

(Authority: 38 U.S.C. 501, 1781)

8. Amend § 17.276 by:

a. Removing “Center Director” and “Director” each time they appear and adding, in their place, “Director, Health Administration Center, or his or her designee”.

b. Revising the authority citation.

c. In the Note, removing “20 CFR” and adding, in its place “38 CFR”.

The revision reads as follows:

**§ 17.276 Appeal/review process.**

\* \* \* \* \*

(Authority: 38 U.S.C. 501, 1781)

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9. Amend § 17.277 by adding an authority citation to read as follows:

**§ 17.277 Third-party liability/medical care cost recovery.**

\* \* \* \* \*

(Authority: 28 U.S.C. 2651; 38 U.S.C. 501, 1781)

10. Amend § 17.278 by adding an authority citation to read as follows:

**§ 17.278 Confidentiality of records.**

\* \* \* \* \*

(Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 501, 1781, 5701, 7332)

[FR Doc. E8-3003 Filed 2-15-08; 8:45 am]

BILLING CODE 8320-01-P

## DEPARTMENT OF ENERGY

### 48 CFR Parts 904, 952 and 970

RIN 1991-AB71

#### Acquisition Regulation: Security Clause

**AGENCY:** Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Energy (DOE) is proposing to amend the Department of Energy Acquisition Regulation (DEAR) to revise the security clause used in all contracts and subcontracts involving access authorizations to specifically require background checks and tests for the absence of any illegal drug, as defined in DOE regulations of uncleared personnel (employment applicants and current employees) who will require access authorizations. Background checks would not be required for applicants for DOE access authorization who possess a current access authorization from another Federal agency.

**DATES:** Written comments on the proposed rulemaking must be received on or before close of business March 20, 2008.

**ADDRESSES:** This proposed rule is available and comments may be submitted to the *Federal Electronic Rulemaking Portal* at <http://www.regulations.gov>. Comments may also be submitted electronically to [Richard.Langston@hq.doe.gov](mailto:Richard.Langston@hq.doe.gov). Comments may be mailed to: Richard Langston, Procurement Policy Analyst; MA-61/Forrestal Building; U.S. Department of Energy; 1000 Independence Avenue, SW.; Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Richard Langston at 202-287-1339 or [Richard.Langston@hq.doe.gov](mailto:Richard.Langston@hq.doe.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

##### II. Section-by-Section Analysis

##### III. 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. Approval by the Office of the Secretary of Energy

##### I. Background

Many DOE contractor and subcontractor employees require access authorizations for access to classified information (Restricted Data, Formerly Restricted Data, or National Security Information) or certain quantities of special nuclear material in order to perform official duties. Section 904.404 is being revised to add a requirement in paragraph (d)(1) that the security clause is required in any contract that will involve contractor employees' access to special nuclear material. That requirement reflects past DOE practice and is being added to make the instruction clear and complete. Section 952.204-2, Security requirements, is revised by changing the title of the section to “Security” and by revising its introductory text to conform to the more recent Federal Acquisition Regulation format. Some of the requirements at 970.2201-1-2 are appropriate to other types of contracts if access authorizations are required, so language at 970.2201-1-2 is being restated in the security clause.

## II. Section-by-Section Analysis

The Department proposes to amend the DEAR as follows:

Section 904.401 is amended to revise the definitions of classified information and Restricted Data.

Section 904.404, Solicitation provision and contract clause, is amended by adding “or access to special nuclear materials” after “classified information” at the end of the first sentence of paragraph (d)(1).

Section 952.204-2, Security requirements, is amended by revising its title to “Security”; by revising the definitions in paragraphs (c) through (g); by revising the title of paragraph (h) from “*Security clearances of personnel*” to “*Access authorizations for personnel*” and redesignating its text as paragraph (h)(1); by adding new paragraphs (h)(2) and (i); by redesignating existing paragraphs (i) and (j) as (j) and (k); and by adding new paragraphs (l) and (m). Paragraphs (h)(2), (i), and (j)(1) contain language similar to that found in management and operating contract policy guidance at 970.2201-1-2(a)(1) and (2). The language in (h)(2) has been augmented by referencing the criteria at 10 CFR 710.8 that are used to grant or deny access authorizations, by adding a requirement that a candidate for a DOE access authorization must be tested to demonstrate the absence of any illegal drug, as defined in 10 CFR 707.4, and by directing contractors to select for employment only those whom they believe can pass the rigorous background investigation required for such positions. A new paragraph (h)(3) has been added making it clear that drug testing is applicable to all employees on an applicant, random or “for cause” basis. Paragraph (i), *Criminal liability* is amended to add “special nuclear material, and other Government property” to “classified information” as items the contractor must protect. Paragraph (j), *Foreign Ownership, Control or Influence*, is amended by moving the flow down to subcontracts requirement of (j)(4) to (l) and redesignating paragraph (j)(5) as (j)(4). New paragraph (k), *Employment announcements*, requires that contractors include a notice in vacancy announcements for positions requiring access authorizations that background checks and testing for the absence of any illegal drug, as defined in 10 CFR 707.4, will be performed, and that the Federal government may conduct a background investigation, subsequent reinvestigations, and, in the case of counterintelligence positions (as defined in 10 CFR 709.3), a

