such disagreements in an open, fair, and reasonable manner, and endorses the use of ombudsmen and alternative disputes resolution procedures for that purpose. Accordingly, by this action, the Department proposes to delete DEAR 970.7107 which provides guidelines for the consideration of subcontractor level protests. This is consistent with the General Accounting Office proposed rule published at 60 FR 5871, January 31, 1995. It is the intention of the Department to incorporate the changes made by this proposed rule into existing management and operating contracts as soon as practicable after the effective date of a final rule.

# II. Section-by-Section Analysis

1. Section 933.170, Subcontract level protests, is removed.

2. The revision to paragraph (a) of the clause, Contractor Purchasing System, at 970.5204–22 provides guidance for a management and operating contract acquisition system consistent with proposed revisions to section 970.7103.

3. Section 970.7101, General, is revised by removing paragraphs (c) and (d).

- 4. The revision to section 970.7102(a) removes the parenthetical which contains references which will no longer exist when sections 970.7104 and 970.7108 are removed in their entirety. Section 970.7102(b)(3) is revised to provide that review of individual purchasing actions shall be pursuant to FAR Subpart 44.2. Section 970.7102(b)(4) is revised to provide that periodic appraisals shall be in accordance with established policies in section 970.7103.
- 5. The revisions to section 970.7103 eliminate the concept of the "Federal norm," and establish contractor purchasing systems objectives, expectations, and standards.
- 6. Section 970.7104, Conditions of purchasing by management and operating contractors, is removed. The DOE believes it is not necessary to retain this section since many of the requirements comply with provisions of statutes and are already reflected in contract clauses. These requirements will, therefore, continue to be applicable as contractual requirements. Some of the requirements, however, are not specifically prescribed in other parts of the DEAR. The Department will review such requirements prior to finalization of this proposed rule and may redesignate appropriate paragraphs, in the final rule, to other parts of the DEAR, if necessary. If such requirements are identified, the Department will publish a Federal

**Register** notice, prior to issuing a final rule, listing the paragraphs being considered for redesignation.

- 7. Section 970.7106, Procedures for handling mistakes relating to management and operating contractor purchases, is removed.
- 8. Section 970.7107, Protest of management and operating contractor procurements, is removed.

#### III. Public Comments

DOE invites interested persons to participate by submitting data, views, or arguments with respect to the DEAR amendments set forth in this rule. Three copies of written comments should be submitted to the address indicated in the "ADDRESSES" section of this rule. All comments received will be available for public inspection during normal work hours. All written comments received by the date indicated in the "DATES" section of this notice will be carefully assessed and fully considered prior to the effective date of these amendments as a final rule. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to its determination in accordance with 10 CFR 1004.11.

# **IV. Procedural Requirements**

### A. Review Under Executive Order 12866

This regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993).

Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

## B. 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 A6), the Department of Energy has determined that this proposed rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

#### C. Review Under the Paperwork Reduction Act

To the extent that new information collection or recordkeeping requirements are imposed by this rulemaking, they are provided for under Office of Management and Budget paperwork clearance package No. 1910–0300. No new information collection is proposed by this rule.

# D. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This proposed rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

#### 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. The Department of Energy 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 Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable