

Act pursuant to 5 U.S.C. 552a(k)(1) and (k)(2) as claimed by ODNI or by the originator of the records, provided the reason for the exemption remains valid and necessary.

[FR Doc. E7-25273 Filed 12-27-07; 8:45 am]

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Procurement Thresholds for Implementation of the Trade Agreements Act of 1979; Correction

AGENCY: Office of the United States Trade Representative.

ACTION: Correction of certain procurement thresholds under the World Trade Organization Agreement on Government Procurement, the United States-Australia Free Trade Agreement, the United States-Bahrain Free Trade Agreement, the United States-Chile Free Trade Agreement, the Dominican Republic-Central American-United States Free Trade Agreement, the United States-Morocco Free Trade Agreement, and the United States-Singapore Free Trade Agreement.

FOR FURTHER INFORMATION CONTACT: Jean Heilman Grier, Senior Procurement Negotiator, Office of the United States Trade Representative, (202) 395-9476 or Jean_Grier@ustr.eop.gov.

SUMMARY: On December 14, 2007, the Office of the United States Trade Representative (USTR) published notice of the Procurement Thresholds for Implementation of the Trade Agreements Act of 1979 (72 FR 71166). That Notice included three incorrect procurement threshold values due to inadvertent calculation errors. This notice provides the corrected thresholds.

Now, therefore, I, Susan C. Schwab, United States Trade Representative, in conformity with the provisions of Executive Order 12260, and in order to carry out the trade agreement obligations of the United States under the World Trade Organization Agreement on Government Procurement (WTO/GPA), Chapter 15 of the United States-Australia Free Trade Agreement (U.S.-Australia FTA), Chapter 9 of the United States-Bahrain Free Trade Agreement (U.S.-Bahrain FTA), Chapter 9 of the United States-Chile Free Trade Agreement (U.S.-Chile FTA), Chapter 9 of the Dominican Republic-Central American-United States (DR-CAFTA), Chapter 9 of the United States-Morocco Free Trade Agreement (U.S.-Morocco FTA), and Chapter 13 of the United

States-Singapore Free Trade Agreement (U.S.-Singapore FTA), do hereby determine, effective on January 1, 2008, for the calendar years 2008-2009, the following thresholds shall apply and replace those set out in the Determination published on December 14, 2007 (72 FR 71166):

\$7,443,000—for the procurement of construction services by all entities listed in the WTO/GPA, U.S.-Australia FTA, U.S.-Chile FTA, DR-CAFTA, U.S.-Morocco FTA, and the U.S.-Singapore FTA.

\$528,000—for the procurement of goods and services by sub-central entities listed in the WTO/GPA, U.S.-Australia FTA, U.S.-Chile FTA, DR-CAFTA, U.S.-Morocco FTA, and the U.S.-Singapore FTA.

\$595,000—for the procurement of goods and services by entities listed in U.S. Annex 3 of the WTO/GPA; List B in Annex 15-A of the U.S.-Australia FTA; List B in Annex 9-A, Section 3 of the U.S.-Bahrain FTA; List B in Annex 9.1, Section C of the U.S.-Chile FTA; List B in Annex 9.1, Section C of the DR-CAFTA; List B in Annex 9.1, Section C of the U.S.-Morocco FTA; and Annex 13A, Section C of the U.S.-Singapore FTA.

Susan C. Schwab,

United States Trade Representative.

[FR Doc. E7-25330 Filed 12-27-07; 8:45 am]

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OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy; Acquisition of Green Products and Services

AGENCY: Office of Federal Procurement Policy (OFPP), OMB.

ACTION: Proposed policy letter on the acquisition of green products and services.

SUMMARY: OFPP is proposing to issue a policy letter on green procurement policies and strategies. The policy letter would address: (1) General responsibilities of agencies for the procurement of green products and services; (2) the relationship of green products and services to other socio-economic programs; (3) automatic substitution policies; (4) listing of green products in Federal catalogues and online ordering systems; (5) green requirements for paper and printing; (6) application of green requirements in service contracting; and (7) energy efficiency. The proposed policy letter would implement specific provisions of

Executive Order (E.O.) 13423, *Strengthening Federal Environmental, Energy, and Transportation Management*, Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962), the Energy Policy Act of 1992 (42 U.S.C. 6903), the Energy Policy Act of 2005 (42 U.S.C. 6361), and Section 9002 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8102). The proposed policy letter, when finalized, would supersede OFPP Policy Letter 92-4, *Procurement of Environmentally-Sound and Energy-Efficient Products and Services*, dated November 2, 1992.

