

***REVIEW DRAFT***

***[AGENCY NAME]***

**POLICIES AND PROCEDURES FOR  
ENERGY-EFFICIENT PURCHASING**

***[ISSUING OFFICE]***

***[DATE]***

***REVIEW DRAFT***

***MODEL POLICY - ENERGY-EFFICIENT FEDERAL PURCHASING***

11/3/99

**REVIEW DRAFT**

**MODEL POLICY - ENERGY-EFFICIENT FEDERAL PURCHASING**

11/3/99

**Contents**

Executive Summary..... 1

1.0 Introduction..... 2

    1.1 Purpose..... 2

    1.2 Authorities ..... 2

        1.2.1 Energy Policy Act of 1992 (PL 102-486)..... 2

        1.2.2 Executive Orders and Procurement Policy Requirements..... 3

    1.3 Information on Buying Energy-Efficient Products ..... 4

2.0 [AGENCY] Affirmative Procurement Program for Buying Energy-Efficient Products..... 4

    2.1 Policy..... 5

    2.2 Applicability ..... 5

        2.2.1 Government-Owned, Contractor-Operated Facilities ..... 5

        2.2.2 State and Local Agencies, Other Purchasers ..... 6

    2.3 Acquisition Planning ..... 6

    2.4 Purchasing..... 6

        2.4.1 Federal Supply Sources..... 7

        2.4.2 Life-Cycle Cost Analysis..... 7

    2.5 Construction, Renovation, Operation, and Leasing ..... 8

        2.5.1 Construction, Renovation, and Operations ..... 8

        2.5.2 Leasing of Facilities and Equipment..... 8

        2.5.3 Energy Savings Performance Contracts ..... 9

    2.6 Certification and Verification ..... 9

    2.7 Specifications Review ..... 9

    2.8 Exceptions and Waivers..... 10

    2.9 Employee and Vendor Awareness ..... 11

3.0 Program Review and Recognition..... 11

    3.1 Annual Review and Reporting ..... 11

    3.2 Awards ..... 12

4.0 Responsibilities..... 12

APPENDIX A: DEFINITIONS AND ACRONYMS ..... 13

    Definitions..... 13

**REVIEW DRAFT**

**MODEL POLICY - ENERGY-EFFICIENT FEDERAL PURCHASING**

11/3/99

Acronyms ..... 14

APPENDIX B: STATUTORY AND ADMINISTRATIVE AUTHORITIES .....1

    (1) Energy Policy Act of 1992, Section 161 (PL 102-486; 42 USC 8262g) .....1

    (2) Executive Order 13123 - "Greening the Government through Efficient Energy Management" .....2

    (3) Federal Acquisition Regulations (FAR).....3

    (4) OMB/OFPP Policy Letter 92-4.....4

APPENDIX C: REQUEST FOR WAIVER .....1

**REVIEW DRAFT**  
**MODEL POLICY - ENERGY-EFFICIENT FEDERAL PURCHASING** 11/3/99

**Executive Summary**

Executive Order 13123 sets new government-wide goals for saving energy and water, reducing greenhouse gases, and adopting renewable energy. Section 403(b) directs all agencies to select, where cost-effective, ENERGY STAR® and other products in the top 25% of energy efficiency as designated by the DOE Federal Energy Management Program (FEMP). This document provides guidance on policies and procedures for identifying, specifying, and selecting energy-efficient products, consistent with the provisions of Executive Order 13123 Section 403(b) and the Federal Acquisition Regulations (FAR) Sections 23.203 and 23.704.

Buying energy-efficient products contributes to cost-effective energy savings, lowers operating costs, reduces environmental pollution, and complements other environmentally-preferable purchasing practices. Using its buying power, the federal government can lead the market and encourage the introduction of more efficient products, at competitive prices, to benefit all purchasers—federal and non-federal.

In response to Executive Order 13123, it is the policy of [AGENCY] to specify and select ENERGY STAR® products and other DOE/FEMP designated energy-efficient products wherever practicable and cost-effective. This policy applies to all program and procurement offices, and to contractors who purchase equipment for use in federal facilities.

[AGENCY] purchasing entities and contractors should give full consideration to buying energy-efficient products from federal supply sources, including the General Services Administration (GSA) and Defense Logistics Agency (DLA). Under Executive Order 13123, GSA and DLA are making it easier for federal buyers to identify ENERGY STAR® and other energy-efficient products by clearly designating such products in print and on-line listings.

Overall responsibility for implementing the [AGENCY's] energy-efficient procurement program is assigned to [DESIGNATED OFFICE OR INDIVIDUAL]. For further information, comments, or questions about energy-efficient procurement or this guidance document, please contact:

[NAME - MANAGER OR LEAD STAFF]  
[PHONE]  
[EMAIL]

**REVIEW DRAFT**  
**MODEL POLICY - ENERGY-EFFICIENT FEDERAL PURCHASING** 11/3/99

**1.0 Introduction**

This section discusses program objectives, statutory and administrative authorities, and sources of information for buying energy-efficient products.

