



[6450-01-P]

DEPARTMENT OF ENERGY

48 CFR Part 970

[DOE-HQ-2026-0199]

Notification of Petition for Rulemaking; America First Legal Foundation

AGENCY: Office of the General Counsel, Department of Energy (DOE).

ACTION: Notification of petition for rulemaking; request for comments.

SUMMARY: This document announces receipt of a petition for rulemaking received by the Department of Energy (DOE) on January 7, 2026, from the America First Legal Foundation (AFL) requesting that DOE update its regulations concerning procedures requiring that management and operating contractors (M&Os) who enter into agreements with DOE submit and implement a written Diversity, Equity, Inclusion, and Accessibility (DEIA) Plan. This document summarizes the substantive aspects of this petition and requests public comments on the merits of the petition.

DATES: DOE will accept comments, data, and information with respect to the America First Legal Foundation Petition until **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by docket number “DOE-HQ-2026-0199,” by the following method:

Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions for submitting comments. For detailed instructions on submitting comments and additional information on this process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: The docket, which includes *Federal Register* notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov*. All documents in the docket are listed in the *www.regulations.gov* index. The docket webpage can be found

at: www.regulations.gov/docket/DOE-HQ-2026-0199. The docket web page will contain simple instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence Butler, U.S. Department of Energy, Office of Management, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (240) 805-8181. Email: MA60Rulemaking@hq.doe.gov. Ms. Jody TallBear, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW, Washington, DC 20585-0103. Telephone: (202) 586-4798. Email: Jody.TallBear@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

The Administrative Procedure Act (APA), 5 U.S.C. 551 et seq., provides, among other things, that “[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.” (5 U.S.C. 553(e)) DOE received a petition for rulemaking from the America First Legal Foundation requesting that DOE update its regulations at DOE Federal Acquisition Regulation (referred to as “DEAR”) by rescinding DEAR clause provision 48 CFR 970.5226-1 titled “Diversity Plan.” The subject provision was last updated in December 2024.

89 FR 89799 (November 13, 2024).

In their petition, the petitioners assert that the “Diversity Plan: provision is problematic for several reasons including that it is drafted in vague, subjective terms that invite arbitrary application as contractors endeavor to create and implement Diversity Plans. Secondly, petitioners assert that this vagueness is particularly problematic related to promoting race and identity-conscious initiatives that may conflict with federal civil rights laws. Additionally, petitioners assert that the provision is at odds with current Administration policy as outlined in Executive Order (E.O.) 14151, “Ending Radical and Wasteful Government DEI Programs and Preferencing.”

DOE notes that it has taken action to implement E.O. 14151 as it relates to contracting to include modifying contract terms and conditions to strengthen civil rights compliance language and related specifically to the “Diversity Plan” provision. First, on January 23, 2025, DOE issued Policy Flash 2025-16 entitled, “Rescission of DEI, CBP, and Justice40 Policy Flashes, Acquisition Letters,

and Financial Assistance Letters.” This Policy Flash rescinded former DOE guidance on DEI, CBP, and Justice40 requirements. DOE later issued a class deviation from DEAR 970.5226-1 on February 3, 2025. The deviation eliminated the requirement to include the DEIA Plan clause at 970.5226-1, directed contracting officers to immediately notify affected contractors that DOE will no longer enforce the clause, and instructed contracting officers to modify affected solicitations and contracts to remove the clause as soon as practicable. The AFL petition acknowledges that DOE issued the deviation but asserts that DOE could “reactivate” the regulation at any time so it should be rescinded.

The petition is described in this document and set forth verbatim below. The petition and class deviation are also available in the docket at www.regulations.gov/docket/DOE-HQ-2026-0199. Through this notification, DOE is seeking views on whether it should grant the petition and undertake a rulemaking to rescind the “Diversity Plan” provision. By seeking comment on whether to grant this petition, DOE takes no position at this time regarding the merits of the suggested rulemaking or the assertions made by the petitioners.

DOE welcomes comments and views of interested parties on any aspect of the petition for rulemaking and on whether DOE should proceed with the rulemaking.

