

**§ 54.519 State telecommunications networks.****(a) Telecommunications services.**

State telecommunications networks may secure discounts under the universal service support mechanisms on supported telecommunications services (as described in § 54.502) on behalf of applicants. Such State telecommunications networks shall pass on such discounts to applicants and shall:

\* \* \* \* \*

(6) Comply with the competitive bid requirements set forth in § 54.510(b).

(b) Internet access and installation and maintenance of internal connections. State telecommunications networks either may secure discounts on Internet access and installation and maintenance of internal connections in the manner described in paragraph (a) of this section with regard to telecommunications, or shall be eligible, consistent with § 54.502(d), to receive universal service support for providing such services to applicants.

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**DEPARTMENT OF ENERGY****48 CFR Part 970**

RIN 1991-AB91

**Acquisition Regulation: Agency Supplementary Regulations**

**AGENCY:** Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Energy (DOE) is proposing to amend the Department of Energy Acquisition Regulation (DEAR) on DOE Management and Operating Contracts to make changes to conform to the Federal Acquisition Regulation (FAR), remove out-of-date coverage, and update references. Today's proposed rule does not alter substantive rights or obligations under current law.

**DATES:** Written comments on the proposed rulemaking must be received on or before close of business July 9, 2010.

**ADDRESSES:** You may submit comments, identified by DEAR: Subchapter I and RIN 1991-AB91, by any of the following methods:

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

• *E-mail to:* [DEARrulemaking@hq.doe.gov](mailto:DEARrulemaking@hq.doe.gov). Include DEAR: Subchapter I and RIN 1991-AB91 in the subject line of the message.

• *Mail to:* U.S. Department of Energy, Office of Procurement and Assistance Management, MA-611, 1000 Independence Avenue, SW., Washington, DC 20585. Comments by e-mail are encouraged.

**FOR FURTHER INFORMATION CONTACT:**

Barbara Binney at (202) 287-1340 or by e-mail [barbara.binney@hq.doe.gov](mailto:barbara.binney@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:****I. Background****II. Section-by-Section Analysis****III. Procedural Requirements**

- A. Review Under Executive Order 12866
- B. Review Under Executive Order 12988
- C. Review Under the Regulatory Flexibility Act
- D. Review Under the Paperwork Reduction Act
- E. Review Under the National Environmental Policy Act
- F. Review Under Executive Order 13132
- G. Review Under the Unfunded Mandates Reform Act of 1995
- H. Review Under the Treasury and General Government Appropriations Act, 1999
- I. Review Under Executive Order 13211
- J. Review Under the Treasury and General Government Appropriations Act, 2001
- K. Approval by the Office of the Secretary of Energy

**I. Background**

The Department of Energy Acquisition Regulation (DEAR) Subchapter I has sections that need to be updated to conform with the FAR. The objective of this action is to update the existing DEAR Subchapter I—Agency Supplementary Regulations, Part 970—DOE Management and Operating Contracts to conform it to the FAR. None of these changes are substantive or of a nature to cause any significant expense for DOE or its contractors.

**II. Section-by-Section Analysis**

*DOE proposes to amend the DEAR as follows:*

1. Section 970.0100 is amended to add the references for the Code of Federal Regulation (CFR) chapters 1 and 9.
2. Section 970.103 is revised to remove “DEAR” before 970.0309 and remove “FAR” before 3.9 and add in its place “48 CFR subpart” in paragraph (a)(3).
3. Section 970.0404-2 is amended to update the DOE Order to 475.1, Counterintelligence Program.
4. Section 970.19 is amended to revise the subpart heading and the 970.1907 section heading to conform to the FAR.
5. Section 970.1907-1 is redesignated as 970.1907-4 to conform to the FAR.
6. Part 970 is revised by adding a new subpart “970.25 Foreign Acquisition” and section “970.2570 Contract clauses”

which provides instructions on when to insert and how to modify the clauses at FAR 52.225-1, Buy American Act—Supplies, and FAR 52.225-9, Buy American Act—Construction Materials, in management and operating contracts.

7. Section 970.3102-05-6 paragraphs (a)(7)(i) and (ii) are amended to clarify that the contract will set forth the reimbursable costs for compensation for personal services, it removes the reference to the personnel appendix. Paragraph (p)(1) revises the reference to the FAR from the “Federal Acquisition Regulation” to “48 CFR.”

