

CHAPTER 2

ENVIRONMENT, SAFETY AND HEALTH

(revised September 25, 2003)

WHAT ARE THE BASIC PRINCIPLES/OBJECTIVES OF THE DEPARTMENT'S ENVIRONMENT, SAFETY AND HEALTH (ES&H) PROGRAM?

1. Work is performed in a manner that protects workers, the public and the environment.
2. The Department holds contractors accountable for the safe performance of work.
3. ES&H functions and activities are an integral and visible part of contractors' business processes.

WHY IS THE DEPARTMENT'S ENVIRONMENT, SAFETY AND HEALTH PROGRAM IMPORTANT?

The Department has a responsibility to protect people, the environment, and property in the performance of the various missions under its contracts. Because of the sensitivity and potential liabilities associated with meeting these responsibilities, the ES&H requirements of the Department's contracts must be closely observed and managed.

This chapter informs contract administration team members about:

- ES&H related contract requirements,
- The process for holding contractor accountable for ES&H performance, and
- Their individual roles and responsibilities in this process.

WHAT IS A GENERAL DESCRIPTION OF THE PROCESSES UNDER THE DEPARTMENT'S ENVIRONMENT, SAFETY AND HEALTH PROGRAM?

This chapter covers those documents which provide the guidance and requirements under which DOE and its performance based management contract (PBMC) contractors protect the health and safety of the environment, prime contract and subcontract workers, and the general public. In doing so this chapter discusses the Department of Energy Acquisition Regulation (DEAR) and Federal Acquisition Regulation (FAR) provisions, DOE directives, and other pertinent references. The term "safety" used in this document encompasses all ES&H activities including pollution prevention and waste minimization.

What are the major ES&H goals and processes which are embodied in DEAR and FAR provisions?

1. Ensure that the contractor establishes a Safety Management System (which includes safety, health and environmental programs) and meets the requirements during the performance of contract work.

Recent DEAR changes have strengthened the administration and oversight of PBMCS. One focus area is ES&H performance. Specifically, DEAR clause 970.5223-1, "Integration of ES&H into Work Planning and Execution" strengthens contractor accountability for ES&H performance by requiring the integration of ES&H into business systems and work management processes. Further, the clause delineates basic ES&H system requirements for all DOE operating contractors in order to help ensure work is conducted safely.

As set forth in DEAR 970.5223-1, a Safety Management System description must be submitted to and approved by the contracting officer (CO). In the process, the conditions and requirements within the Safety Management System description become requirements of the contract and binding on the contractor. The Department expects that each facility or site will tailor the Safety Management System commensurate with the work to be accomplished and associated hazards.

When should a Safety Management System be submitted and approved?

There is no definitive requirement for a time for the submittal and approval of the Safety

Management System. DEAR 970.5223-1 states that the dates for submittal, discussions, and revisions to the System will be established by the contracting officer. However, the clause also states that before work is performed, the associated hazards need to be evaluated and an agreed-upon set of ES&H standards and requirements need to be established which will provide adequate assurance that employees, the public, and the environment are protected from adverse consequences. Inasmuch as the clause states that these ES&H standards and requirements are to be included in the Safety Management System, it is probably prudent, although not required, to have the System itself submitted and approved before any work is performed. The Safety Management System should also be reviewed by the contractor and DOE as conditions change.

It is important to document any changes to the Safety Management System as they may impact contract costs, performance, as well as safety. Accordingly, it is prudent that Safety Management System changes are accomplished through the site's formal change control process.

2. Ensure that the Operations/Field Office Manager formally conveys the annual ES&H performance objectives and measures to the contractor and that commitments to achieve these objectives are implemented and monitored.

Prior to the start of each fiscal year, the contractor and DOE must establish and document the common set of ES&H performance objectives and measures (of the Operations/Field Office Manager) and

commitments (of the contractor) and identify resources necessary to ensure the safe conduct of work (e.g., safety program functions and facility safety upgrades). The contractor's ES&H commitments are to be considered as one of three minimum performance requirements cited in DEAR 970.5215-3, "Conditional Payment of Fee, Profit, or Incentives" and referenced in DOE program and budget execution guidance contained in the Field Budget Call. The other two minimum performance requirements are: (1) compliance with applicable laws, regulations, and DOE requirements; and (2) full and effective implementation of the Safety Management System.

These contractor ES&H performance commitments must also be consistent with site annual work plans (execution) and must, as a minimum, meet ES&H objectives set by the Operations/Field Office Manager through the CO.

