

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Maud, City of, Bowie County	480057	June 2, 1975, Emerg; December 12, 1978, Reg; October 19, 2010, Susp.	.....do	Do.
Nash, City of, Bowie County	480058	April 7, 1975, Emerg; June 21, 1977, Reg; October 19, 2010, Susp.	.....do	Do.
Redwater, Town of, Bowie County	480309	April 17, 2009, Emerg; October 19, 2010, Reg; October 19, 2010, Susp.	.....do	Do.
Upshur County, Unincorporated Areas	481036	February 27, 1981, Emerg; May 1, 1987, Reg; October 19, 2010, Susp.	.....do	Do.
Wake Village, City of, Bowie County	480061	September 24, 1974, Emerg; October 15, 1985, Reg; October 19, 2010, Susp.	.....do	Do.
Region VII				
Kansas:				
Cowley County, Unincorporated Areas	200563	February 26, 1979, Emerg; August 5, 1991, Reg; October 19, 2010, Susp.	.....do	Do.
Winfield, City of, Cowley County	200071	May 30, 1974, Emerg; March 16, 1981, Reg; October 19, 2010, Susp.	.....do	Do.
Region VIII				
South Dakota:				
Doland, Town of, Spink County	460079	May 11, 1978, Emerg; November 12, 1985, Reg; October 19, 2010, Susp.	.....do	Do.
Redfield, City of, Spink County	460081	May 22, 1975, Emerg; November 15, 1985, Reg; October 19, 2010, Susp.	.....do	Do.
Spink County, Unincorporated Areas	460076	March 28, 1978, Emerg; August 5, 1986, Reg; October 19, 2010, Susp.	.....do	Do.

.....do and Do = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: September 15, 2010.

Edward L. Connor,

Acting Federal Insurance and Mitigation Administrator, Department of Homeland Security Federal Emergency Management Agency.

[FR Doc. 2010–23710 Filed 9–21–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF ENERGY

48 CFR Parts 907, 923, 936, 952, and 970

RIN 1991–AB95

Acquisition Regulation: Sustainable Acquisition

AGENCY: Department of Energy.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to implement Executive Order 13514, Federal Leadership in Environmental, Energy and Economic Performance. The intent of the rule is to leverage agency acquisitions to foster markets for sustainable technologies and energy efficient and environmentally sustainable materials, products, and services.

DATES: *Effective Date:* October 22, 2010.

Comment Date: Submit comments to the address below by October 22, 2010.

ADDRESSES: You may submit comments on this interim final rule, identified by RIN 1991–AB95, by any of the following methods:

- Federal eRulemaking Portal at <http://www.Regulations.gov>. Follow the instructions for submitting documents.
- E-mail to

DEARrulemaking@hq.doe.gov. Include Sustainable Acquisition and RIN 1991–AB95 in the subject line of the e-mail with a copy to

Richard.langston@hq.doe.gov.

- Mail to Richard Langston, MA–61, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Richard Langston at 202–287–1339 or Richard.Langston@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Section by Section Analysis
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 - C. Review Under the Regulatory Flexibility Act
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- 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
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I. Background

Executive Order (E.O.) 13514, Federal Leadership in Environmental, Energy and Economic Performance was issued October 5, 2009. It is being implemented in Federal contracting by FAR Case 2010–001 which is being processed concurrently with this rulemaking. This rulemaking will implement and supplement FAR Case 2010–001.

FAR Case 2010–001 was drafted in recognition of changing environmental circumstances and our Nation’s heightened energy demands. These circumstances demand that the Federal Government lead by example to create a clean energy economy that will increase prosperity, promote energy security, protect the interests of taxpayers, and safeguard the health of our environment. Executive Order 13514 requires Federal agencies to leverage agency acquisitions to foster markets for sustainable technologies and energy efficient and environmentally sustainable materials, products, and

services. Federal agencies are additionally required to design, construct, maintain and operate high performance sustainable buildings in sustainable locations.

