

relationships of the owners, including family relationships.

(b) Form required: (1) Assignment. (i) FCC Form 490 shall be filed to assign a license or permit.

(ii) In the case of involuntary assignment, FCC Form 490 shall be filed within 30 days of the event causing the assignment.

(2) Transfer of control. (i) FCC Form 490 shall be submitted in order to transfer control of a corporation holding a license or permit.

(ii) In the case of involuntary transfer of control, FCC Form 490 shall be filed within 30 days of the event causing the transfer.

(3) Form 430. Whenever an application must be filed under paragraphs (a)(1) or (a)(2) of this section, the assignee or transferee shall file FCC Form 430 ("Common Carrier Radio License Qualification Report") unless an accurate report is on file with the Commission.

(4) Notification of completion. The Commission shall be notified by letter of the date of completion of the assignment or transfer of control.

(5) If the transfer of control of a license is approved, the new licensee is held to the original build-out requirement of § 27.104.

(c) In acting upon applications for transfer of control or assignment, the Commission will not consider whether the public interest, convenience, and necessity might be served by the transfer or assignment of the authorization to a person other than the proposed transferee or assignee.

(d) Applicants seeking to transfer their licenses within three years after the initial license grant date are required to file, together with their transfer application, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration to be received in return for the transfer of the license.

#### **§ 27.324 Termination of authorization.**

(a)(1) All authorizations shall terminate on the date specified on the authorization or on the date specified by the rules in this part, unless a timely application for renewal has been filed.

(2) If no application for renewal has been made before the authorization's expiration date, a late application for renewal will only be considered if it is filed within 30 days of the expiration date and shows that the failure to file a timely application was due to causes beyond the applicant's control. During this 30 day period reinstatement applications must be filed on FCC Form 489. Service to subscribers need not be

suspended while a late filed renewal application is pending, but such service shall be without prejudice to Commission action on the renewal application and any related sanctions. See also § 27.14 (Criteria for Comparative Renewal Proceedings).

(b) Special Temporary Authority. A special temporary authorization shall automatically terminate upon failure to comply with the conditions in the authorization.

### **PART 97—AMATEUR RADIO SERVICE**

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.303(j)(2) is revised to read as follows:

#### **§ 97.303 Frequency sharing requirements.**

\* \* \* \* \*

(j) \* \* \*  
(2) The 2300–2310 MHz segment is allocated to the amateur service on a secondary basis. The 2390–2400 MHz and 2402–2417 MHz segments are allocated to the amateur service on a primary basis. No amateur station transmitting in the 2400–2450 MHz segment is protected from interference due to the operation of industrial, scientific, and medical devices on 2450 MHz.

\* \* \* \* \*

[FR Doc. 96–29530 Filed 11–15–96; 10:55 am]

BILLING CODE 6712–01–P

### **DEPARTMENT OF ENERGY**

#### **48 CFR Parts 952 and 970**

#### **Acquisition Regulation, Classification, Security and Counterintelligence**

AGENCY: Energy.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Department of Energy (DOE) proposes to amend the Department of Energy Acquisition Regulation (DEAR) to revise its classification contract clause, revise its access authorization (security clearance) procedures for contractor personnel, and add new counterintelligence provisions. Specific material being revised or added is summarized in the "Section-by-Section Analysis" appearing later in this document. **DATES:** Written comments should be forwarded no later than January 21, 1997.

**ADDRESSES:** Send written comments to the attention of Richard B. Langston, Office of Policy (HR–51), Office of the Assistant Secretary for Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

**FOR FURTHER INFORMATION CONTACT:** Richard Langston, (202) 586–8247.

#### **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 Executive Order 12612

F. Review Under the National Environmental Policy Act

G. Public Hearing Determination

I. Background

This proposed rule will accomplish three objectives.

First, it will update the classification contract clause to incorporate interim changes set forth in Acquisition Letter 92–2R dated April 8, 1993 which provides that only Federal Government employees may serve as "original classifiers" and that both Federal Government employees and contractor employees may serve as "derivative classifiers." The clause is also changed to recognize that a balance is required between the Department's mission to protect the national security and prevent nuclear proliferation and its commitment to maximize the amount of information available to the public. As revised, the clause not only requires that information, documents or equipment originated or generated in classified or potentially classified subject areas be reviewed for classification by the appropriate officials using proper classification guidance provided by the Department, but also requires that documents containing information which is no longer classified by current classification guidance be systematically reviewed for declassification by a Derivative Declassifier. Only when both classification and declassification reviews are performed can the Department achieve its goal of protecting the national security while providing the public with access to as much Government information as possible.