The establishment, execution, and monitoring of ES&H performance commitments are designed to:

- Formally affirm that line management (i.e., Operations/Field Office Manager) is aware of major ES&H issues and associated contractor performance commitments in the current fiscal year work plan and the status of their completion; and
- Identify ES&H vulnerabilities and associated performance commitments in the upcoming fiscal year work plan that puts fee at risk.

This is the annual review and update requirement contained in the ES&H clause DEAR 970.5223-1, "Integration of Environment, Safety, and Health into Work Planning and Execution." Guidance on the preparation, content, review, and approval of the System will be provided by the contracting officer. Chapter IV of the "Integrated Safety Management System Guide" (DOE G 450.4-1B). The chapter states what annual updates should include:

- A summation of contractor performance against the previous year's ES&H performance objectives, performance measures, and commitments;
- The resources planned and budgeted for the out-year to meet ES&H needs;
- Corrective actions for functional ES&H program integration issues;
- Corrective actions to improve Integrated Safety Management System
- implementation and effectiveness;
- ES&H performance objectives, measures, and commitments for the next year;
- Any changes required in a self and independent assessment focus or criteria;
- Any changes, if required, to an Integrated Safety Management System Description document; and

- Impacts of any changes to laws, regulations, and directives (List A/List B revisions).

Performance commitments should focus on the contractor's most risk significant ES&H vulnerabilities (e.g., ES&H support program deficiencies, maintenance of site infrastructure, and corrective actions resulting from internal and external oversight).

The contractor should also ensure that there is an appropriate skill mix and number of qualified personnel in the ES&H area.

3. Ensure that the contractor's ES&H performance is evaluated based on adherence to the requirements of their Safety Management System, including ES&H performance commitments, and compliance with applicable laws, regulations, and DOE requirements. Also, ensure that the otherwise earned fee, fixed fee, profit, or share of cost savings is reduced if it is appropriate to do so.

DEAR 970.5215-3, "Conditional Payment of Fee, Profit, or Incentives," establishes that part or all of the otherwise earned fee, fixed fee, profit or share of cost savings in an evaluation period is subject to reduction by DOE when performance in the critical area of ES&H is below expected levels (also see the chapter "Performance Measurement and Assessment).

The annual update (part of the Safety Management System) includes specific performance objectives and commitments. A contractor's failure to meet these

objectives or commitments puts otherwise earned fee, etc. at risk.

The clause requires that contractors obtain DOE's approval of the Safety Management System and meet the performance requirements contained in the Safety Management System. The contractor is required to avoid catastrophic events (such as a fatality or serious workplace injury or illness, loss of control over classified or special nuclear material, or significant damage to the environment).

Since the Safety Management System establishes the contractor's baseline ES&H requirements and systems, COs should first rely on the Safety Management System to determine whether the contractor is meeting its contractual requirements. COs should use the DEAR 970.5215-3 clause, with support from ES&H technical personnel, to ensure that the contractor performs the minimum ES&H requirements properly.

Regarding work efforts that may be specifically incentivized, the enforcement of the ES&H requirements that are inherent in performance should occur as part of the evaluation of the contractor's overall performance for the work.

What happens if the contractor fails to execute work in accordance with the ES&H performance requirements?

In the case of a contractor's failure to execute work in accordance with ES&H performance requirements, the contractor must promptly evaluate and resolve any noncompliances. If the contractor fails to provide resolution or if, at any time, the

contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the contracting officer may issue an order stopping work.

Additionally, the contractor's failure to execute the work in accordance with ES&H performance requirements should result in a reduction of the otherwise earned fee, fixed fee, profit, or share of cost savings for that work. Accordingly, when developing work efforts for incentivization, the incentive should be structured to promote the integration of ES&H in all aspects of contractor work efforts.

At the end of each performance period, the contracting officer must evaluate the contractor's ES&H performance. The contractor's execution of its ES&H performance commitments must be considered a part of the minimum performance requirements for fee, fixed fee, profit, or share of cost savings.

If the contractor:

- Fails to obtain approval of the Safety Management System or fails to effectively implement the Safety Management System, or
- Experiences adverse occurrences having ES&H impacts during the performance period (e.g., fatality, serious workplace related injury, or illness to one or more Federal, contractor, or subcontractor workers, or the general public, or significant damage to the environment),

then the DOE contracting officer may reduce any otherwise earned fee, fixed fee, profit, or share of cost savings for the evaluation period by an amount up to the amount earned in accordance with DEAR 970.5215-3, "Conditional Payment of Fee, Profit, or Incentives." The aforementioned treatment of otherwise earned fee, fixed fee, profit, or share of cost savings is identical among for profit, not-for-profit and non-profit contractors.

