

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 23 and 52****[FAR Case 2000-005]****RIN 9000-AJ44****Federal Acquisition Regulation;
Leadership in Environmental
Management (E.O. 13148)**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

DATES: Interested parties should submit comments in writing on or before October 28, 2002 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.2000-005@gsa.gov. Please submit comments only and cite FAR case 2000-005 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Laura Smith, Procurement Analyst, at (202) 501-7279. Please cite FAR case 2000-005.

SUPPLEMENTARY INFORMATION:**A. Background**

On April 21, 2000, the President signed Executive Order (E.O.) 13148, Greening the Government Through Leadership in Environmental Management. The E.O.—

1. Provides requirements and goals for agencies related to—

a. Environmental management and compliance;

b. Right-to-know and pollution prevention;

c. Release reduction of toxic chemicals;

d. Use reduction of toxic chemicals, hazardous substances, and other pollutants; and

e. Reduction in ozone-depleting substances;

2. Revokes E.O.s 12843 of April 21, 1993, Procurement Requirements and Policies for Federal Agencies for Ozone-Depleting Substances; 12856 of August 3, 1993, Federal Compliance with Right-To-Know Laws and Pollution Prevention Requirements; and 12969 of August 8, 1995, Federal Acquisition and Community Right-To-Know;

3. Requires agencies to continue to follow the policies and procedures in FAR Subparts 23.8, Ozone-Depleting Substances; 23.9, Toxic Chemical Release Reporting; and 23.10 Federal Compliance with Right-To-Know Laws and Pollution Prevention Requirements, that were in effect as of the date of E.O. 13148; and

4. Requires agencies to implement environmental management systems (EMSs) and conduct facility compliance audits (FCAs) at certain Federal facilities.

This proposed rule amends the FAR to implement E.O. 13148 by—

1. Removing references to E.O.s 12843, 12856, and 12969;

2. Replacing references for the revoked E.O.s with that of E.O. 13148;

3. Adding the requirement at FAR 52.223-5, Pollution Prevention and Right-To-Know Information, for contractors to provide information necessary so that agencies can implement EMSs and complete FCAs at certain Federal facilities; and

4. Making editorial changes.

North American Industry Classification System (NAICS) codes will replace Standard Industrial Classification (SIC) codes in FAR Subpart 23.9 and FAR 52.223-13 and 52.223-14 once the NAICS conversion for the Toxics Release Inventory program is complete.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because as required by E.O. 13148, this rule does not change the current policies and

procedures in FAR Subparts 23.8, 23.9, and 23.10. The proposed rule provides a means for agencies to obtain contractor information for the implementation of EMSs and the completion of FCAs at certain Federal facilities. Agencies will determine which facilities are appropriate for EMS implementation. Federal facilities include Government-owned, contractor-operated facilities, and Government-owned facilities on which multiple contractors perform services. The criteria for performing EMSs indicate that large, rather than small, Federal facilities are more likely to be included in EMSs, and these large Federal facilities are more likely to be operated by large businesses. If, on the other hand, several contractors are performing services on a Government-owned facility, many of the services performed by small businesses fall within the category of administrative support services considered “environmentally clean” and not included in EMSs. For similar reasons, the requirement pertaining to FCAs is not expected to have a significant economic impact on a substantial number of small entities.

An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 23 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2000-005), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies because the proposed rule contains information collection requirements. The proposed changes to the FAR will increase the information collection requirement currently approved under Office of Management and Budget control number 9000-0147, since the rule requires contractors to provide information needed by a Federal facility to implement an EMS (Alternate I of 52.223-5) and to complete a FCA (Alternate II of 52.223-5). Accordingly, the FAR Secretariat has submitted a request for approval of a revised information collection requirement concerning leadership in environmental management as it relates to E.O. 13148 to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Annual reporting burden: Public reporting burden for this collection of information is estimated to average .5 hours per response, including the time

for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 2500.

Responses per respondent: 1.

Total annual responses: 2500.

Preparation hours per response: .5.

Total response burden hours: 1250.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than October 28, 2002 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 208-7312. Please cite OMB Control Number 9000-0147, Leadership in Environmental Management (E.O. 13148), in all correspondence.

List of Subjects in 48 CFR Parts 23 and 52

Government procurement.

Dated: August 20, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 23 and 52 as set forth below:

1. The authority citation for 48 CFR parts 23 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

2. Add section 23.001 to read as follows:

23.001 Definition.

Toxic chemical, as used in this part, means a chemical or chemical category listed in 40 CFR 372.65.

3. Amend section 23.702 by revising paragraph (d) to read as follows:

23.702 Authorities.

* * * * *

(d) Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

* * * * *

4. Amend section 23.801 by revising paragraph (b) to read as follows:

23.801 Authorities.

* * * * *

(b) Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

* * * * *

5. Amend section 23.803 by revising the introductory text of paragraph (b); and in paragraph (b)(1) by removing “12843” and adding “13148” in its place.

23.803 Policy.

* * * * *

(b) In preparing specifications and purchase descriptions, and in the acquisition of supplies and services, agencies shall—

* * * * *

6. Amend Subpart 23.9 as follows:

a. Revise the Subpart heading;

b. Revise section 23.901;

c. In section 23.902, add a sentence to the end of paragraph (b);

d. In section 23.903, amend paragraph (a) by removing “(including all options)” and revise paragraph (b)(2);

e. Remove section 23.904 and redesignate sections 23.905, 23.906, and 23.907 as 23.904, 23.905, and 23.906, respectively;

f. In the newly designated section 23.905 revise paragraphs (a) introductory text, (a)(2)(iv), and (a)(2)(v), and amend paragraph (d) by removing “12969” and adding “13148” in its place; and

g. In the newly designated section 23.906 revise paragraph (a), and amend paragraph (b) by removing “(including all options)”.

The revised and added text reads as follows:

Subpart 23.9—Contractor Compliance with Toxic Chemical Release Reporting

23.901 Purpose.

This subpart implements the requirements of Executive Order (E.O.) 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

23.902 General.

(b) * * * See EPA's website at <http://www.epa.gov/tri> for guidance.

23.903 Applicability.

* * * * *

(b) * * *

(2) Contractor facilities located outside the United States, Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.

23.905 Requirements.

* * * * *

(a) E.O. 13148 requires that solicitations for competitive contracts expected to exceed \$100,000 include, to the maximum extent practicable, as an award eligibility criterion, a certification by an offeror that, if awarded a contract, either—

* * * * *

(2) * * *

(iv) Do not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(A) Major group code 10 (except 1011, 1081, and 1094).

(B) Major group code 12 (except 1241).

(C) Major group codes 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33.

(D) Industry codes 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for generating power).

(E) Industry codes 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act (42 U.S.C. 6921, *et seq.*) or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(v) Are not located within the United States, Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

* * * * *

23.906 Solicitation provision and contract clause.

* * * * *

(a) Insert the provision at 52.223-13, Certification of Toxic Chemical Release Reporting, in all solicitations for competitive contracts expected to exceed \$100,000 and competitive 8(a) contracts, unless it has been determined in accordance with 23.905(b) that to do so is not practicable; and

* * * * *

7. Revise subpart 23.10, consisting of sections 23.1000 through 23.1005, to read as follows:

23.1000 Scope.

This subpart prescribes policies and procedures for obtaining information needed for Government—

(a) Compliance with right-to-know laws and pollution prevention requirements;

(b) Implementation of an environmental management system (EMS) at a Federal facility; and

(c) Completion of facility compliance audits (FCAs) at a Federal facility.

23.1001 Authorities.

(a) Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001-11050 (EPCRA).

(b) Pollution Prevention Act of 1990, 42 U.S.C. 13101-13109 (PPA).

(c) Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

23.1002 Applicability.

The requirements of this subpart apply to facilities owned or operated by a Federal agency except those facilities located outside the United States, Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.

23.1003 Definitions.

As used in this subpart—

Federal agency means an executive agency (see 2.101).

Priority chemical means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to Section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

23.1004 Requirements.

(a) E.O. 13148 requires Federal facilities to comply with the provisions of (EPCRA) and (PPA).

(b) Pursuant to E.O. 13148 and any agency implementing procedures, every

new contract that provides for performance on a Federal facility shall require the contractor to provide information necessary for the Federal agency to comply with the—

(1) Emergency planning and toxic release reporting requirements in EPCRA, PPA, and E.O. 13148;

(2) Toxic chemical, priority chemical, and hazardous substance release and use reduction goals of Sections 502 and 503 of Executive Order 13148; and

(3) Requirements for EMSs and FCAs if the place of performance is at a Federal facility designated by the agency.