Second, it will provide a definition of "counterintelligence" consistent with E.O. 12333, a policy statement regarding DOE's counterintelligence program, and a new contract clause on counterintelligence applicable to certain

DOE management and operating contractors and other contractors managing DOE-owned facilities.

Third, it will revise the DEAR to be consistent with the General Accounting Office Report on Nuclear Security, RCED-93-183, as implemented by DOE Order 472.1 entitled "Personnel Security Activities." The GAO report stresses contractor responsibility for certifying preemployment checks conducted on prospective employees. Where DOE access authorization is required, the contractor must perform normal and prudent preemployment checks and the applicant's job qualifications and suitability must be established before a request is made to the Department for a security clearance. This revision is applicable to DOE management and operating contractors and other contractors managing DOE-owned facilities.

## II. Section-by-Section Analysis

1. The authority citations for Parts 952 and 970 are restated.

2. The classification clause at 952.204-70 is renamed classification/declassification and is updated to incorporate changes set forth as interim changes in Acquisition Letter 92-2R dated April 8, 1993. It is also revised to require systematic declassification reviews as well as classification reviews.

3. A definition of counterintelligence is added to subsection 970.0404-1.

4. A new paragraph is added to 970.0404-2 to describe DOE policy on counterintelligence.

5. New instructions are added to 970.0404-4 to detail the security clause requirements for management and operating contractors and other contractors managing DOE-owned facilities.

6. Section 970.2201 is amended to describe the procedures for confirming to DOE the conduct and outcome of preemployment checks performed by management and operating contractors and other contractors managing DOE-owned facilities, when such contractors request that the DOE process an applicant for access authorization.

7. Section 970.5204-1 is amended to add a new clause entitled counterintelligence.

## 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 action 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, the interim final regulations meet the relevant standards of Executive Order 12988.

### C. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, 5 U.S.C. 601, *et seq.*, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. This proposed rule revises established classification, and security requirements and adds counterintelligence requirements. The security and counterintelligence requirements of this proposed rule are applicable only to management and operating contractors and other contractors managing DOE-owned facilities. Typically, such contractors are large businesses or universities,

therefor, this proposed rule will have no significant impact on a substantial number of small entities. These security and counterintelligence requirements apply only to prime contractors and there is no flowdown to subcontractors who might be small entities. The change to the classification clause applies to all contracts and subcontracts with classified information but has no significant economic impact. Based on this review, DOE certifies that this proposed rule will 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

This proposed rule imposes no new information collection or record keeping requirements. Accordingly, they require no OMB clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

### E. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 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 various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. DOE has determined that this proposed rule will not have a substantial direct effect on the institutional interests or traditional functions of states.

### F. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500-1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR Part 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A), DOE has determined that this proposed rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

**G. Public Hearing Determination**

DOE has concluded that this proposed rule does not involve any significant issues of law or fact. Therefore, consistent with 5 U.S.C. 553, DOE has not scheduled a public hearing.

List of Subjects in 48 CFR Parts 952 and 970

Government procurement.

Issued in Washington, D.C., on November 13, 1996.

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:

1. The authority citation for Part 952 continues to read:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c); 42 U.S.C. 13524.

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

### **952.204–70 [Amended]**

2. Subsection 952.204–70 is amended by revising the section heading and revising the clause to read:

### **952.204–70 Classification/Declassification.**

\* \* \* \* \*

CLASSIFICATION/DECLASSIFICATION (XXX 1996)

In the performance of work under this contract, the contractor shall ensure that all information originated or generated under the contract in a classified or potentially classified subject area is reviewed by a Federal Government Original Classifier and that any documents or equipment originated or generated in such areas are reviewed by a Federal Government or Contractor Derivative Classifier in accordance with classification regulations (e.g., internal agency directives) and guidance furnished to the contractor by the Department of Energy. Every subcontract and purchase order issued hereunder involving the origination or generation of classified information, documents, or equipment shall require that, in the performance of such subcontract or purchase order, the subcontractor or supplier shall ensure that all such information, documents or equipment in a classified or potentially classified subject area are reviewed by a Federal Government Original Classifier or a Federal Government or Contractor Derivative Classifier in accordance with classification regulations (e.g., internal agency directives) and guidance furnished to such subcontractor or supplier by the contractor. In addition, each contractor or subcontractor shall assure that documents containing information which is no longer classified by current classification regulations are systematically reviewed by a Federal Government or Contractor Derivative

Declassifier under applicable regulations in order to maximize the public's access to as much Government information as possible while minimizing security costs.