**1.1 Purpose**

Buying energy-efficient products that are cost-effective over their useful life will help agencies save energy, reduce operating costs, and lower pollution and greenhouse gas emissions associated with energy use. As the largest single buyer of energy-using products, the federal government can play a significant role in creating market demand for energy-efficient products, including renewable energy equipment and water-conserving products.

[AGENCY], as a major federal purchaser, can contribute to government-wide efforts to buy energy-efficient products and thus stimulate both demand for and supply of such products in the broader market. By incorporating energy savings in day-to-day operations, energy-efficient purchasing complements capital investment projects in facilities construction, renovation, and retrofit. Together, purchasing practices plus energy efficiency investments can help agencies achieve their mandated goals to reduce facilities energy use by 35 % in 2010 (compared to 1985 levels).

The following sections provide agency-wide guidance on goals, policies, and procedures for a successful long-term program of purchasing energy-efficient products.

**1.2 Authorities**

The following documents establish requirements for federal purchase of energy-efficient products.

**1.2.1 Energy Policy Act of 1992 (PL 102-486)**

Section 161 of the Energy Policy Act of 1992 (see Appendix B) requires the General Services

## **REVIEW DRAFT**

### **MODEL POLICY - ENERGY-EFFICIENT FEDERAL PURCHASING 11/3/99**

Administration (GSA), the Department of Defense (DoD), and the Defense Logistics Agency (DLA) to include energy-efficient products in carrying out their procurement and supply functions, using life-cycle costing where practicable. The Department of Energy is to consult with these agencies in estimating the degree of relative energy efficiency of products. The Office of Management and Budget, Office of Federal Procurement Policy (OMB/OFPP) is to issue guidelines to encourage the acquisition and use by all Federal agencies of such energy-efficient products (see below, Policy Letter 92-4).

#### **1.2.2 Executive Orders and Procurement Policy Requirements**

Following enactment of the Energy Policy Act of 1992, several policy documents and regulations were issued concerning federal purchasing of energy-efficient products (full text in Appendix B).

**Executive Order 13123**, "Greening the Government Through Efficient Energy Management" (June 3, 1999). This update to previous Executive Orders sets new government-wide goals as of 2010 for saving energy and water, reducing greenhouse gases, and adopting renewable energy. Section 403(b) directs all agencies to select, where cost-effective, ENERGY STAR® and other energy-efficient products, including (where there is no applicable ENERGY STAR® label) products in the upper 25% of energy efficiency as designated by FEMP. The Order also directs the General Services Administration (GSA) and the Defense Logistics Agency (DLA), with assistance from DOE and EPA, to create clear catalog listings (print and on-line) that designate these products for federal purchasers. All agencies are required to incorporate energy efficiency criteria consistent with the ENERGY STAR® and FEMP-designated levels as part of their construction guide specifications, product specifications, and all other purchasing procedures. Finally, DOE and OMB are to explore options for private sector financing of the higher cost of purchasing energy-efficient products. Previous Executive Orders 12902 ("Energy Efficiency and Water Conservation at Federal Facilities") and 12845 ("Requiring Agencies to Purchase Energy-efficient Computer Equipment") are revoked, since similar provisions are enacted in this latest Executive Order.

**Policy Letter 92-4**, "Procurement of Environmentally-Sound and Energy-Efficient Products and Services" was issued by the OMB Office of Federal Procurement Policy in November, 1992. This OMB guidance established Executive Branch policies for the acquisition and use of environmentally sound, energy-efficient products and services, setting forth the "policy of the Federal Government that Executive agencies implement cost-effective procurement preference programs favoring the purchase of environmentally-sound, energy-efficient products and services."

## **REVIEW DRAFT**

### **MODEL POLICY - ENERGY-EFFICIENT FEDERAL PURCHASING 11/3/99**

An August 1997 amendment to the **Federal Acquisition Regulations** (FAR, Sections 23.203 and 23.704), implemented Section 507 of Executive Order 12902 (since replaced by E.O. 13123) by directing agencies to implement cost-effective contracting preference programs favoring the acquisition of products that are in the upper 25 percent of energy efficiency for all similar products. The FAR also directs federal agencies to consider energy efficiency, along with cost and other relevant factors, in procurement planning and specifications, and to implement cost-effective contracting preference programs favoring the acquisition of environmentally preferable and energy-efficient products and services.

#### **1.3 Information on Buying Energy-Efficient Products**

DOE's Federal Energy Management Program publishes *Product Energy Efficiency Recommendations* to assist programs in identifying energy-efficient products. The Recommendations describe performance levels that meet or exceed the requirements of Executive Order 13123, including products qualifying for the ENERGY STAR® label. Product categories include Office Technologies, Lighting, Residential and Commercial Appliances, Residential and Commercial Equipment, Water-Saving Technologies, Construction Products, and Commercial/Industrial Technologies. The first recommendations were published in September 1996, with additions and updates published twice a year.