Comment Date: Comments must be received in writing on or before February 26, 2008 to be considered in the formulation of the final policy letter.

ADDRESSES: Submit comments by any of the following methods:

- *E-mail:* OFPPGreen@omb.eop.gov.
- *Facsimile:* (202) 395-5105.
- *Mail:* Office of Federal Procurement Policy, Office of Management and Budget, Room 9013, 725 17th Street, NW., Washington, DC 20503.

Instructions: Please submit comments only and cite "Proposed OFPP Policy Letter" in all correspondence. All comments will be posted without change to http://www.whitehouse.gov/omb/procurement/green/green_comments.html, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Daumit, Policy Analyst, at (202) 395-1052, for clarification of content.

SUPPLEMENTARY INFORMATION: The proposed policy letter provides guidance on green purchasing policies and strategies. It requires agencies to identify opportunities and give preference to the acquisition of green products and services, including but not limited to: (1) Alternative fuels and alternative fuel vehicles and hybrids; (2) biobased products; (3) Energy Star® and Federal Energy Management Program (FEMP)-designated products; (4) environmentally-preferable products and services; (5) electronics registered on the Electronic Product Environmental Assessment Tool; (6) low or no toxic or hazardous chemicals or materials or products; (7) non-ozone depleting substances; (8) recycled-content and/or remanufactured products; (9) renewable energy; and (10) water-efficient products.

In addition, the proposed policy letter:

- Requires agencies to first consider mandatory and preferred sources to obtain green products and services that meet their performance needs, and

where these sources are unable to meet their needs, to purchase green products and services from other sources.

- Requires agencies to implement automatic substitution policies for the purchase of functionally equivalent green products and services in place of non-green products and services ordered through central supply agencies.
- Requires GSA, DLA, and other central supply agencies to supply designated green products and phase out any competing non-green products from their catalogs and on-line ordering systems. Agencies are encouraged in their comments to identify anticipated needs for non-green products listed in Federal catalogs and on-line ordering systems that may extend beyond January 1, 2010 where green products are currently available.
- Requires agencies to include requirements and preferences for the use of green products in all new service contracts and other existing service contracts as they are re-competed and encourages agencies to incorporate these requirements and preferences into existing contracts as they are modified or extended through options.
- Discusses agencies' responsibilities for accurate, complete, and timely reporting.

Reference information on green acquisition policies and green purchasing programs may be found on OFPP's homepage at http://www.whitehouse.gov/omb/procurement/index_green.html.

Paul A. Denett,
Administrator.

Policy Letter No. 07-XX

To The Heads of Executive Departments And Establishments
Subject: Acquisition of Green Products and Services.

1. *Purpose.* This policy letter provides Executive branch policies for the acquisition, use and disposition of green products and services, including but not limited to: recycled content products; water-efficient, energy-efficient, Energy Star® and those products with the lowest watt stand-by power; biobased products; environmentally preferable products; alternative fuels; hybrid and alternative fuel vehicles; non-ozone depleting substances; renewable energy; and all services that may include the supply or use of any of these products. Agency acquisition policies and programs shall enhance and, where appropriate, mandate the purchase and use of green products and services covered in this policy letter.

2. *Authority.* This policy letter is issued pursuant to section 6(a) of the

Office of Federal Procurement Policy Act, 41 U.S.C. 405(a), Section 6002 of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6962, the Energy Policy Act of 1992, 42 U.S.C. 6903(19), the Energy Policy Act of 2005, 42 U.S.C. 6361, Section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102, and Executive Order (E.O.) 13423, Strengthening Federal Environmental, Energy, and Transportation Management.

3. *Applicability.* This Letter applies to all executive agencies.

4. *Rescission.* This policy letter rescinds Office of Federal Procurement Policy (OFPP) Policy Letter 92-4, Procurement of Environmentally-Sound and Energy-Efficient Products and Services, dated November 2, 1992.

5. *Definitions.*

Alternative fuel is defined by Section 301 of the Energy Policy Act of 1992, as implemented by the Secretary of Energy through rulemaking, at 10 CFR Part 490.2.

Biobased product means a product determined by the Secretary of Agriculture to be a commercial or industrial product (other than food or feed) that is composed, in whole or in part, of biological products or renewable domestic agricultural materials (including plant, animal, and marine materials) or forestry materials.

Energy efficient or FEMP-designated product means a product designated by the Federal Energy Management Program, Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.

Energy Star® product means a product that is rated for energy efficiency under an Energy Star® program established by Section 324A of the Energy Policy and Conservation Act.

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.

