

# **PRIOR TO PUBLIC COMMENT (NOVEMBER 2013) Technical Questions and Answers on the Draft Guidelines for Product Environmental Performance Standards and Ecolabels for Voluntary Use in Federal Procurement**

## **What is the purpose of this FR and the guidelines?**

The Environmental Protection Agency (EPA) is asking for public comments on draft guidelines that may be used in government purchasing to identify environmentally preferable products. EPA, in consultation with the General Services Administration, and other Federal agencies drafted these guidelines in response to requests from manufacturers, environmental groups, and other stakeholders for a consistent way to integrate non-governmental (sometimes referred to as "private sector") environmental performance standards and ecolabels into Federal purchasing. Although Federal purchasers currently utilize the standards and ecolabels mandated by Executive Orders and statutes, a recent survey showed that 65% of Federal purchasers lacked information on non-governmental environmental standards and ecolabels, and a mechanism for identifying "green" products.

The guidelines could assist the Federal workforce in more consistently utilizing non-governmental product environmental performance standards and ecolabels in the Federal procurement process, consistent with Federal standards policy and sustainable acquisition mandates. More specifically, the guidelines could facilitate an effective and efficient implementation of Executive Order 13514 Section 2(h) and Federal Acquisition Regulation (FAR) 23.103, which requires 95% of applicable government contract actions to be sustainable. Section 2(h) of the Executive Order states that:

"The Head of each Agency shall...advance sustainable acquisition to ensure that 95 percent of new contract actions including task and delivery orders, for products and services with the exception of acquisition of weapon systems, are energy-efficient (Energy Star or Federal Energy Management Program (FEMP) designated), water-efficient, biobased, environmentally preferable (e.g., Electronic Product Environmental Assessment Tool (EPEAT) certified), non-ozone depleting, contain recycled content, or are non-toxic or less toxic alternatives, where such products and services meet agency performance requirements."

Specifically the guidelines could provide clarity regarding the term "environmentally preferable" for purposes of E.O. 13514 and the FAR. As envisioned by EPA, the guidelines would not be applied to products directly or to government standards and ecolabels or to nongovernmental standards and ecolabels that are already mandated for procurement via statute or Executive Order. Moreover, these guidelines are not intended to discontinue or diminish procurement of products conforming to government standards and ecolabels. Rather, EPA envisions that non-governmental standards and

ecolabels determined to be in conformance with the guidelines would supplement existing mandates and government standards and ecolabels.

[For illustration purposes, "product category x" has a recovered content minimum of 20% per the EPA Comprehensive Procurement Guidelines (section 6002 of the Resource Conservation and Recovery Act). A multi-attribute standard for "product category x" is determined to conform to the guidelines. Depending on the standard, Federal procurement officials could be informed that either (1) the non-governmental standard facilitates meeting the mandate (e.g., the standard includes the CPG requirement as a prerequisite) or (2) the non-governmental standard addresses important environmental considerations, but does not necessarily fully address the CPG requirement, so the standard could be specified in addition to the CPG requirement.]

### **Why does the government rely on non-governmental/private sector standards?**

Fulfilling Federal obligations under EO 13514, FAR 23.103 and other sustainable-purchasing related mandates can be aided by the use of non-governmental standards. More broadly, the National Technology Transfer and Advancement Act (NTTAA) and OMB Circular A-119 direct Federal agencies to use voluntary consensus standards in procurement and regulation, except where inconsistent with law or otherwise impractical. This is advantageous for many reasons, including cost savings for Federal agencies, enhanced leveraging of external stakeholder expertise in developing standards, and increased buy-in from stakeholders represented in the consensus-based process. Manufacturers, state and local governments, NGOs, and other stakeholders have asked the Federal government to integrate environmental performance standards (and ecolabels based on such standards) into Federal purchasing.

### **Are all agencies required to use standards and ecolabels that conform to the guidelines?**

EPA is proposing to make the list of conforming non-governmental standards and ecolabels available to Federal agencies for **voluntary** use. This list will supplement Federal standards and ecolabels and specific non-governmental ecolabels and standards that are referenced in Executive Orders.

