

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, 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 Oregon, is amended by adding Clatskanie, Channel 225C3.

3. Section 73.202(b), the Table of FM Allotments under Washington, is amended removing Channel 224A and by adding Channel 259A at Long Beach and by removing Channel 259A and by adding Channel 253A at Ilwaco.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 04-27447 Filed 12-14-04; 8:45 am]

**BILLING CODE 6712-01-P**

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 73

[DA 04-3615, MB Docket No. 04-420, RM-11119]

##### Radio Broadcasting Services; Corydon and Morganfield, KY

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document seeks comment on a petition for rulemaking filed by Union County Broadcasting Co., Inc., licensee of Station WMSK-FM, Morganfield, Kentucky proposing the substitution of Channel 237C3 for Channel 237A at Morganfield and the reallocation of Channel 237C3 from Morganfield to Corydon, Kentucky, as the community's first local transmission service, and the modification of the license for Station WMSK-FM to reflect the changes. Channel 237C3 has been

proposed to be reallocated at Corydon at petitioner's proposed site 11.1 kilometers (6.9 miles) southwest of the community at coordinates 37-41-31 NL and 87-48-45 WL.

**DATES:** Comments or counterproposals must be filed on or before January 18, 2005, and reply comments must be filed on or before February 1, 2005.

**ADDRESSES:** Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John F. Garziglia, Esq. and Howard J. Barr, Esq., Womble Carlyle Sandridge & Rice, PLLC; 1401 Eye Street, NW., Seventh Floor; Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rulemaking*, MB Docket No. 04-420, adopted November 24, 2004, and released November 26, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20054, telephone 800-378-3160 or <http://www.BCPIWEB.com>.

The 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 Rulemaking* 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

Radio, 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 Kentucky, is amended by removing Morganfield, Channel 237A and adding Corydon, Channel 237C3.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 04-27445 Filed 12-14-04; 8:45 am]

**BILLING CODE 6712-01-P**

#### DEPARTMENT OF ENERGY

##### 48 CFR Parts 901 and 970

**RIN 1991-AB64**

##### Acquisition Regulation: Make-or-Buy Plans

**AGENCY:** Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Energy (DOE) is proposing to amend the Department of Energy Acquisition Regulation (DEAR) to revise its requirements for contractor make-or-buy plans. The make-or-buy program, as it is currently structured, is not delivering the value to the Department commensurate with the costs of its implementation. The proposed rule would eliminate the burden of make-or-buy analysis.

**DATES:** Written comments on the proposed rulemaking must be received on or before close of business January 14, 2005.

**ADDRESSES:** This proposed rule is available and comments may be submitted on line at <http://www.regulations.gov>. Comments may be submitted electronically to [Irma.Brown@hq.doe.gov](mailto:Irma.Brown@hq.doe.gov). Comments may be mailed to U.S. Department of Energy, Attn: Irma Brown, Mail Code ME-62, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Irma Brown at (202) 586-8455 or [Irma.Brown@hq.doe.gov](mailto:Irma.Brown@hq.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. Review Under Executive Order 13211.
- J. Review Under the Treasury and General Government Appropriations Act, 2001.
- K. Approval by the Office of the Secretary of Energy.

## I. Background

In response to a report entitled *Making Contracting Work Better and Cost Less, Report of the Contract Reform Team*, DOE/S-0107, February 1994, DOE promulgated a rule that established a make-or-buy policy on June 27, 1997 (62 FR 34842). The make-or-buy policy established criteria to assist management and operating (M&O) contractors in categorizing all internal work activities under their contracts as "make" or "buy" activities. "Make" activities are core competencies critical to the mission success that are not available for outsourcing. "Buy" activities are non-core work activities that provide strategic support to core competencies that are available for outsourcing. Contractors use their make-or-buy plan to evaluate subcontracting opportunities and improve in-house performance. The objective of the make-or-buy policy is to require M&O contractors to operate the Department's laboratories, weapons production plants, and other facilities in a most cost effective and efficient manner.

DOE now has more than six years of experience with the make-or-buy policy. All M&O contractors have approved make-or-buy plans in place. The Department has evaluated the operation of the make-or-buy policy and the effect that policy has had in achieving the Department's objectives. As discussed in the following paragraphs, the make-or-buy program is not delivering the value to the Department commensurate with the costs of its implementation.

DOE conducted several assessments and implemented a number of actions to improve the manner in which DOE and its contractors implemented the make-or-buy plan requirements. Beginning in April 1998, DOE conducted its initial assessment to determine whether the requirements of make-or-buy were being implemented. The assessment examined whether: (1) The make-or-buy clause had been incorporated into the contract; (2) the contractor had prepared and submitted a make-or-buy plan; and (3) the plans were approved by the contracting officer. The results indicated that the implementation of the contractor make-or-buy plan requirements was on schedule. However, there were several issues

noted in the early implementation of the make-or-buy plans: (1) The plans did not always meet the documentation requirements of the make-or-buy clause; (2) the make-or-buy plans did not always demonstrate the basic intent (*i.e.*, least cost alternative) of the make-or-buy requirements; and (3) roles and responsibilities of key individuals, including the contracting officer, were not clearly understood.

