

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 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 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 rule meets the relevant standards of Executive Order 12988.

#### *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 Federal agency to assess the effects of a 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 that may affect family well-being. This rule would not have any 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 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 today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

#### *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 promulgated 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 regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

#### *K. Review Under the Small Business Regulatory Enforcement Fairness Act.*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's interim final 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. 801(2).

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

#### **List of Subjects in 48 CFR Parts 904, 923, 952, and 970**

Government procurement.

Issued in Washington, DC on December 2, 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 citation for parts 904 and 952 is revised to read as follows:

**Authority:** 42 U.S.C. 2201, 2282a, 2282b, 2282c, 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

#### **PART 904—ADMINISTRATIVE MATTERS**

■ 2. Section 904.402 is amended by adding a new paragraph (c) to read as follows:

##### **904.402 General.**

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(c)(1) Section 234B of the Atomic Energy Act (42 U.S.C. 2282b) requires that DOE contracts include a clause that provides for an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or any contractor employee of any rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified information. The clause is required for all DOE prime contracts that involve any possibility of contractor access to Restricted Data or other classified information. The clause is required to specify various degrees of violations and the amount of the reduction attributable to each degree of violation. The clause prescribed at 48 CFR 904.404(d)(6) (Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information) or the clause prescribed at 48 CFR 923.7002(f) (Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health) shall be used for this purpose unless the clause prescribed at 48 CFR 970.1504-5(c) (Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts) is used.

(2) The clause entitled "Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information" and the clause entitled "Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other