

DEPARTMENT OF ENERGY**48 CFR Parts 917, 950, 952 and 970**

RIN 1991-AB-28

Acquisition Regulation; Department of Energy Management and Operating Contracts**AGENCY:** Department of Energy.**ACTION:** Notice of limited reopening of the comment period.

SUMMARY: On June 24, 1996, the Department of Energy (DOE or Department) published a notice of proposed rulemaking (61 FR 32588) (DOE-NOPR) to amend the Department of Energy Acquisition Regulation (DEAR) to incorporate certain contract reform initiatives. Among the contract reform initiatives contained in the DOE-NOPR was a proposal to amend 48 CFR (DEAR) 970.5204-2, Environment, Safety and Health. The purpose of this notice is to publish additional proposed changes to that clause and invite comments on those revisions.

DATES: Written comments (1 copy) on the revisions presented in this notice must be submitted by October 25, 1996.

ADDRESSES: All comments are to be submitted to Connie P. Fournier, Office of Policy (HR-51), Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586-8245; (202) 586-0545 (facsimile); connie.fournier@hq.doe.gov (Internet).

The administrative record regarding this rulemaking is on file for public inspection and is located in the Department's Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-6020.

FOR FURTHER INFORMATION CONTACT: Connie P. Fournier, Office of Policy (HR-51), Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586-8245.

SUPPLEMENTARY INFORMATION: On June 24, 1996, DOE published a NOPR to amend the Department of Energy Acquisition Regulation (DEAR) to incorporate certain contract reform initiatives. Among the Department-wide contract reform initiatives contained in the DOE-NOPR was a proposal to amend 48 CFR (DEAR) 970.5204-2, Environment, Safety and Health (ES&H). The Department is revising its proposal to amend that clause in this notice.

One commenter on the ES&H clause published in the NOPR pointed out that the proposed ES&H clause should be consistent with the Defense Nuclear Facilities Safety Board (DNFSB)

Recommendation 95-2, "Integrated Safety Management." The proposed clause was developed and published prior to the issuance of the DNFSB's 95-2 recommendation. DOE realizes that the clause needs to incorporate the concepts of that recommendation and the revised proposed clause is intended to reflect those concepts. Additional information regarding the DNFSB's recommendation is included with the administrative record available in the Public Reading Room.

Three commenters requested the Department describe the specific laws, regulations, and directives applicable to contractors in the ES&H clause. A separate clause, "970.5204-XX Laws, Regulations, and DOE Directives" (Directives clause) published in the NOPR (61 FR 32603), would define the scope of requirements that are applicable to DOE contractors. The Directives clause outlines flexible processes that could be used to determine which DOE Directives are required and will be specifically referenced in the provisions of the ES&H clause.

One commenter stated that the use of the terms "workers" and "employees" in the ES&H clause could cause confusion by implying two different sets of personnel. The revised proposed clause would use only the term "employees."

Additional comments were received concerning the original proposed clause and will be addressed in the notice of final rulemaking. The revisions to the proposed clause contained in this Notice include: (1) A change in the title of the clause; (2) the addition of guiding principles for contractors to follow in the performance of work as outlined in the Department's implementation plan dated April 18, 1996, for DNFSB recommendation 95-2; and (3) the modification of the requirement for contractors to submit an ES&H Management Plan to a requirement for submission of a Safety Management System (System).

(Note: "safety" includes environment, safety and health.)

The submission of a System will not conflict with, or create a greater burden than, the submission of the ES&H Management Plan described in the ES&H clause published in the NOPR. Instead, it will simply provide a broader context within which the Department can fulfill its commitments to the DNFSB.

The revised proposed ES&H clause is intended to expand and modify the original language to assure contractors understand DOE expectations regarding

integrated safety management. Specifically, the proposed clause requires documentation of the contractor's System for approval by DOE. This establishes an agreement between the contractor and DOE on how the contractor will ensure the protection of the public, employees and the environment as well as implement the Department's Safety Management System Policy (DOE P 450.4).

The submission and approval of a System would likely be done on a one-time basis, assuming the contractor's System proves satisfactory in practice; however, the revised proposed clause would require that the System provide for annual updates and mutual agreement between the contractor and DOE regarding ES&H performance objectives, performance measures tied to rewards/penalties, and performance commitments. Such commitments are intended to highlight the contractor's most significant ES&H vulnerabilities, specific work to be accomplished to address those vulnerabilities, as well as assure major obligations to external ES&H oversight and regulatory bodies are met within budget constraints. Accordingly, the annual updates would identify the resources needed to conduct work safely in terms of ES&H support and assure appropriate skill mix and numbers of personnel in the ES&H area.

The Department thanks the commenters for their participation in this rulemaking already and urges interested members of the public to comment on this revised approach. Additional changes may be contained in the final rule.

Issued in Washington, D.C. on October 7, 1996.

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 proposed to be amended as set forth below:

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

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

Authority: 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).

2. Subsection 970.5204-2 revised to read as follows:

970.5204-2 Integration of Environment, Safety and Health into Work Planning and Execution.

As prescribed in 48 CFR (DEAR) 970.2303-2(a), insert the following clause.

Integration of Environment, Safety and Health into Work Planning and Execution
(Month and Year TBE)

(a) In performing work under this contract, the contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. Employees include subcontractor employees. In accomplishment of this requirement, the contractor shall implement programs to prevent accidents, releases, and exposures. The contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral and discernible part of the contractor's work planning and execution processes. The contractor shall, in the performance of work, ensure that:

(1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those contractor and subcontractor employees managing or supervising employees performing work.

(2) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.

(3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.

(5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.

(6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards.

(7) The conditions and requirements to be satisfied for operations to be initiated and conducted are clearly established and agreed-upon. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in the Safety Management System (System).

(b) The contractor shall manage and perform work in accordance with a documented System that fulfills all conditions in paragraph (a) of this clause at a minimum. The contractor shall exercise a degree of care commensurate with the work and the associated hazards. Documentation

of the System shall describe how the contractor will:

(1) Define the scope of work.
(2) Identify and analyze hazards associated with the work.

(3) Develop and implement hazard controls.

(4) Perform work within controls, and

(5) Provide feedback on adequacy of controls and continue to improve safety management.

(c) The System shall describe how the contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the contractor will measure system effectiveness.

(d) The contractor shall comply with, and assist the Department of Energy in complying with (where identified by the Department),

(i) All applicable Federal and non-Federal ES&H laws, regulations, and

(ii) Applicable directives identified in the clause of this contract on Laws, Regulations, and DOE Directives. The contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.

(e) The contractor shall submit to the contracting officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the contracting officer. Guidance on the preparation, content, review, and approval of the System addressing all aspects of ES&H is provided in DOE Guide G 450.4, "Integrated Safety Management," and successor documents. Additional guidance regarding the System may be provided by the contracting officer. On an annual basis, the contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the contractor's business processes for work planning, budgeting, authorization, execution, and change control.

(f) The contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the contractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the contracting officer may issue an order stopping work in whole or in part. Any stop work order issued under this clause (including a stop work order issued by the contractor to a subcontractor in accordance with paragraph (g) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. Thereafter, an order authorizing the resumption of the work may be issued at the discretion of the contracting officer. The

contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(g) The contractor shall provide in its purchasing system, required under the clause of this contract entitled, Contractor Purchasing System, policies, practices, and procedures for the flowdown of requirements of this clause, as appropriate, to subcontract performance of work on-site at a DOE-owned or-leased facility. Such subcontracts shall require the submittal of a documented description of the subcontractor's Safety Management System to the contractor for review and approval. Dates for initial submittal, discussions, and revisions to the subcontractor's System will be established by the contractor. Guidance on the preparation, content, review, and approval of the subcontractor's System will be provided by the contractor. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (f) of this clause.

(h) The contractor shall be responsible for compliance with the ES&H requirements applicable to this contract regardless of the performer of the work.

(i) For the purposes of this clause, safety encompasses environment, safety and health, including pollution prevention and waste minimization.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Endangered Status in Arizona and Threatened Status in Texas for the Cactus Ferruginous Pygmy-Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period will be reopened on the proposed rule to list the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) as an endangered species in Arizona with critical habitat and as threatened in Texas. The reopening of the comment period will allow all interested parties to submit written comments on the proposal.

DATES: The comment period for this proposal will be reopened on October 10, 1996 and will close on November