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### **Is ANSI accreditation of standards development processes required by the guidelines?**

No. The draft guidelines encourage processes aligned with ANSI's Essential Requirements (see Section I of the guidelines), but were designed to allow flexibility in standards development approaches consistent with the National Technology Transfer and Advancement Act of 1996 (NTTAA) and OMB Circular A-119. For more information on Federal standards policy and terminology, please visit [www.standards.gov](http://www.standards.gov).

### **Will 3rd party certification of products be required to meet the guidelines?**

The draft guidelines do not require manufacturers to seek third party conformity assessment. The EPA and the Federal interagency group that developed the draft guidelines recognized that the appropriate

method of conformity assessment may vary across product categories based on cost, risk, and other factors.

### **Will these guidelines also address services such as printing, hospitality, cleaning, etc.?**

Not at this time. While much of the contents of the draft guidelines could also apply to services, the draft guidelines were developed for **product** environmental performance standards and ecolabels. Although, there are currently no plans to expand their applicability, EPA is interested in public comments on this topic.

### **What is the relationship between the guidelines and the Federal Trade Commission (FTC) "Green Guides for environmental claims?"**

The [FTC Green Guides](#) [EXIT Disclaimer](#) provide guidance to marketers, not institutional buyers, to ensure that environmental claims are truthful and substantiated. EPA shared its experience in environmentally preferable products and purchasing with the FTC during the latest revision of the Green Guides. The Green Guides discuss how seals and certifications are likely to be perceived by consumers and give guidance about the types of claims that could be supported. Other than requiring substantiation of any claims, FTC's Green Guides do not address the substance of standards or ecolabels, the process used to develop standards, or their use in the procurement process.

### **How do the guidelines address standards and ecolabels developed in other countries?**

Standards and ecolabels developed in other countries will be evaluated in the same manner as those developed in the United States. The draft guidelines do not establish a preference for ecolabels or standard developed in the United States or in other countries. However, Federal procurement is subject to the Buy American Act, international trade agreements, and other restrictions that may impact the purchase of non-domestic products.

### **How do the guidelines address the range of approaches amongst standards and ecolabels in addressing sustainability?**

EPA recognizes that the level to which sustainability practices have been incorporated varies by industry sector and even from product category to product category. Therefore, a single, one-size-fits-all approach to assessing standards and ecolabels would not be appropriate or useful. To address differences among sectors, EPA is requesting comment on an approach that provides flexibility. For example, each draft guideline has been designated either as "baseline" or "leadership". Based on initial analysis, draft "baseline" guidelines align with Federal goals and requirements, are relatively straightforward to evaluate, and are applicable across industry sectors. Draft "Leadership" guidelines represent EPA's current assessment of best practices and are currently achievable by some standards and ecolabels.

### **How would standards and ecolabels be assessed? Would there be a "verified list" of standards and ecolabels?**

In addition to seeking input on the draft guidelines themselves, EPA is seeking input on how standards and ecolabels should be assessed for conformance to the guidelines. Based on discussions with stakeholders, EPA anticipates a number of organizations may be positioned to respond to the need for assessment of standards and ecolabels for conformity with the guidelines. Taking this into account, EPA is considering a pilot project to test an assessment approach, especially with respect to guidelines addressing the "environmental effectiveness" of a standard or ecolabel's criteria. During this pilot, EPA expects that an external entity (or entities) would convene and work with a multi-stakeholder panel

(or panels) to develop product category-specific programs to assess conformity of standards and ecolabels with the guidelines. The entity(s) would then conduct the assessments for selected product categories in a manner consistent with the International Organization for Standardization's (ISO) Guides on conformity assessment, and develop a list of standards and ecolabels that conform to the guidelines. The results from the pilot project would be made publicly available and EPA would evaluate the results to inform any future assessments. The list of conforming standards and ecolabels from the pilot project would be made available on EPA's website for voluntary use by Federal agencies in procurement activities. The external entity (or entities) would not perform any inherently governmental functions such as procurement policy, procurement decisions, or strategic implementation decisions.