counterintelligence evaluation, which may include a polygraph examination. In addition to the subject matter from paragraph (j)(4), new paragraph (l), *Flow down to subcontracts*, addresses the flow down to subcontracts by incorporating the subject matter from the final sentence of 970.2201-1-2(a)(1)(ii).

Section 970.2201-1-2, Policies, is revised at paragraph (a)(1)(ii). The first sentence is revised by changing "personnel investigations" to "background checks" in the first and second sentences; in the third sentence, changing "pre-employment" to "background," "applicant's" to "uncleared employment applicant's or uncleared employee," and "applicant" to "individual"; adding a new fourth sentence to require a test to demonstrate the absence of any illegal drug as defined in 10 CFR 707.4; in the sixth sentence, changing "applicant's" to "uncleared employment applicant's or uncleared employee"; in the seventh sentence, rewriting the sentence to address "employee" rather than "applicant"; in the eighth sentence, changing the first usage of "applicant" to "uncleared employee" and the second to "employee"; and in the last sentence, changing "may" to "shall" in order to make it imperative that subcontractors perform background checks on subcontract employee applicants or employees if they will require access authorizations to perform their duties.

### III. 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 proposed rule is not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget.

#### 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; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) 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 that 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 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 that is likely to have a significant economic impact on a substantial number of small entities. The proposed rule would not have a significant economic impact on small entities because it imposes no significant burdens. Any costs incurred by DOE contractors complying with the rule would be reimbursed under the contract.

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 contains no new information collection or recordkeeping requirements. Information collection or recordkeeping requirements mentioned in this proposed rule relative to the facility clearance and access authorization processes have been previously cleared under Office of Management and Budget (OMB) paperwork clearance package number 0704-0194 for facility clearances processed by the Department of Defense

for Standard Form (SF) 283 or package number 3206-0007 processed by the Office of Personnel Management for personnel access authorizations using SF 86.

#### 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 would be 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. DOE has examined today's 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) 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 proposed rule 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 proposed 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 Office of Information and Regulatory Affairs (OIRA), OMB, 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 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 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 notice 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*

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

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

Government procurement.

Issued in Washington, DC, on February 11, 2008.

**Edward R. Simpson,**

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

**David O. Boyd,**

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

For the reasons set out in the preamble, DOE proposes to amend Chapter 9 of Title 48 of the Code of Federal Regulations as set forth below:

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

1. The authority citations for parts 904 and 952 continue to read as follows:

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

2. In 904.401, the definitions of Classified Information and Restricted Data are revised to read as follows:

#### **904.401 Definitions.**

\* \* \* \* \*

*Classified Information* means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, *Classified National Security Information*, as amended, or prior executive orders, which is identified as National Security Information.

\* \* \* \* \*

*Restricted Data* means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to 42 U.S.C. 2162 [Section 142, as amended, of the Atomic Energy Act of 1954].

#### **904.404 [Amended]**

3. Section 904.404, [DOE Coverage—Paragraph (d)] is amended by adding the words “, access to special nuclear materials or the provision of protective services” after the words “classified information” at the end of the first sentence of paragraph (d)(1).

### **PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

4. Section 952.204–2 is revised to read as follows:

#### **952.204–2 Security.**

As prescribed in 904.404(d)(1), the following clause shall be included in contracts entered into under section 31 (research assistance, 42 U.S.C. 2051), or section 41 (ownership and operation of production facilities, 42 U.S.C. 2061) of the Atomic Energy Act of 1954, and in other contracts and subcontracts which involve or are likely to involve classified information or special nuclear material.

#### **Security (XXX 2007)**

(a) *Responsibility.* It is the Contractor’s duty to protect all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for protecting all classified information and protecting against sabotage, espionage, loss or theft of the classified documents and material, including special nuclear material, in the Contractor’s possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter or special nuclear material in the possession of the Contractor or any person under the Contractor’s control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and classification levels and categories of material proposed for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

(b) *Regulations.* The Contractor agrees to comply with all security regulations and contract requirements of DOE in effect on the date of award.

(c) *Definition of Classified Information.* The term *Classified Information* means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, *Classified National Security Information*, as amended, or prior executive orders, which is identified as *National Security Information*.

(d) *Definition of Restricted Data.* The term *Restricted Data* means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to 42 U.S.C. 2162 [Section 142, as amended, of the Atomic Energy Act of 1954].