The most recent information is available on the DOE Web site (<http://www.eere.energy.gov/femp/technologies/eeproducts.cfm>) or by calling the toll-free hotline 1/800/363 3732 to obtain a copy of the free loose-leaf publication "*Buying Energy-Efficient Products*." Listings of ENERGY STAR® labeled products are also available on-line, at [www.energystar.gov](http://www.energystar.gov). DOE and EPA are working with GSA and DLA to increase the number of catalogs, schedules, and on-line procurement sources that identify specific products complying with the FEMP energy efficiency Recommendations and the DOE/EPA ENERGY STAR® label.

#### **2.0 [AGENCY] Affirmative Procurement Program for Buying Energy-Efficient Products**

Federal agencies are directed by Executive Order 13123 and FAR Section 23.704 to purchase energy-efficient products wherever practicable and cost-effective. [AGENCY] has established an affirmative procurement program for energy-efficient purchasing, to include:

- acquisition planning;
- purchasing;
- construction, renovation, and leasing;

## ***REVIEW DRAFT***

### ***MODEL POLICY - ENERGY-EFFICIENT FEDERAL PURCHASING*** 11/3/99

- review of product and construction specifications;
- an exceptions procedure;
- employee and vendor awareness;
- annual review and reporting; and
- awards and recognition.

The following subsections set forth this overall policy and its applicability throughout [AGENCY], followed by a description of each program element.

#### **2.1 Policy**

It is the policy of [AGENCY] to acquire, wherever practicable, products that are energy-efficient as defined by Executive Order 13123 and FAR Section 23.704, i.e., ENERGY STAR® labeled products and those designated by DOE/FEMP criteria in the top 25% of energy efficiency (where there is no applicable ENERGY STAR® label). Higher levels of energy efficiency may be economically justified in some cases, based on expected energy cost savings over the life cycle of the product. For other energy-using products for which DOE/FEMP has not issued efficiency recommendations, purchase decisions should be based on life-cycle cost analyses, comparing the added cost (if any) of an efficient product with its expected lifetime energy cost savings.

Exceptions to the requirement to buy energy-efficient products may be made, with written justification: (a) where there is no efficient product available that meets the functional requirements for a specific application, (b) where an efficient product would not be cost-effective on a life-cycle basis, or where (c) there are not enough suppliers to maintain a satisfactory level of competition in the procurement (typically three supply sources).

#### **2.2 Applicability**

Policies and procedures for buying energy-efficient products apply to all [AGENCY] program offices and facilities, contractors operating [AGENCY] facilities, and contracts for construction, renovation, and leasing of [AGENCY] or contractor-operated facilities. Construction and leasing are described in a later section. This policy is provided as guidance to all [AGENCY] personnel, including acquisition policy offices, contracting offices, facility managers, energy managers, and other purchasers or users of energy-related products.

##### **2.2.1 Government-Owned, Contractor-Operated Facilities**

The requirements of Executive Order 13123, Section 403(b) apply to management and operating

## **REVIEW DRAFT**

### **MODEL POLICY - ENERGY-EFFICIENT FEDERAL PURCHASING 11/3/99**

(M&O) contractors who purchase energy-using products for use in federal facilities, as long as appropriate provisions are contained in the contracts. Once appropriate provisions are included in each contract, the contractor is required to comply with the federal requirements and the provisions of this program as if the contractor were a [AGENCY] entity. Hence, the contractor will also require any sub-contractors who purchase or specify energy-related products for use in federal facilities to comply with these same provisions.

[AGENCY] contracting personnel are required to include appropriate provisions in all new or renewed M&O contracts, and are encouraged to include such provisions, wherever practicable, in amendments to existing contracts which will remain in force for at least one year.

The contract manager is responsible for assuring that the contractor complies with these provisions.

#### **2.2.2 State and Local Agencies, Other Purchasers**

State and local agencies using [AGENCY] funds to purchase energy-related products are strongly encouraged but not required to establish their own affirmative procurement program for energy-efficient purchasing. The efficiency recommendations issued by DOE/FEMP are available for use by any other government, institutional, or private purchaser. Also, EPA and DOE have developed a "Toolkit" for Energy Star Purchasing by state and local agencies; this Toolkit includes the DOE/FEMP efficiency recommendations as well as ENERGY STAR® labeled products. For more information on "Energy Star Purchasing for State and Local Governments" contact the EPA Energy Star Program Manager at 202/233 9073. Information for government purchasers is also available online at [http://208.254.22.7/index.cfm?c=government.bus\\_government](http://208.254.22.7/index.cfm?c=government.bus_government).

#### **2.3 Acquisition Planning**

All [AGENCY] contracting and procurement personnel shall incorporate requirements for energy-efficient purchasing during the acquisition planning stage. Energy efficiency criteria based on the requirements of Executive Order 13123 and FAR Section 23.704 shall be used wherever practicable and cost-effective, in developing plans, drawings, work statements, specifications, or other product descriptions, as well as in purchasing decisions and in the evaluation and awarding of contracts.

#### **2.4 Purchasing**

All purchasers and initiators of procurement requests shall include an explicit requirement for

## **REVIEW DRAFT**

### **MODEL POLICY - ENERGY-EFFICIENT FEDERAL PURCHASING 11/3/99**

ENERGY STAR® and other energy-efficient products in all applicable statements of work, procurement requests, and grants. In making procurement award determinations, all [AGENCY] personnel shall ensure that contracts awarded will provide energy-efficient products that meet or exceed the requirements of Executive Order 13123 and FAR Section 23.704, for all ENERGY STAR® labeled products and other products covered by DOE/FEMP energy efficiency purchase recommendations.