FAR Case 2010–001 carries forward certain elements of earlier Executive Order 13423, “Strengthening Federal Environmental, Energy, and Transportation Management,” issued on January 26, 2007. That Order established the policy that Federal agencies shall conduct their environmental, transportation, and energy-related activities in an environmentally, economically, and fiscally sound, integrated, continuously improving, efficient, and sustainable manner.

This rulemaking implements the Executive Orders and FAR Case in DOE contracting and more specifically in contracts for the operation of DOE facilities and motor vehicle fleets.

The FAR Case is being issued as an Interim Final Rule, prior to the receipt of public comment. That is because urgent and compelling reasons exist to promulgate this action as an interim final rule, principal of which are the prior issuance of both Executive Order 13514 and E.O. 13423, which the FAR rulemaking and this rulemaking are intended to implement. The same factors warrant our issuance of this document as an Interim Final Rule. In light of Public Law 98–577, Small Business and Federal Procurement Competition Enhancement Act of 1989, and FAR 1.501, both of which require we afford the opportunity for public comment before any significant revision of the FAR System, this Interim Final Rule solicits public comments which will be fully considered before finalizing this Interim Final Rule.

II. Section by Section Analysis

1. Part 907 is amended to add a new subpart 907.1, Acquisition Plans, consisting of section 907.105(b)(16), Environmental and energy conservation objectives.

2. A new section 923.002 is added to restate a requirement of E.O. 13423 and to prescribe a clause to be used in DOE contracts for contractor operation of DOE owned facilities or fleets.

3. A new subpart 923.1, Sustainable Acquisition, is added to implement 23.101 and to explain the Department’s Sustainable Acquisition Program. FAR Subpart 23.1, Sustainable Acquisition is a new Part created by FAR Case 2010–001. The new DEAR subpart 923.1 will contain sections 923.101, Policy, 923.102, Applicability to contractors, and 923.103, Contract clause.

4. Subpart 923.4, Use of Recovered Materials, containing section 923.4, Procedures, is removed as its content is duplicative of the updated FAR 23.4.

5. Subpart 923.7, Contracting for Environmentally Preferable and Energy Efficient Products and Services containing section 923.703, Policy, is removed as it is outdated.

6. A new subpart 923.9, Contractor Compliance with Environmental Management Systems, is added to implement the new FAR 23.9. It consists of section 923.903, Contract clause,

7. A new subpart 936.2, Special Aspects of Contracting for Construction, is added consisting of section 936.202–70 Specifications.

8. Part 952, Solicitation Provisions and Contract Clauses is amended to add a new clause titled 952.223–78, Sustainable acquisition program.

9. A new section 970.2301, Sustainable Acquisition is added. It consists of sections 970.2301–1, Policy, and 970.2301–2, Contract clauses.

10. Section 970.2307, Contracting for Environmentally Preferable and Energy Efficient Products and Services, including 970.2307–1, Motor vehicle fleet operations, and 970.2307–2, Contract clause, are removed.

11. The clause at 970.5223–2, Affirmative procurement program, is removed.

12. The clause at 970.5223–5, DOE Motor Vehicle Fleet Fuel Efficiency, is removed.

13. A new clause 970.5223–6, Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management is added.

14. A new clause 970.5223–7, Sustainable acquisition program, is added.

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 interim final 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 (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; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) 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 that 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, these regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and which is likely to have a significant economic impact on a substantial number of small entities. The rule would not have a significant economic impact on small entities because it imposes no significant burdens. Any costs incurred by DOE contractors complying with the rule would be reimbursed under the contract.

Accordingly, DOE certifies that this rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis is required and none has been prepared.

D. Review Under the Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements. Information collection or recordkeeping requirements mentioned in this rule relative to the Environmentally Preferable and Sustainable Purchasing Practices clause

of 970.5223–2 are the same burdens previously contained in the Affirmative Procurement clause being replaced by this rule. The clearance number is 1910–4100 with an expiration date of August 31, 2011.

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 would be 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. 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) requires a federal agency to perform a detailed 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 in any single year. This rule 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 or policy that may affect family well-being. This rule will have no impact on family well being.

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 the OIRA, OMB, a Statement of Energy Effects for any 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; or (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 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 implementing 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(2).