In August 1999, follow-up action was initiated to determine progress on the adequacy of the contractor make-or-buy plans and whether contracting officer approvals were obtained. The results indicated a number of contractors had well-thought-out and elaborate processes for arriving at make-or-buy decisions and several contractors were implementing productivity improvements for work areas retained under "make" decisions. There were a number of examples where the contractors had approved make-or-buy plans in place; however, contractor analysis of all work activities under the contract were not always accomplished. Overall, implementation across the DOE complex had been inconsistent largely because of a general misunderstanding of the make-or-buy policy and its attendant administration requirements. Additionally, the assessment questioned whether the DOE requirements for contractor's make-or-buy plans are overly stringent, unrealistic and inappropriate, thereby creating an impossible standard of performance.

DOE implemented a number of corrective actions to promote a better understanding of the make-or-buy requirements: (1) In December 1999, the M&O contractors conducted benchmarking studies of contractor make-or-buy plans and procedures to develop a decision model and a sample make-or-buy plan to be used by the M&O contractors; (2) in February 2000, program specific make-or-buy criteria were issued to the M&O contractors to assist in identifying core and non-core activities; (3) in July 2001, a workshop was conducted with federal and contractor staff to discuss and promote an understanding of the make-or-buy requirements and to identify potential problem areas where policy and procedural improvements could be made, and (4) in August 2001 assessment compliance criteria were developed and implemented by the Department to assist in the oversight of contractor make-or-buy plans.

The July 2001 workshop had a large attendance of both contractors and federal staff from the offices responsible for implementing the make-or-buy program. Discussions were held on what

was working and what was not. The following problem areas were quickly identified: (1) An inconsistent approach by the M&O contractors in categorizing work activities; (2) the DOE complex was relatively inexperienced in conducting actual make-or-buy analyses; and (3) the costs to conduct make-or-buy analyses were a major consideration in determining how many would be done annually (in most cases the time estimated to complete the make-or-buy analyses on the available "buy" inventory extended beyond the expiration date of the contract). There were minor comments made for improving the existing policies and procedures, however, it was determined that these changes would have made minimal impact in increasing the value of the make-or-buy program.

By June 2002, the Department began considering whether to discontinue the make-or-buy program. But before moving in that direction, the Department conducted a random sampling of four contractors' make-or-buy plans. The results indicated that, based on contractor inventories ranging from approximately 46 to 119 eligible "buy" functions, M&O contractors were conducting 4% or 2–5 make-or-buy decisions per year for eligible "buy" functions, which is far less than the anticipated 20% or approximately 9–24 make-or-buy decisions per year. In most cases, the rationale for the low number of actions per year was the significant costs and time required to conduct comprehensive analyses on each make-or-buy decision. In one case, the costs associated with the process were determined to be extremely high relative to the potential benefits (2,149 hours of mostly senior level management and professionals) only to make the decision to keep the function in-house based on a variety of appropriate factors.

The conclusion drawn from these assessments is that there is little evidence that these plans are producing the efficiencies and cost savings anticipated by the Department. The Department has determined that the lack of measurable progress, costs of complying, and additional workload to monitor compliance with the make-or-buy policy outweigh any potential benefits to the Department.

Although the results of the Department's evaluation of the make-or-buy policy are a rationale for revising the Department's policy, another consideration for revising the policy is the progress made in the Department's contractual environment since the Department's contract reform initiative in February 1994. Recognizing that there are multiple approaches to achieving

cost efficiencies and operational effectiveness under a contract, the Department has made great strides in its contract reform initiatives. For its major site and facility contracts, the Department significantly increased the use of Performance-Based Management Contracts, competing more than 31 contracts while extending only 15 (four contracts only for an interim period), increased subcontracting goals to as high as 60% in some contracts, reduced DOE sponsored Federally Funded Research and Development Center (FFRDC) contracts by 27%, and increased the use of alternative contract types, such as cost plus incentive fee, to drive both cost efficiencies and operational effectiveness in contractor performance.

In consideration of the foregoing, the Department proposes to amend its Acquisition Regulation to eliminate the requirement that M&O contractors prepare and maintain formal make-or-buy plans.

The Department proposes to amend the clause at 970.5203-1 entitled "Management Controls" and the clause at 970.5203-2 entitled "Performance Improvement and Collaboration" by adding a requirement in both clauses for contractors to consider outsourcing as a mechanism to introduce improvements in the management of the contract. Outsourcing would be one of many options available for improving the contractor's cost effectiveness and performance.

In addition, the Department is proposing to amend the clause entitled Contractor Purchasing System by removing and reserving paragraph (n) entitled "Make-or-Buy Plans."

## II. Section-by-Section Analysis

The Department proposes to amend the DEAR as follows.

