



6450-01-P

DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991-AC07

Acquisition Regulation: Technical and Administrative Changes to Department of Energy Acquisition Regulation

AGENCY: Department of Energy.

ACTION: Final rule; technical amendment.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to make technical and administrative changes to the DEAR by changing the term “Work for Others” to “Strategic Partnership Projects” and “WFO” to “SPP” in every instance where it appears in the DEAR. This final rule does not alter substantive rights or obligations under current law.

DATES: *Effective date:* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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I. Background.

Since July 1991, DOE has officially used the term “Work for Others” to describe work performed by its national laboratories for non-DOE entities, including other Federal agencies, universities, and the private sector. Projects performed under the Work for Others program provide solutions to difficult technical challenges vital to maintaining strong national security and promoting economic competitiveness. To better convey the importance of projects that the laboratories perform for other entities, DOE has decided to change the term “Work for Others (WFO) to “Strategic Partnership Projects (SPP)”.

The national laboratories/plants/sites and DOE programs assisted in determining the new name. This change will take place immediately and will be implemented throughout DOE and its contractor community in the coming months. 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 amends the DEAR as follows:

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1. Section 970.1707, is revised to change the term “Work for Others” to “Strategic Partnership Projects”.
2. Section 970.1707-1, is revised to change the term “Work for Others” to “Strategic Partnership Projects” and change the title for DOE Order 481.1C.
3. Section 970.1707-2, is revised to change the term “Work for Others” to “Strategic Partnership Projects”.
4. Section 970.1707-3, is revised to change the term “work for others” to “Strategic Partnership Projects” in both the title and paragraph (a).
5. Section 970.1707-4, is revised to change the term “Work for Others” to “Strategic Partnership Projects”.
6. Section 970.3270, paragraph (a)(6), is revised to change the term “Work for others” to “Strategic Partnership Projects”.
7. Section 970.3501-2, is revised to change the number and title for DOE Order 481.1.
8. Section 970.5217-1, is revised to change the clause title and date, and change the term “Work for Others” to “Strategic Partnership Projects” throughout the clause.

9. Section 970.5227-1, paragraph (b)(ii), is revised to change the term “Work for Others” to “Strategic Partnership Projects”.
10. Section 970.5227-2, paragraph (b)(1)(ii), is revised to change the term “Work for Others” to “Strategic Partnership Projects”.
11. Section 970.5227-3, is revised to change the term “Work for Others” to “Strategic Partnership Projects” and “WFO” to “SPP” throughout the clause.
12. Section 970.5227-11, paragraph (c)(2)(viii), is revised to change the term “Work-for-Others” to “Strategic Partnership Projects”.
13. Section 970.5227-12, paragraph (c)(1)(viii), is revised to change the term “Work-for-Others” to “Strategic Partnership Projects”.
14. Section 970.5232-6, is revised to change the term “Work for Others” to “Strategic Partnership Projects”.
15. Section 970.5235-1, paragraph (c), is revised to change the term “Work for Others” to “Strategic Partnership Projects” and change the number and title for DOE Order 481.1 in paragraph (d).

III. Procedural Requirements

A. Review Under Executive Order 12866 and 13563.

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 final 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).

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued

on January 18, 2011 (76 FR 3281 (Jan. 21, 2011)). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. DOE believes that this final rule is consistent with these principles, including the requirement that, to the extent permitted by law, agencies adopt a regulation only upon a

reasoned determination that its benefits justify its costs and, in choosing among alternative regulatory approaches, those approaches maximize net benefits.

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 final rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel’s web site at <http://www.energy.gov/gc/office-general-counsel>

The regulatory amendments in this notice of final rulemaking to change the term “Work for Others (WFO) to “Strategic Partnership Projects (SPP)” relate solely to internal agency organization, management or personnel, and as such, are not subject to the requirement for a general notice of proposed rulemaking under the Administrative Procedure Act (5 U.S.C. 553(a)(2)) (APA). There is no requirement under the APA or any other law that this rule be proposed for public comment. Consequently, this rulemaking is exempt from the requirements of the Regulatory Flexibility Act.

D. Review Under the Paperwork Reduction Act.

This final 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, with an expiration date of October 31, 2014.

E. Review Under the National Environmental Policy Act.

DOE has concluded that promulgation of this final 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 rulemaking 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 final 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 final 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 rulemaking or policy that may affect family well-being. This final rule 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 (OIRA), of the Office of Management and Budget (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; (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. This final 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 this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Administrative Procedure Act.

The regulatory amendments in this notice of final rulemaking to change the term "Work for Others (WFO) to "Strategic Partnership Projects (SPP)" relate solely to internal agency organization, management or personnel, and as such, are not subject to the requirement for a general notice of proposed rulemaking under the Administrative Procedure Act (5 U.S.C. 553(a)(2)) (APA). There is no requirement under the APA or any other law that this rule be proposed for public comment

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of this final rule prior to the effective date set forth at the outset of this rulemaking. The report will state that it has been determined that the rule is not a “major rule” as defined by 5 U.S.C. 801(2).