Electronic Product Environmental Assessment Tool (EPEAT) is an environmental procurement tool designed to help institutional purchasers in the public and private sectors evaluate, compare and select electronic products based on their environmental attributes. The first EPEAT standard applies to computer desktops, laptops and monitors.

EPEAT-registered products are those products which meet the Institute of Electronic and Electrical Engineers (IEEE) 1680 Standard for the Environmental Assessment of Personal Computer Products, and products registered under similar standards developed after the date of this policy letter, and are listed on the EPEAT Product Registry located at www.epeat.net.

Executive agency means an Executive department, a military department, or any independent establishment within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101.

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 Parts 436.18(a), (b), and (c), 436.20, and 436.21.

Ozone-depleting substances means any substance designated as a Class I or Class II substance by the Environmental Protection Agency (EPA) in 40 CFR Part 82.

Postconsumer content means a material or product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item.

Recovered material means waste material and by-products which have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

Recycled content products means products containing recovered materials designated for federal preferred procurement by the EPA under Section 6002 of RCRA. The products are also known as EPA-designated items.

Renewable energy means energy produced by solar, wind, biomass, landfill gas, hydrokinetic, ocean (including tidal, wave, current and thermal), geothermal, municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project.

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.

Water efficient product or service means a product or service that uses less water than competing products or services that serve the same purpose, including those meeting EPA's WaterSense standards.

6. *Background.* E.O. 13423, *Strengthening Federal Environmental, Energy, and Transportation Management*, issued on January 26, 2007 (72 FR 3919), directs federal agencies to conduct their environmental, transportation, and energy-related activities in support of their respective missions in an environmentally, economically and fiscally sound, integrated, continuously improving, efficient, and sustainable manner. In agency acquisitions of goods and services, the Executive Order requires: (i) use of sustainable environmental practices, including acquisition of biobased, environmentally preferable, energy-efficient, water-efficient, and recycled-content products, and (ii) use of paper of at least 30 percent postconsumer fiber content.

Other goals of E.O. 13423 address improving energy efficiency, consuming renewable energy, reducing water consumption, increasing diversion of solid waste, ensuring sustainable/green construction of buildings, reducing petroleum use, and ensuring acquisition and use of EPEAT-registered electronic products. E.O. 13423 further requires that agency programs to reduce and better manage the use of toxic and hazardous chemicals include reducing the acquisition of such chemicals.

Acquiring green products and services is a key element of successfully implementing E.O. 13423, an effective environmental management system (EMS), and a sustainability program. This policy letter provides guidance to agencies for implementing the green acquisition requirements of E.O. 13423, including its implementation within an EMS framework. E.O. 13423 also provides guidance to agencies that do not have an EMS or have not yet incorporated goals toward sustainability but are still required to implement an affirmative procurement program for green products and services as part of their overall acquisition strategy.

7. *Policy.* It is the policy of the federal government to develop and implement green purchasing policies and affirmative procurement programs in order to conserve resources and be good stewards of the environment and reduce our negative impact on the environment. The purchase of green products applies to all acquisition and contracting mechanisms used by federal agencies, including service contracts,

purchases made with government purchase and fleet cards and purchases below the micropurchase threshold.

8. *Responsibilities.*

A. *General requirements.* In implementing this policy, Executive agencies shall:

(1) Identify opportunities for and give preference to the acquisition of green products and services including but not limited to:

(a) Alternative fuels and Alternative fuel vehicles (AFVs) and hybrids as required by Section 303 of the Energy Policy Act of 1992 and amended by the Energy Policy Act of 2005 and E.O. 13423;

(b) Biobased products designated by the Department of Agriculture (USDA) under section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA);

(c) Energy Star®, FEMP-designated, and those electronic products with the lowest available stand-by power as required by section 104 of the Energy Policy Act of 2005 and E.O. 13423;

(d) Environmentally-preferable products and services in accordance with E.O. 13423;

(e) EPEAT-registered electronics in accordance with E.O. 13423;

(f) Low or no toxic or hazardous chemicals or materials or products containing lesser or no toxic or hazardous constituents;

(g) Non-ozone depleting substances under the Clean Air Act as contained in EPA's Significant New Alternatives Program (SNAP);

(h) Recycled content and/or remanufactured products designated by EPA under section 6002 of RCRA;

(i) Renewable energy as required by section 203 of the Energy Policy Act of 2005, E.O. 13423; and

(j) Water efficient products, including those meeting EPA's "WaterSense" standards.

