

Chronological History of Federal Energy-Efficient Product Procurement: Executive, Legislative and Regulatory Requirements, Actions and Mandates

Introduction

The National Energy Conservation Policy Act (NECPA), signed into law in 1978, is the foundational authority for federal energy management requirements. Various legislative actions and Executive Orders (EOs) have developed purchasing requirements that encompass all areas of federal procurement. Federal agencies have been required to purchase energy-efficient products since the early 1990's. Numerous EOs, Acts and legislation are codified in the Federal Acquisition Regulations (FAR Part 23) and Code of Federal Regulations (10 CFR 436) providing extensive guidance on energy-efficient purchasing practices to federal agency procurement officers.

Useful Links

United States Code (Fully Amended) Title 42; The Public Health and Welfare Chapter 91; National Energy Conservation Policy Subchapter III; Federal Energy Initiative Part B; Federal Energy Management. 42 USC § 8259b - Federal procurement of energy-efficient products: <http://www.law.cornell.edu/uscode/text/42/8259B>

FAR Part 23 – Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace; FAR Part 23 codifies these procurement requirements: <https://www.acquisition.gov/far/current/html/FARTOCP23.html>

FAR Part 52.223-15 –Energy Efficiency in Energy-Consuming Products: https://www.acquisition.gov/far/current/html/52_223_226.html

10 Code of Federal Regulations part 436—Federal Energy Management and Planning Programs: http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title10/10cfr436_main_02.tpl

EO 12759 (Federal Energy Management)

(April 17, 1991; 56 FR 16257)

Current Status: Revoked by EO 12902

Federal procurement of energy-efficient product requirements: Required agencies to reference Sec. 5., Procurement of Energy-Efficient Goods and Products. This EO mandated that each agency should select for procurement those energy-consuming goods or products which were the most life-cycle cost-effective, pursuant to the requirements of FAR.

Actions: To the extent practicable, each agency was to require vendors of goods to provide appropriate data that could be used to assess the life-cycle costs of each good or product.

Energy Policy Act of 1992

42 U.S.C. § 13201

(October 24, 1992; Public Law 102-486, 106 Stat. 2776 and section 301 of title 3)

Current Status: In effect as amended – see The Energy Policy Act of 2005 (EPAAct) and the Energy Independence and Security Act (EISA).

Federal procurement of energy-efficient product requirements: Required agencies to reference Section 161- Procurement and Identification of Energy-Efficient Products which contains the requirements for agencies to purchase energy-consuming products that are life-cycle cost-effective.

Actions: The U.S. Department of Energy (DOE), in consultation with other agencies, was charged with identifying and designating energy-efficient products that offer significant potential savings; with issuing guidelines to encourage the acquisition and use (of these products) by all federal agencies; and reporting to Congress annually on program activities, status and progress. The current version of this resource can be accessed through: http://www1.eere.energy.gov/femp/technologies/procuring_eeproducts.html.

1993 | EO 12845 (Requiring Agencies to Purchase Energy-Efficient Computer Equipment)

(April 21, 1993; 58 FR 21887)

Current Status: Revoked by EO 13123

Federal procurement of energy-efficient product requirements: This EO directed the U.S. government to participate in the U.S. Environmental Protection Agency (EPA) ENERGY STAR computer program by agreeing to buy energy-efficient computers, monitors, and printers. To the extent possible, federal agencies were to purchase only computer equipment that met the EPA ENERGY STAR requirements.

Actions: To the extent permitted by law, agencies were to include this specification in all existing and future contracts, if both the Government and the contractor agreed, and if any additional costs would be offset by the potential energy savings. Additionally, agencies were to ensure that federal users were made aware of the significant economic and environmental benefits of the energy-efficient low-power standby feature. A good resource for calculating potential savings can be found at: http://www1.eere.energy.gov/femp/technologies/eep_ec-calculators.html.

1994 | EO 12902 (Energy Efficiency and Water Conservation at Federal Facilities)

(March 3, 1994; 59 FR 11463)

Current Status: Revoked by EO 13123

Federal procurement of energy-efficient product requirements: Section 507, Procurement of Energy-Efficient Products by Federal Agencies outlined the requirement that agencies should purchase energy-efficient products in accordance with the Office of Management and Budget guidelines under section 161 of the Energy Policy Act of 1992. Products that were labeled with the ENERGY STAR logo met this requirement. DOE's Federal Energy Management Program (FEMP) provided additional guidance to federal agencies to identify efficient products not covered by the ENERGY STAR program, i.e., FEMP designated products.