When should incentives be used for ES&H requirements?

Specific incentives for stand-alone ES&H requirements or objectives (e.g., injury rates) should only be used where there is a demonstrated need to either reduce specific risks or better focus the contractor's management attention on improving a specific area of performance. In both instances, the incentive should not be continued once the desired level of performance has been achieved. The rationale for limiting the use of specific incentives for stand-alone ES&H requirements is that the contractor may succeed in meeting performance targets needed to earn the specific incentive, but not achieve the more important objective of integrated safety management.

4. Ensure that all appropriate DOE standards and directives (including ES&H) are properly referenced in the contract.

DEAR 970.5204-2, "Laws, Regulations, and DOE Directives," (also see the "Business/Contract Management" chapter), requires the contractor to comply with all

applicable Federal, state and local laws and regulations, unless relief has been granted in writing by the appropriate regulatory agency. A listing of these requirements may be set forth in the contract for informational purposes and is called the List A requirements.

The clause also provides for a uniform contractual mechanism by which DOE directives and ES&H related standards are specified in the contract. This list of specified DOE requirements must appear in the contract as “List B.”

Who is responsible for determining which directives are applicable to individual contracts?

The program and requirements personnel are responsible for identifying which directives are applicable to individual solicitations and contracts. DEAR 970.0470-1 requires program and requirements personnel to:

- Identify requirements in the directives system that are applicable to a contract,
- Develop a list of applicable requirements, and
- Provide it to the contracting officer.

The contracting officer is responsible for ensuring that applicable requirements are properly inserted into contracts and solicitations.

How often is “List B” updated?

The CO is required to, at least annually (concurrently with the annual work scope

and fee negotiations), review and update the “List B” set of documents to ensure that they are complete and current.¹ To accomplish this update, the CO should identify the organization and individuals with operational, line management, or technical support responsibility for each requirement and request that they review the requirements and affirm their applicability.

Can the “List B” requirements be tailored?

List B requirements may be tailored. Tailoring must be accomplished with a DOE-approved process and the results are then incorporated into the contract. In seeking guidance on tailoring contractor requirements, consult:

- DOE G 450.4-1B, “Integrated Safety Management System Guide;”
- DOE G 450.3-3, “Tailoring for Integrated Safety Management Applications;” and
- DOE P 450.3, “Authorizing Use of the Necessary and Sufficient Process for Standards-based ES&H.”

¹Memorandum of February 19, 1999, Richard H. Hopf, Director Office of Procurement and Assistance Management

How is maintenance of Integrated Safety Management continuity ensured during the transition between contractors?

During a contractor transition, it is important that DOE Requests for Proposals either specify use of the currently approved Integrated Safety Management System, specify how the current Integrated Safety Management System should be modified, or specify that a revised Integrated Safety Management System be developed and submitted by a new contractor. A re-verification may be appropriate in cases where the Integrated Safety Management System is substantially modified or a new Integrated Safety Management System is submitted.

However, a re-verification may not be necessary in cases where a currently approved Integrated Safety Management System is to be sustained through a contractor transition. In such a case the following steps should be taken to more effectively manage the transition:

1. Include DEAR clauses 970.5223-1, 970.5204-2, and 970.5215-3 in the request for proposals and in the new contract.
2. Include the List of Applicable Laws and Regulations (List A) and List of Applicable Directives (List B) in the request for proposals and in the new contract.
3. Include a requirement in the request for proposals for the new contractor to continue to use the currently approved Integrated Safety Management System Description

document from the previous contract through a period of transition.

4. Identify in the key personnel section of the request for proposals the names of any individuals who the new contractor should keep in place in order to support continuity of operations at the site and to maintain the existing Integrated Safety Management System during the transition period. Although this may not be a common practice, a deliberate decision by DOE to utilize this step can be effective.
5. Identify in the request for proposals any key aspects of the contractor's line management organizational structure for site operations that DOE desires to maintain during the transition period.
6. Ensure Authorization Agreements are prepared, signed, and in place in support of the actual transition date.

Where can I locate guidance related to Integrated Safety Management?

Guidance on Integrated Safety Management can be found in DOE G 450.4-1B, "Integrated Safety Management System Guide."

This Guide and other guidance documents may be found at the following ISM web site which is also listed in Appendix B:

<http://tis-nt.eh.doe.gov>

Where can I locate guidance related to environmental policy, regulations, laws, etc.?

