

TO: OFPP

FAX: 202-395-5105

SUBJECT: Proposed OFPP Policy Letter

FROM Department of Defense
Installations and Environment, David Asiello, 703-571-9068
Defense Procurement and Acquisition Policy, Sandra Ross
703-695-9774

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DoD Comments

- 1 Exclude items needed for combat and combat-related contingencies as this exclusion is currently in the FAR definition of "energy-efficient product". FAR 2.101 (implementing 42 U.S.C. Sec 8259b). To have only a partial exclusion related to energy efficient products but not the other green products covered by the OFPP policy may have a detrimental impact on DoD mission related activities, as the policy broadly covers alternate fuels and hybrid and alternate fuel vehicles, non-ozone depleting substances, along with energy-efficient products. See Purpose paragraph of proposed Policy Letter. DLA notes that Executive Order 13423, *Strengthening Federal Environmental, Energy, and Transportation Management*, excludes law enforcement, protective, emergency response, or military tactical vehicle fleets of an agency from provisions of the Executive Order. Similarly, there is limited exception for use of Class I ozone-depleting substances in DFARS 223.803. We urge that a limited exclusion for all combat and combat-related products and services from all green acquisition policies be recognized in the OFPP Policy Letter.
- 2 Section 8, *Responsibilities, C. Automatic substitution policies* - The references to the Defense Logistics Agency (DLA) should be replaced by the term Department of Defense (DoD) in three locations [subsections 8.C. and 8.C.(2), paragraphs 1 and 2].
- 3 Section 8, *Responsibilities, C. Automatic substitution policies* - Recommend inserting the phrase "...schedules, unless the item is designed or procured for contingency operations, combat or combat-related missions, or the Head of the Agency provides written justification for exclusion, in accordance with ..." into subsection 8.D.(2). Recommend that combat or combat-related items for contingency and combat operations be excluded from the scope of this policy.
- 4 Section 8, *Responsibilities, D. Compliance and listing of green products in federal catalogs and on-line ordering systems*. To comply with this section, OFPP should coordinate an effort through DLA, GSA and OFEE to have all EPEAT registered items entered into the Federal Catalog. This would satisfy the OFPP mandate by offering the EPEAT items in the Federal Catalog and allow the Green Procurement Report to track their purchase.
- 5 Section 8, *Responsibilities, D Compliance and listing of green products in federal catalogs and on-line ordering systems*. Recommend removal of subsection 8.D.2(a). The provision establishing a compliance deadline of January 1, 2010 for previously designated green products is imposing an unrealistic timeline due to the extensive time required to identify compatible substitutes for all applications, coupled with the multiple applications for many of the products affected. Historical examples of similar actions that have far exceeded anticipated timeframes are, but not limited to:
 - * Biobased Cutlery -- these products were successfully introduced into the inventory in Spring 2007, but only after 8 years of concerted work with Army testing activities and industry to ensure a product that would perform as needed.
 - * Ozone-depleting substances -- many alternatives have been implemented but for some specific applications none will work, so some ODS material remains in the inventory--demonstrating the need to understand all the uses of a product before/if a phase-out is possible (which can take a long time given the variety of functions and applications among customers).
 - * Biobased Hydraulic fluids -- evaluations to determine products that would meet performance requirements began with market surveys two years ago, but the field testing phase is still to come, so an implementation date is yet undetermined and a two-year deadline would not be realistic.

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- 5 In its place, recommend inserting the following clause:
"GSA and DLA shall report to the OFPP Administrator annually, in conjunction with the annual requirement established in subsection 8.C.(1) on progress made towards the phase-out of all competing non-green products."
- 6 Section 8, *Responsibilities, E. Requirements for paper and printing*. Note that for DoD, 10 U.S.C. Section 2378 imposes higher post consumer content of 50%. Recommend that the Policy Letter note that the statutory requirement for DoD takes precedence for DoD agencies over the less stringent OFPP policy.
- 7 Section 8, *Responsibilities, F. Service contracting*. Please clarify whether the stated encouragement to incorporate new OFPP requirements into existing contracts, or as options are exercised, is to be read in accordance with FAR 1.108(d). Clarification will help to alleviate component concerns that the guidance requires immediate incorporation of the new clauses, which could have serious workload and resource implications, as well as customer service disruptions.
- 8 Section 8, *Responsibilities, G. Exemptions from requirements*. - Please clarify whether a written justification requirement applies to micro purchases.
- 9 Section 8, *Responsibilities, G. Exemptions from requirements*. - In accordance with the Energy Policy Act of 2005, Section 104 (42 U.S.C. Section 8259b), recommend that Policy Letter recognize exclusion of requirement for contingency operations and combat-related items and services for all green products and services for DoD.
- 10 Section 8, *Responsibilities*. Paragraph 4(b), Reporting of green contract requirements through the Federal Procurement Data System (FPDS). Recommend modifying existing identifiers to automatically capture this data element as manual reports will be extremely labor intensive.
- 11 Recommend including mandatory representations and certifications from section K of the Uniform Contract Format (UCF) to which vendors can certify the product offered meets green criteria. Agency needs to reply on vendor self certification with attendant requirements that product provided is green, rather than agency verification.
- 12 Request OFPP include provisions to address unique electronic acquisitions that do not fit EPEAT registration guidelines, or provide exceptions to exclude them from EPEAT registration requirements.
- 13 This new policy imposes additional duties on federal agencies that will warrant systems changes to implement. Recommend including guidance on how funding, either allotted or budgeted, is to be secured in order to incorporate these changes.