Submission of Comments

DOE invites all interested parties to submit in writing by the date under the **DATES** heading, comments and information regarding this petition via www.regulations.gov. All submissions must include the agency name, “Department of Energy,” and docket number, DOE-HQ-2026-0199, for this rulemaking. All comments received will be posted without change to www.regulations.gov, including any personal information provided. Do not include personal information you would not want publicly shared, including social security information, home addresses, or any other personal identifying information not to be publicly shared. DOE will not take responsibility for sharing information shared by you. Do not submit to www.regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter

referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted.

DOE considers public participation to be a very important part of its process for considering rulemaking petitions. DOE actively encourages the participation and interaction of the public during the comment period. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in determining how to proceed with a petition.

Signing Authority

This document of the Department of Energy was signed on March 6, 2026, by Jonathan Brightbill, General Counsel, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on March 6, 2026.

Jennifer Hartzell,
Alternate Federal Register Liaison Officer,
U.S. Department of Energy.

Petition of America First Legal Foundation for Rulemaking

Petition to Rescind Rule Requiring Department of Energy Contractors to Develop a Diversity Plan

PETITION FOR RULEMAKING SUMMARY

OF PETITION

1. This petition for rulemaking is submitted pursuant to 5 U.S.C. § 553(e) and 42 U.S.C. § 7191, which grant any interested person the right to petition the Department of Energy for the issuance, amendment, or repeal of a rule. America First Legal Foundation (“AFL”) respectfully requests that the Department of Energy (“DOE”) rescind 48 C.F.R. § 970.5226-1—which requires management and operating contractors who enter into engagements with the DOE to prepare, submit, and annually update a written diversity, equity, inclusion, and accessibility plan. The diversity plan requirement pressures contractors to sort and evaluate employees and applicants by race and sex, encouraging quotas and preferences that contravene federal civil rights guarantees and the Constitution’s promise of equal protection. Prompt rescission of this rule is essential to restoring fair, merit-based federal contracting untethered from compelled “diversity” metrics.

STATEMENT OF INTEREST

2. AFL is a national, 501(c)(3) nonprofit organization working to promote the rule of law, prevent executive overreach, protect our citizens’ civil rights, and promote public understanding of the Constitution and the laws of the United States. Our mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and media, including social media platforms, all to educate the public and to keep government officials accountable for their duty to faithfully execute, protect, and defend the Constitution, laws, and citizens of the United States.

JURISDICTION & AUTHORITY

3. Congress created the Department of Energy with the passage of the Department of Energy Organization Act¹ and authorized it to manage and

¹ 42 U.S.C. § 7101 *et seq.*

operate nuclear and other energy facilities through contracts with private entities.² Acting under this general contracting authority, the Department adopted acquisition regulations in 48 C.F.R. Part 970 to govern its management-and-operating contracts.³ One such provision, 48 C.F.R. § 970.5226-1, requires covered contractors to submit and implement a written Diversity (or DEIA) Plan.⁴ The clause requires contractors to prepare, submit, and annually update a written diversity, equity, inclusion, and accessibility plan for approval by the contracting officer.⁵ The plan must describe how they will promote workforce and supplier diversity, set specific goals, and periodically report on their progress.⁶ DOE inserts this clause into its M&O contracts to operationalize its diversity policies within the contractor workforce and subcontracting base.⁷

BACKGROUND

4. 48 C.F.R. § 970.5226-1 originated in 2000, when the DOE undertook a comprehensive rewrite of its management and operating contract regulations and added a Diversity Policy and Diversity Contract Clause to its regulations governing management and operating contracts.⁸ Under that original framework from 2000, the clause was presented as a tool for encouraging contractors to “foster and enhance partnerships with small, small disadvantaged, women-owned small businesses, and educational institutions.”⁹ Contractors were not required to pursue racial diversity or to prepare any sort of diversity plan.¹⁰
5. But several decades later, in 2023, the DOE proposed 48 C.F.R. § 970.5226-1, which rebranded the “Diversity Contract Clause” as a “Diversity Plan.”¹¹ The amendment requires contractors to submit a “Diversity, Equity, Inclusion, and Accessibility (DEIA) Plan” to the contracting officer. The amendments were finalized in November 2024.¹² The Federal Register notice explained that this change was intended “to incorporate the more current terminology of ‘Diversity, Equity, Inclusion, and Accessibility’ (DEIA)” and to “better align the

² 42 U.S.C. § 7256(a) (authorizing the Secretary “to enter into and perform such contracts . . . as he may deem to be necessary or appropriate to carry out functions . . . vested in the Secretary”).

