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DEPARTMENT OF ENERGY**48 CFR Parts 901 and 970**

RIN 1991-AB64

Acquisition Regulation: Make-or-Buy Plans**AGENCY:** Department of Energy.**ACTION:** Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to revise its requirements for contractor make-or-buy plans. The Department published a Notice of Proposed Rulemaking on December 15, 2004, proposing to eliminate its program requiring make or buy analyses and plans from its management and operating (M&O) contractors.

DATES: *Effective Date:* May 1, 2006.

FOR FURTHER INFORMATION CONTACT: Richard Langston, U.S. Department of Energy, MA-61, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 287-1339 or submit electronically to *Richard.Langston@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of Public Comments
- III. Section-by-Section Analysis
- IV. Procedural Requirements
 - A. Review Under Executive Order 12866
 - B. Review Under Executive Order 12988
 - C. Review Under the Regulatory Flexibility Act
 - D. Review Under the Paperwork Reduction Act
 - E. Review Under the National Environmental Policy Act
 - F. Review Under Executive Order 13132
 - G. Review Under the Unfunded Mandates Reform Act of 1995
 - H. Review Under the Treasury and General Government Appropriations Act, 1999
 - I. Review Under Executive Order 13211
 - J. Review Under the Treasury and General Government Appropriations Act, 2001
 - K. Review Under the Small Business Regulatory Fairness Act of 1996
 - L. Approval by the Office of the Secretary of Energy

I. Background

DOE now has more than eight years of experience with the make-or-buy policy it established in 1997. All M&O contractors have approved make-or-buy plans in place. The Department has evaluated the operation of the make-or-buy policy and the effect that policy has had in achieving the Department's

objectives. The make-or-buy program is not delivering value to the Department commensurate with the costs of its implementation.

The Department conducted a number of assessments since establishing the current make-or-buy plan requirements and implemented a number of actions intended to improve the manner in which DOE and its contractors implemented the make-or-buy requirements. The conclusion drawn from the most recent assessment is that there is little evidence that these plans are producing the efficiencies and cost savings anticipated by the Department. The Department has determined that the lack of measurable progress and costs of complying and monitoring compliance with the make-or-buy policy outweigh any potential benefits to the Department.

There are multiple approaches to achieving cost efficiencies and operational effectiveness under a contract, and the Department has made great strides with its other contract reform initiatives. The make-or-buy plan requirements have not increased efficiency and the Department is amending the DEAR to eliminate the requirement that M&O contractors prepare and maintain formal make-or-buy plans.

II. Discussion of Public Comments

Only one comment was received in response to our December 15, 2004 Notice of Proposed Rulemaking. The reviewer suggested that, rather than eliminate the make-or-buy review analysis, the Department introduce a 5-part alternative make-or-buy system which would include consolidation of identified products or services into a DOE-wide plan.

The Department has evaluated the suggested revisions to the make-or-buy process. The make-or-buy process was ideally meant to be a system for categorizing all M&O contract internal work activities as "make" or "buy" activities. "Make" activities are core competencies critical to the mission success that are not available for outsourcing. "Buy" activities are non-core work activities that provide strategic support to core competencies that are available for outsourcing. Contractors use their make-or-buy plans to evaluate subcontracting opportunities and improve in-house performance. The objective of the make-or-buy policy is to require M&O contractors to operate the Department's laboratories, weapons production plants, and other facilities in the most cost effective and efficient manner. The suggested alternative does not appear to offer advantages in

fulfilling those needs. Accordingly, the Department is not pursuing the suggested alternative.

III. Section-by-Section Analysis

The Department is amending the DEAR as follows.

1. Sections 901.105 is amended to delete the reference to the Office of Management and Budget, OMB control number for make-or-buy plans.

2. Sections 970.1504-4-1 through 970.1504-4-3 are eliminated.

3. Section 970.1504-5(b) is eliminated.

4. Section 970.5203-1 is amended to include outsourcing of functions as a consideration of efficient and effective operations.

5. Section 970.5203-2 is amended to provide a requirement for contractors to consider outsourcing as a mechanism to increase improvement in the management of the contract.

6. Section 970.5215-2 is eliminated.

7. Section 970.5244-1 is amended to remove and reserve paragraph (n).

IV. Procedural Requirements*A. Review Under Executive Order 12866*

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 rule is not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) within the OMB.

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 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, these regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This 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 that is likely to have a significant economic impact on a substantial number of small entities. The rule would not have a significant economic impact on small entities because no small entities are DOE M&O contractors and because the rule would eliminate the existing burden of preparing make-or-buy analyses.

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 Paperwork Reduction Act

Information collection or recordkeeping requirements contained in this rulemaking have been previously cleared under OMB paperwork clearance package number 1910-5102. The existing burden will be removed by this rulemaking.

