

a population of less than 10,000 or (ii) is not within the outer boundaries of a city or town if the city or town has a population of 50,000 or more and if the adjacent urbanized and urbanizing areas have a population density of more than 100 per square mile.

(4) "Urban area" means any Metropolitan Area (MA) as defined by the Office of Management and Budget (OMB) and any non-MA that meets one of the following criteria:

(i) A geographical area within the jurisdiction of any incorporated city, town, borough, village, or other unit of general local government, except county or parish, having a population of 10,000 or more inhabitants.

(ii) That portion of the geographical area within the jurisdiction of any county, town, township, or similar governmental entity which contains no incorporated unit of general local government, but has a population density equal to or exceeding 1,500 inhabitants per square mile; or

(iii) That portion of any geographical area having a population density equal to or exceeding 1,500 inhabitants per square mile and situated adjacent to the boundary of any incorporated unit of general local government which has a population of 10,000 or more inhabitants. (Reference: Intergovernmental Cooperation Act of 1968, 40 U.S.C. 535.)

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DEPARTMENT OF ENERGY

48 CFR Parts 904, 909, 923, 926, 952 and 970

RIN 1991-AB31

Acquisition Regulation: Elimination of Non-Statutory Certification Requirements

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to eliminate all non-statutorily imposed contractor and offeror certification requirements.

DATES: This final rule is effective September 4, 1997.

FOR FURTHER INFORMATION CONTACT: John R. Bashista (202) 586-8192 (telephone); (202) 586-0545 (facsimile); john.bashista@hq.doe.gov (electronic mail).

SUPPLEMENTARY INFORMATION:

I. Background

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G. Review Under the Small Business Regulatory Enforcement Fairness Act.

H. Review Under the Unfunded Mandates Reform Act.

I. Background

Section 4301(b)(1)(B) of the Clinger-Cohen Act of 1996, Pub. L. 104-106, requires agencies that have procurement regulations containing one or more certification requirements for contractors and offerors that are not specifically imposed by statute to issue for public comment a proposal to amend their regulations to remove the certification requirements. Such certification requirements may be omitted from the agency proposal if (i) the senior procurement executive for the executive agency provides the head of the executive agency with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and (ii) the head of the executive agency approves in writing the retention of such certification requirement.

A notice of proposed rulemaking was published in the **Federal Register** on August 29, 1996 (61 FR 45391) which constituted DOE's proposal for the elimination of all non-statutorily imposed contractor and offeror certification requirements from the DEAR pursuant to section 4301(b)(1)(B) of the Clinger-Cohen Act of 1996. No comments were received. Accordingly, the Department adopts the proposed rule as final.

The proposed rule made reference to a separate rulemaking which would eliminate the certification contained in section 952.209-70, Organizational conflicts of interest, disclosure or representation. A separate final rule will be published in the **Federal Register** to amend section 952.209-70 to eliminate the certification previously contained therein.

II. Explanation of Revisions

1. Section 952.204-2, Security Requirements, is amended to remove the non-statutory certification requirement pertaining to retention by a contractor of classified matter after contract completion or termination. A contractor seeking to retain classified material is still required to identify such material, and the reasons for its retention, to the contracting officer. However, there is no need to certify the information.

2. Section 952.204-73, Foreign ownership, control, or influence (FOCI) over contractor, is amended to remove the requirement for offerors to certify that FOCI data submitted to the Department is accurate, complete and current and that the disclosure is made in good faith; and to remove the requirement for offerors to certify that FOCI information previously submitted to DOE for a facility security clearance is accurate, complete and current. The disclosure requirement at DEAR 904.7003, however, will remain. In addition, technical and conforming amendments to the DEAR are made to 904.7003, 904.7005 and 904.7103.

3. Section 952.226-73, Energy Policy Act target group certification, is amended to remove the language requiring offerors to certify as to their status as one of the designated target groups under section 3021 of the Energy Policy Act of 1992. This provision is amended to require a representation from offerors regarding their status instead of a certification. In addition, technical and conforming amendments to the DEAR are made to subsection 926.7007 pursuant to the amendment of subsection 952.226-73.