#### **2.4.1 Federal Supply Sources**

Many ENERGY STAR® and other DOE/FEMP designated energy-efficient products are available to procuring agencies and their contractors through established Federal supply sources, and new items are continuously being added. [AGENCY] strongly encourages users to consider federal supply sources, such as GSA and DLA as a source for these energy-efficient products. Information about the availability of ENERGY STAR® and other energy-efficient products is available from GSA at their on-line GSAdvantage site (<https://www.gsaadvantage.gov/>) by clicking "Advanced Search" and checking the boxes for ENERGY STAR® and/or energy-efficient products.

Procuring energy-efficient products through federal supply sources offers several advantages:

- Products identified with the ENERGY STAR® symbol meet federal requirements for energy-efficient purchasing;
- Federal supply sources work with manufacturers and vendors to help assure that other designated products meet the applicable federal requirements based on DOE/FEMP efficiency recommendations;
- As federal supply sources develop new systems for on-line purchasing, federal buyers will experience added convenience and reduced paperwork; and
- In some cases, GSA and DLA may be able to help their customers track progress on government-wide purchasing of energy-efficient products.

#### **2.4.2 Life-Cycle Cost Analysis**

OMB/OFPP Policy Letter 92-4 requires Federal agencies to use life-cycle cost analyses, wherever feasible and appropriate, in selecting products and services. Detailed guidance on calculating cost-effectiveness of an energy-using product over its life cycle is described in 10 CFR 436.11. Also, examples of life-cycle cost-effectiveness are shown in each of the specific *Product Energy Efficiency Recommendations* issued by DOE/FEMP. These Efficiency Recommendations also

**REVIEW DRAFT**  
**MODEL POLICY - ENERGY-EFFICIENT FEDERAL PURCHASING 11/3/99**

describe how to modify the example to meet the initiator's specific situation.

[AGENCY's] policy is that the DOE/FEMP Efficiency Recommendations and ENERGY STAR® labeling criteria, based on the requirements of Executive Order 13123 and FAR Section 23.704 are generally cost-effective on a life-cycle basis and should serve as a minimum level of energy efficiency. Higher levels of energy efficiency may be justified in specific cases based on life-cycle cost analysis. In some circumstances (e.g., where energy costs or equipment usage are below average), a life-cycle cost analysis may show that it is not cost-effective to purchase an efficient product at or above the ENERGY STAR® or DOE/FEMP recommended levels. In these cases, a written waiver should be prepared (see Section 2.8, below).

In practice, federal buyers may not have the time, expertise, or resources to perform a life-cycle cost analysis for all purchases, especially for smaller purchases. Thus, for all simplified acquisition purchases up to \$25,000 [AGENCY] purchasers may presume that ENERGY STAR® and DOE/FEMP designated energy-efficient products are life-cycle cost-effective and in compliance with OMB/OFPP policy, provided there are multiple vendors.

## **2.5 Construction, Renovation, Operation, and Leasing**

Federal requirements for energy-efficient purchasing apply to products specified, purchased, and installed by contractors in new or existing facilities that are owned or occupied by federal agencies. [AGENCY] contracting personnel shall include appropriate provisions consistent with Executive Order 13123 and FAR Section 23.704 in all new contracts for design, construction, renovation, or operation and maintenance of such facilities. The contract manager is responsible for assuring that the contractor complies with these provisions.

### **2.5.1 Construction, Renovation, and Operations**

Once provisions are included in contract documents, all contractors providing design, construction, or operation and maintenance services for new or existing federal facilities are required to comply with the federal requirements for specifying and purchasing energy-efficient products and with the provisions of this [AGENCY] policy. The contractor will also require any sub-contractors who purchase or specify energy-related products for a federal construction or renovation project to comply with these same provisions.

### **2.5.2 Leasing of Facilities and Equipment**

## ***REVIEW DRAFT***

### ***MODEL POLICY - ENERGY-EFFICIENT FEDERAL PURCHASING*** 11/3/99

Construction, renovation, and operation and maintenance of facilities that are leased for federal occupancy also offer opportunities for purchasing energy-efficient products, as does the lease or lease-purchase of major pieces of energy-using equipment. Section 403(e) of the Executive Order requires agencies to negotiate leases that provide for energy and water efficiency wherever life-cycle cost-effective. In negotiating new or renewed leases for facilities and equipment, [AGENCY] contracting officers shall include appropriate provisions requiring the use of ENERGY STAR® products and products that meet the DOE/FEMP energy efficiency criteria under Executive Order 13123 and FAR Section 23.704.

#### **2.5.3 Energy Savings Performance Contracts**

Energy-saving measures in federal facilities may be financed through an energy savings performance contract with a qualified energy service company who can offer a range of services such as energy analysis, design, construction, financing, commissioning, operation, and measurement and verification of savings. In negotiating energy savings performance contracts, [AGENCY] contracting officers shall include provisions to assure that all energy-using equipment or energy-related products installed in a federal facility have ENERGY STAR® labels or meet the DOE/FEMP energy efficiency criteria under Executive Order 13123 and FAR Section 23.704.

#### **2.6 Certification and Verification**

Contractors and vendors are responsible for certifying to the [AGENCY] purchaser or contracting officer that the energy-using products they supply for use in federal facilities meet the requirements of Executive Order 13123 and FAR Section 23.704, based on the ENERGY STAR® label or the DOE/FEMP energy efficiency criteria.

[AGENCY] is not responsible for checking the energy performance of individual products, but will advise DOE/FEMP (202/586 5772), as well as the federal supply source or other vendor or contractor, of any information it receives about a product that claims to comply with the ENERGY STAR® label or the DOE/FEMP energy efficiency criteria but may not actually perform at this level.

#### **2.7 Specifications Review**

Consistent with Section 403(b)(3) of the Executive Order, program offices are responsible for reviewing and revising specifications, product descriptions, and standards for energy-related products to help assure that [AGENCY] is specifying and purchasing energy-efficient products that meet the requirements of Executive Order 13123 and FAR Section 23.704 and are cost-effective.

**REVIEW DRAFT**

**MODEL POLICY - ENERGY-EFFICIENT FEDERAL PURCHASING 11/3/99**

When preparing new or revised procurement specifications, any criteria or standards unrelated to performance that present barriers to selecting energy-efficient products should be revised or eliminated.

When converting to Commercial Item Descriptions (CID) during procurement actions, [AGENCY] personnel shall ensure that the CID meets or exceeds the energy efficiency requirements of Executive Order 13123 and FAR Section 23.704.

## **2.8 Exceptions and Waivers**

The policy of [AGENCY] is to purchase ENERGY STAR® and other DOE/FEMP-designated energy-efficient products that meet or exceed the requirements of Executive Order 13123 and FAR Section 23.704. Exceptions to this requirement must be justified in writing, in the following circumstances:

- where there is no efficient product available that meets the functional requirements for a specific application;
- where an efficient product would not be cost-effective on a life-cycle basis; or
- where there are not enough suppliers to maintain a satisfactory level of competition in the procurement (typically three supply sources).

The procedure for justifying a waiver to the requirement for energy-efficient purchasing shall be as follows:

- (1) The procurement originator identifies energy efficiency requirements or product characteristics in the procurement request that are required by Executive Order 13123 and FAR Section 23.704 to meet ENERGY STAR® requirements or the efficiency Recommendations issued by DOE/FEMP.
- (2) If the product to be procured cannot meet these efficiency requirements, the originator provides brief written statement to the Contracting Officer indicating:
  - (a) that no energy efficient products are available to meet the functional requirements for this specific application; or
  - (b) it is not cost-effective (on a life-cycle basis) to purchase an energy-efficient product for this specific application; or
  - (c) there are not enough sources of supply to assure a competitive procurement.

**REVIEW DRAFT**  
**MODEL POLICY - ENERGY-EFFICIENT FEDERAL PURCHASING** 11/3/99

The original copy of the form becomes part of the contracting office contract file, and a copy is forwarded to the agency-wide designated individual responsible for energy-efficient procurement (see Section 4.0). A sample form “Request for Waiver” is included as Appendix C, below.

## **2.9 Employee and Vendor Awareness**

[AGENCY] will continue to promote awareness of energy-efficient purchasing both internally and externally. The internal promotion program consists of educating program staff and procurement offices about requirements to buy energy-efficient products, and providing [AGENCY] employees and contractors with information on the ENERGY STAR® labeling program and the *Product Energy Efficiency Recommendations* published by DOE/FEMP, as well as where to find efficient products within the federal supply system or from commercial sources. [AGENCY’s] external promotion program will make manufacturers, suppliers, and contractors aware of the federal requirements and [AGENCY’s] own policies on buying energy-efficient products.

[AGENCY] will use the following means to increase awareness internally and externally of its energy-efficient purchasing policies:

- Distributing copies of this policy document to program offices, procurement offices, and contractors
- Publishing articles on energy-efficient purchasing in internal [AGENCY] publications and appropriate trade publications
- Participating in vendor shows and trade fairs
- Adding explanatory language to solicitation documents and discussing energy-efficient purchasing requirements at bidders conferences
- Conducting workshops and training sessions for [AGENCY] staff, including training for users of federal credit cards

## **3.0 Program Review and Recognition**

### **3.1 Annual Review and Reporting**

Section 303 of Executive Order 13123 requires that each federal agency measure and report its progress in meeting each provision of the Order, including the purchase of energy-efficient products as provided in Section 403(b). OMB and DOE are responsible for evaluating each agency’s progress, using an annual scorecard.

## **REVIEW DRAFT**

### **MODEL POLICY - ENERGY-EFFICIENT FEDERAL PURCHASING 11/3/99**

As part of its annual update report on energy management, [AGENCY] will provide information on the status of its program for buying energy-efficient products, including significant accomplishments, barriers and methods used to overcome them, and any changes in policies or practices to better achieve the energy-efficient purchasing goals of Executive Order 13123 and FAR Section 23.704. If existing record-keeping by [AGENCY] or federal supply sources provides quantitative estimates of the volume or percent share of energy-related product purchases that are energy-efficient, this information will also be provided. DOE/FEMP may use this information in preparing case studies and lessons learned for use by other agencies, in addition to including the information in its Report to Congress.

*[OPTIONAL: INSERT SECTION ON AGENCY'S QUANTITATIVE GOALS FOR ENERGY-EFFICIENT PURCHASING.]*

#### **3.2 Awards**

The DOE/FEMP program has established annual Federal Energy and Water Management Awards to recognize successful and innovative energy-saving actions by personnel throughout the government. Actions taken to increase the purchasing of ENERGY STAR® and other energy-efficient products are eligible for these government-wide awards. Supervisors and co-workers in [AGENCY] are encouraged to nominate outstanding individuals or groups for these awards. For more information on Federal Energy and Water Management Awards, contact the DOE/FEMP office at 202/586 5772, or download information from the Web site at:

<http://www.eere.energy.gov/femp/services/awards.cfm>

*[OPTIONAL: ADD SECTION ON AGENCY-LEVEL AWARDS AND RECOGNITION, UNDER SECTION 406(a) OF THE EXECUTIVE ORDER.]*

#### **4.0 Responsibilities**

The designated individual responsible for agency-wide coordination of energy-efficient purchasing is:

OFFICE or INDIVIDUAL  
JOB TITLE  
CONTACT INFORMATION

**REVIEW DRAFT**  
**MODEL POLICY - ENERGY-EFFICIENT FEDERAL PURCHASING** 11/3/99

**APPENDIX A: DEFINITIONS AND ACRONYMS**

**Definitions**

Acquisition - "Acquisition" means acquiring by contract supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract. [source: EO 13123, Sec. 701]

Environmentally Preferable - products or services that have a lesser negative effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison should use principles recommended in guidance issued by EPA (see Executive Order 12873, Section 503), and may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service. [source: FAR 23.703]

Facility - means any individual building or collection of buildings, grounds, or structure, as well as any fixture or part thereof, including the associated energy or water-consuming support systems, which is constructed, renovated, or purchased in whole or in part for use by the Federal Government. It includes leased facilities where the Federal Government has a purchase option or facilities planned for purchase. In any provision of this order, the term "facility" also includes any building 100 percent leased for use by the Federal Government where the Federal Government pays directly or indirectly for the utility costs associated with its leased space. The term also includes Government-owned contractor-operated facilities. [source: EO 13123, Sec. 705]

Life-Cycle Cost - means the sum of the present values of investment costs, capital costs, installation costs, energy costs, operating costs, maintenance costs, and disposal costs, over the lifetime of the project, product, or measure. Additional guidance on measuring life-cycle costs is specified in 10 C.F.R. 436.19. [source: EO 13123, Sec. 707]

Life-Cycle Cost-Effective - means the life-cycle costs of a product, project, or measure are estimated to be equal to or less than the base case (i.e., current or standard practice or product). Additional guidance on measuring cost-effectiveness is specified in 10 CFR. 436.18 (a), (b), and

**REVIEW DRAFT**

**MODEL POLICY - ENERGY-EFFICIENT FEDERAL PURCHASING 11/3/99**

(c), 436.20, and 436.21. [source: EO 13123,Sec. 708]

Practicable - capable of being used consistent with: performance in accordance with applicable specifications; availability at a reasonable price; availability within a reasonable period of time; and maintenance of a satisfactory level of competition. [source: EPA Guidelines for Executive Order 12873]

Specification - a clear and accurate description of the technical requirement for materials, products, or services which specifies the minimum requirement for quality and construction of materials and equipment necessary for an acceptable product. In general, specifications are in the form of written descriptions, drawings, prints, commercial designations, industry standards, and other descriptive references. [source: EPA Guidelines for Executive Order 12873]

**Acronyms**

APP	Affirmative Procurement Program
CFR	Code of Federal Regulations
CID	Commercial Item Description
DLA	Defense Logistics Agency
DOE	Department of Energy
EO	Executive Order
EPA	Environmental Protection Agency
FAR	Federal Acquisition Regulation
FEMP	Federal Energy Management Program
FR	Federal Register
GSA	General Services Administration
M&O	Management and Operating (Contractor)
OFPP	Office of Federal Procurement Policy
OMB	Office of Management and Budget

**REVIEW DRAFT**

**MODEL POLICY - ENERGY-EFFICIENT FEDERAL PURCHASING**

11/3/99

**APPENDIX B: STATUTORY AND ADMINISTRATIVE AUTHORITIES**

**(1) Energy Policy Act of 1992, Section 161 (PL 102-486; 42 USC 8262g)**

Procurement and Identification of Energy Efficient Products

(a) Procurement

The Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency, each shall undertake a program to include energy efficient products in carrying out their procurement and supply functions.

