

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under New York, is amended by removing Channel 62 + and adding Channel 68 – at Syracuse.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22786 Filed 9–12–95; 8:45 am]

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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: Final rule.

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

EFFECTIVE DATE: October 13, 1995.

FOR FURTHER INFORMATION CONTACT: P. Devers Weaver, Office of Policy (HR–51), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585; telephone 202–586–8250.

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I. Background

A proposed rule was published in the January 11, 1995, **Federal Register** at 60 FR 2727. It proposed 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.

Subparagraph (a)(3) of the clause Acquisition and Use of Environmentally

Preferable Products and Services (DEAR 970.5204–39) has been amended to reflect the May 1, 1995, Environmental Protection Agency rule at 40 CFR Part 247 (60 FR 21370) which superseded prior Part 247 and removed 40 CFR Parts 248, 249, 250, 252, and 253.

We note an amendment to the Federal Acquisition Regulation (FAR) covering environmentally preferable products published in the May 31, 1995, **Federal Register** (60 FR 28492). The FAR coverage addresses Federal policy and contract clauses involving environmentally preferable products. Today's rule is consistent with the FAR and supplements the FAR with requirements that meet needs that are unique to DOE management and operating contracts.

II. Disposition of Comments

Comments, due by March 13, 1995, were received from two organizations. One was a DOE field organization and one was an industrial firm in the private sector.

One comment suggests that DOE should delay finalization of the proposed rule until the Environmental Protection Agency (EPA) publishes further guidelines for the procurement of products containing recovered materials, pursuant to Executive Order 12873 of October 20, 1993, entitled "Federal Acquisition Recycling and Waste Prevention." These new EPA guidelines, according to the commenter, would evaluate products based upon multiple attributes, such as energy consumption in the manufacture of recycled products, rather than on the single factor of being made from recycled contents.

DOE has adopted EPA guidelines for the acquisition and use of products containing recovered materials (10 CFR Parts 247–253) based on the expertise of the EPA in environmental matters. The contract clause which is the subject of this rule requires DOE management and operating contractors to comply with the requirements of the DOE "Affirmative Procurement Program for Products Containing Recovered Materials" (APP). The APP will be periodically updated to account for changes in EPA guidelines. Therefore, DOE will incorporate future changes in published EPA guidelines and does not need to further delay publication of this rule to accommodate this comment.

Another comment asked that subparagraph (a)(4) of the proposed clause at 970.5204–39, Acquisition and Use of Environmentally Preferable Products and Services, be amended by adding the words "and provided to the contractor by the Contracting Officer for

implementation" at the end of the subparagraph, to ensure that a contractor is aware of the existence of guidance documents. The proposed clause provides that a contractor shall comply with requirements in the document "U.S. Department of Energy Affirmative Procurement Program for Products Containing Recovered Materials," and related guidance documents as they are identified in writing by the contracting officer. It is necessary for DOE to identify the documents with which a management and operating contractor is to comply, but this does not require that the document be provided by the contracting officer. (As a practical matter, DOE program officials will often provide the contractor with the relevant guidance documents.) The clause is not being amended.

III. 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 Parts 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. 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 Sept. 7, 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 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).

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 (DEAR) subpart 923.4.

970.2304-2 Contract clause.

The contracting officer shall insert the clause at 48 CFR (DEAR) 970.5204-39, Acquisition and Use of Environmentally

Preferable Products and Services, in management and operating contracts.

5. To subpart 970.52 add section 970.5204-39 as follows:

970.5204-39 Acquisition and Use of Environmentally Preferable Products and Services.

As prescribed in 48 CFR (DEAR) 970.2304-2, insert the following clause in management and operating contracts.

ACQUISITION AND USE OF ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES (OCT 1995)

(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, Part 247 (Comprehensive Guidelines for the Procurement of Products Containing Recovered 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) of this clause, 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) of this clause, shall be submitted through the DOE recycling point of contact.

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