

THE CENTER FOR REGULATORY EFFECTIVENESS' (CRE) COMMENTS ON PROPOSED POLICY LETTER ON THE ACQUISITION OF GREEN PRODUCTS AND SERVICES, 72 FR 73904 (December 28, 2007) SUBMITTED ON FEBRUARY 26, 2008, BY E-MAIL: OFPPGreen@omb.eop.gov; and by Facsimile: (202) 395-5105

CRE appreciates the opportunity to comment on this important proposed policy letter.

We recommend that the policy letter be amended to state that all information disseminations that are covered by the policy letter must comply with the disseminating agency's Information Quality Act (IQA) guidelines. The IQA requirements include pre-dissemination review for compliance with the IQA guidelines.

We also recommend that the current reporting requirements in the policy letter apply annually rather than biennially.

In addition to the letter's proposed reporting requirements, each agency should also report annually to OMB/OIRA and to OFPP on its IQA compliance with regard to the policy letter, including the agency's compliance with its IQA Guidelines for disseminations covered by the policy letter.

Also in addition to the current reporting requirements, each agency should report annually to OFPP on its application and use of the standards/definitions in the policy letter.

OFPP should post all agency policy letter reports on OFPP's public website; and OFPP should also meet IQA requirements when it disseminates information via its website or otherwise.

We discuss these recommendations and provide other comments below.

Federal Agency Public Websites

The policy letter covers many information disseminations that are subject to the disseminating agency's IQA guidelines. For example, the policy letter requires information to be disseminated on several federal agency public websites. These include

the Federal Procurement Data System website
<https://www.fpds.gov/common/html/login.html>;

the reference information on green acquisition polices and green purchasing programs that's on OFPP's homepage at
http://www.whitehouse.gov/omb/procurement/index_green.html;

the Federal Leadership in High Performance and Sustainable Buildings Memorandum of Understanding and related technical guidance found on the Whole Building Design Guide at
<http://www.wbdg.org>;

the guidance document Incorporating Environmentally Preferable Purchasing into Environmental Management Systems, available on EPA's website at
<http://www.epa.gov/epp/pubs/grn-pur/green-pur-ems.htm>; and

"on-line ordering systems," 72 FR 73907, operated by the General Service Administration, the Defense Logistics Agency, and any other federal central supply source.

OMB/OIRA has explained that information on these and all other federal agency public websites is subject to the IQA, if the agency adopts or uses the information:

"Federal agency public websites are information resources funded in whole or in part by the Federal government and operated by an agency, contractor, or other organization on behalf of the agency. They present government information or provide services to the public or a specific non-Federal user group and support the proper performance of an agency

function. Federal agency public websites are also information dissemination products as defined in Office of Management and Budget (OMB) Circular A-130, "Management of Federal Information Resources." Agencies must manage Federal agency public websites as part of their information resource management program following guidance in OMB Circular A-130, OMB "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies" (67 FR 5365), this memorandum, and other information policy issuances."

Memorandum for the Heads of Executive Departments and Agencies, Policies for Federal Agencies Public Websites, (OMB, December 17, 2004), available online at <http://www.whitehouse.gov/omb/memoranda/fy2005/m05-04.pdf>

The buy-green requirements of the policy letter are information that is adopted or used by the federal government. Consequently, the public letter should be amended to state that its buy-green requirements, and the other information contained in the letter, are subject to the IQA when they are posted on federal agency public websites. We note that this conclusion is inevitable because, by definition, contract information on a federal agency public website is information which is distributed to the public. Such information is not limited to other agency personnel or to specific government contractors.

Reporting Requirements

The policy letter includes the following reporting requirements:

"10. Reporting requirements. Agency activities conducted pursuant to this policy letter will be reported biennially to the President as required by E.O. 13423 and as otherwise required by statute.

A. OFPP will collect data annually from agencies. Each Executive agency shall provide accurate, complete and timely data to OFPP in its annual requests. Requests may include, but are not limited to:

- (1) Quantitative data on purchases of indicator items;
- (2) Contract compliance data reported through the FPDS system;

(3) Data documenting the results of participation in agency or government-wide pilots;

(4) Evidence of preference language included in service contracts, procurement forecasts, solicitations, and/or competitive sourcing studies; and/or

(5) Evidence of annual training, compliance monitoring, corrective action plans and implementation of corrective actions.

B. Criteria for agency reporting to OFPP on green product purchasing and service acquisitions will be updated as necessary to ensure consistency with the requirements of this policy letter."

We recommend that these reports be submitted annually rather than biennially. Annual reporting is required for a number of reasons, including the ambiguity of some of the governing terms and standards.

For example, the policy letter includes the following standard/definition:

"Environmentally preferable means products and services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, product, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service. Sustainable means to create and maintain conditions, under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic, and other requirements of present and future generations of Americans."

72 FR 73905.

This standard/definition is broadly worded and could be applied in many different ways to the same product. An institutionalized process for OMB and public scrutiny is essential to establish consistency, objectivity, accuracy and reproducibility in the applications of this and other definition/standards in the policy letter. Consequently, the required annual agency reporting should include agency reports on the agency's

application and use of this and the other standards/definitions in the policy letter.

We assume that OFFP will post all agency reports on OFFP's public website and on the agency's own public websites. If we are correct in our assumption, then the policy letter should be amended to state that the reports must also comply with the IQA. If we are incorrect in our assumption, and if OFFP and the agencies decide not to post these reports for the public, then we ask why.

In addition, we recommend that the annual reports to OFPP include a record of the agencies' IQA compliance with regard to the policy letter, and that the reports be submitted to OMB/OIRA too. Once again, if OFPP and/or OMB/OIRA decide not to require and publicly post a record of each agency's IQA compliance, then we ask why.

We again thank you for the opportunity to submit these comments. We look forward to your response, and we look forward to further discussing the policy letter with you.

Sincerely,

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