Actions: Twenty-two federal agencies signed an agreement in 1994 to shift their purchasing of energy-using products to the best 25% of models on the market in order to encourage a market for highly energy-efficient products. After consulting with industry, utilities and other interested parties, DOE was to: identify advanced energy-efficient technologies; issue a

“Federal Procurement Challenge;” and coordinate with General Services Administration (GSA) and other agencies to develop guidelines for cost-effective early retirement of inefficient appliances and equipment. To review the product designation process, please reference: http://www1.eere.energy.gov/femp/technologies/eep_fempdesignatedproducts.html.

1999 | EO 13123 (Greening the Government Through Efficient Energy Management)

(June 3, 1999; 64 FR 30851)

Current Status: Revoked by EO 13423

Federal procurement of energy-efficient product requirements: EO 13123 directed EPA and DOE to expedite the process of designating products as ENERGY STAR qualified and to merge their efficiency rating procedures. For product groups where ENERGY STAR labels were not yet available, agencies were to select products that were in the upper 25 percent of energy efficiency as designated by FEMP. This EO revoked EO 12759, EO 12845, and EO 12902.

Actions: GSA and the Defense Logistics Agency (DLA), with assistance from EPA and DOE, were to create clear catalogue listings that designated these products in both print and electronic formats.

2001 | EO 13221 (Energy-Efficient Standby Power Devices)

(July 31, 2001; 66 FR 40571)

Current Status: In effect

Federal procurement of energy-efficient product requirements: Section 1 – Energy-Efficient Standby Power Devices contain the requirements for federal agencies to purchase products that use one watt or less of standby power. If an agency finds that no product meets this level, the agency is required to purchase the product that uses the least amount of standby power.

Actions: DOE in consultation with the Department of Defense (DoD) and GSA was required to complete and maintain a list of products subject to this requirement. For additional information, please reference: http://www1.eere.energy.gov/femp/technologies/standby_power.aspx.

2005 | EAct of 2005

(August 8, 2005; EAct 2005; Public Law 109-58)

42 USC §13201

Current Status: In effect

Federal procurement of energy-efficient product requirements:

EAct (Pub. L. 109–58; August 8, 2005), amended Part 3 of title V of NECPA (42 U.S.C. 8251–8259) by adding section 553. Section 553 of NECPA requires each federal agency to procure ENERGY STAR (42 U.S.C. 6294a) qualified or FEMP (10 CFR Part 436) designated products, unless the head of the agency determines in writing that a statutory exception applies. (42 U.S.C. 8259b(b)(1)). Further, each agency is required to incorporate into the specifications of all procurements involving energy-consuming products and systems, and into the factors for evaluation of offers received for such procurements, criteria for energy-efficiency that are consistent with the criteria used for rating ENERGY STAR qualified products and for rating FEMP designated products. (42 U.S.C. 8259b(b)(3)). Section 553 also requires that all inventories or listings of products operated and maintained by GSA and DLA clearly identify and prominently display ENERGY STAR qualified and FEMP designated products in any listing or inventory of products, and it requires GSA and DLA to supply only ENERGY STAR qualified and FEMP designated products in all covered product categories, except in cases in which an exception applies. (42 U.S.C. 8259b(c)).

Section 104 (b, c, and e) Procurement of Energy-Efficient Products of EAct 2005 requires that each agency incorporate energy-efficiency criteria consistent with ENERGY STAR and FEMP designated products for “...all procurements involving energy-consuming products and systems, including guides specifications, project specifications, and construction, renovation, and services contracts that include provision of energy-consuming products and systems, and into the factors for the evaluation of offers received for the procurement.”

EAct 2005 also reaffirmed the authority of FEMP to identify a product as being “among the highest 25 percent of equivalent products for energy-efficiency.” (42 U.S.C. 8259b(a)(4))

Actions: The statute prescribes the program duties of the Administrator of EPA and the Secretary of Energy; requires the solicitation of public comment before an ENERGY STAR product category, specification or criterion is established or revised; and establishes a lead time before a new or significant revision of a product category, specification, or criterion may become effective.

2007 | EO 13423 (Strengthening Federal Environmental, Energy and Transportation Management)

(January 24, 2007; 72 FR 3919)

FR Doc. 07-374

Current Status: In effect

Federal procurement of energy-efficient product requirements:

In Section 2 of EO 13423, Goals for Agencies, subsections (d) and (h) outline the requirements for the acquisition of sustainable environmental goods and services. The Instructions for Implementing EO 13423 define this requirement to include the procurement of ENERGY STAR qualified, FEMP designated and WaterSense labeled products. Additionally, 95 percent of electronic products purchased must meet Electronic Product Environmental Assessment Tool standards where applicable.

