thereto, to avoid unfair dissemination of an offeror's proposal.

(b) If an offeror initially included in the best value pool is no longer considered to be among those most likely to receive award after submission of proposal revisions and subsequent evaluation thereof, the offeror may be eliminated from the best value pool without being afforded an opportunity to submit further proposal revisions.

(c) Requesting and/or receiving proposal revisions do not necessarily conclude exchanges. However, requests for proposal revisions should advise offerors that the Government may make award without obtaining further revisions.

873.116 Source select decision.

(a) An integrated comparative assessment of proposals should be performed before source selection is made. The contracting officer shall independently determine: which proposal(s) represents the best value, consistent with the evaluation information or factors and subfactors in the solicitation; and that the prices are fair and reasonable. The contracting officer may determine that all proposals should be rejected if it is in the best interest of the Government.

(b) The source selection team, or advisory boards or panels, may conduct comparative analysis(es) of proposals and make award recommendations, if the contracting officer requests such assistance.

(c) The basis for the source selection decision shall be documented and shall reflect the rationale for any cost/technical tradeoffs. Specific tradeoffs that cannot be reasonably quantified need not be described in terms of cost/price impacts.

873.117 Award to successful offeror.

(a) The contracting officer shall award a contract to the successful offeror by furnishing the contract or other notice of the award to that offeror.

(b) If a request for proposal (RFP) process was used for the solicitation and if award is to be made without exchanges, the contracting officer may award a contract without obtaining the offeror's signature a second time. The offeror's signature on the offer constitutes the offeror's agreement to be bound by the offer. If a request for quotation (RFQ) process was used for the solicitation, the contracting officer must obtain the offeror's acceptance signature on the contract to ensure formation of a binding contract.

(c) If the award document includes information that is different than the latest signed offer, both the offeror and the contracting officer shall sign the contract award.

(d) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the offer acceptance period.

873.118 Debriefings.

Offerors excluded from multiphase acquisitions or best value pools may make a written request for a debriefing. Without regard to FAR 15.505, preaward debriefings will be conducted by the contracting officer when determined to be in the best interest of the Government. Post-award debriefings shall be conducted in accordance with FAR Part 15.506.

[FR Doc. 98–29838 Filed 11–6–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF ENERGY

48 CFR Parts 909 and 970

RIN: 1991–AB44

Acquisition Regulations; Performance Guarantees

AGENCY: Department of Energy.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing to amend its acquisition regulations to formally require a performance guarantee under circumstances where a prospective awardee has been created solely for the performance of the instant contract and lacks sufficient financial or other resources to fulfill its obligations under the prospective contract. In circumstances where the newly created entity likely will be dependent upon the resources of the parent organization, this proposal would allow Contracting Officers to consider the resources of the parent in a determination of the newly created entity's responsibility only when the parent provides a performance guarantee or other undertaking satisfactory to the Contracting Officer. While this situation occurs most often in the award of contracts for the management and operation of DOE facilities, this proposal would make a form of performance guarantee necessary whenever these circumstances are encountered.

DATES: Written comments on the proposed rulemaking must be received on or before close of business December 9, 1998.

ADDRESSES: Comments (3 copies) should be addressed to: Robert M. Webb at the address indicated below.

FOR FURTHER INFORMATION CONTACT: Robert M. Webb, U.S. Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–8264.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Energy in certain cases requires that the contractor be a corporate entity organized specifically for the performance of the contract at a specific DOE site. This requirement occurs regularly in the award of management and operating contracts and is intended (1) to assure the dedication of the contractor to the performance of the contract; (2) to limit involvement of the Department with the corporate parent; (3) to isolate the contractor from the parent for purposes of security and classification matters; (4) to limit the flow of information between the contractor and its parent, limiting a potential source of organizational conflict of interest; (5) to isolate the accounting system of the contractor, since often the budget and accounting systems of such contractors are integrated into DOE's budget and accounting systems; and (6) to limit the necessity of corporate support thereby reducing or negating a basis for charging general and administrative expense to the contract.

Such dedicated contractors, however, generally have limited assets. In most cases, without consideration of the corporate assets of the parent entity(ies), the DOE Contracting Officer would not be able to make a determination that the contractor was financially responsible and had sufficient resources available to assure successful performance of the contract.

It has been a common practice of the Department in such instances for the parent entity(ies) to provide some form

of guarantee of performance. While there are other means for the parent to guarantee the subsidiary's fulfillment of all its contractual obligations, such as an unconditional letter of credit, the most appropriate means under these circumstances is a contractually binding performance guarantee. Recently, the Department issued Acquisition Letter 98–05R to assure a uniform process for dealing with this circumstance. This rulemaking proposes to incorporate the requirement for a performance guarantee into the Department of Energy Acquisition Regulation.

II. Section-by-Section Analysis

This rulemaking proposes to add a subsection 909.104–3(e) to the DEAR to supplement the coverage in the Federal Acquisition Regulation at 48 CFR 9.104–3. The proposed subsection would require some binding form of performance guarantee in contracts other than management and operating contracts where the contractor has been formed specifically for performance of the contract and lacks sufficient resources to carry out performance of the prospective contract.

