

state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 30, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 14, 2007.

**John B. Askew,**  
Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart R—Kansas**

■ 2. In § 52.870(c) the table is amended by revising an entry for K.A.R. 28–19–350 to read as follows:

**§ 52.870 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED KANSAS REGULATIONS**

Kansas citation	Title	State effective date	EPA approval date	Explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
K.A.R. 28–19–350 ...	Prevention of Significant Deterioration (PSD) of Air Quality.	06/30/06	05/29/07 [insert FR page number where the document begins].	Kansas did not adopt subsections with references to the clean unit exemptions, pollution control projects, and the recordkeeping provisions for the actual-to-projected-actual emissions applicability test because of the June 24, 2005, decision of the United States Court of Appeals for the District of Columbia Circuit relating to the Clean Unit Exemption, Pollution Control Projects and the recordkeeping provisions for the actual-to-projected-actual emissions applicability test.
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**DEPARTMENT OF ENERGY**

**48 CFR Parts 913 and 970**

**RIN 1991–AB62**

**Acquisition Regulation: Technical Revisions or Amendments to Update Clauses**

**AGENCY:** Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to remove clauses concerning simplified acquisition procedures and facilities management contracting and to add a clause addressing work authorization. This rule also revises associated regulatory coverage, as necessary.

**DATES:** *Effective Date:* June 28, 2007.

**FOR FURTHER INFORMATION CONTACT:** Sandra Cover at (202) 287–1344 or [Sandra.Cover@hq.doe.gov](mailto:Sandra.Cover@hq.doe.gov)

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- H. Review Under the Treasury and General Government Appropriations Act, 1999
- I. Review Under Executive Order 13211
- J. Review Under the Treasury and General Government Appropriations Act, 2001
- K. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996
- L. Approval by the Office of the Secretary

## I. Background.

On July 29, 2005, DOE published in the **Federal Register** (70 FR 43832) a notice of proposed rulemaking to modify clauses contained in the Department of Energy Acquisition Regulation (DEAR) concerning debarment; fast payment procedures; applicable laws, regulations, and directives; work authorization; and integration of environment, safety, and health into work planning and execution. In addition, DOE proposed to delete a clause on facilities management and the corresponding instruction.

DOE received comments from interested parties and based upon our review and consideration DOE issues a final rule that: (1) Deletes DEAR 913.4, Fast Payment Procedure; (2) adds DEAR 970.5211-1, Work authorization, with prescriptive language at 970.1170-1 and a contract clause instruction at DEAR 970.1170-2; and (3) deletes DEAR 970.5237-2, Facilities Management System, and the corresponding instruction at DEAR 970.37, Facilities management contracting.

The proposed changes to DEAR 909.406, Debarment; DEAR 970.5204-2, Laws, Regulations, and DOE Directives', and DEAR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution are withdrawn after reviewing comments and further consideration.

## II. Comments, Responses and Discussion

DOE received three comments concerning the proposal to amend DEAR 909.406-2, the Debarment clause. The proposed amendment would have permitted the debarring officials to debar a contractor if it was established by a preponderance of evidence that the contractor falsely self-certified itself as falling into one of the business categories aided by the Small Business Administration Act. The commenters argued that the proposed rule is not a technical amendment and could harm the small business community. Commenters further argued that Congress vested Small Business Administration (SBA) with exclusive jurisdiction to determine small business size standards and eligibility. Current SBA regulations contain size rules, which differ depending on whether a

company is subject to employee-based size standards or revenue-based size standards. Because small businesses self-certify their size, SBA affiliation determinations are made after the fact, and there is a risk of erroneous self-certification. Therefore, it was argued, the proposed rule could result in debarment of small businesses that unintentionally misrepresented their size status.

*Response:* After reviewing and considering the comments, DOE has concluded this change is unnecessary and is withdrawing the proposed amendment to DEAR 909.406-2. First, there is sufficient coverage of this issue in the Federal Acquisition Regulation (FAR). In addition, the Small Business Act vests exclusive jurisdiction in SBA for making determinations of small business status, while 15 U.S.C. 645 grants SBA the authority to debar or suspend contractors who misrepresent their status as small business to obtain government contracts. This statutory provision provides SBA with authority to initiate corrective action in cases of suspected misrepresentation of small business size status if the solicitation and award reference Section 8(d) of the Small Business Act.

DOE has further considered the proposed revisions to clauses DEAR 970.5204-2, Laws, Regulations, and DOE Directives and DEAR 970.5223-1, Integration of Environment, Safety and Health into Work Planning and Execution, and decided not to promulgate the proposed revisions. After, further considering the proposed revisions, DOE has decided to retain the current clauses.

## III. Section-by-Section Analysis

DOE is amending the DEAR as follows:

1. DEAR subpart 913.4, Fast Payment Procedure, is deleted in its entirety. DEAR 913.402 currently prohibits the use of fast payment procedures. Upon review of DOE's policy and the FAR, DOE has determined that FAR coverage in subpart 13.4, Fast Payment Procedure, is adequate to protect the DOE interests. DOE will now use fast payment procedures under FAR 13.4.

2. A new section 970.1170, Work authorization, is added. It consists of DEAR 970.1170-1, Policy, and 970.1170-2, Contract provision.

3. DEAR 970.5211-1, Work authorization, is added. This clause incorporates requirements that are presently located in the contractor requirements document attached to Directive DOE O 412.1A, Work Authorization System. That Order establishes an assignment and control

process for budget of estimated costs, description of work, and schedule of performance, and for individual work activities performed by designated contractors within the contract scope of work. The DEAR clause eliminates the need for a contractor requirements document.