You can access such information at the following DOE Office of Environmental Policy and Assistance web site which is also listed in Appendix B:

<http://tis.eh.doe.gov/oepa/>

WHAT ARE MY MAJOR ROLES AND RESPONSIBILITIES IN THE AREA OF ENVIRONMENT, SAFETY AND HEALTH?

On the following pages are the major roles and responsibilities of members of the contract administration team. Key sections of documents have been summarized for ease of reference. Please bear in mind that the referenced documents themselves are controlling and should be consulted for a complete discussion of the various roles, responsibilities and requirements. Additionally, other documents, not listed here, may contain other roles and responsibilities.

Major environment, safety, and health roles and responsibilities for various organizations and individual positions are contained in DOE M 411.1.1B, "Safety Management Functions, Responsibilities and Authorities Manual." Additionally, each program office and field organization is required to develop its own functions, responsibilities, and authorities documents. These documents, which supplement DOE M 411.1.1B, further define ES&H roles and responsibilities within that organization. As such, they may add to or modify the general statements of responsibilities described below.

Note: Various responsibilities on the following pages are marked with an asterisk (*). This signifies that the responsibility is not specifically assigned to this individual by a clause, regulation, or procedure. It is suggested because:

- (1) The responsibility is necessary to perform Government contract administration responsibilities; and is either commonly performed by this individual or reflects "good business practice."
- (2) The responsibility is stated in the reference as a DOE/Government responsibility; and is either commonly performed by this individual or reflects "good business practice."

Local guidance may determine who specifically is obligated to perform the responsibility.

CHIEF FINANCIAL OFFICER

Issue Departmental budget formulation and execution guidance, including ES&H, prior to the start of each fiscal year.

[DOE Budget Formulation Handbook, DOE Field Budget Call, DOE M 411.1.1B, section 9.1.4.1]

PROGRAM OFFICE

* Issue program and budget execution guidance prior to the start of each fiscal year outlining objectives and priorities.

[DOE Budget Formulation Handbook, DOE Field Budget Call, DOE M 411.1.1B, sections 9.1.3 and 9.1.4]

Provide guidance to Operations/Field Office Managers on expected performance, set goals and priorities, and allocate resources.

[DOE M 411.1.1-1B, Section 9.2.2.4]

Review and approve nuclear safety rule implementation plans, tailoring processes, authorization protocols, contractual safety requirements, and other safety management plans and documents that identify the controls, processes, programs, and procedures needed for safety, when this approval has not been assigned to the Operations/Field Office Managers. Oversee implementation of approved plans, procedures, and programs.

[DOE M 411.1.1B, section 9.4]

OPERATIONS/FIELD OFFICE MANAGER

* Formally convey to contractors, prior to each fiscal year, the ES&H related performance objectives, performance measures and commitments to be achieved for the performance period.

[DEAR 970.5223-1]

Assess the Contractor's performance in the area of environment, safety and health as defined in the contract or the Performance Evaluation and Measurement Plan.

May reduce any otherwise earned fees, fixed fee, profit, or share of cost savings if the Contractor fails to obtain approval of the Safety Management System or fails to achieve the minimum performance requirements of the system during the evaluation period,

[DEAR 970.5215-3]

May reduce any otherwise earned fee, fixed fee, profit, or share of cost savings if there is a catastrophic event (such as a fatality, a serious workplace-related injury, or illness to one or more Federal, prime contractor, or subcontractor employees or the general public; loss of control over classified or special nuclear material, or significant damage to the environment).

[DEAR 970.5215-3]

* In accordance with Executive Order 12856, comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (42 U.S.C. 13101-13109).

[FAR 52.223-5]

* Request all needed information from the contractor to comply with Emergency Planning and Community Right-to-Know Act of 1986 and Pollution Prevention Act of 1990.

[FAR 52.223-5]

* Ensure that local DOE functions, responsibilities and authorities documents, which further define ES&H roles and responsibilities, are followed.

FIELD ELEMENT MANAGER²

Review nuclear safety rule implementation plans, tailoring processes, authorization protocols, contractual safety requirements, and other safety management plans and documents that identify the controls, processes, programs, and procedures needed for safety. Approve such when this approval has been assigned to the Operations/Field Office Managers, or provide recommendations to the PSO where approval is retained at that level. Oversee implementation of approved plans, procedures, and programs.

[DOE M 411.1.1B, section 9.4]

HEAD OF CONTRACTING ACTIVITY

Determine appropriate authorization protocol based on work and hazard.

[DOE M 411.1.1-1B, Section 9.4.3.3]

Append approved authorization agreement to or modify the affected contract to include its provisions.