It further proposes to add a section 970.0902 to treat this matter in the context of the award of DOE management and operating contracts. Since this situation will occur predominately in the award of management and operating contracts, the proposed 970 coverage includes a solicitation provision for use when DOE's solicitation requires a dedicated performing entity.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's 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 was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (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 proposed 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 of 1980, Public Law 96–354, that requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and that is likely to have significant economic impact on a substantial number of small entities. The contracts to which this rulemaking would apply involve awards to newly formed subsidiaries organized by a parent corporations to perform specific DOE contracts. In such instances, the parent would be required to guarantee the performance of the subsidiary. There would not be an adverse economic impact on contractors or subcontractors. 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 has been prepared.

D. Review Under the Paperwork Reduction Act

No additional information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

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 12612

Executive Order 12612, (52 FR 41685, October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This proposed rule merely reflects current practice relating to determinations of responsibility. States which contract with DOE will be subject to this rule. However, DOE has determined that this proposed rule would not have a substantial direct effect on the institutional interests or traditional functions of the States.

G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

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

H. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally 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. This proposed rulemaking would only affect

private sector entities, and the impact is less than $100 million.

List of Subjects in 48 CFR Parts 909 and 970

Government procurement.

Issued in Washington, D.C. on November 2, 1998.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 909—[AMENDED]

1. The authority citation for Part 909 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. Subsection 909.104–3 is added as follows:

909.104–3 Application of standards. (DOE coverage-paragraph (e))

(e) DOE may select an entity which was newly created to perform the prospective contract, including, but not limited to, a joint venture or other similarly binding corporate partnership. In such instances when making the determination of responsibility pursuant to 48 CFR 9.103, the contracting officer may evaluate the financial resources of other entities only to the extent that those entities are legally bound, jointly and severally if more than one, by means of a performance guarantee or other equivalent enforceable commitment to supply the necessary resources to the prospective contractor and to assume all contractual obligations of the prospective contractor. The guaranteeing corporate entity(ies) must be found to have sufficient resources in order to satisfy its guarantee.

PART 970—[AMENDED]

3. The authority citation for Part 970 continues to read:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub.L. 95–91 (42 U.S.C. 7254).

4. Section 970.0902 is added as follows:

970.0902 Determination of responsibility.

(a) In the award of a management and operating contract, the contracting officer shall determine that the prospective contractor is a responsible contractor and is capable of providing all necessary financial, personnel, and other resources in performance of the contract.

(b) DOE contracts with entities that have been created solely for the purpose of performing a specific management and operating contract. Such a newly created entity generally will have very limited financial and other resources. In such instances, when making the determination of responsibility required under this section, the contracting officer may evaluate the financial resources of other entities only to the extent that those entities are legally bound, jointly and severally if more than one, by means of a performance guarantee or other equivalent enforceable commitment to supply the necessary resources to the prospective contractor and to assume all contractual obligations of the prospective contractor. A performance guarantee should be the means used unless an equivalent degree of commitment can be obtained by an alternative means.

(c) The guaranteeing corporate entity(ies) must be found to have sufficient resources in order to satisfy its guarantee.

(d) Contracting officers shall insert the provision at 970.5204-XX in solicitations where the awardee is required to be organized solely for performance of the requirement.

5. Section 970.5204-XX is added as follows:

§ 970.5204-XX Requirement for guarantee of performance.

In accordance with 970.0902(d), insert the following provision in appropriate solicitations.

Requirement for Guarantee of Performance (XXX 1998)

The successful proposer is required by other provisions of this solicitation to organize a dedicated corporate entity to carry out the work under the contract to be awarded as a result of this solicitation. The successful proposer will be required, as part of the determination of responsibility of the newly organized, dedicated corporate entity and as a condition of the award of the contract to that entity, to furnish a guarantee of that entity's performance. That guarantee of performance must be satisfactory in all respects to the Department of Energy.

In order to consider the financial or other resources of the parent corporate entity(ies) or other guarantors, each of those entities must be legally bound, jointly and severally if more than one, to provide the necessary resources to the prospective contractor and to assume all contractual obligations of the prospective contractor.

[FR Doc. 98–29941 Filed 11–6–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 98–4672]

Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking submitted by Price T. Bingham, a private individual. The petitioner requested that the agency initiate rulemaking to require air bag sensors to be designed so that data is recorded during a crash and can be read by crash investigators. The agency agrees that the recording of crash data from air bag sensors, as well as other vehicle sensors, can provide information that is very valuable in understanding crashes. This information can then be used in a variety of ways to improve motor vehicle safety. The agency is denying the petition because the auto industry is already voluntarily moving in the direction recommended by the petitioner. Further, the agency believes this area presents some issues that are, at least for the present time, best addressed in a non-regulatory context.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Mr. Clarke Harper, Chief, Light Duty Vehicle Division, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2264. Fax: (202) 366–4329.

For legal issues: J. Edward Glancy, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION: NHTSA received a petition for rulemaking from Price T. Bingham, a private individual. Mr. Bingham stated that air bag sensors are capable of collecting and recording data that could be extremely valuable to crash investigators. He stated his concern in light of air bag deployments that might be ''spontaneous,'' but did not limit his petition to that issue. The petitioner asked the agency to initiate rulemaking to require manufacturers to design their air bag sensors so that data are collected and recorded during a crash so that they can be read by crash investigators.