may not be present in all cases, and the recipient must use judgment in classifying each agreement as a subgrant or a procurement contract. The recipient must make case-by-case determinations whether each agreement that it makes with another entity constitutes a subgrant or a procurement contract.

(b) Characteristics that support the classification of the agreement as a subgrant include when the other entity:

* * * * *

(2) Has its performance measured in relation to whether objectives of the LSC grant were met;

(3) Has responsibility for programmatic decision-making regarding the delivery of legal assistance under the recipient's LSC grant;

* * * * *

(5) In accordance with its agreement, uses LSC funds or property or services acquired in whole or in part with LSC funds, to carry out a program for a public purpose specified in LSC's governing statutes and regulations, as opposed to providing goods or services for the benefit of the recipient.

* * * * *

■ 4. Amend § 1627.4 as proposed to be amended at 80 FR 21692, April 20, 2015 by:

■ a. Redesignating paragraphs (a) through (e) as paragraphs (b) through (f), respectively;

■ b. Adding a new paragraph (a);

■ c. Revising the introductory text of newly redesignated paragraph (b);

■ b. Redesignating the newly redesignated paragraph (b)(5) as (b)(5)(i) and adding paragraph (b)(5)(ii);

■ c. Revising the newly redesignated paragraph (d)(2); and

■ d. Adding paragraph (g).

The revisions and additions read as follows:

§ 1627.4 Requirements for all subgrants.

(a) *Threshold.* (1) A recipient must obtain LSC's written approval prior to making a subgrant when the cost of the award is $15,000 or greater.

(2) *Valuation of in-kind subgrants.* (i) If either the actual cost to the recipient of the transferred property or service or the fair market value of the transferred property or service exceeds $15,000, the recipient must seek written approval from LSC prior to making a subgrant. If the asset transferred involves leased space, the fair market value of the office space must be determined by an independent property appraisal.

(ii) The valuation of the subgrant, either by fair market value or actual cost to the recipient of property or services, must be documented and to the extent feasible supported by the same methods used internally by the grantee.

(b) *Corporation approval of subgrants.* Recipients must submit all applications for subgrants exceeding the $15,000 threshold to LSC in writing for prior written approval. LSC will publish notice of the requirements concerning the format and contents of the application annually in the **Federal Register** and on LSC's Web site.

* * * * *

(5)

* * * * *

(ii) If a subgrant did not require prior approval, and the recipient proposes a change that will cause the total value of the subgrant to exceed the threshold for prior approval, the recipient must obtain LSC's prior written approval before making the change.

* * * * *

(d) * * *

* * * * *

(2) The recipient must ensure that the subrecipient properly spends, accounts for, and audits funds or property or services acquired in whole or in part with LSC funds received through the subgrant.

* * * * *

(g) *Accounting for in-kind subgrants.* (1) The value of property or services provided by a recipient to a subrecipient through a subgrant is subject to the audit and financial requirements of the Audit Guide for Recipients and Auditors and the Accounting Guide for LSC Recipients. Subgrants involving in-kind exchanges of property or services may be separately disclosed and accounted for, and reported upon in the audited financial statements of a recipient. The relationship between the recipient and subrecipient will determine the proper method of financial reporting following generally accepted accounting principles.

(2) If accounting for in-kind subgrants is not practicable, a recipient may convert the subgrant to a cash payment and follow the accounting procedures in paragraph (d) of this section.

■ 5. Amend § 1627.5 as proposed to be amended at 80 FR 21692, April 20, 2015 by revising paragraphs (c) and (d) to read as follows:

§ 1627.5 Applicability of restrictions, timekeeping, and recipient priorities; private attorney involvement subgrants.

* * * * *

(c) *Timekeeping.* A recipient must account for how its subgrantees spend LSC funds. Accurate and contemporaneous time records must identify for each attorney and paralegal:

(1) Time spent on each case or matter by date and in increments not greater than one-quarter of an hour;

(2) The unique case name or identifier for each case;

(3) The category of action on which time was spent for each matter; and

(4) The legal problem type for each case or matter with a timekeeping system able to aggregate time record information on both closed and pending cases by legal problem type.