## **PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS**

The authority citation for Part 970 continues to read:

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

### **970.0404–1 [Amended]**

3. Subsection 970.0404–1 is amended by adding in alphabetical order “counterintelligence” as a new definition to read as follows:

### **970.0404–1 Definitions.**

\* \* \* \* \*

*Counterintelligence* means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities.

\* \* \* \* \*

4. Subsection 970.0404–2 is amended by adding paragraph (e) to read as follows:

### **970.0404–2 General.**

\* \* \* \* \*

(e) Executive Order 12333, United States Intelligence Activities, provides for the organization and control of United States foreign intelligence and counterintelligence activities. In accordance with this Executive Order, DOE has established a counterintelligence program which is described in DOE Order 5670.3 (as amended). All DOE elements, including management and operating contractors and other contractors managing DOE-owned facilities, should undertake the necessary precautions to ensure that DOE and covered contractor personnel, programs and resources are properly protected from foreign intelligence threats and activities.

5. Subsection 970.0404–4 is amended by revising paragraph (a)(1) and by adding a new paragraph (a)(2) to read as follows:

### **970.0404–4 Contract clauses.**

(a) \* \* \*

(1) *Security and Classification/Declassification, 970.5204–1(a).* These clauses are required in all contracts which involve access to classified information, nuclear material, or access authorizations.

(2) *Counterintelligence, 970.5204–1(b).* This clause is required in all

management and operating contracts and other contracts for the management of DOE-owned facilities which include the security and classification/declassification clauses.

\* \* \* \* \*

6. Section 970.2201 is amended by revising paragraph (b)(1)(ii) to read as follows:

### **970.2201 Basic labor policies.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) The job qualifications and suitability of prospective employees should be established by the contractor prior to employment by careful personnel investigations. Such personnel investigations should include, as appropriate: A credit check; verification of high school degree/diploma or degree/diploma granted by an institution of higher learning within the last 5 years; contacts with listed personal references; contacts with listed employers for the past 3 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, statute, or regulation, and when the individual had resided in the jurisdiction where the contractor is located. When a DOE access authorization (security clearance) will be required, the preemployment checks must be conducted and the applicant's job qualifications and suitability must be established before a request is made to the DOE to process the applicant for access authorization. Evidence must be furnished to the DOE with the applicant's security forms that specifies: the date each check was conducted, the entity contacted that provided information concerning the applicant, a synopsis of the information provided as a result of each contact, and a statement that all information available has been reviewed and favorably adjudicated in accordance with the contractor's personnel policies. When an applicant is being hired specifically for a position which requires a DOE access authorization, the applicant shall not be placed in that position prior to the access authorization being granted by the DOE unless an exception has been obtained from the Head of the Contracting Activity or designee. If an applicant is placed in that position prior to access authorization being granted by the DOE, the applicant may not be afforded access to classified matter or special nuclear materials (in categories requiring access authorization) until the

DOE notifies the employer that access authorization has been granted.

\* \* \* \* \*

#### 970.5204-1 [Amended]

7. Section 970.5204-1 is revised to read as follows:

#### 970.5204-1 Security.

(a) As prescribed in 970.0404-4(a)(1), insert the Security and Classification/Declassification clauses found at 952.204-1 and 952.204-70.

(b) As prescribed in 970.0404-4(a)(2), insert the following clause in contracts containing the security and classification/declassification clauses:

COUNTERINTELLIGENCE (XXX 1996)

(a) The contractor shall take all reasonable precautions in the work under this contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 5670.3, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.

(b) The contractor shall appoint a qualified employee(s) to function as the Contractor Counterintelligence Officer. The Contractor Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of employees traveling to foreign countries or interacting with foreign nationals; providing thoroughly documented written reports relative to targeting, suspicious activity and other matters of counterintelligence interest; immediately reporting targeting, suspicious activity and other Counterintelligence concerns to the DOE Headquarters Counterintelligence Division; and providing assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

[FR Doc. 96-29542 Filed 11-19-96; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### 49 CFR Part 1319

[STB Ex Parte No. 598]

#### Exemption of Freight Forwarders in the Noncontiguous Domestic Trade From Rate Reasonableness and Tariff Filing Requirements

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Board is considering whether it should exempt freight

forwarders in the noncontiguous domestic trade from rate reasonableness and tariff filing requirements.

