

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Bodorff, E. Joseph Knoll III, Wiley, Rein & Fielding, 1776 K Street, NW, Washington, DC 20006 (Counsel for Central Virginia Educational Telecommunications Corporation).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00-240, adopted November 27, 2000, and released November 28, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Virginia is amended by removing DTV Channel *14 and adding DTV Channel *46 at Charlottesville.

Federal Communications Commission.

Barbara A. Kreisman,
Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00-30501 Filed 11-29-00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00-2608, MM Docket No. 00-238, RM-10008]

Radio Broadcasting Services; Ephraim, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Carrie L. Riordan proposing the allotment of Channel 295A at Ephraim, Wisconsin, as the community's first local transmission service. The coordinates for Channel 295A at Ephraim are 45-10-12 and 87-07-46. There is a site restriction 3.4 kilometers (2.1 miles) northeast of the community. Canadian concurrence will be requested for the allotment of Channel 295A at Ephraim. **DATES:** Comments must be filed on or before January 8, 2001, and reply comments on or before January 23, 2001.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Carrie L. Riordan, 213 13th Avenue, Sault Ste. Marie, Michigan 49783.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 00-238, adopted November 8, 2000, and released November 17, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800, facsimile (202) 857-3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed

Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Ephraim, Channel 295A.

Federal Communications Commission.

John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00-30503 Filed 11-29-00; 8:45 am]

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DEPARTMENT OF ENERGY

48 CFR Parts 923, 936 and 970

RIN 1991-AB47

Acquisition Regulations: Acquisition of Products Containing Recovered Materials

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing to amend its acquisition regulations to implement Executive Order 13101, dated September 14, 1998, entitled Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition.

DATES: Written comments on the proposed rulemaking must be received on or before close of business January 2, 2001.

ADDRESSES: Comments should be addressed to: Richard Langston, MA-51, U.S. Department of Energy, Office of Procurement and Assistance Management 1000 Independence Avenue, SW., Washington, D.C. 20585

FOR FURTHER INFORMATION CONTACT:

Richard Langston at (202) 586-8247 or richard.langston@pr.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Background.

II. Section by Section Analysis.

III. Procedural Requirements.

- A. Review Under Executive Order 12866.
- B. Review Under Executive Order 12988.
- C. Review Under the Regulatory Flexibility Act.
- D. Review Under the Paperwork Reduction Act.
- E. Review Under the National Environmental Policy Act.
- F. Review Under Executive Order 13132.
- G. Review Under the Unfunded Mandates Reform Act of 1995.
- H. Review Under the Treasury and General Government Appropriations Act, 1999.

I. Background

The purpose of this proposed rulemaking is to provide additional guidance regarding Executive Order 13101, dated September 14, 1998 (63 FR 49641), entitled Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition which superseded Executive Order 12873, dated October 20, 1993, Federal Acquisition, Recycling, and Waste Prevention.

A rule has been proposed to amend the Department of Energy Acquisition Regulation to streamline policies, procedures, provisions, and clauses contained in Part 970 relative to the Department's management and operating contracts (65 FR 13418, March 13, 2000). It may be necessary to revise certain of the citations in this proposed rule if the other action is finalized prior to this action being finalized.

II. Section-by-Section Analysis

The Department of Energy proposes to amend the regulation as follows:

- 1. The authority citation is revised.
- 2. A new section 923.405, Procedures, is being added to note that the percentage of recycled content included in the EPA Recovered Materials Advisory Notice (RMAN) is to be specified in the solicitation as the minimum recycled content.
- 3. Section 923.471, Policy, is being deleted as unnecessarily duplicative of FAR coverage at 23.403.
- 4. A new section 923.705, Contract clause, will be added to supplement the FAR instruction concerning the clause at 52.223-10. It specifies that the clause is to be used in prime contracts for support services performed at Government-owned or Government-leased facilities and in contracts for operation of a Government-owned or Government-leased facility.

5. A new 936.601-3 is added to supplement FAR coverage regarding Architect-Engineer (A-E) work statement preparation.

6. Section 936.602-70 is modified by the addition of a new paragraph (a)(8) regarding consideration of energy efficiency, pollution prevention, waste reduction, and the use of recovered materials when performing A-E evaluations.

7. Section 970.2304 is being updated to include reference to 48 CFR (FAR) 23.4 and 23.7 and revised to provide guidance concerning circumstances under which the clause at 970.5204-39 should be included in subcontracts.

8. The clause at 970.5204-39 is being updated and revised to include guidance concerning circumstances under which the clause should be included in subcontracts.

III. Procedural Requirements*A. Review Under Executive Order 12866*

Today's 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 proposed rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines

issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, these proposed regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and that is likely to have significant economic impact on a substantial number of small entities. The proposed rule, which would implement provisions of Executive Order 13101 concerning use of recycled materials, would not have a significant economic impact on small entities. While rule requirements may flow down to subcontractors in certain circumstances, the costs of compliance are not estimated to be large and, in any event, would be reimbursable expenses under the contract or subcontract.

Accordingly, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

Information collection or record keeping requirements contained in this rulemaking have been previously cleared under Office of Management and Budget paperwork clearance package Number 1910-0300. There are no new burdens imposed by this rule.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this proposed rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this proposed rule is categorically excluded from NEPA review because the amendments to the DEAR would be strictly procedural (categorical exclusion A6). Therefore, this proposed rule does not require an

environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's proposed rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of \$100 million or more. This proposed rulemaking would only affect private sector entities, and the impact is less than \$100 million.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277), requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. This rulemaking will have no impact on family well being.

List of Subjects in 48 CFR Parts 923, 936 and 970

Government procurement.

Issued in Washington, D.C. on November 16, 2000.