(d) *PAI subgrant.* (1) The prohibitions and requirements set forth in 45 CFR part 1610 apply *only* to the subgranted funds or property or services acquired in whole or in part with LSC funds when the subrecipient is a bar association, *pro bono* program, private attorney or law firm, or other entity that receives a subgrant for the sole purpose of funding private attorney involvement activities (PAI) pursuant to 45 CFR part 1614.

(2) Any funds or property or services acquired in whole or in part with LSC funds and used by a recipient as payment for a PAI subgrant are deemed LSC funds for purposes of this paragraph.

■ 6. Amend § 1627.6 as proposed to be amended at 80 FR 21692, April 20, 2015 by revising paragraph (b) to read as follows:

§ 1627.6 Subgrants to other recipients.

* * * * *

(b) The subrecipient must audit any funds or property or services acquired in whole or in part with LSC funds provided by the recipient under a subgrant in its annual audit and supply a copy of this audit to the recipient. The recipient must either submit the relevant part of this audit with its next annual audit or, if an audit has been recently submitted, submit it as an addendum to that recently submitted audit.

* * * * *

Dated: April 19, 2016.

Stefanie K. Davis,

Assistant General Counsel.

[FR Doc. 2016–09384 Filed 4–25–16; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991–AC03

Acquisition Regulation: Nondisplacement of Qualified Workers Under Service Contracts and Other Changes to the Contractor Purchasing System Clause

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and opportunity for comment.

SUMMARY: The Department of Energy (DOE) is proposing to amend the Department of Energy Acquisition Regulation (DEAR) to address the applicability of Executive Order 13495 as implemented by Federal Acquisition Regulation (FAR) subpart 22.12 to its management and operating contracts and subcontracts under such contracts. DOE is also proposing to increase dollar thresholds in its contractor purchasing system clause for management and operating contracts to conform to FAR subpart 28.1. Finally, DOE is revising the DEAR in accordance with a class deviation addressing Buy American Act non-availability determinations.

DATES: Written comments on the proposed rulemaking must be received on or before close of business May 26, 2016.

ADDRESSES: You may submit comments, identified by DEAR: Nondisplacement of Qualified Workers and RIN 1991–AC03, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email to: DEARrulemaking@hq.doe.gov* Include DEAR: Nondisplacement of Qualified Workers and RIN 1991–AC03 in the subject line of the message.
- *Mail to:* U.S. Department of Energy, Office of Acquisition Management, MA–611, 1000 Independence Avenue SW., Washington, DC 20585. Comments by email are encouraged.

FOR FURTHER INFORMATION CONTACT: Lawrence Butler at (202) 287–1945 or by email *lawrence.butler@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Energy Acquisition Regulation (DEAR) does not presently address the applicability of the new FAR subpart 22.12, Nondisplacement of Qualified Workers Under Service Contracts, and the associated Department of Labor regulations at title 29 of the Code of Federal Regulations, to subcontracts under DOE's management and operating contracts. This proposed rule clarifies that FAR subpart 22.12 applies to subcontracts under the Department's management and operating contracts. A management and operating contract requires a contractor to operate, maintain, and support a Government-owned or -controlled research, development, special production, or testing establishment which is devoted to a major program(s) of the contracting agency. Service subcontracts awarded by management and operating contractors, *e.g.,* contracts for routine, recurring maintenance, are subject to various labor laws implemented by FAR part 22.

Additionally, DEAR section 970.5244–1, Contractor purchasing system, paragraphs (f)(1) through (f)(3) do not presently reflect the applicable dollar threshold in FAR 28.102–2(b) and (c), so this proposed rule replaces the dollar amount in these paragraphs with reference to title 48 of the Code of Federal Regulations, sections 28.102–2(b) and (c), as appropriate.

Section 970.5244–1, paragraph (g) requires contractor purchasing systems on management and operating contracts to comply with the Buy American Act. Pursuant to a DEAR class deviation dated August 29, 2011, the proposed rule increases the dollar threshold in this paragraph from $100,000 to $500,000 for: (1) Determinations of individual item non-availability requiring the prior concurrence of the Head of Contracting Activity (HCA); and (2) HCA authorization of management and operating contractors with approved purchasing systems to make determinations of non-availability for individual items.