4. Section 952.227-13, Patent Rights—Acquisition by the Government, paragraph (e)(3), is amended to remove the certification requirements for contractors in the interim and final reports pertaining to the disclosure of all inventions developed under the subject contract. Contractors are still required to submit interim and final reports and to disclose all inventions developed under the subject contract, however, there is no need to certify the information.

5. Section 952.227-80, Technical data certification, which includes a requirement for offerors to certify that they have not delivered or are not obligated to deliver to the Government under any other contract or subcontract the same or substantially the same technical data as included in their offer to the Department, is removed.

6. Section 952.227-81, Royalty Payments Certification, which includes a certification requirement for offerors to disclose whether their contract price includes an amount representing the payment of royalty by the offeror to others in connection with contract performance and, if so, to identify pertinent information about the royalty, is removed.

7. Section 970.5204-57, Certification regarding workplace substance abuse programs at DOE facilities, is amended to remove the requirement for offerors to certify that they will provide to the contracting officer within 30 days after

either notification of selection for award or award of a contract, their written workplace substance abuse program consistent with the requirements of 10 CFR 707. Instead, offerors are required to agree to provide a drug-free workplace in accordance with 41 U.S.C. 701(a)(1) as a condition of responsibility prior to contract award. In addition, technical and conforming amendments to the DEAR are made to sections 909.104, 923.570-2, 923.570-3, 970.2305-4 and 970.2305-5.

III. Procedural Requirements

A. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

B. 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 action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

C. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to

ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the regulations meet the relevant standards of Executive Order 12988.

D. Review Under the Regulatory Flexibility Act

This final rule has been reviewed under the Regulatory Flexibility Act of 1980, Public Law 96-354, that requires preparation of an initial regulatory flexibility analysis for any rule that is likely to have significant economic impact on a substantial number of small entities. In the preamble to the proposed rule, DOE noted that the proposed rule would eliminate any compliance costs on small businesses associated with the administrative aspects of providing the express certifications which are eliminated from the Department of Energy Acquisition Regulation. The Department certified that this rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis had been prepared. DOE did not receive any comments on this certification.

E. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500-1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.). Pursuant to Appendix A of Subpart D of 10 CFR 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), DOE has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

F. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

H. 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 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. This rulemaking only affects private sector entities, and the impact is less than \$100 million.

List of Subjects in 48 CFR Parts 904, 909, 923, 926, 952 and 970

Government procurement.

Issued in Washington, DC on July 30, 1997.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

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

1. The authority citations for parts 904, 909, 923, 926 and 952 continue to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 904—ADMINISTRATIVE MATTERS

2. Section 904.7003 is amended by revising paragraph (d) to read as follows:

904.7003 Disclosure of foreign ownership, control, or influence.

* * * * *

(d) The contracting officer shall not award or extend any contract subject to this subpart, exercise any options under a contract, modify any contracts subject to this subpart, or approve or consent to a subcontract subject to this subpart unless:

(1) The contractor provides the information required by the solicitation provision at 48 CFR 952.204-73, and

(2) The contracting officer has made a positive determination in accordance with 48 CFR 904.7004.

3. Section 904.7005 is amended by revising paragraph (a) to read as follows:

904.7005 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 48 CFR 952.204-73, Foreign Ownership, Control or Influence over Contractor, in all solicitations for contracts subject to 48 CFR 904.7001.

* * * * *

4. Section 904.7103 is amended by revising paragraph (a) to read as follows:

904.7103 Solicitation provision and contract clause.

(a) Any solicitation, including those under simplified acquisition procedures, for a contract under the national security program which will require access to proscribed information shall include the provision at 48 CFR 952.204-73 with its Alternate I.