L. Approval by the Office of the Secretary of Energy

The Office of the Secretary of Energy has approved issuance of this final rule.

List of Subjects in 48 CFR Parts 907, 923, 936, 952 and 970

Government procurement.

Issued in Washington, DC, on September 14, 2010.

Patrick M. Ferraro,
Acting Director, Office of Procurement and Assistance Management, Office of Management, Department of Energy.

Stephen Law,

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

■ For the reasons set out in the preamble, DOE amends Chapter 9 of Title 48 of the Code of Federal Regulations as set forth below:

PART 907—ACQUISITION PLANNING

■ 1. The authority citation for part 907 is revised to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*, and 50 U.S.C. 2401 *et seq.*

■ 2. Add new subpart 907.1, consisting of section 907.105, to read as follows:

Subpart 907.1—Acquisition Plans

907.105 Contents of written acquisition plans.

(b)(16) Environmental and energy conservation objectives.

Incorporate sustainable building considerations including building location and regional planning considerations into planning for new Federal facilities and leases.

PART 923—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 3. The authority citation for part 923 continues to read as follows:

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

■ 4. The heading of part 923 is revised as set forth above.

■ 5. Add a new section 923.002, to part 923 to read as follows:

923.002 Policy.

(a) *Requirement.* FAR 23.002 and Section 3(e) of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, require contracts for the operation of Government-owned facilities or Government-owned motor vehicle fleets to include provisions that obligate the contractor to comply with

the requirements of Executive Order 13423 to the same extent as the Federal agency would be required to comply if the agency operated the facility or fleet.

(b) *Contract clause.* Insert the clause at 970.5223–6, Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, in contracts for Contractor operation of a DOE facility or motor vehicle fleet.

- 6. Add a new subpart 923.1 to part 923, to read as follows:

Subpart 923.1—Sustainable Acquisition

Sec.
923.101 Policy.
923.102 Applicability to contractors.
923.103 Contract clauses.

923.101 Policy.

The Department has promoted energy efficient products as well as products with recycled or biobased content as these products have become more common and the market has become more energy and resource aware. All of these products and services and others with environmentally preferable attributes are captured in the DOE Sustainable Acquisition Program. Guidance on all these products may be found at: <http://www.hss.energy.gov/pp/epp/>.

923.102 Applicability to contractors.

Many of the Department's major facilities are operated by contractors. Provisions regarding those contracts may be found at Part 970 of this chapter. At other locations, the Department makes significant use of contractors to operate and maintain its facilities. As such, the Department encourages the greatest possible use of energy efficient and environmentally sustainable products and services by its facility support contractors. The DOE Sustainable Acquisition Program is to be followed by all contractors operating DOE facilities or motor vehicle fleets.

923.103 Contract clauses.

Insert the clause at 952.223–78, Sustainable Acquisition Program, or its Alternate I, in all contracts under which the contractor operates Government-owned facilities or Government-owned fleets or performs construction at a Government-owned facility. All such contracts should also include the following clauses: FAR 52.223–2, Affirmative Procurement of Biobased Products under Service and Construction Contracts; FAR 52.223–10, Waste Reduction Program; FAR 52.223–XX, Compliance with Environmental

Management Systems (see 923.903 regarding the applicability of this clause to specific DOE contracts); FAR 52.223–15, Energy Efficiency in Energy Consuming Products; and FAR 52.223–17, Affirmative Procurement of EPA-designated Items in Service and Construction Contracts.

Subpart 923.4 [Removed]

- 7. Remove subpart 923.4, including sections 923.405 and 923.471.

Subpart 923.7 [Removed]

- 8. Remove subpart 923.7 including section 923.703.
- 9. Add a new subpart 923.9 consisting of section 923.903 to read as follows:

Subpart 923.9—Contractor Compliance With Environmental Management Systems

§ 923.903 Contract clause.

The FAR Environmental Management Systems clause at 52.223–XX should be used in contracts where the contractor operates a DOE site or portion thereof. Some DOE sites have a single Environmental Management System for the site while others have separate Environmental Management Systems for various portions of the site which may be operated by different contractors. Check with local environmental management personnel regarding the applicability of the FAR 52.223–XX clause to a specific contract.

PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

- 10. The authority citation for part 936 continues to read as follows:

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

- 11. Add a new section 936.202–71 to subpart 936.2 to read as follows:

936.202–71 Specifications.

When developing specifications for the work to be performed, plan for ways to ensure that construction and demolition debris can be diverted or recycled in sufficient quantities as to ensure that the Agency goal from section 2(e) of Executive Order 13514 of diverting at least 50% of the debris stream may be attained.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 12. The authority citation for part 952 continues to read as follows:

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

- 13. Add a new section 952.223–78, to read as follows:

952.223–78 Sustainable acquisition program.

In accordance with 923.103 insert the following clause or its Alternate I in all contracts under which the contractor operates Government-owned facilities, motor vehicle fleets, or significant portions thereof or performs construction at a DOE facility.

SUSTAINABLE ACQUISITION PROGRAM (OCT 2010)

(a) Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, the Department of Energy (DOE) is committed to managing its facilities in an environmentally preferable and sustainable manner that will promote the natural environment and protect the health and well being of its Federal employees and contractor service providers. In the performance of work under this contract, the Contractor shall provide its services in a manner that promotes the natural environment, reduces greenhouse gas emissions and protects the health and well being of Federal employees, contract service providers and visitors using the facility.

(b) Green purchasing or sustainable acquisition has several interacting initiatives. The Contractor must comply with initiatives that are current as of the contract award date. DOE may require compliance with revised initiatives from time to time. The Contractor may request an equitable adjustment to the terms of its contract using the procedures in the Changes clause of the contract. The initiatives important to these Orders are explained on the following Government or Industry Internet Sites:

- (1) Recycled Content Products are described at <http://epa.gov/cpg>.
- (2) Biobased Products are described at <http://www.biopreferred.gov/>.
- (3) Energy efficient products are at <http://energystar.gov/products> for Energy Star products.
- (4) Energy efficient products are at <http://www.femp.energy.gov/procurement> for FEMP designated products.
- (5) Environmentally preferable and energy efficient electronics including desktop computers, laptops and monitors are at <http://www.epeat.net> the Electronic Products Environmental Assessment Tool (EPEAT) the Green Electronics Council site.
- (6) Green house gas emission inventories are required, including Scope 3 emissions which include contractor emissions. These are discussed at Section 13 of Executive Order 13514 which can be found at <http://www.archives.gov/federal-register/executive-orders/disposition.html>.
- (7) Non-Ozone Depleting Alternative Products are at <http://www.epa.gov/ozone/strathome.html>.
- (8) Water efficient plumbing products are at <http://epa.gov/watersense>.
- (c) The clauses at FAR 52.223–2, Affirmative Procurement of Biobased

Products under Service and Construction Contracts, 52.223–15, Energy Efficiency in Energy Consuming Products, and 52.223–17 Affirmative Procurement of EPA–Designated Items in Service and Construction Contracts, require the use of products that have biobased content, are energy efficient, or have recycled content. To the extent that the services provided by the Contractor require provision of any of the above types of products, the Contractor must provide the energy efficient and environmentally sustainable type of product unless that type of product—

(1) Is not available;

(2) Is not life cycle cost effective or does not exceed 110% of the price of alternative items if life cycle cost data is unavailable (EPEAT is an example of lifecycle costs that have been analyzed by DOE and found to be acceptable at the silver and gold level);

(3) Does not meet performance needs; or,

(4) Cannot be delivered in time to meet a critical need.

(d) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, (<http://www.epa.gov/greeningepa/practices/eo13423.htm>) and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance (<http://www.archives.gov/federal-register/executive-orders/disposition.html>). The Contractor shall also consider the best practices within the DOE Acquisition Guide, Chapter 23, *Acquisition Considerations Regarding Federal Leadership in Environmental, Energy, and Economic Performance*. This guide includes information concerning recycled content products, biobased products, energy efficient products, water efficient products, alternative fuels and vehicles, non-ozone depleting substances and other environmentally preferable products and services. This guide is available on the Internet at: <http://management.energy.gov/documents/AcqGuide23pt0Rev1.pdf>.