[DOE M 411.1.1-1B, Section 9.4.3.3]

OFFICE OF ENVIRONMENT, SAFETY AND HEALTH

Review and comment on the authorization basis, associated safety documentation, and management systems to develop and maintain authorization bases as part of The Office of Environment, Safety and Health's oversight function, or as requested by line management or directed by the Secretary.

[DOE M 411.1.1-1B, Sections 9.4.1.1 & 9.4.1.2]

²The term Field Element Manager (FEM) is used in DOE M 411.1.1-1B. It refers to the head of a field element. The FEM can be the head of a field or operations office, the head of an area office, etc. In most cases, the FEM would be the Operations/Field Office Manager.

PROGRAM AND REQUIREMENTS PERSONNEL

Identify requirements in the Directives System applicable to a contract, develop a list of applicable requirements, and provide it to the contracting officer for inclusion in the contract.

[DEAR 970.0470-1]

* Work cooperatively with the contractor, program personnel, and other requirements personnel to select a DOE-approved tailoring process to identify requirements for the contract.

[DEAR 970.0470-1, DEAR 970.5204-2]

* Ensure that local DOE functions, responsibilities and authorities documents, which further define ES&H roles and responsibilities, are followed.

SITE ES&H MANAGER

* Support the CO by:

- § Providing DOE requirements to be included in the contractor's List B and List A if determined to be included;
- § Assist in the evaluation of the contractor's Safety Management System description;
- § Assess the contractor's Safety Management System description requirements and milestones;
- § Provide the CO with a recommendation regarding the Safety Management System description assessment; and
- § Assist the CO in work stop and restart decisions regarding ES&H issues.

[DEAR 952.223-72, DEAR 970.5215-3, DOE Field Budget Call]

* Make recommendations to the DOE Operations/Field Office Manager or designee to reduce the evaluation period's otherwise earned fee, fixed fee, profit, or share of cost savings if the contractor fails to obtain approval of the Safety Management System, does not meet the minimum requirements of the contract, or has a catastrophic event.

[DEAR 970.5215-3]

* Ensure that local DOE functions, responsibilities and authorities documents, which further define ES&H roles and responsibilities, are followed.

CONTRACTING OFFICER

* Issue the Operations/Field Office Manager's guidance prior to the start of work under a new contract, to contractors on the preparation, content, review and approval of the contractor's Safety Management System. This is done in coordination with site ES&H staff and, as requested, by HQ Office of Environment, Safety and Health staff.

[DEAR 970.5223-1]

* Assists the Operations/Field Office Manager's in ensuring prior to each fiscal year, that the contractor updates their Safety Management System, including ES&H performance objectives, performance measures, and commitments. This is done in coordination with site ES&H and budget staffs.

* Ensure that ES&H performance is assessed at the end of performance period based on the achievement of ES&H performance commitments.

[DEAR 970.5223-1]

May issue an order stopping work if, in the opinion of the Operations/Field Office Manager, the contractor fails to provide resolution or, if at any time the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public.

[DEAR 970.5223-1]

Regarding safety management system documentation:

- Decide on the need for team review and, if needed, select members of the review team for specific applications and select the team leader from the approved list; and
- Approve safety management system descriptions and revisions.

[DOE M 411.1.1-1A, Section 9.2.2.6]

* Assist the Operations/Field Office Manager in evaluating, in coordination with the site ES&H manager, the Safety Management System description for accuracy, completeness, and conformance to DOE requirements.

* Approve or disapprove the contractor's Safety Management System description per the recommendation of the Operations/Field Office Manager.

* If disapproved, establish, in conjunction with the site ES&H manager, corrective actions and milestones.

[DEAR 952.223-72]

* Assist the Operations/Field Office Manager in assessing the contractor's performance in meeting the requirements of the Safety Management System description plan with support from the site ES&H manager. If it is determined that the contractor did not meet requirements, fee, fixed fee, profit, or share of cost sharing can be reduced.

[DEAR 952.223-72, DEAR 970.5215-3]

May stop work if the contractor fails to meet requirements of the safety standards during the performance period. * Work stoppage and subsequent restart decisions due to ES&H issues should be coordinated with the Operations/Field Office Manager with support from the site ES&H manager.

[DEAR 952.223-72]

May revise List B of DEAR 970.5204-2 by unilateral modification (where List B consists of all applicable DOE directives).

Prior to revising List B, notify the contractor in writing of the Department's intent and provide the contractor with the opportunity to assess the effect of the contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract.