* * * * *

PART 909—CONTRACTOR QUALIFICATIONS

5. Section 909.104-1 is amended by revising paragraph (h) to read as follows:

909.104-1 General Standards. (DOE coverage—paragraph (h))

(h) For solicitations for contract work subject to the provisions of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, the prospective contractor must agree, in accordance with 48 CFR 970.5204-57, Agreement Regarding Workplace Substance Abuse Programs at DOE Sites, to provide the contracting officer with its written workplace substance abuse program in order to be determined responsible and, thus, eligible to receive the contract award.

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

6. Section 923.570-2 is amended by revising paragraph (a) to read as follows:

923.570-2 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 48 CFR 970.5204-57, Agreement Regarding Workplace Substance Abuse Programs at DOE Sites, in solicitations where the work to be performed by the contractor will occur

on sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, as specified in 48 CFR 923.570-1, Applicability.

* * * * *

7. Section 923.570-3 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows, and by removing paragraph (b)(4):

923.570-3 Suspension of payments, termination of contract, and debarment and suspension actions.

* * * * *

(b) * * *

(1) * * *

(2) The contractor has failed to comply with the terms of the provision at 48 CFR 970.5204-57; or

(3) Such a number of contractor employees having been convicted of violations of criminal drug statutes for violations occurring on the DOE-owned or -controlled site, as to indicate that the contractor has failed to make a good faith effort to provide a drug free workplace.

PART 926—OTHER SOCIOECONOMIC PROGRAMS

8. Section 926.7007 is amended by revising paragraph (d) to read as follows:

926.7007 Solicitation provisions and contract clauses.

* * * * *

(d) The contracting officer shall insert the provision at 48 CFR 952.226-73, Energy Policy Act Target Group Representation, in solicitations for Energy Policy Act procurements.

* * * * *

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. Section 952.204-2 is amended by revising the clause date and paragraphs (a) and (b) of the clause to read as follows:

952.204-2 Security

* * * * *

Security (SEP 1997)

(a) Responsibility. It is the contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss or theft of the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon

completion or termination of this contract, transmit to DOE any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified matter is required after the completion or termination of the contract, the contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and the proposed period of retention. If the retention is approved by the contracting officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

(b) Regulations. The contractor agrees to comply with all security regulations and requirements of DOE in effect on the date of award.

* * * * *

10. Section 952.204-73 is amended by removing the certification language following the list of questions at the end of paragraph (c) and preceding paragraph (d), and revising the clause date and paragraph (e) to read as follows:

952.204-73 Foreign ownership, control, or influence over contractor (Representation)

* * * * *

Foreign Ownership, control or influence over contractor (JUL 1997)

* * * * *

(c) * * *

(d) * * * * *

(e) The offeror shall require any subcontractors having access to classified information or a significant quantity of special nuclear material to provide responses to the questions in paragraph (c) of this provision directly to the DOE contracting officer.

* * * * *

11. Section 952.226-73 is amended by revising the clause date and the introductory text to paragraph (a) of the provision to read as follows:

952.226-73 Energy Policy Act target group representation.

* * * * *

Energy Policy Act target group representation (SEP 1997)

(a) The offeror is:

* * * * *

12. Section 952.227-13 is amended by revising the clause date and paragraph (e)(3) of the clause to read as follows:

952.227-13 Patent rights-acquisition by the Government

* * * * *

Patent rights-acquisition by the Government (SEP 1997)

* * * * *

(e) Invention identification, disclosures, and reports.

* * * * *

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing all subject inventions during that period, and including a statement that all subject inventions have been disclosed (or that there are not such inventions), and that such disclosure has been made in accordance with the procedures required by paragraph (e)(1) of this clause.

(ii) A final report, within 3 months after completion of the contracted work listing all subject inventions or containing a statement that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or containing a statement that there were no such subcontracts.

* * * * *

952.227-80 and 952.227-81 [Removed]

13. Sections 952.227-80 and 952.227-81 are removed.

14. Section 952.227-83 is amended by revising the introductory text to read as follows:

952.227-83 Rights in technical data solicitation representation.