(e) *Definition of Formerly Restricted Data.* The term “*Formerly Restricted Data*” means information removed from the Restricted

Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense that the information: (1) Relates primarily to the military utilization of atomic weapons; and (2) can be adequately protected as National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.

(f) *Definition of National Security Information.* The term “National Security Information” means information that has been determined, pursuant to Executive Order 12958, Classified National Security Information, as amended, or any predecessor order, to require protection against unauthorized disclosure, and that is marked to indicate its classified status when in documentary form.

(g) *Definition of special nuclear material.* The term “special nuclear material” means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which, pursuant to 42 U.S.C. 2071 [section 51 as amended, of the Atomic Energy Act of 1954] has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(h) *Access authorizations of personnel.* (1) The Contractor shall not permit any individual to have access to any classified information or special nuclear material, except in accordance with the Atomic Energy Act of 1954, and the DOE’s regulations and contract requirements applicable to the particular level and category of classified information or particular category of special nuclear material to which access is required.

(2) The job qualifications and suitability of employees or prospective employees must be considered by the Contractor prior to assignment to positions requiring access authorizations by careful personnel background checks. Background checks are not required for an applicant for DOE access authorization who possesses a current access authorization from DOE or another Federal agency. Such background checks must include, but are not limited to, as appropriate: A credit check; verification of high school diploma received within the last five years or degree/diploma granted by an institution of higher learning; contacts with listed personal references; contacts with listed employers for the last five years (excluding employment of less than 60 days’ duration, part-time employments, and craft/union employments); and local law enforcement checks when such checks are not prohibited by state or local law or regulation, and when the individual resides in the jurisdiction where the Contractor is located. When a DOE access authorization will be required, the aforementioned background checks must be conducted and the uncleared applicant’s or uncleared employee’s job qualifications and suitability must be established before a request is made to the DOE to process the uncleared applicant or uncleared employee for an access authorization. In addition, each candidate for a DOE access authorization

must be tested to demonstrate the absence of any illegal drug, as defined in 10 CFR 707.4. Evidence must be furnished to DOE with the uncleared applicant’s or uncleared employee’s security forms that specify: The results of the test for the absence of any illegal drug, as defined in 10 CFR 707.4, and, for the background checks, the date each check was conducted; the identity of the contact who provided the information; a synopsis of the information provided by each contact; and a statement that all relevant information available has been reviewed in accordance with the Contractor’s personnel policies with favorable results. When hiring new employees for positions requiring access authorizations, the Contractor shall perform these background checks prior to submission of the request for DOE access authorization. If adverse information is found in the course of the background checks, the Contractor must assess the possible impact of such findings on the uncleared applicant’s or uncleared employee’s suitability for a position requiring an access authorization and act accordingly. Access authorizations are granted or denied based on criteria in 10 CFR 710.8. DOE will not process candidates for a DOE access authorization unless their tests confirm the absence of any illegal drug. Contractors must propose personnel to work in positions requiring access authorizations only if they are confident that the individuals will pass the rigorous background review that DOE will conduct. When an uncleared applicant is hired specifically for a position that requires a DOE access authorization, the uncleared employee shall not be placed in that position prior to the access authorization being granted by DOE, unless an approval has been obtained from the head of the cognizant local security office. If an uncleared employee is placed in that position prior to an access authorization being granted by the DOE, the uncleared employee may not be afforded access to classified information or matter or special nuclear material (in categories requiring access authorization) until DOE notifies the employer that an access authorization has been granted.

(3) All positions requiring access authorizations are deemed *testing designated positions* in accordance with 10 CFR part 707. All employees possessing access authorizations are subject to applicant, random or for cause testing for use of illegal drugs.

(i) *Criminal liability.* It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come to the Contractor or any person under the Contractor’s control in connection with work under this contract, may subject the Contractor, its agents, employees, or Subcontractors to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 *et seq.*; 18 U.S.C. 793 and 794).

(j) *Foreign Ownership, Control, or Influence.* (1) The Contractor shall immediately provide the cognizant security office written notice of any change in the

extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Standard Form (SF) 328, *Certificate Pertaining to Foreign Interests*, executed prior to award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Contracting Officer.

(2) If a Contractor has changes involving foreign ownership, control, or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.

(3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control, or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to protect any classified information or special nuclear material.

(4) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a foreign ownership, control, or influence situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to foreign ownership, control, or influence and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the foreign ownership, control, or influence problem.

(k) *Employment announcements.* When placing announcements seeking applicants for positions requiring access authorizations, the Contractor shall include in the written vacancy announcement, a notification to prospective applicants that background checks and tests for the absence of any illegal drug, as defined in 10 CFR 707.4, will be conducted by the employer and a background investigation by the Federal government may be required for the required access authorization prior to employment, and that subsequent reinvestigations may be required. If the position is covered by the Counterintelligence Evaluation Program regulations at 10 CFR part 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence-scope polygraph examination.