³ 48 C.F.R. § 970; see also 42 U.S.C. § 7191 (outlining the DOE’s general rulemaking authority).

⁴ 48 C.F.R. § 970.5226-1 (2024).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ 48 C.F.R. § 970.2671 (2000).

⁹ *Id.*

¹⁰ *Id.*

¹¹ 48 C.F.R. § 970.5226-1 (2024).

¹² *Id.*

DOE clause with current Administration initiatives” and “the broader scope of recent DEIA initiatives.”¹³

6. The addition of the “Diversity Plan” was closely tied to the Biden Administration’s agenda of promoting diversity, equity, and inclusion.¹⁴ For example, in the first few days of the Biden administration, President Biden ordered the federal workforce to apply DEI principles in its hiring.¹⁵ DOE’s Diversity Plan clause became one vehicle for operationalizing that mandate in the management and operating contracting space, by requiring contractors to internalize DEIA priorities in areas that extend well beyond traditional equal-employment-opportunity compliance. In practice, the clause invites contractors to treat DEIA as a freestanding policy objective, rather than as a constraint defined and limited by existing civil-rights statutes.

THE DIVERSITY PLAN CONFLICTS WITH CURRENT EXECUTIVE POLICY

7. The Diversity Plan clause at 48 C.F.R. § 970.5226-1 is fundamentally at odds with the current Trump Administration’s stated policy goals.
8. On January 20, 2025, President Trump responded to the widespread support for eliminating the government’s race- and sex-conscious policies by signing Executive Order 14,151, *Ending Radical and Wasteful Government DEI Programs and Preferencing*.¹⁶ The Executive Order “coordinate[s] the termination of all discriminatory programs, including illegal DEI and ‘diversity, equity, inclusion, and accessibility’ (DEIA) mandates, policies, programs, preferences, and activities in the Federal Government.”¹⁷
9. The DOE has recognized that this Executive Order poses problems for 48 C.F.R. § 970.5226-1 and has issued a class deviation for the Diversity Plan requirement.¹⁸ The deviation instructs contracting officers to notify contractors that the DOE “will no longer enforce” the clause, that they “should not submit” DEIA plans or updates, and that they should remove Diversity Plan clauses

¹³ 48 C.F.R. Chapter 9 (Department of Energy Acquisition Regulation (DEAR)).

¹⁴ See e.g., Exec. Order No. 14,035, 86 Fed. Reg. 34,593 (Jun. 25, 2021) (Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce); Exec. Order No. 13,985, 86 Fed. Reg. 7,009 (Jan. 25, 2021) (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government); Exec. Order No. 14,091, 88 Fed. Reg. 10,825 (Feb. 16, 2023) (Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government).

¹⁵ See Exec. Order No. 14,035, 86 Fed. Reg. 34,593 (Jun. 25, 2021) (Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce).

¹⁶ Exec. Order No. 14,151, 90 Fed. Reg. 8,339 (Jan. 29, 2025) (Ending Radical and Wasteful Government DEI Programs and Preferencing).

¹⁷ *Id.*

¹⁸ CLASS DEVIATION FINDINGS AND DETERMINATION DEPARTMENT OF ENERGY ACQUISITION REGULATION (DEAR) 970.5226-1, DOE (Feb. 3, 2025), <https://perma.cc/M2MJ-U6D2>.

from existing contracts “as soon as practicable,” pending formal amendment of the DEAR.¹⁹ But that formal amendment has not yet been made.

10. According to both the APA and the Supreme Court’s interpretation of the APA, the DOE may rescind or revise a prior rule when it concludes the rule is unlawful, no longer justified, or inconsistent with current policy, so long as it provides a reasoned explanation and complies with the APA’s procedural requirements.²⁰ Given this landscape, rescission is the logical next step. Maintaining this clause in the Code of Federal Regulations, even while the DOE has formally suspended its use, prolongs uncertainty for contracting officers and contractors and creates an invitation for future administrators to revive the unlawful requirements.