Pursuant to 48 CFR 927.7004-1 and 927.7004-2, include this provision and the legend at FAR 52.215-12 in solicitations which may result in contracts for research, development, or demonstration work or contracts for supplies in which delivery of required technical data is contemplated.

* * * * *

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

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

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95-91 (42 U.S.C. 7254).

16. Subsection 970.2305-4 is amended by revising paragraph (a) to read as follows:

970.2305-4 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 48 CFR 970.5204-57, Agreement Regarding Workplace Substance Abuse Programs at DOE Sites, in solicitations for the management and operation of DOE-owned or -controlled sites operated under the authority of the Atomic Energy Act of 1954, as amended.

* * * * *

17. Subsection 970.2305-5 is amended by revising paragraph (b)(2) to read as follows:

970.2305-5 Suspension of payments, termination of contract, and debarment and suspension actions.

* * * * *

(b) * * *
(1) * * *

(2) The contractor has failed to comply with the terms of the provision at 48 CFR 970.5204-57;

* * * * *

18. Subsection 970.5204-57 is amended by revising the section and provision heading, removing paragraph (d) of the provision, and revising paragraphs (b) and (c) of the provision to read as follows:

970.5204-57 Agreement regarding workplace substance abuse programs at DOE facilities.

* * * * *

Agreement Regarding Workplace Substance Abuse Programs At DOE Sites (SEP 1997)

* * * * *

(b) By submission of its offer, the officer agrees to provide to the contracting officer, within 30 days after notification of selection for award, or award of a contract, whichever occurs first, pursuant to this solicitation, its written workplace substance abuse program consistent with the requirements of 10 CFR part 707.

(c) Failure of the offeror to agree to the condition of responsibility set forth in paragraph (b) of this provision, renders the offeror unqualified and ineligible for award.

[FR Doc. 97-20556 Filed 8-4-97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Chapter X

[STB Ex Parte No. 567]

Nomenclature Changes in the Board's Regulations

AGENCY: Surface Transportation Board.

ACTION: Final rules.

SUMMARY: The Board revises its regulations to make nomenclature changes to reflect the transfer of functions from the Interstate Commerce Commission to the Surface Transportation Board.

EFFECTIVE DATE: These rules are effective August 5, 1997.

FOR FURTHER INFORMATION CONTACT: James W. Greene, (202) 565-1578. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: The Surface Transportation Board (Board) is revising its regulations to reflect nomenclature changes effected by the

ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA). The ICCTA abolished the Interstate Commerce Commission (ICC) and eliminated many of its functions. Some of the ICC's retained functions were transferred directly to the Board, while others were transferred directly to the Secretary of Transportation (and subsequently delegated to the Federal Highway Administration (FHWA)). The ICC's regulations in 49 CFR chapter X were, however, transferred en masse to the Board, after which some were subsequently transferred to the FHWA and redesignated in 49 CFR chapter III.

In various rulemaking proceedings that it has conducted since the ICCTA was enacted, the Board has eliminated or revised many of its regulations, and, in the revised regulations, we have made the necessary nomenclature changes to reflect the transfer of functions from the ICC to the Board. Nevertheless, numerous regulations in 49 CFR Chapter X continue to contain incorrect references to the ICC, and we are revising those regulations to remove the ICC references and add references to the Board.¹

Small Entities

The Board certifies that this rule will not have a significant economic effect on a substantial number of small entities.

Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: July 29, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,
Secretary.

For the reasons set forth in the preamble, parts 1002 through 1332 (except in part 1201 subpart A (ii)16.(a), part 1206, part 1249, and part 1312) of title 49, chapter X, of the Code of Federal Regulations are amended as follows:

In the list below, in the order listed, remove the term indicated in the left column from wherever it appears in parts 1002 through 1332 (except in part 1201 subpart A (ii)16.(a), part 1206, part 1249, and part 1312), and add in its place the term indicated in the right column:

¹ Certain regulations are being excluded from these revisions because they already include the appropriate nomenclature, will be revised in the near future to reflect the nomenclature and other changes, or will be redesignated to other parts of the CFR.