(e) Contractors must establish and maintain a documented energy management program which includes requirements for energy and water efficient equipment, EnergyStar or WaterSense, as applicable and procedures for verification of purchases, following the criteria in DOE Order 430.2B, Departmental Energy, Renewable Energy, and Transportation Management, Attachment 1, or its successor to the extent required elsewhere in the contract. This requirement should not be flowed down to subcontractors.

(f) In complying with the requirements of paragraph (c) of this clause, the Contractor(s) shall coordinate its activities with and submit required reports through the Environmental Sustainability Coordinator or equivalent position. Reporting under this paragraph and paragraphs (g) and (h) of this clause is only required if the contract or subcontract offers subcontracting opportunities for energy efficient and environmentally sustainable products or services exceeding \$100,000 in any contract year.

(g) The Contractor shall prepare and submit performance reports, if required,

using prescribed DOE formats, at the end of the Federal fiscal year, on matters related to the acquisition of environmentally preferable and sustainable products and services. This is a material delivery under the contract. Failure to perform this requirement may be considered a failure that endangers performance of this contract and may result in termination for default.

(h) These provisions shall be flowed down only to first tier subcontracts exceeding the simplified acquisition threshold that support operation of the DOE facility and offer significant subcontracting opportunities for energy efficient or environmentally sustainable products or services. The Subcontractor, if subcontracting opportunities for sustainable and environmentally preferable products or services exceed the threshold in paragraph (f) of this clause, will comply with the procedures in paragraphs (c) through (f) of this clause regarding the collection of all data necessary to generate the reports required under paragraphs (c) through (f) of this clause, and submit the reports directly to the Prime Contractor's Environmental Sustainability Coordinator at the supported facility. The Subcontractor will advise the Contractor if it is unable to procure energy efficient and environmentally sustainable items and cite which of the reasons in paragraph (c) of this clause apply. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multi-year, the Subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties. Failure to comply with these reporting requirements may be considered a breach of contract with attendant consequences.

(i) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "Subcontractor."
(End of Clause)

Alternate I for Construction Contracts and Subcontracts (OCT 2010)—When contracting for construction, alteration, or renovation of DOE facilities, substitute the following paragraphs (d) through (i):

(d) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, (<http://www.epa.gov/greeningepa/practices/eo13423.htm>) and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance (<http://www.archives.gov/federal-register/executive-orders/disposition.html>). The Contractor shall also consider the best practices within the DOE Acquisition Guide, Chapter 23, *Acquisition Considerations Regarding Federal Leadership in Environmental, Energy, and Economic Performance*. This guide includes information concerning recycled content products, biobased products, energy efficient products, water efficient products, alternative fuels and vehicles, non-ozone depleting substances and other environmentally preferable products and services. This guide is available on the

Internet at: <http://management.energy.gov/documents/AcqGuide23pt0Rev1.pdf>. When developing the Bill of Materials for approval of the Contracting Officer or Representative, the contractor shall specify energy efficient and environmentally sustainable materials to the extent possible within the constraints of the general design specifications. Compliance with the *Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings* (Guiding Principles) shall be achieved through certification to the Leadership in Energy and Environmental Design (LEED) Gold level under the LEED rating system most suited to the building type.

(e) [Reserved]

(f) In complying with the requirements of paragraph (c) of this clause, the Contractor(s) shall coordinate its activities with and submit required reports through the Environmental Sustainability Coordinator or equivalent position. Reporting under this paragraph and paragraphs (g) and (h) of this clause is only required if the contract or subcontract offers subcontracting opportunities for energy efficient and environmentally sustainable products or services exceeding \$100,000 in any contract year, except for reporting on high performance sustainable buildings which may be required elsewhere in this contract.

(g) The Contractor shall prepare and submit performance reports using prescribed DOE formats, at the end of the Federal fiscal year, on matters related to the acquisition of energy efficient and environmentally and sustainable products and services. This is a material delivery under the contract. Failure to perform this requirement may be considered a failure that endangers performance of this contract and may result in termination for default.