8. Subpart 970.34 is amended by redesignating 970.3400 as 970.3405 and 970.3400-1 as 970.3405-2 to conform with the FAR.

9. Subpart 970.37 is revised to add the new section “970.3706 Performance-based acquisition” and “970.3706-1 General” which references 970.1100 for policy and guidance on performance-based contracting for management and operating (M&O) contracts.

10. Section 970.3770-1 is amended by adding that the use of DOE directives is prescribed in 970.0470.

11. Section 970.5204-1 is amended by revising the date of the clause and removing “DOE Order 5670.3, Counterintelligence Program” in paragraph (a) of the clause and adding in its place “DOE Order 475.1, Counterintelligence Program, or its successor”.

12. Section 970.5223-3 is amended by revising the date of the provision and adding that DOE may grant an extension to the notification or implementation period if necessary as per 10 CFR 707.5 (g) in paragraph (b). This change will provide the contracting officer the authority to extend the time needed for the contractor to submit the workplace substance abuse program plan.

13. Section 970.5223-4 is amended by revising the date of the clause and revising the clause to permit the contracting officer to agree to different date beyond the 30-day notice by the contractor for the submission of the workplace substance abuse program plan. This change will provide the Contracting Officer the authority to extend the time needed for the Contractor to submit the workplace substance abuse program plan.

14. Section 970.5226-1 is amended by revising the punctuation in the last sentence of the clause.

15. Section 970.5232-3 is amended at paragraph (h)(1) to add “or subcontractor’s” after “contractor’s” and to add “and to interview any current employee regarding such transactions” after “hereunder.” Section 871 of the Duncan Hunter National Defense

Authorization Act for Fiscal Year 2009 and section 902 of Title IX of the Recovery Act formalized the current practices permitting access to the Government Accountability Office to records and to interview current employees of contractors and subcontractors administering contracts.

16. Section 970.5235-1 is amended to update the clause to reference the clause 48 CFR 970.5217-1 in paragraph (c) since this clause applies the Work for Others Program. Also, paragraph (d) is amended to add the full title of DOE order 481.1.

17. The rule text is amended as noted in paragraph 15 and in the tables at paragraphs 27 and 28 by removing "FAR" or "DEAR" and adding "48 CFR"; removing "FAR" or "48 CFR"; adding "48 CFR", revising the punctuation; and capitalizing Contractor, Contractor's, and Contracting Officer.

### III. 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 rule 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 United States 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 if 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 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 that an agency prepare an initial regulatory flexibility analysis for any regulation for which a general notice or proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). This rule updates references in the DEAR that apply to public contracts and does not impose any additional requirements on small businesses. On the basis of the foregoing, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Today's proposed rule does not alter any substantive rights or obligations and consequently, today's proposed rule will not have a significant cost or administrative impact on contractors, including 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 proposed rule does not impose a collection of information requirement subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Existing burdens associated with the collection of certain contractor data under the DEAR have been cleared under OMB control number 1910-4100.

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

DOE has concluded that promulgation of this proposed 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 proposed rule is categorically excluded from NEPA review because the amendments to the DEAR are strictly procedural (categorical exclusion A6). Therefore, this proposed 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 the proposed rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

#### 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 proposes changes that do not alter any substantive rights or obligations. This proposed rule does not impose any mandates.

#### 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 Office of Information and Regulatory Affairs of the Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that 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; (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 proposed 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 the proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

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

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

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

Government procurement.

Issued in Washington, DC on May 19, 2010.

**Patrick M. Ferraro,**

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

**Joseph F. Waddell,**

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

For the reasons set out in the preamble, the Department of Energy is proposing to amend Chapter 9 of Title 48 of the Code of Federal Regulations as set forth below.

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

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

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

#### **Subpart 970.01—Management and Operating Contract Regulatory System**

##### **970.0100 [Amended]**

2. Section 970.0100 is amended in the first sentence, by adding, “(Chapter 1 of Title 48 Code of Federal Regulations (CFR))” after “(FAR)” and by adding “(Chapter 9 of Title 48 CFR)” after “DEAR”.

##### **970.0103 [Amended]**

3. Section 970.0103 is amended by:

- Removing, in introductory paragraph (a) heading, “part” and adding in its place “Part”;
- Removing, in paragraph (a)(3) “DEAR”; and
- Removing, in paragraph (a)(3) “FAR 3.9” and adding in its place “48 CFR subpart 3.9”.