Insert into List B of DEAR 970.5204-2 (tailored ES&H) requirements recommended by program and requirements personnel.

Attach List A to the contract if the CO determines that it should be included.

[DEAR 970.5204-2]

Negotiate with the contractor any changes to other terms and conditions resulting from the intended change to List B of DEAR 970.5204-2.

[DEAR 970.5204-2]

* Forward the certificate to the appropriate party or the contracting officer's representative, if the CO is the individual to whom the contractor submits the certification and estimate, required by FAR 52.223-9, upon completion of the contract.

[FAR 52.223-9]

May terminate the contract or take other action as appropriate, if the contractor fails to comply accurately and fully with the Emergency Planning and Community Right-to-Know Act of 1986 and The Pollution Prevention Act of 1990 toxic chemical release filing and reporting requirements.

[FAR 52.223-14]

Notify receiving activities so that appropriate safeguards can be taken, upon receipt of the contractor's notice of planned delivery of radioactive material.

Specify in the clause at 52.223-7, the number of days in advance of delivery that the contractor will provide notification. *The determination of the number of days should be done in coordination with the installation/facility radiation protection officer (RPO). The RPO is responsible for insuring the proper license, authorization, or permit is obtained prior to receipt of the radioactive material.

May waive the notification if the contractor states that the notification on prior deliveries is still current.

May waive the notice only after consultation with cognizant technical representatives.

[FAR 23.601]

Direct the contractor if an exception is needed to the requirement for the contractor to obtain all needed permits and licenses.

* As needed in accordance with local guidance, authorize individuals from the appropriate disciplines, to act as The contracting officer's representatives to ensure that the ES&H requirements of the contract are fulfilled.

[FAR 2.101, FAR 52.202-1, DEAR 952.202-1, FAR 1.102]

Review and update, at least annually (concurrently with the annual work scope and fee negotiations) the "List B" set of documents in DEAR 970.5204-2 to ensure that they are complete and current. To accomplish this update, the CO should identify the organization and individuals with operational, line management, or technical support responsibility for each requirement and request that they review the requirements and affirm their applicability.

[Memorandum of February 19, 1999, Richard H. Hopf, Director Office of Procurement and Assistance Management]

Provide written direction to the contractor on the preparation and submission of reports on matters related to the use of environmentally preferable products and services.

Identify the DOE recycling point of contact to the contractor.

[DEAR 970.2307-2]

* Ensure that local DOE functions, responsibilities and authorities documents, which further define ES&H roles and responsibilities, are followed.

CONTRACTOR

Perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and be accountable for the safe performance of work.

Exercise a degree of care commensurate with the work and the associated hazards.

[DEAR 970.5223-1]

Ensure that management of ES&H functions and activities becomes an integral and visible part of the contractor's work planning and execution processes.

Manage and perform work in accordance with a documented Safety Management System that fulfills at a minimum all conditions in paragraph (b) of DEAR 970.5223-1.

[DEAR 970.5223-1]

Submit to the CO documentation of its Safety Management System for review and approval.

Review and update, on an annual basis, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction.

Comply with and assist the Department in complying with ES&H requirements of all applicable laws, regulations, and applicable directives identified in the clause of its contract, "Laws, Regulations, and DOE Directives."

[DEAR 970.5223-1]

Cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.

Promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the Safety Management System.

Include a clause substantially the same as the clause, "Integration of ES&H into Work Planning and Execution," in subcontracts involving complex or hazardous work on site at a DOE owned or leased facility.

May require that the subcontractor submit a Safety Management System for the contractor's review and approval.

[DEAR 970.5223-1]

Take all reasonable precautions to protect the safety and health of employees and members of the public against the hazards of ionizing radiation and radioactive materials.

Comply with all applicable DOE radiation protection and nuclear criticality safety standards and requirements (including reporting requirements).

Submit a management program and implementation plan to the CO for review and approval.

[DEAR 952.223-72]³

Meet the minimum ES&H requirements of the Safety Management System program, the minimum requirements regarding a catastrophic event or release of restricted data, and, if Alternate I is applicable, the minimum specified level of performance, and the minimum cost performance requirements in order to receive all otherwise earned fee, fixed fee, profit, or share of cost savings.

[DEAR 970.5215-3]

³The application of DEAR 952.223-72, "Radiation Protection and Nuclear Criticality" to DOE contracts is very limited. Consult with appropriate personnel (*Office of General Counsel and/or the representative from the Office of Environment, Safety and Health) before including this clause in the contract.

