

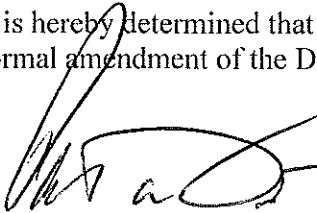
CLASS DEVIATION FINDINGS AND DETERMINATION
DEAR 970.5204-3

Findings

1. The Department recently issued a final rule amending the existing DEAR clause at 970.5204-3, "Ownership of and Access to Records" in order to ensure greater access to records generated during contracts (both prime and subcontracts) performing potentially hazardous work and to clarify the requirements for management and retention of records after contract termination.
2. DOE contractors may perform functions that involve exposure to radioactive and other hazardous materials. Because of the possible long-term effects of exposure, DOE contractors and subcontractors must create and maintain records on the potentially hazardous work performed by their personnel. For example, the Occupational Radiation Protection Program requires the creation, maintenance and disposition of records on contractor and subcontractor personnel. These records are needed for processing claims and providing documentation that protects the financial and legal obligations of both individuals and the Government.
3. The existing clause was applicable only to M&O contracts and cost-reimbursement subcontracts that meet at least one of the following three conditions:
 - a) Subcontract value over \$2 million
 - b) Contracting Officer determines that the subcontract is or involves a critical task related to the contract
 - c) Subcontract includes DEAR 970.5223-1, "Integration of Environment, Safety, and Health into Work Planning and Execution," or similar clause
4. The revisions to the clause broadened its applicability to also capture non-M&O contracts and subcontracts performing potentially hazardous work regardless of contract type or dollar value.
5. The subcontract flowdown provisions were revised to require flowdown to all subcontracts that contain either the clause at DEAR 970.5223-1 or 952.223-72 regardless of contract type or dollar value. Since the M&O contractors issue many small dollar, fixed-price subcontracts that nevertheless contain DEAR 970.5223-1, this change significantly and inadvertently increased the number of affected subcontracts (many of which are small business subcontracts).
6. This deviation revises the subcontract flowdown provisions to replace the automatic flowdown based on the presence of DEAR 970.5223-1 with language that requires the contractor to flowdown the clause (or maintain the applicable records themselves) whenever the subcontract scope of work could result in potential exposure to radioactive or other toxic substances that can cause long term health impacts. It also makes some revisions to improve clarity and reduce the possibility of misunderstanding.

Determination

It is hereby determined that a class deviation to revise DEAR 970.5204-3 is appropriate pending formal amendment of the DEAR.



5/6/15

pm Paul Bosco,
Director
Office of Acquisition and
Project Management
Department of Energy



4/30/15

Joseph Waddell,
Deputy Associate Administrator
Acquisition and
Project Management
National Nuclear Security Administration