23.1005 Contract clause.

(a) Insert the clause at 52.223-5, Pollution Prevention and Right-to-Know Information, in solicitations and contracts that provide for performance, in whole or in part, on a Federal facility.

(b) Use the clause with its Alternate I if the contract provides for contractor—

(1) Operation or maintenance of a Federal facility at which the agency has implemented an EMS; or

(2) Activities and operations—

(i) To be performed at a Government-operated Federal facility that has implemented an EMS; and

(ii) That the agency has determined are covered within the EMS.

(c) Use the clause with its Alternate II if—

(1) The contract provides for contractors to conduct activities on a Federal facility; and

(2) The agency has determined that the contractor activities should be included within the FCA.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 52.213-4 is amended by revising the date of the clause and paragraph (b)(1)(vii) to read as follows:

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items)(Date)

* * * * *

(b) * * *

(1) * * *

(vii) 52.223-5, Pollution Prevention and Right-to-Know Information (DATE)(E.O. 13148). (Applies to services performed on Federal facilities.)

* * * * *

9. Revise section 52.223-5 to read as follows:

52.223-5 Pollution Prevention and Right-to-Know Information.

As prescribed in 23.1005, insert the following clause:

Pollution Prevention and Right-To-Know Information (Date)

(a) *Definitions.* As used in this clause—

Priority chemical means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to Section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

Toxic chemical means a chemical or chemical category listed in 40 CFR 372.65.

(b) Executive Order 13148 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA)(42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA)(42 U.S.C. 13101-13109).

(c) The Contractor, upon request of the Government, shall provide all information needed by the Federal facility to comply with the following:

(1) The emergency planning reporting requirements of Section 302 of EPCRA.

(2) The emergency notice requirements of Section 304 of EPCRA.

(3) The list of Material Safety Data Sheets, required by Section 311 of EPCRA.

(4) The emergency and hazardous chemical inventory forms of Section 312 of EPCRA.

(5) The toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA.

(6) The toxic chemical, priority chemical, and hazardous substance release and use reduction goals of Sections 502 and 503 of Executive Order 13148.

Alternate I (DATE). As prescribed in 23.1005(b), add the following paragraph (c)(7) to the basic clause:

(c)(7) The environmental management system as described in Section 401 of E.O. 13148.

Alternate II (DATE). As prescribed in 23.1005(c), add the following paragraph (c)(7) to the basic clause. If Alternate I is also prescribed, renumber paragraph (c)(7) as paragraph (c)(8).

(c)(7) The facility compliance audits as described in Section 402 of E.O. 13148.

10. Amend section 52.223-13 by revising the introductory text, the date of the provision, and paragraphs (a),

(b)(2)(i), (b)(2)(iv), and (b)(2)(v) to read as follows:

52.223-13 Certification of Toxic Chemical Release Reporting.

As prescribed in 23.906(a), insert the following provision:

Certification of Toxic Chemical Release Reporting (Date)

(a) Executive Order 13148, of April 21, 2000, Greening the Government through Leadership in Environmental Management, requires submission of this certification as a prerequisite for contract award.

(b) * * *

(2) * * *

[] (i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

* * * * *

[] (iv) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(1) Major group code 10 (except 1011, 1081, and 1094).

(2) Major group code 12 (except 1241).

(3) Major group codes 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33.

(4) Industry codes 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for generating power).

(5) Industry codes 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act (42 U.S.C. 6921, *et seq.*)) or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

[] (v) The facility is not located within the United States, Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

(End of provision)

11. Amend section 52.223-14 by revising the introductory text, the date of the clause, and paragraphs (b)(1), (b)(4), and (b)(5) to read as follows:

52.223-14 Toxic Chemical Release Reporting.

As prescribed in 23.906(b), insert the following clause:

Toxic Chemical Release Reporting (Date)

* * * * *

(b) * * *

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

* * * * *

(4) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(i) Major group code 10 (except 1011, 1081, and 1094).

(ii) Major group code 12 (except 1241).

(iii) Major group codes 20 through 39 or their corresponding North American Industry Classification System sectors 31 through 33.

(iv) Industry codes 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for generating power).

(v) Industry codes 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act (42 U.S.C. 6921, *et seq.*)) or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(5) The facility is not located within the United States, Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

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[FR Doc. 02-21618 Filed 8-28-02; 8:45 am]

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