

circumstances, the costs of compliance are not estimated to be large and, in any event, would be reimbursable expenses under the contract or subcontract.

Accordingly, DOE certifies that this rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

Information collection or record keeping requirements contained in this rulemaking have been previously cleared under Office of Management and Budget paperwork clearance package Number 1910-0300. There are no new burdens imposed by this rule.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this 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 rule is categorically excluded from NEPA review because the amendments to the DEAR would be strictly procedural (categorical exclusion A6). Therefore, this 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. DOE has examined today's 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

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each agency to assess the

effects of Federal regulatory action on State, local and tribal governments, and the private sector. The Department has determined that today's regulatory action 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 rule or policy that may affect family well-being. This rulemaking will have no impact on family well-being.

I. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department of Energy will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

J. 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 the Office of Information and Regulatory Affairs (OIRA), 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; and (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 rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. 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 Parts 923, 936 and 970

Government procurement.

Issued in Washington, DC, on January 28, 2003.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management, Office of Management, Budget and Evaluation, Department of Energy.

Robert C. Braden, Jr.,

Director, Office of Procurement and Assistance Management, National Nuclear Security Administration.

For the reasons set out in the preamble, DOE amends Chapter 9 of Title 48 of the Code of Federal Regulations as set forth below.

1. The authority citations for Parts 923 and 936 are revised to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

PART 923—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

2. Section 923.405 is added to read as follows:

923.405 Procedures [DOE supplemental coverage—paragraph (e)].

(e) When acquiring items designated in the EPA Comprehensive Procurement Guidelines, the EPA recommended percentage of recovered/recycled content or range of content contained in the Recovered Materials Advisory Notice (RMAN) shall be specified in the solicitation and contract as the minimum percentage of recovered/recycled content or range of content. Acquisition of a product with recycled content exceeding the RMAN recommended content or range of content is encouraged if the product performs acceptably.

923.471 [Removed and Reserved].

3. Section 923.471 is removed and reserved.

PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

4. Section 936.602-70 is amended by adding paragraph (a)(8) to read as follows:

936.602-70 DOE selection criteria.

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