(h) These provisions shall be flowed down only to first tier construction subcontracts exceeding the simplified acquisition threshold that support operation of the DOE facility and offer significant opportunities for designating energy efficient or environmentally sustainable products or services in the materials selection process. The subcontractor, if subcontracting opportunities for sustainable and environmentally preferable products or services exceed the threshold in paragraph (f) of this clause, will comply with the procedures in paragraphs (c) through (f) of this clause regarding the collection of all data necessary to generate the reports required under paragraphs (c) through (f) of this clause, and submit the reports directly to the Prime Contractor's Environmental Sustainability Coordinator at the supported facility. The subcontractor will advise the contractor if it is unable to procure energy efficient and environmentally sustainable items and cite which of the reasons in paragraph (c) of this clause apply. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multi-year, the subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties. Failure to comply with these

reporting requirements may be considered a breach of contract with attendant consequences.

(i) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "Subcontractor."

(End of Clause)

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

■ 14. 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.*; 50 U.S.C. 2401 *et seq.*

■ 15. Add new sections 970.2301, 970.2301-1, and 970.2301-2 to subpart 970.23 to read as follows:

970.2301 Sustainable acquisition.

970.2301-1 Policy.

There are many environmentally beneficial and resource efficient programs described in various subparts of FAR Part 23. For ease of use, DOE refers to all of these as the DOE Sustainable Acquisition Program with guidance for the many products at <http://www.hss.energy.gov/pp/epp>. Contractors operating DOE facilities shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance. The contractor shall also consider the best practices within the DOE Acquisition Guide, Chapter 23, *Acquisition Considerations Regarding Federal Leadership in Environmental, Energy, and Economic Performance*.

970.2301-2 Contract clauses.

(a) Section 3(f) of Executive Order 13423 requires contractors to comply with the provisions of the Order to the same extent as the Federal agency would be required to comply if it operated the facility or fleet. Insert the clause at 970.5223-6, Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, in such contracts.

(b) Insert the clause at 970.5223-6, Sustainable and Environmentally Preferable Purchasing Practices, or its Alternate I in contracts for the management and operation of DOE facilities, or other contracts under which the contractor manages Government facilities or fleets, or conducts mission operations at Government facilities, or performs construction at DOE facilities. Inclusion

of this contract clause applies to contractors that are responsible for the management and operation of the DOE's facilities or the conduct of mission operations at the Department's facilities, including elements of the National Nuclear Security Administration (NNSA), the Power Marketing Administrations, and the National Laboratories. All such contracts should also include the following clauses: FAR 52.223-2, Affirmative Procurement of Biobased Products under Service and Construction Contracts; FAR 52.223-10, Waste Reduction Program; FAR 52.223-XX, Compliance with Environmental Management Systems (see 923.903 regarding the applicability of this clause to specific DOE contracts); FAR 52.223-15, Energy Efficiency in Energy Consuming Products; and FAR 52.223-17, Affirmative Procurement of EPA-designated Items in Service and Construction Contracts.

970.2304, 970.2304-1 and 970.2304-2 [Removed]

■ 16. Remove sections 970.2304, 970.2304-1 and 970.2304-2.

970.2307, 970.2307-1, and 970.2307-2 [Removed]

■ 17. Remove sections 970.2307, 970.2307-1 and 970.2307-2.

970.5223-2 and 970.5223-5 [Removed]

■ 18. Remove 970.5223-2 and 970.5223-5.

■ 19. Add 970.5223-6 to subpart 970.52 to read as follows:

970.5223-6 Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management.

In accordance with the prescriptions at 923.002(b) or 970.2301-2(b), insert the following in contracts for the operation of a DOE facility or motor vehicle fleet.

EXECUTIVE ORDER 13423, STRENGTHENING FEDERAL ENVIRONMENTAL, ENERGY, AND TRANSPORTATION MANAGEMENT (OCT 2010)

Since this contract involves Contractor operation of Government-owned facilities and/or motor vehicles, the provisions of Executive Order 13423 are applicable to the Contractor to the same extent they would be applicable if the Government were operating the facilities or motor vehicles. Information on the requirements of the Executive Order may be found at <http://www.archives.gov/federal-register/executive-orders/>.