M. Approval by the Office of the Secretary of Energy.

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

List of Subjects in 48 CFR Part 970

Government procurement.

Issued in Washington, D.C. on March 12, 2015.

Paul Bosco,
Director,
Office of Acquisition and
Project Management,
Department of Energy.

Joseph Waddell,
Deputy Associate Administrator,
Acquisition and Project Management,
National Nuclear Security Administration.

For the reasons set out in the preamble, the Department of Energy amends 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.*

2. Section 970.1707 is amended by revising the section heading to read as follows:

970.1707 Strategic Partnership Projects.

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970.1707-1 [Amended]

3. Section 970.1707-1 is amended by:

a. Removing the term “Work for Others” in two places and adding in their places “Strategic Partnership Projects”; and

b. Removing “DOE Order 481.1C, WORK FOR OTHERS (NON-DEPARTMENT OF ENERGY FUNDED WORK)”, and adding in its place “DOE Order 481.1C, Strategic Partnership Projects (Formerly Known as Work for Others (Non-Department of Energy Funded Work)), or successor version”.

970.1707-2 [Amended]

4. Section 970.1707-2 is amended by removing the term “Work for Others” in the introductory text and adding in its place “Strategic Partnership Projects”.
5. Section 970.1707-3 is amended by:
 - a. Revising the section heading; and
 - b. In paragraph (a), removing the term “work for others” and adding in its place “strategic partnership projects”.

The revision reads as follows:

970.1707-3 Terms governing Strategic Partnership Projects.

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970.1707-4 [Amended]

6. Section 970.1707-4 is amended by removing the term “Work for Others” wherever it appears and adding in its place “Strategic Partnership Projects”.

970.3270 [Amended]

7. Section 970.3270, paragraph (a)(6), is amended by removing the term “Work for others” and adding in its place “Strategic Partnership Projects”.

970.3501-2 [Amended]

8. Section 970.3501-2 is amended by removing “DOE Order 481.1, Work for Others (Non-Department of Energy Funded Work)”, and adding in its place “DOE Order 481.1C, Strategic Partnership Projects (Formerly Known as Work for Others (Non-Department of Energy Funded Work)), or successor version”.

9. Section 970.5217-1 is amended by:

- a. Revising the section heading and clause heading and date; and

b. Removing the terms “work for others”, “Work for Others”, and “Work for others” wherever they appear and adding in their place “Strategic Partnership Projects”; and

The revisions read as follows:

970.5217-1 Strategic Partnership Projects Program.

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STRATEGIC PARTNERSHIP PROJECTS PROGRAM (NON-DOE FUNDED WORK) (INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER)

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970.5227-1 [Amended]

10. Section 970.5227-1, paragraph (b)(1)(ii), is amended by removing the term “Work for Others” and adding in its place “Strategic Partnership Projects”.

970.5227-2 [Amended]

11. Section 970.5227-2, paragraph (b)(1)(ii), is amended by removing the term “Work for Others” and adding in its place “Strategic Partnership Projects”.

970.5227-3 [Amended]

12. Section 970.5227-3 is amended by:

a. In paragraphs (a)(2), (c)(1), (n)(4), and (n)(4)(iii), removing the terms “Work for Others” and “Work for others” wherever they appear and adding in their place “Strategic Partnership Projects”; and

b. In paragraphs (a)(2), (d)(4), (d)(9), (n)(4) and (n)(4)(iii), removing the acronym “WFO” wherever it appears and adding in its place “SPP”.

970.5227-11 [Amended]

13. Section 970.5227-12, paragraph (c)(2)(viii), is amended by removing the term “Work-for-Others” and adding in its place “Strategic Partnership Projects”.

970.5227-12 [Amended]

14. Section 970.5227-12, paragraph (c)(1)(viii), is amended by removing the term “Work-for-Others” and adding in its place “Strategic Partnership Projects”.

15. Section 970.5232-6 is amended by:

- a. Revising the section heading and clause heading and date; and
- b. Removing the term “Work for Others” and adding in its place “Strategic Partnership Projects”.

The revisions read as follows:

970.5232-6 Strategic Partnership Projects funding authorization.

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STRATEGIC PARTNERSHIP PROJECT FUNDING AUTHORIZATION

**([INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE
FEDERAL REGISTER])**

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970.5235-1 [Amended]

16. Section 970.5235-1 is amended by:

- a. In paragraph (c), removing “48 CFR 970.5217-1, Work for Others Program” and adding in its place “48 CFR 970.5217-1, Strategic Partnership Projects Program”; and

b. In paragraph (d), removing “DOE Order 481.1, Work for Others (Non-Department of Energy Funded Work),” and adding in its place “DOE Order 481.1C, Strategic Partnership Projects (Formerly Known as Work for Others (Non-Department of Energy Funded Work)), or successor version”.

[FR Doc. 2015-06572 Filed: 3/23/2015 08:45 am; Publication Date: 3/24/2015]