THE DIVERSITY PLAN IMPOSES ADDITIONAL REGULATORY BURDENS WITH NO LEGITIMATE PURPOSE

11. Requiring contractors to develop, update, and negotiate a stand-alone DEIA Plan diverts management time and resources from the technical, safety, and mission-critical work those contracts are supposed to advance. When the DOE revised § 970.5226-1 in 2024, it did not identify any concrete evidence that the Diversity Plan requirement had improved contract performance or addressed documented deficiencies in contractor practices. Instead, the DOE’s stated rationale was largely to “incorporate” updated DEIA terminology and align the clause with contemporary policy priorities.²¹
12. Because it does not serve a legitimate purpose, the DEIA Plan requirement functions less as a neutral compliance mechanism and more as a preferential channel for contractors willing to endorse a woke ideological framework. The clause does not turn on legal noncompliance, performance failures, or identifiable risks; instead, it directs contractors to describe “innovative strategies” to advance “diversity, equity, inclusion, and accessibility” across broad categories of activity.²² Contractors that adopt expansive DEIA rhetoric can readily represent themselves as meeting the clause’s expectations, while those that simply adhere to existing, content-neutral civil-rights and procurement requirements may be perceived as deficient. This inherently subjective standard invites contracting officials to inject their own political or ideological preferences into what should be an objective, performance-based process.

¹⁹ *Id.*

²⁰ See 5 U.S.C. §§ 553(b)–(c), 706(2)(A); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 514–16 (2009); *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 29–34 (2020).

²¹ See 48 C.F.R. Chapter 9 (Department of Energy Acquisition Regulation (DEAR)), *supra* n. 7.

²² 48 C.F.R. 970.5226-1 (2024).

THE DIVERSITY PLAN REQUIREMENT EXPOSES CONTRACTORS TO LEGAL RISK

13. The text of § 970.5226-1 is drafted in vague, subjective terms that invite arbitrary application. Contractors are left to guess at the DOE's expectations, and contracting officers are given broad discretion to approve or disapprove plans based on their own policy preferences rather than on clear, objective standards.
14. The clause requires contractors to submit a DEIA Plan that "include[s] innovative strategies for increasing opportunities to fully use the talents and capabilities of a diverse work force" and that describes the contractor's approach to "promoting diversity" in a wide range of areas, including workforce practices, educational outreach, community involvement, subcontracting, economic development, and the prevention of profiling and discrimination.²³ Yet the regulation nowhere explains what counts as a "diverse work force," what it means to "promot[e] diversity" in these contexts, or what qualifies as an acceptable "innovative strategy."
15. This vagueness is particularly problematic because the subject matter of the clause lies close to areas regulated by federal civil-rights statutes.²⁴ By instructing contractors to devise "innovative strategies" to promote "diversity" in hiring, subcontracting, and economic-development activities, the clause creates pressure to adopt race- and identity-conscious initiatives that may exceed, or even conflict with, the contractors' obligations under federal law.²⁵ Contractors who understand the clause as a signal to prioritize particular demographic characteristics in employment or subcontracting may find themselves navigating an untenable tension between perceived expectations of the DEIA Plan and their duty to adhere to statutes that require equal treatment without regard to protected characteristics.

REQUESTED ACTION

16. To promote equality of opportunity and meritocracy, the Department of Energy should initiate the process to rescind 48 C.F.R. § 970.5226-1's requirement for contractors to create a Diversity Plan.

²³ *Id.*

²⁴ *See, e.g.*, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2 (1964) (prohibiting employment discrimination); Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (1964) (prohibiting discrimination under federally funded programs); 42 U.S.C. § 1981 (1866) (guaranteeing equal rights to make and enforce contracts).

²⁵ *See id.*

CONCLUSION

17. The DOE must rescind 48 C.F.R. § 970.5226-1 to comply with current law and the President's agenda. The Diversity Plan requirement uses the procurement process to pressure contractors to adopt contested DEIA priorities, rather than simply ensuring that they can perform the work safely, effectively, and in compliance with neutral civil-rights and procurement laws. By layering vague, subjective DEIA criteria onto the contracting process, the clause injects uncertainty and politics into award and oversight decisions, distracting contractors from their core technical, safety, and mission-critical responsibilities. For these reasons, AFL respectfully requests that the DOE initiate the process of removing the Diversity Plan for contractors from its rules, regulations, and guidance materials, and return to a neutral, statutorily grounded approach that serves all Americans equally.
18. Please confirm receipt of this petition and advise on the timeline and process for the DOE's consideration. We stand ready to provide additional information or participate in any public comment process that may follow.

Respectfully submitted,

/s/ Alice Kass
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