**How will it be determined which leadership guidelines apply to certain product categories? Will standards need to satisfy some or all of the leadership guidelines?**

As proposed, the external assessing entity (or entities), working with a multi-stakeholder panel(s), would decide how to apply the leadership guidelines on a product category-by-product category basis. For standards in ecolabels in certain product categories, application of specific leadership guidelines may be considered essential along with the baseline guidelines. The assessing entity would also decide if and how to weight the leadership guidelines to determine a standard or ecolabel's conformity.

**Do the guidelines consider Life Cycle information?**

Yes. The draft guidelines address lifecycle information in two ways:

1. a "leadership" guideline encourages consideration of the entire lifecycle of a product (inclusive of human health, environmental, and economic considerations), and
2. a "baseline" guideline calls for standards and ecolabels to focus on the most significant environmental impact(s) ("hotspots") in the product category.

**What is the relationship between these guidelines and the "Guidance for Product Category Rule Development"?**

The [Guidance for Product Category Rule \(PCR\) Development](#) , published by an informal global initiative in which EPA participated, supplements international protocols for product environmental performance disclosure claims based on life cycle assessment (specifically for development of Environmental Product Declarations or EPDs). The PCR Guidance does not address standards and ecolabels that establish performance thresholds for claims of environmental preferability (as the guidelines do) but rather provides guidance so that LCA-based claims that require a PCR can be developed in a consistent manner and hopefully lead to reducing the need for duplicate PCRs for same product category. As such, the PCR Guidance is intended to facilitate product sustainability within, but not limited to the Federal marketplace. The PCR Guidance is, however, consistent with EPA's draft guidelines for product environmental performance standards and ecolabels, where applicable.

**Will Federal conformance to the guidelines mean increased costs for vendors and small and medium sized businesses?**

In developing the draft guidelines, a number of steps were taken in consideration of manufacturers, and especially small businesses. The guidelines may reduce manufacturers' costs by providing greater certainty regarding the standards and ecolabels that will be used by the Federal government, minimizing confusion and financial risk. More specifically, costs to manufacturers are addressed in three main ways:

- The draft guidelines would not establish a blanket requirement for products to have undergone third-party certification (which can be more costly), because the appropriate method of conformity assessment may vary across product categories based on risk and other factors.
- In cases when third-party certification is determined to be necessary, the draft guidelines would encourage conformity assessment bodies to offer a sliding scale of certification fees in order to be accessible to small and medium size businesses.
- By identifying baseline and leadership guidelines and applying them on a sector-by-sector and/or product category-by-product category basis, the draft guidelines would allow time for the development of more environmentally sensitive and sustainability-related standards, ecolabels, and products.

It should be noted that an informal survey of standards developers in 2012 indicated that thousands of manufacturers are already using and meeting many sustainability-related voluntary consensus standards for sustainability. Among 200+ sustainability standards considered in this survey, more than 40 percent of the manufacturers meeting those standards have annual revenues under \$25M or have fewer than 500 employees. Based on this information, as well as the significant input received from the private sector during the listening sessions, EPA expects that the proposed guidelines and resulting consistent use of non-governmental standards and ecolabels would help make the Federal marketplace more accessible to many businesses.

**Will the government develop a mark or label for products meeting conforming standards and ecolabels?**

There are no plans for developing such a mark or label.

**Does this duplicate other efforts, such as the Responsible Purchasing Network, the Sustainability Consortium, or the Sustainable Purchasing Leadership Council?**

The draft guidelines are intended to assist Federal agencies in selecting voluntary, non-governmental product standards and ecolabels for use in Federal procurement. A number of other organizations focus on various aspects of evaluating, standardizing, developing, and maintaining environmental standards and ecolabels, and on promoting sustainable products and purchasing more generally. Since these groups do not provide guidance on assessing standards and ecolabels, the draft guidelines would not duplicate their efforts.