4. DEAR 970.5237-2, Facilities management, and the corresponding instruction at DEAR 970.37, Facilities Management Contracting, are deleted. They currently provide guidance concerning site development planning, design criteria, energy management, and subcontract requirements. DOE has decided that other DOE directives, such as DOE O 430.1B, Real Property Asset Management, already provide sufficient guidance.

## IV. 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, this rulemaking is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

### 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, this final rule meets 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 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). DOE has made its procedures and policies available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>.

DOE has reviewed today's rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. While rule requirements may flow down to subcontractors in certain circumstances, the costs of compliance are not estimated to be large and, in any event, would be reimbursable expenses under the contract or subcontract. On the basis of the foregoing, DOE certifies that this rule 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. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

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

This rulemaking contains information collection requirements associated with the contract clause Work authorization at 970.5211-1. The information collection requirements were forwarded to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). OMB assigned this information collection OMB Control No. 1910-5132.

#### *E. Review Under the National Environmental Policy Act*

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR are strictly procedural (categorical exclusion A6). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

#### *F. 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 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.

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

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104(4) generally requires a Federal agency to perform a written assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of \$100 million or more. This rulemaking would only affect private sector entities, and the impact is less than \$100 million.

#### *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 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.

#### *I. 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 OIRA, of the 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; 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 rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

#### *J. 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 today's rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

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

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

*L. Approval by the Office of the Secretary of Energy*

Issuance of this rule has been approved by the Office of the Secretary.

**List of Subjects in 48 CFR Parts 913 and 970.**

Government procurement.

Issued in Washington, DC on May 21, 2007.

**Edward R. Simpson,**

*Director, Office of Procurement and Assistance Management, Office of Management.*

**David O. Boyd,**

*Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.*

■ 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.

**PART 913—SIMPLIFIED ACQUISITION PROCEDURES**

■ 1. The authority citation for part 913 continues to read as follows:

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

**Subpart 913.4—[Removed and Reserved]**

■ 2. Subpart 913.4 is removed and reserved.

**PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS**

■ 3. 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.*

**Subpart 970.11—Describing Agency Needs**

■ 4. Sections 970.1170, 970.1170-1, and 970.1170-2 are added to read as follows:

**970.1170 Work authorization.**

**970.1170-1 Policy.**

Each contract for the management and operation of a DOE site or facility, and other contracts designated by the DOE or NNSA Procurement Executive, must

contain a scope of work section that describes, in general terms, work planned and/or required to be performed. Work to be performed under the contract shall be assigned through the use of a work authorization to control individual work activities performed within the scope of work. Work authorizations must be issued prior to the commencement of the work and incurrence of any costs.

**970.1170-2 Contract provision.**

The Contracting Officer shall insert the clause at 48 CFR 970.5211-1, Work authorization, in each solicitation and contract for the management and operation of a DOE site or facility and in other contracts designated by the DOE or NNSA Procurement Executive.

**Subpart 970.37—Facilities Management Contracting**

**970.3770-2 [Removed and Reserved]**

■ 5. Section 970.3770-2 is removed and reserved.

**Subpart 970.52—Solicitation Provisions and Contract Clauses For Management and Operating Contracts**

■ 6. Section 970.5211-1 is added to read as follows:

**970.5211-1 Work authorization.**

As prescribed in 970.1170-2, insert the following clause:

Work Authorization (MAY 2007)

(a) *Work authorization proposal.* Prior to the start of each fiscal year, the Contracting Officer or designee shall provide the contractor with program execution guidance in sufficient detail to enable the contractor to develop an estimated cost, scope, and schedule. In addition, the Contracting Officer may unilaterally assign work. The contractor shall submit to the Contracting Officer or other designated official, a detailed description of work, a budget of estimated costs, and a schedule of performance for the work it recommends be undertaken during that upcoming fiscal year.

(b) *Cost estimates.* The contractor and the Contracting Officer shall establish a budget of estimated costs, description of work, and schedule of performance for each work assignment. If agreement cannot be reached as to scope, schedule, and estimated cost, the Contracting Officer may issue a unilateral work authorization, pursuant to this clause. The work authorization, whether issued bilaterally or unilaterally shall become part of the contract. No activities shall be authorized or costs incurred prior to Contracting Officer issuance of a work

authorization or direction concerning continuation of activities of the contract.

(c) *Performance.* The contractor shall perform work as specified in the work authorization, consistent with the terms and conditions of this contract.

(d) *Modification.* The Contracting Officer may at any time, without notice, issue changes to work authorizations within the overall scope of the contract. A proposal for adjustment in estimated costs and schedule for performance of work, recognizing work made unnecessary as a result, along with new work, shall be submitted by the contractor in accordance with paragraph (a) of this clause. Resolution shall be in accordance with paragraph (b) of this clause.

(e) *Increase in estimated cost.* The contractor shall notify the Contracting Officer immediately whenever the cost incurred, plus the projected cost to complete work is projected to differ (plus or minus) from the estimate by 10 percent. The contractor shall submit a proposal for modification in accordance with paragraph (a) of this clause. Resolution shall be in accordance with paragraph (b) of this clause.

(f) *Expenditure of funds and incurrence of costs.* The expenditure of monies by the contractor in the performance of all authorized work shall be governed by the "Obligation of Funds" or equivalent clause of the contract.

(g) *Responsibility to achieve environment, safety, health, and security compliance.* Notwithstanding other provisions of the contract, the contractor may, in the event of an emergency, take that corrective action necessary to sustain operations consistent with applicable environmental, safety, health, and security statutes, regulations, and procedures. If such action is taken, the contractor shall notify the Contracting Officer within 24 hours of initiation and, within 30 days, submit a proposal for adjustment in estimated costs and schedule established in accordance with paragraphs (a) and (b) of this clause. (End of clause)

**970.5237-2 [Removed and Reserved]**

■ 7. Section 970.5237-2 is removed and reserved.

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