(l) *Flow down to subcontracts.* The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under this contract that will require Subcontractor employees to possess access authorizations. Additionally, the Contractor must require such Subcontractors to have an existing DOD or DOE facility clearance or submit a completed SF 328, *Certificate Pertaining to Foreign Interests*, as required in

DEAR 952.204–73 and obtain a foreign ownership, control and influence determination and facility clearance prior to award of a subcontract. Information to be provided by a Subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, Subcontractor means any Subcontractor at any tier and the term “Contracting Officer” means the DOE Contracting Officer. When this clause is included in a subcontract, the term “Contractor” shall mean Subcontractor and the term “contract” shall mean subcontract. (End of Clause)

## PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

5. 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.

### 970.0470–1 [Amended]

6. Section 970.0470–1(b) is amended by revising both mentions of “Directives System” to read “Directives Program.”

### 970.2201–1–1 [Amended]

7. Section 970.2201–1–1 is amended by removing the term “guidance” and adding in its place “requirements.”

8. Section 970.2201–1–2, paragraphs (a)(1)(i) and (ii) are revised to read as follows:

### 970.2201–1–2 Policies.

(a)(1) \* \* \*

(i) Management and operating contractors are expected to bring experienced, proven personnel from their private operations to staff key positions on the contract and to recruit other well-qualified personnel as needed. Such personnel should be employed and treated during employment without discrimination by reason of race, color, religion, sex, age, disability, or national origin. Contractors shall be required to take affirmative action to achieve these objectives.

(ii) The job qualifications and suitability of prospective employees should be established by the contractor prior to employment by careful background checks. Such background checks should include, as appropriate: a credit check; verification of high school diploma received within the last five years or degree/diploma granted by an institution of higher learning; contacts with listed personal references; contacts with listed employers for the last five years (excluding employment of less than 60 days’ duration, part-time employments, and craft/union employments); and local law enforcement checks when such checks

are not prohibited by state or local law or regulation, and when the individual resides in the jurisdiction where the contractor is located. When a DOE access authorization will be required, the aforementioned background checks must be conducted and the uncleared employment applicant’s or uncleared employee’s job qualifications and suitability must be established before a request is made to the DOE to process the individual for an access authorization. In addition, each candidate for a DOE access authorization must be tested for the absence of any illegal drug as defined in 10 CFR part 707.4. Evidence must be furnished to DOE with the uncleared employment applicant’s or uncleared employee’s security forms that specify: the results of the test for the absence of any illegal drug, as defined in 10 CFR 707.4, and, for the background checks, the date each background check was conducted, the identity of the contact who provided the information, a synopsis of the information provided by each contact, and a statement that all relevant information available has been reviewed and favorably adjudicated in accordance with the contractor’s personnel policies. When an uncleared applicant is hired specifically for a position which requires a DOE access authorization, the uncleared employee shall not be placed in that position prior to the access authorization being granted by DOE, unless approved by the head of the cognizant local security office. If an uncleared employee is placed in that position prior to access authorization being granted by the DOE, the uncleared employee may not be afforded access to classified information or matter, or to special nuclear materials (in categories requiring an access authorization) until DOE notifies the employer that an access authorization has been granted. Management and operating contractors and other contractors operating DOE facilities shall include the requirements set forth in this subsection in subcontracts (appropriately modified to identify the parties) wherein subcontract employees will be required to hold DOE access authorizations in order to perform on-site duties, such as protective force operations.

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[FR Doc. E8–3012 Filed 2–15–08; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### 49 CFR Part 612

[Docket FTA–2008–0005]

RIN 2132–AA96

### Contractor Performance Incentives for the Capital Investment Program

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** This notice of proposed rulemaking provides interested parties with the opportunity to comment on the Federal Transit Administration’s (FTA) proposal to establish a new part 612 of Title 49 of the Code of Federal Regulations to establish procedures for 49 U.S.C. 5309 capital investment (New Starts) project sponsors to apply for incentive awards if their projects meet eligibility criteria for both cost and ridership estimates. This proposed rule would carry out certain provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005). Interested parties are invited to send comments on all facets of this proposal.

**DATES:** Comments must be submitted by April 21, 2008. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may submit comments identified by the docket number [FTA–2008–0005] by any of the following methods:

*Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Mail:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave SE., Washington, DC 20590.

*Hand Delivery:* The West Building of the U.S. Department of Transportation, 1200 New Jersey Ave SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Fax:* 202–493–2251.

*Instructions:* You must include the agency name (Federal Transit Administration) and Docket number (FTA–2008–0005) or the Regulatory Identification Number (RIN) for this rulemaking at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-