##### **970.0404–2 [Amended]**

4. Section 970.0404–2 is amended in paragraph (b) by removing “5670.3 (as amended).” at the end of the first sentence and adding in its place “475.1, Counterintelligence Program, or its successor.”

#### **Subpart 970.19—Small Business Programs**

5. Revise subpart 970.19 subpart heading to read as set forth above.

6. Revise 970.1907 section heading to read as set forth below:

##### **970.1907 The Small Business Subcontracting Program.**

\* \* \* \* \*

##### **970.1907–1 [Redesignated]**

7. Section 970.1907–1 is redesignated as 970.1907–4.

8. Add a new subpart 970.25, consisting of 970.2570, to part 970 to read as follows:

#### **Subpart 970.25—Foreign Acquisition**

##### **970.2570 Contract clauses.**

Contracting officers shall insert the clauses at 48 CFR 52.225–1, Buy American Act—Supplies, and 48 CFR 52.225–9, Buy American Act—Construction Materials, in management and operating contracts. The clause at 48 CFR 52.225–1 shall be modified in paragraph (d) by substituting the word “use” for the word “deliver.”

##### **970.2673–1 [Amended]**

9. Section 970.2673–1 is amended by:

- Removing the “:” in introductory text and adding in its place a “—”;
- Removing the “,” in paragraph (a) and adding in its place a “;”;
- Removing the “,” in paragraph (b) and adding in its place a “;”.

10. Section 970.3102–05–6 is

amended by:

- Revising paragraphs (a)(7)(i) and (a)(7)(ii) to read as set forth below; and
- Removing “Federal Acquisition Regulation” in paragraph (p)(1) and adding in its place “48 CFR”.

##### **970.3102–05–6 Compensation for personal services.**

(a) \* \* \*

(7)(i) Reimbursable costs for compensation for personal services are to be set forth in the contract. This compensation shall be set forth using the principles and policies of 48 CFR 31.205–6, Compensation, as supplemented by this section, 970.3102–05–6, and other pertinent parts of the DEAR. Costs that are unallowable under other contract terms shall not be allowable as compensation for personnel services.

(ii) The contract sets forth, in detail, personnel costs and related expenses allowable under the contract and documents personnel policies, practices and plans which have been found acceptable by the contracting officer. The contractor will advise DOE of any proposed changes in any matters covered by these policies, practices, or plans which relate to personnel costs. Types of personnel costs and related expenses addressed in the contract are as follows: Salaries and wages; bonuses and incentive compensation; overtime, shift differential, holiday, and other premium pay for time worked; welfare benefits and retirement programs; paid time off, and salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, or serving on labor management (contractor)

committees provided, however, that the contracting officer's approval is required in each instance of total compensation to an individual employee above an annual rate as specified in the contract.

\* \* \* \* \*

#### 970.3102-05-46 [Amended]

11. Section 970.3102-05-46 is amended in paragraph (e)(3) introductory text by adding "48 CFR" before "31.109".

#### 970.3400 and 970.3400-1 [Redesignated]

12. Redesignate 970.3400 as 970.3405 and 970.3400-1 as 970.3405-2.

13. Add a new section 970.3706 and 970.3706-1 to subpart 970.37 to read as follows:

#### 970.3706 Performance-based acquisition.

##### 970.3706-1 General.

For policy and guidance on performance-based contracting for management and operating (M&O) contracts, see 970.1100.

14. Section 970.3770-1 is revised to read as follows:

##### 970.3770-1 Policy.

Contractors managing the Department of Energy (DOE) facilities shall be required to comply with the DOE Directives applicable to facilities management. The use of the DOE Directives is prescribed in 970.0470.

15. Section 970.5204-1 is amended by:

- a. Revising the date of the clause to read as set forth below; and
- b. Removing "DOE Order 5670.3, Counterintelligence Program;" in paragraph (a) of the clause and adding in its place "DOE Order 475.1, Counterintelligence Program, or its successor;"

The revision reads as follows:

#### 970.5204-1 Counterintelligence.

\* \* \* \* \*

#### COUNTERINTELLIGENCE (XXX 20XX)

\* \* \* \* \*

16. Section 970.5223-3 is amended by:

- a. Revising the date of the provision to read as set forth below; and
- b. Adding a new sentence at the end of paragraph (b) as set forth below.