Develop, obtain DOE approval of, and implement a Safety Management System in accordance with the provisions of the clause entitled "Integration of Environment, Safety and Health into Work Planning and Execution," if included in the contract, or as otherwise agreed to with the CO.

[DEAR 970.5215-3]

Report catastrophic and other required events to the DOE Operations/Field Office Manager or designee.

[DOE O 231.1A]

Comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency.

Comply with the requirements of those DOE directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to the contract.

Advise the CO in writing of the potential impact of the contractor's compliance with the revised List B.

Negotiate with the CO any changes to other terms and conditions resulting from the intended change to List B.

[DEAR 970.5204-2]

Flow down the necessary ES&H provisions of the clause to subcontracts at any tier to which the contractor determines such requirements apply.

[DEAR 970.5204-2]

Execute the certification specified in the clause entitled, "Estimate of Percentage of Recovered Material Content for EPA Designated Items."

Estimate the percentage of recovered materials actually used in the performance of the contract.

Submit the certification and estimate upon completion of the contract to the individual designated in the contract.

[FAR 52.223-9]

Establish a compliant program to promote cost-effective waste reduction in all operations and facilities covered by the contract.

[FAR 52.223-10]

File an annual Toxic Chemical Release Inventory Form (Form R), unless otherwise exempt under the provisions of the clause, "Toxic Chemical Release Reporting."

For each facility subject to the Form R filing and reporting requirements, file the annual Form R throughout the life of the contract.

[FAR 52.223-14]

If the contractor has certified to an exemption in accordance with one or more of the criteria under the provisions of the clause, "Toxic Chemical Release Reporting," and if after contract award the circumstances change so that any of its owned or operated facilities is no longer exempt-

- Notify the CO; and
- Submit a Toxic Chemical Release Inventory Form (Form R) for the prior calendar year during which the facility becomes eligible; and (ii) continue to file the annual Form R for the life of the contract for such facility.

[FAR 52.223-14]

Except for acquisitions of commercial items (defined in FAR Part 2):

- Include a solicitation provision substantially the same as the provision "Certification of Toxic Chemical Release Reporting" for competitive subcontracts expected to exceed \$100,000 (including all options), ; and
- Include in any resultant subcontract exceeding \$100,000 (including all options) the substance of the clause.

[FAR 52.223-14]

Agree:

- To comply with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Clean Water Act relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Sections 114 and 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;
- That no portion of the work required by the contract will be performed in a facility listed on the EPA List of Violating Facilities unless and until the EPA eliminates the name of the facility from the listing;
- Use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and
- Insert the substance of the clause, "Clean Air and Water" in subcontracts.

[FAR 52.223-2]

Comply with:

- Applicable implementation plan as described in Section 110(d) of the Air Act (42 U.S.C. 7410(d));
- Approved implementation procedure or plan under Section 111(c) or Section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or
- Approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 7412(d)).

[FAR 52.223-2]

Provide a list to the CO of any hazardous material to be delivered under the contract. Update the list of hazardous materials and provide a copy to the CO whenever the contractor determines that any material to be delivered, but not already listed, is hazardous.

Submit a Material Safety Data Sheet for each hazardous material to be delivered under the contract.

Resubmit data on hazardous materials whenever the composition of an item on the list of hazardous materials to be delivered changes or whenever there is a revision to Federal Standard No. 313, which defines hazardous materials.

[FAR 52.223-3]

Notify the CO prior to delivery of radioactive material.

[FAR 52.223-7, FAR 23.601]

Procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and state, territory, and political subdivisions in which the work under the contract is performed except as otherwise directed by the CO. Provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of Emergency Planning and Community Right-to-Know Act of 1986; the emergency notice requirements of Section 304 of Emergency Planning and Community Right-to-Know Act of 1986; the list of Material Safety Data Sheets required by Section 311 of Emergency Planning and Community Right-to-Know Act of 1986; the emergency and hazardous chemical inventory forms of Section 312 of Emergency Planning and Community Right-to-Know Act of 1986; the toxic chemical release inventory of Section 313 of Emergency Planning and Community Right-to-Know Act of 1986; and the toxic chemical reduction goals requirements of Section 3-302 of Executive Order 12856.

[FAR 52.223-5]

Comply with the requirements of:

- Executive Order 12873, “Federal Acquisition, Recycling, and Waste Prevention,”
- Section 6002 of the Resource Conservation and Recovery Act (RCRA) of 1976,
- Title 40 of the Code of Federal Regulations, Subchapter I, Part 247, “Comprehensive Guidelines for the Procurement of Products Containing Recovered Materials” and other Subchapter I Parts or Comprehensive Procurement Guidelines as the Environmental Protection Agency may issue,
- “U.S. Department of Energy Affirmative Procurement Program for Products Containing Recovered Materials,” and
- Related guidance document(s) as they are identified in writing by the Department.