T. J. Glauthier,
Deputy Secretary of Energy.

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

1. The authority citations for parts 923 and 936 are revised to read as follows:

Authority: Atomic Energy Act of 1954 (42 U.S.C. 2201); Department of Energy

Organization Act (42 U.S.C. 7101, *et seq.*); National Nuclear Security Administration Act (50 U.S.C. 2401 *et seq.*).

PART 923—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

2. Section 923.405(e) is added to read as follows:

§ 923.405 Procedures [DOE supplemental coverage—paragraph (e)].

(e) When acquiring items designated in the EPA Comprehensive Procurement Guidelines, the EPA recommended percentage of recovered/recycled content contained in the Recovered Materials Advisory Notice (RMAN) shall be specified in the solicitation as the minimum percentage of recycled content. Acquisition of products with recycled contents exceeding the RMAN recommended content is encouraged if their performance is acceptable.

§ 923.471 [Removed and Reserved].

3. Section 923.471 is removed and reserved.

4. Subpart 923.7 is added to read as follows:

Subpart 923.7—Contracting for Environmentally Preferable and Energy-Efficient Products and Services

§ 923.705 Contract clause.

Pursuant to 48 CFR (FAR) 23.704, the clause at 48 CFR (FAR) 52.223-10 should be included in solicitations and contracts for prime support service awards being performed at Government-owned or Government-leased facilities and in contracts for operation of a Government-owned or Government-leased facility.

PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

5. Section 936.601-3 is added to read as follows:

§ 936.601-3 Applicable contract procedures.

Executive Order 13123, Section 403(d), requires agencies to apply sustainable design principles to the siting, design, and construction of new facilities. Contracting activities shall optimize life-cycle costs, recycled materials, pollution prevention, and other environmental and energy efficiency considerations associated with the construction, life-cycle operation, and decommissioning of their facilities. Contracting activities shall consider using Energy Savings Performance Contracts or utility energy-

efficiency service contracts to aid them in constructing sustainable design buildings.

6. Section 936.602-70 is amended by adding paragraph (a)(8) to read as follows:

§ 936.602-70 DOE selection criteria.

* * * * *

(a) * * *

(8) In addition to these requirements, consider the Architect Engineer firms' experience in energy efficiency, pollution prevention, waste reduction, and the use of recovered materials and other criteria at FAR 36.602-1.

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PART 970—MANAGEMENT AND OPERATING CONTRACTS

7. The authority citation for part 970 continues to read as follows:

Authority: Atomic Energy Act of 1954 (42 U.S.C. 2201); Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*); National Nuclear Security Administration Act (50 U.S.C. 2401 *et seq.*).

Subpart 970.23—Environment, Conservation, Occupational Safety, and Drug-Free Workplace

8. Sections 970.2304, 970.2304-1, and 970.2304-2 are revised to read as follows:

§ 970.2304 Use of recovered/recycled materials.

§ 970.2304-1 General.

The policy for the acquisition and use of EPA designated items, i.e. items with recovered/recycled content, is set forth at 48 CFR (FAR) 23.4—Use of Recovered Materials as supplemented by 48 CFR (DEAR) 923.405(e) and by 48 CFR (FAR) 23.705, Application to Government-owned or Government-leased facilities, and 48 CFR (FAR) 23.706, Contract clause, as supplemented by 48 CFR (DEAR) 923.706.

§ 970.2304-2 Contract clause.

The contracting officer shall insert the clause at 48 CFR (FAR) 52.223-10, Waste Reduction Program, and the clause at 48 CFR (DEAR) 970.5204-39, Affirmative Procurement Program, in contracts for the management of DOE facilities including national laboratories. If the contractor subcontracts a significant portion of the logistical operation of the Government facility, or subcontracts for construction or remodeling at the facility, which includes the acquisition of items designated in EPA's Comprehensive Procurement Guidelines that Federal agencies and their contractors are to acquire with recovered/recycled

content, the subcontract shall contain the clause at 48 CFR (DEAR) 970.5204–39. Examples of such subcontracts would be operation of the facility supply function, construction or remodeling at the facility, or operation of the facility motor vehicle fleet.

Subpart 970.52—Contract Clauses for Management and Operating Contracts

9. Section 970.5204–39 is revised to read as follows:

§ 970.5204–39 Affirmative procurement program.

As prescribed in 48 CFR (DEAR) 970.2304–2, insert the following clause in contracts for the management of DOE facilities, including national laboratories.

Affirmative Procurement Program (xxx 2000)

(a) In the performance of this contract, the Contractor shall comply with the requirements of the U.S. Department of Energy Affirmative Procurement Program Guidance which is available on the Internet.

(b) In complying with the requirements of paragraph (a) of this clause, the Contractor shall coordinate its activities with the DOE Recycling Coordinator. Reports required by paragraph (c) of this clause shall be submitted through the DOE Recycling Coordinator.

(c) The contractor shall prepare and submit reports on matters related to the acquisition of items designated in EPA's Comprehensive Procurement Guidelines that Federal agencies and their contractors are to procure with recovered/recycled content at the conclusion of each fiscal year.

(d) If the contractor subcontracts a significant portion of the logistical operation

of the Government facility or subcontracts for construction or remodeling at the facility which includes the acquisition of items designated in EPA's Comprehensive Procurement Guidelines that Federal agencies and their contractors are to acquire with recovered/recycled content, the subcontract shall contain the clause at 48 CFR (DEAR) 970.5204–39. Examples of such a subcontract would be operation of the facility supply function, construction or remodeling at the facility, or operation of the facility motor vehicle fleet.

(e) When this clause is used in a subcontract, the word “contractor” will be understood to mean “subcontractor” and the term “DOE Recycling Coordinator” will be understood to mean “Contractor Recycling Coordinator.”

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