Actions: Agency implementation of sustainable practices for acquisition.

2007 | Energy Independence and Security Act of 2007

(December 19, 2007; 42 U.S.C. §17381)

(EISA; Public Law 110-140)

Current Status: In effect

Federal procurement of energy-efficient product requirements:

Section 553 of NECPA was further amended by section 525 of the Energy Independence and Security Act of 2007 (Pub. L. 140-110); (December 19, 2007). The act clarifies that the procurement requirements apply to the procurement of a product in a category covered by the ENERGY STAR program or the FEMP program for designated products. (42 U.S.C. 8259b(1)). Additionally, requires federal agencies to purchase energy-consuming products with a low standby power level of 1 watt or less.

Section 553 also requires that all inventories or listings of products operated and maintained by GSA and DLA clearly identify and prominently display ENERGY STAR qualified and FEMP designated products in any listing or inventory of products. It also requires GSA and DLA to supply only ENERGY STAR qualified and FEMP designated products in all covered product categories, except in cases in which the head of the agency ordering a product specifies in writing that an exception applies. (42 U.S.C. 8259b(c)). Section 553 of NECPA contains two exceptions to the requirement to procure only ENERGY STAR qualified and FEMP designated

products, and it excludes a specific category of energy-consuming products from coverage.

The subsection entitled “REGULATIONS,” section 553(f) of NECPA, directs the Secretary of Energy to issue guidelines to carry out the statute. (42 U.S.C. 8259b(f)). NECPA section 553 imposes procurement requirements on agencies and additional requirements on GSA and DLA.

Actions: Each federal agency was required to include specifications for product energy-efficiency that are consistent with the criteria used for rating ENERGY STAR qualified products and for rating FEMP designated products. This includes all procurements involving energy-consuming products and systems, and the factors for evaluation of offers received for such procurements, (42 U.S.C. 8259b(b)(3)). For guidance on Model Acquisition Language for Energy-Efficient Product Contracts please reference: http://www1.eere.energy.gov/femp/technologies/eep_modellang.html.

DOE: Federal Procurement of Energy-Efficient Products

(April 13, 2009, 74 FR 10830)

URL: <https://www.federalregister.gov/articles/2009/03/13/E9-5459/federal-procurement-of-energy-efficient-products>

Current Status: In effect, final rule

Federal procurement of energy-efficient product requirements: DOE published a final rule to promote federal procurement of energy-efficient products. The final rule establishes guidelines for federal agencies regarding the implementation of amendments to NECPA that required federal agencies to procure ENERGY STAR qualified and FEMP designated products in procurements involving energy-consuming products and systems. This final rule includes changes in response to comments received on the notice of proposed rulemaking published June 19, 2007. The final rule does not establish a reporting requirement, as initially proposed, for federal agencies under the procurement requirement of NECPA.

Consistent with the direction provided in section 553(f) this rule amends 10 CFR part 436, Federal Energy Management and Planning Programs, to establish guidelines for federal agencies on compliance with section 553.

Actions: DOE undertook a rulemaking to incorporate the requirements for federal agencies to purchase energy-efficient products

into 10 CFR 436. DOE responded to comments received on the notice of proposed rulemaking published June 19, 2007. DOE encouraged agencies other than GSA and DLA that operate procurement ordering systems to achieve the goals of section 553.

EO 13514 (Federal Leadership in Environmental, Energy and Economic Performance)

(October 8, 2009; 74 FR 52117)

Current Status: In effect

Federal procurement of energy-efficient product requirements: EO 13514 expands on the energy reduction and environmental performance requirements for federal agencies identified in EO 13423. Section 2(h) and (i) – Goals for Agencies set the requirements for agencies to ensure that 95% of their new product procurements, including electronic equipment, are energy (i.e., FEMP designated and ENERGY STAR) and water efficient.

The current version of the approved product resource can be accessed through: http://www1.eere.energy.gov/femp/technologies/procuring_eeproducts.html.

Conclusion

There are numerous legislative contributors to the current requirements for federal energy-efficient product procurement (EEPP). The basis for the evolving EOs and acts is found in USC 42, FAR parts 23 and 52, and 10 CFR Part 36. As technologies improve, the recommendations for product purchasing will evolve. All procurement officers should have a thorough understanding of the various facets of procurement standards and defer to the FEMP approved resources in order to stay current on EEPP.

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