, or the extension of the contract, the contractor must submit to the contracting officer for approval an Internal Audit Implementation Design to include the overall strategy for the internal audits. The Audit Implementation Design must describe:

(i) The internal audit organization's placement within the contractor's organization and its reporting requirements;

(ii) The audit organization's size and the experience and educational standards of its staff;

(iii) The audit organization's relationship to the corporate entities of the contractor;

(iv) The standards to be used in conducting the internal audits;

(v) The overall internal audit strategy of this contract, considering particularly the method of auditing costs incurred in the performance of the contract;

(vi) The intended use of external audit resources;

(vii) The plan for audit of subcontracts, both pre-award and post-award; and

(viii) The schedule for peer review of internal audits by other contractor internal audit organizations.

(2) By each January 31 of the contract performance period, the contractor must submit an annual audit report, providing a summary of the audit activities undertaken during the previous fiscal year. That report shall reflect the results of the internal audits during the previous fiscal year and the actions to be taken to resolve weaknesses identified in the contractor's system of business, financial, or management controls.

(3) By each June 30 of the contract performance period, the contractor must submit to the contracting officer an annual audit plan for the activities to be undertaken by the internal audit organization during the next fiscal year that is designed to test the costs incurred and contractor management systems described in the internal audit design.

(4) The contracting officer may require revisions to documents

submitted under paragraphs (i)(1), (i)(2), and (i)(3) of this clause, including the design plan for the internal audits, the annual report, and the annual internal audits.

(j) *Remedies.* If at any time during contract performance, the contracting officer determines that unallowable costs were claimed by the contractor to the extent of making the contractor's management controls suspect, or the contractor's management systems that validate the costs incurred and claimed suspect, the contracting officer may, in his or her sole discretion, require the contractor to cease using the special financial institution account in whole or with regard to specified accounts, requiring reimbursable costs to be claimed by periodic vouchering. In addition, the contracting officer, where he or she deems it appropriate, may; impose a penalty under DEAR 970.5242–1, Penalties for unallowable costs; require a refund; reduce the contractor's otherwise owed fee; and take such other action as authorized in law, regulation, or this contract.

[FR Doc. E6–6736 Filed 5–5–06; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 060418103–6103–01; I.D. 040706F]

**RIN 0648–AT59**

#### Fisheries of the Northeastern United States; Proposed 2006 Through 2008 Specifications for the Spiny Dogfish Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes specifications for the spiny dogfish fishery for the 2006 through 2008 fishing years (May 1, 2006, through April 30, 2009). The implementing regulations for the Spiny Dogfish Fishery Management Plan (FMP) require NMFS to publish specifications for up to a period of 5 years and to provide an opportunity for public comment. The intent of this rulemaking is to specify the commercial quota and other management measures, such as possession limits, to rebuild the spiny dogfish resource. NMFS also

proposes that the possession limits for dogfish be set at 600 lb (272 kg) for both quota periods 1 and 2 of the fishery.

**DATES:** Public comments must be received (see **ADDRESSES**) no later than 5 p.m. eastern standard time on May 23, 2006.

**ADDRESSES:** Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is accessible via the Internet at <http://www.nero.nmfs.gov>. Written comments on the proposed rule may be sent by any of the following methods:

- Mail to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope “Comments 2006–2008 Dogfish Specifications”;
- Fax to Patricia A. Kurkul (978) 281–9135;
- E-mail to the following address: [DogfishSpecs2006@noaa.gov](mailto:DogfishSpecs2006@noaa.gov). Include in the subject line of the e-mail comment the following document identifier: “Comments 2006–2008 Dogfish Specifications.”
- Electronically through the Federal e-Rulemaking portal: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Eric Jay Dolin, Fishery Policy Analyst, (978)281–9259, fax (978)281–9135.

**SUPPLEMENTARY INFORMATION:** Spiny dogfish were declared overfished by NMFS on April 3, 1998, and added to that year's list of overfished stocks in the *Report on the Status of the Fisheries of the United States*, prepared pursuant to section 304 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Consequently, the Magnuson-Stevens Act required the preparation of measures to end overfishing and to rebuild the spiny dogfish stock. A joint FMP was developed by the Mid-Atlantic and New England Fishery Management Councils (Councils) during 1998 and 1999. The Mid-Atlantic Fishery Management Council (MAFMC) was designated as the administrative lead on the FMP.

The regulations implementing the FMP at 50 CFR part 648, subpart L, outline the process for specifying the commercial quota and other management measures (e.g., minimum