[DEAR 970.2307-2]

Prepare and submit reports on matters related to the use of environmentally preferable products and services in accordance with written direction from the CO.

[DEAR 970.2307-2]

Coordinate its concerns and seek implementing guidance on Federal and Departmental policy, plans, and program guidance with the DOE recycling point of contact, identified by the CO.

[DEAR 970.2307-2]

Ensure the confidentiality of all work-related records generated under the Beryllium Disease Prevention program including the requirement that the records be used or disclosed only in conformance with any applicable requirements imposed by the Americans with Disabilities Act, the Privacy Act of 1974, the Freedom of Information Act, and any other applicable law.

[10 CFR Section 850.39, DEAR 970.5204-3]

Maintain all required records in current and accessible electronic systems.

Transmit all records generated as required by this rule, in a format that protects the confidentiality of individuals, to the DOE Assistant Secretary for Environment, Safety and Health on request.

Transmit semi-annually to the DOE Office of Epidemiologic Studies within the Office of Environment, Safety and Health an electronic registry of beryllium-associated workers that protects confidentiality.

[10 CFR Section 850.39, DEAR 970.5204-3]

CONTRACTING OFFICER'S REPRESENTATIVE

* Within delegated authority, advise and support the CO to ensure that the proper tailoring process is used to identify requirements for the contract; that identified requirements are inserted into the contract; and that the contractor meets the ES&H requirements of the contract.

[FAR 2.101, FAR 52.202-1, DEAR 952.202-1, FAR 1.102]

WHERE CAN I GO FOR MORE DETAILED INFORMATION ON ENVIRONMENT, SAFETY AND HEALTH?

1. DEAR 952.202-1, "Definitions"
2. DEAR 952.223-72, "Radiation Protection and Nuclear Criticality"⁴
3. DEAR 970.0470-1, "General"
4. DEAR 970.5223-1, "Integration of Environment, Safety and Health into Work Planning and Execution"
5. DEAR 970.2307-2, "Acquisition and Use of Environmentally Preferable Products and Services"
6. DEAR 970.5204-2, "Laws, Regulations, and DOE Directives"
7. DEAR 970.5215-3, "Conditional Payment of Fee, Profit, or Incentives"
8. DOE G 450.4-1B, "Integrated Safety Management System Guide"
9. DOE M 411.1.1B, "Safety Management Functions, Responsibilities and Authorities Manual"
10. DOE M 450.3-1, "The Department of Energy Closure Process for Necessary and Sufficient Sets of Standards"
11. DOE O 231.1A, "Environmental, Safety and Health Reporting"
12. DOE Budget Formulation Handbook
13. DOE Field Budget Call
14. Memorandum of February 19, 1999, Richard H. Hopf, Director Office of Procurement and Assistance Management
15. FAR 1.102, "Statement of Guiding Principles for the Federal Acquisition System"
16. FAR 2.101, "Definitions"
17. FAR 23.601, "Requirements"
18. FAR 52.202-1, "Definitions"
19. FAR 52.223-2, "Clean Air and Water"
20. FAR 52.223-3, "Hazardous Material Identification and Material Safety Data"
21. FAR 52.223-5, "Pollution Prevention and Right-to-Know Information"
22. FAR 52.223.7, "Notice of Radioactive Materials"
23. FAR 52.223-9, "Estimate of Percentage of Recovered Material Content for EPA Designated Items"
24. FAR 52.223-10, "Waste Reduction Program"
25. FAR 52.223-14, "Toxic Chemical Release Reporting"
26. 10 CFR Section 850.39, "Recordkeeping and Use of Information," (for Beryllium related records)

⁴The application of DEAR 952.223-72, "Radiation Protection and Nuclear Criticality to DOE contracts is very limited. Consult with Office of General Counsel and the representative from the Office of Environment, Safety and Health before including this clause in the contract.

**DO YOU HAVE ANY COMMENTS OR SUGGESTIONS FOR
IMPROVING THIS CHAPTER OR THE BOOK? IF SO, PLEASE
CONTACT US AT:**

editor@pr.doe.gov

CHAPTER REVISIONS

Date	Subject of Revision
September 25, 2003	1. Revised DEAR citations affected by DEAR 970 Rule (Dec. 2000)
	2. Revised chapter to update ES&H provisions.