

4. Additionally, we propose to permit private coast stations currently authorized to operate on Channel 11 within the proposed Prince William Sound VTS area to continue operation until the end of their current license terms on a noninterference basis. The staff will help affected licensees find suitable alternative channels. No fee will be charged for affected stations that apply for modification for an alternative channel before their next renewals.

5. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. The change proposed herein will have a beneficial effect on the marine community by allowing the Coast Guard to manage vessel traffic in the Prince William Sound area in a more efficient manner. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) of the Regulatory Flexibility Act. Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601-612 (1980).

List of Subjects in 47 CFR Part 80

Communications equipment, Marine Safety.

Federal Communication Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95-646 Filed 1-10-95; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

48 CFR Parts 923 and 970

RIN 1991-AB05

Acquisition Regulation; Acquisition and Use of Environmentally Preferable Products and Services

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) proposes to amend the Department of Energy Acquisition Regulation (DEAR) to provide for the acquisition and use of environmentally preferable products and services.

DATES: Written comments must be received on or before March 13, 1995.

ADDRESSES: Comments on the proposed rule should be addressed to the U.S. Department of Energy, Procurement

Policy Division (HR-521.1), Attention: P. Devers Weaver, 1000 Independence Avenue SW., Washington, D.C. 20585. **FOR FURTHER INFORMATION CONTACT:** P. Devers Weaver, Procurement Policy Division (HR-521.1), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585; telephone 202-586-8250.

SUPPLEMENTARY INFORMATION:

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I. Background

Section 6002 of the Resource Conservation and Recovery Act (RCRA) of 1976, Public Law 89-272, 42 U.S.C. 6962, requires procuring agencies to establish a preference for the acquisition of products made with recovered materials. The Environmental Protection Agency (EPA) has promulgated guidelines to implement section 6002 of RCRA. These guidelines, for products that are designated "environmentally preferable," including retread tires, re-refined lubricating oil, and recycled paper, are set forth at Title 40 of the Code of Federal Regulations, Parts 247 through 253. Also, Executive Order 12873 of October 20, 1993, Federal Acquisition, Recycling, and Waste Prevention, requires management and operating contractors in their contracting practices to comply with RCRA requirements that are applicable to Federal agencies. Implementing RCRA, the Office of Federal Procurement Policy on November 2, 1992, issued its Policy Letter No. 92-4, Procurement of Environmentally-Sound and Energy Efficient Products.

RCRA requires all Federal agencies to develop "affirmative procurement programs" (APPs) to assure the purchase of materials covered by the EPA guidelines. DOE issued its APP in May 1994 in the document "Affirmative Procurement Program For Products Containing Recovered Materials," providing DOE guidance for compliance with RCRA and the Executive Order.

The Department proposes to amend the DEAR to provide a contract clause, Acquisition and Use of Environmentally Preferable Products and Services. The

clause is to be incorporated in DOE management and operating contracts, to promote the acquisition and use of environmentally preferable products and services, in accordance with specified Department of Energy and other Federal policies.

II. Section-by-Section Analysis

1. Section 923.471 describes DOE policy to acquire items composed of the highest percentage of recovered/recycled materials without adversely affecting performance requirements.

2. To subpart 970.23, section 970.2304 is added.

Section 970.2304-1 extends the requirements at subpart 923.4 on the acquisition and use of environmentally preferable products and services to management and operating contracts.

3. Sections 970.5204-YY and 970.2304-2 provide a clause and a requirement for the use of the clause, Acquisition and Use of Environmentally Preferable Products and Services. The clause provides for compliance with Executive Order 12873, certain RCRA and EPA requirements, and certain DOE requirements involving the acquisition and use of environmentally preferable products and services. Paragraph (a)(4) of the clause at 970.5204-YY refers to an "Affirmative Procurement Program" guidance document. A copy of this guidance document is available, without charge, upon informal written request to: Director, Waste Minimization Division (EM-334), U.S. Department of Energy, Washington, DC 20585-0002. (Please do not use telephone or fax to request the document.)

III. Public Comments

DOE invites interested persons to participate by submitting data, views, or arguments with respect to the proposed 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 Subpart D of 10 CFR Part 1021, National Environmental Policy Act Implementing Procedures, the Department of Energy has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment. This rule establishes a clause and practices for the purchase of goods and services and does not require preparation of an environmental impact statement or an environmental assessment under categorical exclusion A6 of Subpart D.

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.

D. Review Under the Regulatory Flexibility Act

This 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 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 rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

F. Public Hearing Determination

DOE has concluded that the 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.

G. 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 effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that this rule meets the requirements of sections 2(a) and 2(b) of Executive Order 12778.

List of Subjects in 48 CFR Parts 923 and 970

Government procurement.

Issued in Washington, D.C. on January 6, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 923—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

1. The authority citation for Part 923 continues to read as follows:

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

2. New subpart 923.4 is added as follows:

Subpart 923.4—Use of Recovered Materials

923.471 Policy.

The DOE policy is to acquire items composed of the highest percentage of recovered/recycled materials practicable (consistent with published minimum content standards), without adversely affecting performance requirements; consistent with maintaining a satisfactory level of competition; and consistent with maintaining cost effectiveness and not having a price premium paid for products containing recovered/recycled materials.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

3. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99-145 (42 U.S.C. 7256a), as amended.

4. Section 970.2304 is added to read as follows:

970.2304 Use of Recovered/Recycled Materials.

970.2304-1 General.

The policy for the acquisition and use of environmentally preferable products and services is described at 48 CFR part 923, subpart 923.4.

970.2304-2 Contract clause.

The contracting officer shall insert the clause at 970.5204-YY, Acquisition and Use of Environmentally Preferable Products and Services, in management and operating contracts.

5. To subpart 970.52 add section 970.5204-YY as follows:

970.5204-YY Acquisition and Use of Environmentally Preferable Products and Services.

As prescribed in 970.2304-2, insert the following clause in management and operating contracts.

Acquisition and Use of Environmentally Preferable Products and Services

(a) In the performance of this contract, the Contractor shall comply with the requirements of the following issuances:

(1) Executive Order 12873 of October 20, 1993, entitled "Federal Acquisition, Recycling, and Waste Prevention,"

(2) Section 6002 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended (42 U.S.C. 6962, Pub. L. 94-580, 90 Stat. 2822),

(3) Title 40 of the Code of Federal Regulations, Subchapter I, Parts 247 through 253 (Solid Wastes, Guidelines for the procurement of certain products that contain

recovered/recycled materials) and such other Subchapter I Parts or Comprehensive Procurement Guidelines as the Environmental Protection Agency may issue from time to time as guidelines for the procurement of products that contain recovered/recycled materials,

(4) "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.

(b) The Contractor shall prepare and submit reports on matters related to the use of environmentally preferable products and services from time to time in accordance with

written direction (e.g., in a specified format) from the Contracting Officer.

(c) In complying with the requirements of paragraph (a), the Contractor shall coordinate its concerns and seek implementing guidance on Federal and Departmental policy, plans, and program guidance with the DOE recycling point of contact, who shall be identified by the Contracting Officer. Reports required pursuant to paragraph (b) shall be submitted through the DOE recycling point of contact.

(End of clause)

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