(b) Identification program

The Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency, in consultation with the Secretary of Energy, each shall implement, in conjunction with carrying out their procurement and supply functions, a program to identify and designate those energy efficient products that offer significant potential savings, using, to the extent practicable, the life cycle cost methods and procedures developed under section 8254 of this title. The Secretary of Energy shall, to the extent necessary to carry out this section and after consultation with the aforementioned agency heads, provide estimates of the degree of relative energy efficiency of products.

(c) Guidelines

The Administrator for Federal Procurement Policy, in consultation with the Administrator of General Services, the Secretary of Energy, the Secretary of Defense, and the Director of the Defense Logistics Agency, shall issue guidelines to encourage the acquisition and use by all Federal agencies of products identified pursuant to this section. The Secretary of Defense and the Director of the Defense Logistics Agency shall consider, and place emphasis on, the acquisition of such products as part of the Agency's ongoing review of military specifications.

(d) Report to Congress

Not later than December 31 of 1993 and thereafter as part of the report required under section 8258(b) of this title, the Secretary of Energy, in consultation with the Administrator for Federal Procurement Policy, the Administrator of General Services, the Secretary of Defense, and the

**REVIEW DRAFT**

**MODEL POLICY - ENERGY-EFFICIENT FEDERAL PURCHASING**

11/3/99

Director of the Defense Logistics Agency, shall report on the progress, status, activities, and results of the programs under subsections (a), (b), and (c) of this section. The report shall include--

(1) the types and functions of each product identified under subsection (b) of this section, and efforts undertaken by the Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency to encourage the acquisition and use of such products;

(2) the actions taken by the Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency to identify products under subsection (b) of this section, the barriers which inhibit implementation of identification of such products, and recommendations for legislative action, if necessary;

(3) progress on the development and issuance of guidelines under subsection (c) of this section;

(4) an indication of whether energy cost savings technologies identified by the Advanced Building Technology Council, under section 1701j-2(h) of title 12, have been used in the identification of products under subsection (b) of this section;

(5) an estimate of the potential cost savings to the Federal Government from acquiring products identified under subsection (b) of this section with respect to which energy is a significant component of life cycle cost, based on the quantities of such products that could be utilized throughout the Government; and

(6) the actual quantities acquired of products described in paragraph (5).

**(2) Executive Order 13123 – “Greening the Government through Efficient Energy Management”<sup>1</sup>**

Sec. 403. Energy Management Strategies and Tools. Agencies shall use a variety of energy management strategies and tools, where life-cycle cost-effective, to meet the goals of this order. An agency's use of these strategies and tools shall be taken into account in assessing the agency's progress and formulating its score card :

(b) ENERGY STAR® and Other Energy Efficient Products.

(1) Agencies shall select, where life-cycle cost-effective, ENERGY STAR® and other energy efficient products when acquiring energy-using products. For product groups where ENERGY STAR® labels are not yet available, agencies shall select products that are in the

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<sup>1</sup> Replaces E.O. 12902 (Energy Efficiency and Water Conservation at Federal Facilities) and E.O. 12845 (Requiring Agencies to Purchase Energy Efficient Computer Equipment).

**REVIEW DRAFT**

**MODEL POLICY - ENERGY-EFFICIENT FEDERAL PURCHASING**

11/3/99

upper 25 percent of energy efficiency as designated by FEMP. The Environmental Protection Agency (EPA) and DOE shall expedite the process of designating products as ENERGY STAR® and will merge their current efficiency rating procedures.

(2) GSA and the Defense Logistics Agency (DLA), with assistance from EPA and DOE, shall create clear catalogue listings that designate these products in both print and electronic formats. In addition, GSA and DLA shall undertake pilot projects from selected energy-using products to show a "second price tag", which means an accounting of the operating and purchase costs of the item, in both printed and electronic catalogues and assess the impact of providing this information on Federal purchasing decisions.

(3) Agencies shall incorporate energy efficient criteria consistent with ENERGY STAR® and other FEMP-designated energy efficiency levels into all guide specifications and project specifications developed for new construction and renovation, as well as into product specification language developed for Basic Ordering Agreements, Blanket Purchasing Agreements, Government Wide Acquisition Contracts, and all other purchasing procedures.

(4) DOE and OMB shall also explore the creation of financing agreements with private sector suppliers to provide private funding to offset higher up-front costs of efficient products. Within 9 months of the date of this order, DOE shall report back to the President's Management Council on the viability of such alternative financing options.

**(3) Federal Acquisition Regulations (FAR)**

Section 23.203:

Agencies shall consider energy efficiency in the procurement of products and services. Energy conservation and efficiency data shall be considered along with estimated cost and other relevant factors in the preparation of plans, drawings, specifications, and other product descriptions.

Section 23.704:

Policy.

(a) Agencies shall implement cost-effective contracting preference programs favoring the acquisition of environmentally preferable and energy-efficient products and services, and shall employ acquisition strategies that affirmatively implement the objectives in paragraph (b) of this section.