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 are 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

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires a Federal agency to perform a detailed 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 in any single year. This rulemaking 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 rule will have no impact on family well being.

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 the OIRA, Office of Management and Budget, 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; 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 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.

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 implementing 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 rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

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

As required by 5 U.S.C. 801, DOE 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).

L. Approval by the Office of the Secretary of Energy

The Office of the Secretary of Energy has approved issuance of this final rule.

List of Subjects in 48 CFR Parts 901 and 970

Government procurement.

Issued in Washington, DC, on March 23, 2006.

Edward R. Simpson,

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

Robert C. Braden, Jr.,

Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.

■ For the reasons set out in the preamble, the Department of Energy is amending chapter 9 of title 48 of the Code of Federal Regulations as set forth below:

PART 901—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 1. The authority citation for part 901 is revised to read as follows:

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

■ 2. Section 901.105 is amended by revising the second sentence to read as follows:

901.105 OMB control numbers.

* * * The OMB control number for the collection of information under 48 CFR chapter 9 is 1910–4100 except for Reporting and Recordkeeping Requirements for Safety Management (see 48 CFR 970.5223–1) which is 1910–5103.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

■ 3. 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.*; 41 U.S.C. 418b; 50 U.S.C. 2401, *et seq.*

970.1504–4–1–970.1504–4–3 [Removed and Reserved]

■ 4. Sections 970.1504–4–1 through 970.1504–4–3 are removed and reserved.

970.1504–5 [Amended]

■ 5. Section 970.1504–5 is amended by removing paragraph (b), and redesignating paragraphs (c), (d) and (e) as paragraphs (b), (c) and (d) respectively.

970.5203–1 [Amended]

■ 6. Section 970.5203–1 is amended by revising the clause date to read “May 2006” and by adding in paragraph (a)(1), second sentence, the words “including consideration of outsourcing of functions” after the word “promoted”.

970.5203–2 [Amended]

■ 7. Section 970.5203–2, is amended by revising the clause date to read “May

2006” and by adding in paragraph (a), last sentence, the words “outsourcing decisions,” after the words “changes in organization,”.

970.5215–2 [Removed and Reserved]

■ 8. Section 970.5215–2, Make-or-Buy plan, is removed and reserved.

970.5244–1 [Amended]

■ 9. Section 970.5244–1 is amended by revising the clause date to read “May 2006” and by removing and reserving paragraph (n).

[FR Doc. 06–3085 Filed 3–30–06; 8:45 am]

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 635**

[Docket No. 060131019–6080–02; I.D. 012006B]

RIN 0648–AU17

Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; fishing season notification.

SUMMARY: This rule establishes the 2006 second and third trimester season quotas for large coastal sharks (LCS) and small coastal sharks (SCS) based on over- or underharvests from the 2005 second and third trimester seasons. In addition, this rule establishes the opening and closing dates for the LCS and SCS fisheries based on adjustments to the trimester quotas. This action could affect all commercial fishermen in the Atlantic commercial shark fishery. This action is necessary to ensure that

the landings quotas in the Atlantic commercial shark fishery represent the latest landings data.

DATES: This rule is effective May 1, 2006. The Atlantic commercial shark fishing season opening and closing dates and quotas for the 2006 second and third trimester seasons by region are provided in Table 1 under

SUPPLEMENTARY INFORMATION.

ADDRESSES: For copies of this rule, write to Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910. Copies are available on the internet at <http://www.nmfs.noaa.gov/sfa/hms>.

FOR FURTHER INFORMATION CONTACT:

Chris Rilling or Karyl Brewster-Geisz by phone: 301–713–2347 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks, finalized in 1999, and Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks (Amendment 1), finalized in 2003, are implemented by regulations at 50 CFR part 635. Information regarding the rules establishing the regional quotas and the procedures for calculating the quotas was provided in the proposed rule (February 17, 2006; 71 FR 8557) and is not repeated here.

Opening and Closing Dates and Quotas

The final opening and closing dates and quotas for the 2006 second and third trimester seasons by region are provided in Table 1. As described in the proposed rule (February 17, 2006; 71 FR 8557), because opening the LCS fishery in the North Atlantic for even one week could result in an overharvest, NMFS is keeping the North Atlantic LCS fishery closed during the third trimester season.

TABLE 1.—FINAL OPENING AND CLOSING DATES AND QUOTAS

Second Trimester Season				
Species Group	Region	Opening Date	Closing Date	Quota
Large Coastal Sharks	Gulf of Mexico	July 6, 2006	July 31, 2006 11:30 p.m. local time	201.1 mt dw (443,345 lb dw)
	South Atlantic		August 16, 2006 11:30 p.m. local time	151.7 mt dw (334,438 lb dw)
	North Atlantic		August 6, 2006 11:30 p.m. local time	66.3 mt dw (146,165 lb dw)