(End of Clause)

■ 20. Add a new section 970.5223-7 to part 970, to read as follows:

970.5223-7 Sustainable acquisition program.

As prescribed in 970.2301-2, insert the following clause in contracts:

SUSTAINABLE ACQUISITION PROGRAM (OCT 2010)

(a) Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, the Department of Energy (DOE) is committed to managing its facilities in an environmentally preferable and sustainable manner that will promote the natural environment and protect the health and well being of its Federal employees and contractor service providers. In the performance of work under this contract, the Contractor shall provide its services in a manner that promotes the natural environment, reduces greenhouse gas emissions and protects the health and well being of Federal employees, contract service providers and visitors using the facility.

(b) Green purchasing or sustainable acquisition has several interacting initiatives. The Contractor must comply with initiatives that are current as of the contract award date. DOE may require compliance with revised initiatives from time to time. The Contractor may request an equitable adjustment to the terms of its contract using the procedures at 48 CFR 970.5243-1 Changes. The initiatives important to these Orders are explained on the following Government or Industry Internet Sites:

(1) Recycled Content Products are described at <http://epa.gov/cpg>.

(2) Biobased Products are described at <http://www.biopreferred.gov/>.

(3) Energy efficient products are at <http://energystar.gov/products> for Energy Star products.

(4) Energy efficient products are at <http://www.femp.energy.gov/procurement> for FEMP designated products.

(5) Environmentally preferable and energy efficient electronics including desktop computers, laptops and monitors are at <http://www.epeat.net> the Electronic Products Environmental Assessment Tool (EPEAT) the Green Electronics Council site.

(6) Green house gas emission inventories are required, including Scope 3 emissions which include contractor emissions. These are discussed at Section 13 of Executive Order 13514 which can be found at <http://www.archives.gov/federal-register/executive-orders/disposition.html>.

(7) Non-Ozone Depleting Alternative Products are at <http://www.epa.gov/ozone/strathome.html>.

(8) Water efficient plumbing products are at <http://epa.gov/watersense>.

(c) The clauses at FAR 52.223-2, Affirmative Procurement of Biobased Products under Service and Construction Contracts, 52.223-15, Energy Efficiency in Energy Consuming Products, and 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts, require the use of products that have biobased content, are energy efficient, or

have recycled content. To the extent that the services provided by the Contractor require provision of any of the above types of products, the Contractor must provide the energy efficient and environmentally sustainable type of product unless that type of product—

(1) Is not available;

(2) Is not life cycle cost effective (or does not exceed 110% of the price of alternative items if life cycle cost data is unavailable), EPEAT is an example of lifecycle costs that have been analyzed by DOE and found to be acceptable at the silver and gold level;

(3) Does not meet performance needs; or,

(4) Cannot be delivered in time to meet a critical need.

(d) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, (<http://www.epa.gov/greeningepa/practices/eo13423.htm>) and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance (<http://www.archives.gov/federal-register/executive-orders/disposition.html>). The Contractor shall also consider the best practices within the DOE Acquisition Guide, Chapter 23, *Acquisition Considerations Regarding Federal Leadership in Environmental, Energy, and Economic Performance*. This guide includes information concerning recycled content products, biobased products, energy efficient products, water efficient products, alternative fuels and vehicles, non ozone depleting substances and other environmentally preferable products and services. This guide is available on the Internet at: <http://management.energy.gov/documents/AcqGuide23pt0Rev1.pdf>.

(e) Contractors must establish and maintain a documented energy management program which includes requirements for energy and water efficient equipment, EnergyStar or WaterSense, as applicable and procedures for verification of purchases, following the criteria in DOE Order 430.2B, Departmental Energy, Renewable Energy, and Transportation Management, Attachment 1, or its successor. This requirement should not be flowed down to subcontractors.