II. Section-by-Section Analysis

DOE proposes to amend the DEAR as follows:

1. Section 970.2212 is added to clarify that FAR subpart 22.12 is applicable to subcontracts of management and operation contractors.

2. Section 970.5244–1, paragraph (f) is revised to replace all dollar amounts with references to title 48 of the Code of Federal Regulations, sections 28.102–2(b) and (c), as appropriate.

3. Section 970.5244–1, paragraph (g) is revised to increase the dollar threshold from $100,000 to $500,000.

4. Section 970.5244–1, paragraph (x) is revised to add the clause prescribed in FAR 22.1207 as item (7).

III. Procedural Requirements

A. Review Under Executive Orders 12866 and 13563

Today's regulatory action has been determined to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this proposed rule was reviewed 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, January 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 today's proposed 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 this proposed rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* which requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and which is likely to have a significant economic impact on a substantial number of small entities. 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.gc.doe.gov.*

This proposed rule would not have a significant economic impact on small entities because it imposes no significant burdens. The proposed rule clarifies that FAR subpart 22.12 applies to subcontracts under the Department's management and operating (M&O) contracts. M&O subcontractors, including any small entities, who perform service contracts are currently required to follow the policies and procedures of FAR subpart 22.12. The proposed rule merely clarifies that M&O subcontractors are not exempt from the pre-existing policy. The other changes contained in the proposed rule update dollar thresholds to conform to the FAR or a DEAR class deviation. Those changes will result in fewer burdens to small entities because they raise the thresholds at which certain Buy American, bonds, and other financial protection requirements become applicable.

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

D. Review Under the Paperwork Reduction Act

This 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 proposed 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 (OIRA) 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. This 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 this 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 of Energy.

List of Subjects in 48 CFR Part 970

Government procurement.

Issued in Washington, DC on April 19, 2016.

Berta Schreiber,

Acting Senior Procurement Executive, Office of Acquisition Management, Department of Energy.

Joseph Waddell,

Senior Procurement Executive and Deputy Associate Administrator, National Nuclear Security Administration, Office of Acquisition Management.

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.*

■ 2. Add section 970.2212 to subpart 970.22 to read as follows:

970.2212 Nondisplacement of qualified workers.

48 CFR subpart 22.12 is applicable to subcontracts under the Department's management and operating contracts (see 970.5244–1(x)).

■ 3. Section 970.5244–1 is amended by:

■ a. Revising the clause date;

■ b. Revising the first sentence of paragraph (f)(1);

■ c. Revising paragraphs (f)(2) and (3) and (g); and

■ d. Adding paragraph (x)(7).

The revisions and additions read as follows:

970.5244–1 Contractor purchasing system.

* * * * *

Contractor Purchasing System (XXX 20xx)

* * * * *

(f) * * * (1) The Contractor shall require performance bonds in penal amounts as set forth in 48 CFR 28.102–2(b)(1) for all fixed-price and unit-priced construction subcontracts in excess of the amount set forth in 48 CFR 28.102–2(b). * * *

(2) For fixed-price, unit-priced and cost-reimbursement construction subcontracts in excess of the amount set forth in 48 CFR 28.102–2(b), a payment bond shall be obtained on Standard Form 25A modified to name the Contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR 28.102–2(b)(2).

(3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts in an amount falling within the range in 48 CFR 28.102–2(c), the Contractor shall select two or more of the payment protections in 48 CFR 28.102–1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.

* * * * *

(g) *Buy American.* The Contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR 52.225–1 and 48 CFR 52.225–9. The Contractor shall forward determinations of non-availability of individual items to the DOE Contracting Officer for approval. Items in excess of $500,000 require the prior concurrence of the Head of Contracting Activity. If the Contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the Contractor to make determinations of non-availability for individual items valued at $500,000 or less.

* * * * *

(x) * * *

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(7) Nondisplacement of Qualified Workers clause prescribed in 48 CFR 22.1207.

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[FR Doc. 2016–09688 Filed 4–25–16; 8:45 am]

BILLING CODE 6450–01–P