The revision and addition read as follows:

#### 970.5223-3 Agreement regarding Workplace Substance Abuse Programs at DOE Sites.

\* \* \* \* \*

#### AGREEMENT REGARDING WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (XXX 20XX)

\* \* \* \* \*

(b) \* \* \* DOE may grant an extension to the notification or implementation period if necessary as per 10 CFR 707.5 (g).

\* \* \* \* \*

17. Section 970.5223-4 is amended by:

- a. Revising the date of the clause to read as set forth below; and
  - b. Revising paragraph (c)(1).
- The revisions read as follows:

#### 970.5223-4 Workplace Substance Abuse Programs at DOE sites.

\* \* \* \* \*

#### WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (XXX 20XX)

\* \* \* \* \*

(c) *Subcontracts.* (1) The Contractor agrees to notify the Contracting Officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the Contractor believes may be subject to the requirements of 10 CFR part 707, unless the Contracting Officer agrees to a different date.

\* \* \* \* \*

(End of Clause)

18. Section 970.5232-3 is amended by:

- a. Revising the date of the clause to read as set forth below; and

b. Adding "or subcontractor's" after "contractor's" and adding "and to interview any current employee regarding such transactions" after "hereunder" in paragraph (h)(1).

The revision reads as follows:

#### 970.5232-3 Accounts, records, and inspection.

\* \* \* \* \*

#### ACCOUNTS, RECORDS, AND INSPECTION (XXX 20XX)

\* \* \* \* \*

19. Section 970.5235-1 is amended by:

- a. Revising the introductory text and the date of the clause to read as set forth below;

b. Removing "DOE Order 481.1, Work for Others (Non-Department of Energy Funded Work) (see current version)." in paragraph (c) and adding in its place "the clause 48 CFR 970.5217-1 Work for Others Program."; and

- c. Adding "Work for Others (Non-Department of Energy Funded Work), or its successor" after "DOE Order 481.1" in paragraph (d).

The revisions read as follows:

#### 970.5235-1 Federally funded research and development center sponsoring agreement.

As prescribed in 970.3501-4, insert the following clause:

#### FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER SPONSORING AGREEMENT (XXX 20XX)

\* \* \* \* \*

#### PART 970—[AMENDED]

20. In the table below, for each section indicated in the left column, remove the word indicated in the middle column from where it appears in the section, and add the word in the right column:

Section	Remove	Add
970.1504-1-4(e), in the introductory text, and (e)(2) in the introductory text	“.”	“_”
970.2201-1-1	“48 CFR Subpart”	“48 CFR subpart”
970.2201-1-2(a)(1)(ii)(A)	“A review must.”	“A review must—”
970.2201-1-2(a)(1)(ii)(C)	“including those.”	“including those—”
970.2201-1-2(a)(1)(iii)	“10 CFR Part 707.4”	“10 CFR 707.4”
970.2201-1-2(a)(1)(iii)	“10 CFR Part 707”	“10 CFR part 707”
970.2201-1-2(a)(1)(v)(A)	“authorization.”	“authorization—”
970.2305-2(b)	“48 CFR 23.5”	“48 CFR subpart 23.5”
970.2306(b)(4)	“48 CFR 970.5223-3”	“970.5223-3”
970.2672-2	“48 CFR”	“subpart”
970.5215-3(b)(4)(iii) in the first sentence	“contracting officer”	“Contracting Officer”
970.3204-1(a)	“48 CFR subpart 932.4”	“subpart 932.4”
970.5222-1 in the last sentence	“contractor”	“Contractor”
970.5223-1(b) in the third sentence	“contractor’s”	“Contractor’s”
970.5223-1(b)(2)	“(ES&H)”	“ES&H”
970.5226-1	“contracting officer”	“Contracting Officer”
970.5226-1 in the second sentence	“contractor”	“Contractor”
970.5226-1 in the third sentence	“Appendix.”	“the Appendix.”