(f) In complying with the requirements of paragraph (c) of this clause, the Contractor shall coordinate its activities with and submit required reports through the Environmental Sustainability Coordinator or equivalent position.

(g) The Contractor shall prepare and submit performance reports using prescribed DOE formats, at the end of the Federal fiscal year, on matters related to the acquisition of environmentally preferable and sustainable products and services. This is a material delivery under the contract. Failure to perform this requirement may be considered a failure that endangers performance of this contract and may result in termination for default [see FAR 52.249–6, Termination (Cost Reimbursement)].

(h) These provisions shall be flowed down only to first tier subcontracts exceeding the simplified acquisition threshold that support operation of the DOE facility and offer significant subcontracting opportunities for

energy efficient or environmentally sustainable products or services. The Subcontractor will comply with the procedures in paragraphs (c) through (f) of this clause regarding the collection of all data necessary to generate the reports required under paragraphs (c) through (f) of this clause, and submit the reports directly to the Prime Contractor's Environmental Sustainability Coordinator at the supported facility. The Subcontractor will advise the Contractor if it is unable to procure energy efficient and environmentally sustainable items and cite which of the reasons in paragraph (c) of this clause apply. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multi-year, the Subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties. Failure to comply with these reporting requirements may be considered a breach of contract with attendant consequences.

(i) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "Subcontractor."

(End of Clause)

Alternate I for Construction Contracts and Subcontracts (OCT 2010)—When contracting for construction, alteration, or renovation of DOE facilities, substitute the following paragraphs (d) through (i):

(d) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, (<http://www.epa.gov/greeningepa/practices/eo13423.htm>) and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance (<http://www.archives.gov/federal-register/executive-orders/disposition.html>). The Contractor shall also consider the best practices within the DOE Acquisition Guide, Chapter 23, *Acquisition Considerations Regarding Federal Leadership in Environmental, Energy, and Economic Performance*. This guide includes information concerning recycled content products, biobased products, energy efficient products, water efficient products, alternative fuels and vehicles, non-ozone depleting substances and other environmentally preferable products and services. This guide is available on the Internet at: <http://management.energy.gov/documents/AcqGuide23pt0Rev1.pdf>. When developing the Bill of Materials for approval of the Contracting Officer or Representative, the contractor shall specify energy efficient and environmentally sustainable materials to the extent possible within the constraints of the general design specifications. Compliance with the *Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings* (Guiding Principles) shall be achieved through certification to the Leadership in Energy and Environmental Design (LEED) Gold level under the LEED rating system most suited to the building type.

(e) [Reserved]

(f) In complying with the requirements of paragraph (c) of this clause, the Contractor(s)

shall coordinate its activities with and submit required reports through the Environmental Sustainability Coordinator or equivalent position.

(g) The Contractor shall prepare and submit performance reports using prescribed DOE formats, at the end of the Federal fiscal year, on matters related to the acquisition of energy efficient and environmentally sustainable products and services. This is a material delivery under the contract. Failure to perform this requirement may be considered a failure that endangers performance of this contract and may result in termination for default, see 48 CFR 52.249–6, Termination (Cost Reimbursement).

(h) These provisions shall be flowed down only to first tier construction subcontracts exceeding the simplified acquisition threshold that support operation of the DOE facility and offer significant opportunities for designating energy efficient or environmentally sustainable products or services in the materials selection process. The subcontractor will comply with the procedures in paragraphs (c) through (f) of this clause regarding the collection of all data necessary to generate the reports required under paragraphs (c) through (f) of this clause, and submit the reports directly to the Prime Contractor's Environmental Sustainability Coordinator at the supported facility. The subcontractor will advise the contractor if it is unable to procure energy efficient and environmentally sustainable items and cite which of the reasons in paragraph (c) of this clause apply. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multi-year, the subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties. Failure to comply with these reporting requirements may be considered a breach of contract with attendant consequences.

(i) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "Subcontractor."

(End of Clause)

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 385

Change to FMCSA Policy on Calculating and Publicizing the Driver, Vehicle, and Hazardous Materials Out-of-Service Rates and Crash Rates

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of enforcement policy amendment.