**REVIEW DRAFT**

**MODEL POLICY - ENERGY-EFFICIENT FEDERAL PURCHASING**

11/3/99

(b) The following environmental objectives shall be addressed throughout the acquisition process:

(1) Obtaining products and services considered to be environmentally preferable (based on EPA-issued guidance).

(2) Obtaining products considered to be energy-efficient; i.e., products that are in the upper 25 percent of energy-efficiency for all similar products, or products that are at least 10 percent more efficient than the minimum level that meets Federal standards (see Exec. Order 12902, Sec. 507)...

**(4) OMB/OFPP Policy Letter 92-4**

Policy Letter 92-4 (Fed. Reg. 57:217, Nov. 9, 1992) states in part:

1. *Purpose.* This Policy Letter provides Executive Branch policies for the acquisition and use of environmentally-sound, energy-efficient products and services...

5. *Background.* In its day-to-day operations, the Federal Government has the opportunity and obligation to be environmentally and energy conscious in its selection and use of needed products and services. The Government, as the largest single consumer in the nation, has many opportunities to conserve and make more efficient use of energy and other resources. Leveraging the Government's \$190 billion annual purchasing program toward more energy-efficient and environmentally-sound practices will not only benefit the nation by reducing the cost of Government, but will help make the Government a model consumer...

6. *Policy.* It is the policy of the Federal Government that Executive agencies implement cost-effective procurement preference programs favoring the purchase of environmentally-sound, energy-efficient products and services.

a. *Energy Efficiency.* Executive agencies shall consider energy conservation and efficiency factors in the procurement of property and services... Energy conservation and efficiency data will be considered, along with estimated cost and other relevant factors, in the development of purchase requests, invitations for bids and solicitations for offers. In addition, with respect to the procurement of consumer products, as defined under Part B, Title III of the Energy Policy and Conservation Act, agencies shall consider energy use/efficiency labels (42 U.S.C. 6294) and prescribed energy efficiency standards (42 U.S.C. 6295) in making purchasing decisions....

7. *Responsibilities.*

**REVIEW DRAFT**

**MODEL POLICY - ENERGY-EFFICIENT FEDERAL PURCHASING**

11/3/99

a. *Heads of Executive Agencies.* In implementing the policies in Paragraph 6, above, Executive agencies shall:

- (1) Identify and procure needed products and services that, all factors considered, are environmentally-sound and energy-efficient; ...
- (3) Employ life cycle cost analysis, whenever feasible and appropriate, to assist in making product and service selections;
- (4) Use product descriptions and specifications that reflect cost-effective use of ...water efficiency devices, ...and energy-efficient products, materials, and practices;
- (5) Work with private standard-setting organizations and participate, pursuant to OMB Circular No. A-118, in the development of voluntary standards and specifications defining environmentally-sound, energy-efficient products, practices and services...

8. *Federal Acquisition Regulations (FAR) Councils.*

...shall conduct a thorough review of the relevant parts of the FAR to (1) assure that no unintended encumbrances to the acquisition of environmentally-sound, energy-efficient products and services are contained therein, and (2) that the procurement policies established by this Policy Letter are fully reflected in the FAR within 210 days of the effective date of this Policy Letter.

APPENDIX C: REQUEST FOR WAIVER

The policy of [AGENCY] is to purchase ENERGY STAR® labeled products and other energy-efficient products as designated by DOE/FEMP consistent with the requirements of Executive Order 13123 and FAR Section 23.704. Exceptions to this requirement must be justified in writing.

Instructions. This form should be used for all items procured that are subject to [AGENCY' s] Affirmative Procurement Program for Energy-Efficient Products.

- 1. This form is to be completed by the procurement originator, purchase card holder and/or the contracting officer, as appropriate, when energy-related products covered by the ENERGY STAR® labeling program or DOE/FEMP Efficiency Recommendations are not purchased at or above the efficiency levels specified in Executive Order 13123 and FAR Section 23.704.
2. The procurement originator/cardholder and/or contracting officer checks the appropriate justification(s), provides a written explanation, and signs and dates the form.
3. The original form is maintained in the contracting office contract file.
4. The procurement originator submits a copy of the form to the [AGENCY' s] designated Program Coordinator for energy-efficient purchasing, [TITLE OR NAME].

Procurement Request No. \_\_\_\_\_

Brief description of energy-related product(s): \_\_\_\_\_

Quantity (or estimated dollar value) of purchase: \_\_\_\_\_

In this case, it is not practicable to purchase an ENERGY STAR® labeled product or an energy-efficient product that complies with Executive Order 13123 and FAR Section 23.704, because:

(check one or more)

No ENERGY STAR® or energy-efficient product is available that meets the functional requirements for this specific application

It is not cost-effective (on a life-cycle basis) to purchase an energy-efficient product for this specific application (attach summary of life-cycle cost analysis results)

There are not enough sources of supply (typically 3 or more sources) to assure a competitive procurement

Additional explanation: \_\_\_\_\_

Signature of Contracting Officer/Purchase Cardholder \_\_\_\_\_

Date \_\_\_\_\_

Signature of Energy-Efficient Purchasing Program Coordinator \_\_\_\_\_

Date \_\_\_\_\_

**- Attach Additional Pages if Needed -**