Section	Remove	Add
970.5232–2(e)(2)(iv)(B) in the last sentence 970.5232–3(d) in the second sentence 970.5232–3(j) in the last sentence	“contractor” “Clause __,” “Penalties for Unallowable costs;”	“Contractor” “Clause 970.5204–3,” “Penalties for Unallowable Costs;”

21. In the table below, for each section indicated in the left column, remove the word indicated in the right column from where it appears in the section:

Section	Remove
970.2201–1–2(a)(1)(ii)	“48 CFR”
970.2671–2	“48 CFR”
970.2672–3	“48 CFR”
970.2673–2	“48 CFR”
970.5226–1 introductory text	“48 CFR”
970.5226–2 introductory text	“48 CFR”
970.5226–3 introductory text	“48 CFR”
970.5232–5(b) in two places	“FAR”

[FR Doc. 2010–13678 Filed 6–8–10; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF HOMELAND SECURITY

### 48 CFR Parts 3015, 3016, and 3052

[Docket No. DHS–2010–0045]

RIN 1601–AA43

### Revision of Department of Homeland Security Acquisition Regulation; Limitations on Subcontracting in Emergency Acquisitions (HSAR Case 2009–005)

**AGENCY:** Office of the Chief Procurement Officer, DHS.

**ACTION:** Proposed rule with requests for comments.

**SUMMARY:** The Department of Homeland Security (DHS) is proposing to amend its Homeland Security Acquisition Regulation (HSAR) to implement a statutory requirement limiting the use of subcontractors on cost-reimbursement type contracts entered into by the Department to facilitate the response to or recovery from a natural disaster or act of terrorism or other man-made disaster.

**DATES:** Comments and related material submitted electronically must be submitted to the Federal eRulemaking Portal <http://www.regulations.gov> on or before August 9, 2010. Comments and related material submitted by mail must reach the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation Branch at the address shown below on or before August 9, 2010 to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments identified by DHS docket number DHS–2010–0045, using any one of the following methods:

(1) *Via the internet at Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments and use docket number DHS–2010–0045.

(2) By mail to the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation Branch, Attn: Jeremy Olson, 245 Murray Drive, Bldg. 410 (RDS), Washington, DC 20528.

**FOR FURTHER INFORMATION CONTACT:** Jeremy Olson, Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation Branch, (202) 447–5197.

#### SUPPLEMENTARY INFORMATION:

- I. Request for Comments
- II. Background
- III. Discussion of Proposed Rule
- IV. Regulatory Requirements
  - A. Executive Order 12866 (Regulatory Planning and Review)
  - B. Small Entities
  - C. Collection of Information

#### I. Request for Comments

Interested persons are invited to participate in this rulemaking by submitting comments and related materials. Comments and related materials should be organized by HSAR Part, and indicate the specific section that is being commented on. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. See **ADDRESSES** above for information on how to submit comments. If you submit comments by mail, please submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. You may submit comments either by mail or via the internet as identified in the **ADDRESSES** section above; but to avoid duplication DHS requests that you submit comments and materials by only one method. If you would like DHS to acknowledge receipt of comments submitted by mail, please enclose a self-addressed, stamped postcard or envelope. DHS will consider all comments and material received during the comment period.

*Viewing comments and documents:* To view comments and read background

documents related to this rulemaking, go to <http://www.regulations.gov>, which contains relevant instructions under the FAQs tab on the home page.

## II. Background

Section 692 of the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), Public Law 109–295, 120 Stat. 1394, 1409 (Oct. 4, 2006), establishes a limitation on subcontracting for cost-reimbursement type contracts above the simplified acquisition threshold entered into to facilitate the response to or recovery from a natural disaster or act of terrorism or other man-made disaster. Congress enacted this limitation based on findings that excessive tiering of subcontractors under disaster recovery cost-reimbursement type contracts leads to inflated overhead charges and poor prime contractor oversight over subcontractor work. In order to implement the statutory requirement, DHS proposes to amend the Homeland Security Acquisition Regulation (HSAR) to add implementing policy.

## III. Discussion of Proposed Rule

The proposed rule would revise 48 CFR part 3015, Contracting by Negotiation; part 3016, Types of Contracts; and part 3052, Solicitation Provisions and Contract Clauses, to limit the use of subcontractors by prime contractors on certain DHS acquisitions above the simplified acquisition threshold (as defined by section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403) (currently \$100,000)), unless DHS determines that such requirements are not feasible or practicable. The authority to determine whether or not the subcontracting requirements are not feasible or practicable rests one level above the contracting officer. This determination may be made on the basis of analysis of information provided by an offeror seeking a DHS contract or the contracting officer may prepare a recommended Determination & Finding for review and approval by the deciding official.

*Contracts to be covered by the proposed regulation are those awarded in response to or recovery from:* (1) A major disaster or emergency declared by the President under Title IV or Title V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as