**DATES:** Comments are due on December 20, 1996.

**ADDRESSES:** Send comments (an original and 10 copies) referring to STB Ex Parte No. 598 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Ave., NW., Washington, DC 20423-0001.

**FOR FURTHER INFORMATION CONTACT:** James W. Greene, (202) 927-5612. [TDD for the hearing impaired: (202) 927-5721.]

**SUPPLEMENTARY INFORMATION:** The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA), abolished the Interstate Commerce Commission (ICC) and transferred certain of its responsibilities, including the responsibility for regulating intermodal surface transportation in the noncontiguous domestic trade, to the Surface Transportation Board (Board). Additionally, the ICCTA transferred the responsibility for regulating port-to-port water carrier transportation in the noncontiguous domestic trade from the Federal Maritime Commission (FMC) to the Board.

Under the FMC's regulations, both vessel operating common carriers (VOCCs) and non vessel operating common carriers (NVOCCs) were required to file tariffs for their transportation services in the noncontiguous domestic trade. Under the ICCTA, VOCCs are classified as water carriers and NVOCCs are classified as freight forwarders.

The ICCTA significantly reduced economic regulation over surface transportation. Nevertheless, the provisions of 49 U.S.C. 13701 and 13702 continue to impose rate reasonableness and tariff filing requirements on certain property transportation in the noncontiguous domestic trade. While these requirements are related primarily to the services of water carriers, and joint intermodal services with water carriers, they also appear to encompass freight forwarder services.<sup>1</sup>

Pursuant to the provisions of 49 U.S.C. 13541, the Board is to exempt a class of persons from an otherwise applicable statutory provision if it finds that the application of that provision (1) is not necessary to carry out the transportation policy of section 13101; (2) is not needed to protect shippers from the abuse of market power or that the transaction or service is of limited scope; and (3) when an exemption is in

the public interest.<sup>2</sup> Pursuant to this statutory requirement, we are considering whether we should relieve freight forwarders in the noncontiguous domestic trade from rate reasonableness and tariff filing requirements.

Freight forwarders assume responsibility for transportation from the place of receipt to the place of destination, and frequently provide consolidation, assembly, break-bulk, distribution and other services of value to their customers. The freight forwarder industry is highly competitive, and any person meeting basic fitness and financial responsibility requirements can become a freight forwarder and provide service to the public. Additionally, noncontiguous domestic trade transportation services are available from the underlying water carriers, which must file tariffs and charge rates that are subject to challenge on reasonableness grounds.

Given the availability of transportation services from the underlying carriers, as well as the highly competitive environment for freight forwarder services, we seek comment on whether the rate reasonableness and tariff filing requirements for freight forwarders in the noncontiguous domestic trade are necessary to carry out the transportation policy of 49 U.S.C. 13101 or protect shippers from the abuse of market power, and whether the elimination of such requirements may be in the public interest. We note in this connection that freight forwarders subject to the former ICC's jurisdiction were relieved of tariff filing requirements in 1986,<sup>3</sup> even though motor carriers continued to be subject to such requirements until 1994.<sup>4</sup> Although Congress, in the ICCTA, recently reenacted the tariff filing and rate reasonableness requirements for water carriers themselves, we seek comment on whether these requirements are necessary as to freight forwarders in the noncontiguous domestic trade.

#### Request for Comments

We invite comments on all aspects of the proposed exemption. We encourage

<sup>2</sup> We note that the statute, as written, directs us to exempt when "(3) (regulation) is in the public interest." We presume that Congress, in drafting the ICCTA, intended to direct us to exempt when "an exemption is in the public interest."

<sup>3</sup> Freight forwarder tariff filing requirements were eliminated by the Surface Freight Forwarder Deregulation Act of 1986.

<sup>4</sup> Motor carrier tariff filing requirements for individually determined rates for the transportation of property (other than household goods) were eliminated by the Trucking Industry Regulatory Reform Act of 1994, with respect to transportation other than in the noncontiguous domestic trade.

<sup>1</sup> See, for example, 49 U.S.C. 13702(b)(2)(C).