1. Sections 901.105 would be amended to delete the reference to the Office of Management and Budget, OMB, number for make-or-buy plans.

2. Section 970.1504-4-1 through 970.1504-4-3 would be eliminated.

3. Section 970.1504-5(b) would be eliminated.

4. Section 970.5203-1 would be amended to provide outsourcing of functions for considerations of efficient and effective operations.

5. Section 970.5203-2 would be amended to provide a requirement for contractors to consider outsourcing as a mechanism to increase improvement in the management of the contract.

6. Section 970.5215-2 would be eliminated.

7. Section 970.5244-1 would be amended to remove and reserve paragraph (n).

## 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 rule is not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) within the 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 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 a significant economic impact on a substantial number of small entities. The proposed rule would not have a significant economic impact on small entities because no small entities are DOE M&O contractors and because the rule would eliminate the existing burden of preparing make-or-buy analyses.

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 Paperwork Reduction Act

Information collection or recordkeeping requirements contained in this rulemaking have been previously cleared under OMB paperwork clearance package number 1910-5102. The existing burden will be removed by this rulemaking.

### 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 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) 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 in any single year. This rulemaking does not impose a Federal mandate on State, local or tribal governments or on the private sector.

### *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 rule or policy that may affect family well-being. This rule will have no impact on family well being.

### *I. Review Under Executive Order 13211*

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the OIRA, Office of Management and Budget, a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

### *J. Review Under the Treasury and General Government Appropriations Act, 2001*

The Treasury and General Government Appropriations Act, 2001, 44 U.S.C. 3516, note, provides for agencies to review most disseminations of information to the public under implementing guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's

guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

### *K. Approval by the Office of the Secretary of Energy*

The Office of the Secretary of Energy has approved issuance of this proposed rule.

### **List of Subjects in 48 CFR Parts 901 and 970**

Government procurement.

Issued in Washington, DC, on December 8, 2004.

**Richard H. Hopf,**

*Director, Office of Procurement and Assistance Management, Office of Management, Budget and Evaluation, Department of Energy.*

**Robert C. Braden, Jr.,**

*Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.*

For the reasons set out in the preamble, DOE proposes to amend Chapter 9 of Title 48 of the Code of Federal Regulations as set forth below:

1. The authority citation for part 901 is revised to read as follows:

**Authority:** 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101, et. seq.; 41 U.S.C. 418b; 50 U.S.C. 2401, et seq.

### **PART 901—FEDERAL ACQUISITION REGULATIONS SYSTEM**

2. Section 901.105 is amended by revising the second sentence to read as follows:

#### **901.105 OMB control numbers.**

\* \* \* The OMB control number for the collection of information under 48 CFR chapter 9 is 1910-4100 except for Reporting and Recordkeeping Requirements for Safety Management (see 48 CFR 970.5223-1) which is 1910-5103.

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

**Authority:** 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101, et. seq.; 41 U.S.C. 418b; 50 U.S.C. 2401, et seq.

### **PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS**

#### **970.1504-4-1-970.1504-4-3 [Removed and Reserved]**

4. Sections 970.1504-4-1 through 970.1504-4-3 are removed and reserved.

### **970.1504-5 [Amended]**

5. Section 970.1504-5 is amended by removing paragraph (b), and redesignating paragraphs (c), (d) and (e) as paragraphs (b), (c) and (d) respectively.

### **970.5203-1 [Amended]**

6. Section 970.5203-1 is amended by revising the clause date to read [Date (Month and Year) 30 days following the date of publication of the final rule in the **Federal Register**] and by adding in paragraph (a)(1), second sentence, the words "including consideration of outsourcing of functions" after the word "promoted".

### **970.5203-2 [Amended]**

7. Section 970.5203-2, is amended by revising the clause date to read [Date (Month and Year) 30 days following the date of publication of the final rule in the **Federal Register**] and by adding in paragraph (a), last sentence, the words "outsourcing decisions," after the words "changes in organization."

### **970.5215-2 [Removed and Reserved]**

8. Section 970.5215-2, Make-or-Buy plan, is removed and reserved.

9. Section 970.5244-1 is amended by revising the clause date and by removing and reserving paragraph (n) to read as follows:

#### **970.5244-1 Contractor purchasing system.**

\* \* \*

#### **Contractor Purchasing System**

[Date (Month and Year) 30 days following date of publication of the final rule in the **Federal Register**]

\* \* \* \* \*

(n) [Removed and Reserved].

\* \* \* \* \*

[FR Doc. 04-27417 Filed 12-14-04; 8:45 am]

BILLING CODE 6450-01-P

## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

#### **49 CFR Part 571**

[Docket No. NHTSA-2004-19840]

RIN 2127-AH34

### **Federal Motor Vehicle Safety Standards; Door Locks and Door Retention Components and Side Impact Protection**

**AGENCY:** National Highway Traffic Safety Administration, Department of Transportation.