(2) Ensure representation of environmental and energy experts, managers, or technical personnel on integrated procurement teams for all major acquisitions and consider each of the following factors:

(a) Sustainable design practices;

(b) Life cycle cost analysis;

(c) Product or packaging take back (return to manufacturer for recycling or remanufacturing purposes); and

(d) Maximization of energy and resource recovery in solid waste management.

(3) Incorporate green purchasing requirements within agency, organizational, and facility environmental management systems. Guidance can be found in *Incorporating Environmentally Preferable Purchasing*

into Environmental Management Systems, available at <http://www.epa.gov/epp/pubs/grn-pur/green-pur-ems.htm>.

(4) Develop and implement a formal, comprehensive, written affirmative procurement program (APP), also referred to as a green purchasing plan, for all products and services covered by this policy letter.

(a) Minimally, an APP must:

- State a preference for the acquisition of the green products and services identified above;
- Delineate the roles and responsibilities of contracting officials, program managers, product specifiers, and purchase card holders and administrators;
- Promote the acquisition of green products and services internally within the agency and externally to all product vendors and service providers, including other federal, state, and local agencies;
- Provide for annual compliance monitoring, corrective action, and/or auditing as appropriate;
- Provide mechanisms for reporting on the effectiveness of the program to demonstrate compliance;
- Require flow down of green product preferences to contractors and subcontractors; and
- For recycled content products only, require estimates of the total amount of recovered materials used in items supplied or used under the contract, certification that the minimum recycled content requirement was met, where appropriate, and implement procedures for verifying the estimates and certifications.

(b) An effective APP should also address:

- Preference for green products and services in the agency's annual procurement forecasts for all products and services;
- Development of templates for incorporating green purchasing requirements into solicitations and contracts and/or using the model templates developed by other agencies;
- Use of Federal Business Opportunities (FedBizOpps) and other e-procurement tools to publicize and promote requirements for green products and services and/or sustainable acquisitions;
- The incorporation of green product requirements in the agency's automated contract writing system;
- Strategic sourcing opportunities for purchasing green products and services;
- Achievement of best value based on life cycle cost assessments of cradle-to-grave manufacture, use and disposition;
- Past performance evaluation of contractors' adherence to green

components/sustainable aspects of contracts;

- Green and/or sustainable standards and performance indicators in statements of work, source selection factors, and performance-based acquisitions;
- Reporting of green contract requirements implementation through the Federal Procurement Data System (FPDS); and
- For agencies that manage government specifications or commercial item descriptions, review and revise, as necessary, specifications and standards to permit the acquisition of green products and services.

(5) Work with private standard setting organizations and participate, pursuant to OMB Circular A-119 and the National Technology Transfer and Advancement Act (NTTAA), in the development of voluntary standards and specifications defining green products, practices and services.

(6) Develop and require training on the acquisition of green products and services as well as agency sustainable practices for requirements personnel, procurement personnel, purchase card and travel card holders and administrators, fleet managers, and facilities managers.

(7) Conduct pilot projects to test and measure results from the purchase and use of green products and services. Agencies may be requested to serve as a lead agency in coordinating a pilot and reporting government-wide results associated with the pilot.

(8) Ensure that the agency (a) meets at least 95 percent of its requirements for acquiring an electronic product with an EPEAT-registered electronic product, unless there is no EPEAT standard for such product, (b) enables the Energy Star® feature on agency computers and monitors, (c) establishes and implements policies to extend the useful life of agency electronic equipment, and (d) uses environmentally sound practices with respect to disposition of agency electronic equipment that has reached the end of its useful life.

B. Relationship of green purchasing requirements to other socio-economic programs. Executive agencies should first determine their specific performance requirements for products and services then identify sources that effectively meet the agency's performance needs. If an agency determines that a green product or service can meet its performance needs, it shall first consider mandatory and preferred sources to obtain green products or services. If these sources do not offer products or services that meet

the agency's performance needs, the agency shall obtain such products and services from other sources.

Nonprofit agencies employing people who are blind or severely disabled under the AbilityOne Program pursuant to the Javits-Wagner-O'Day Act and Federal Prison Industries' UNICOR programs are mandatory sources. See Subparts 8.6 and 8.7 of the Federal Acquisition Regulation (FAR). Small businesses, including Small Disadvantaged, Women-Owned, Native American, Alaska Native, HUB-zone, and Service-Disabled Veterans, are preferred sources.

C. Automatic substitution policies. Executive agencies in coordination with General Services Administration (GSA) and the Defense Logistics Agency (DLA) shall implement automatic substitution policies in accordance with the following guidelines:

(1) GSA and DLA shall coordinate with Chief Acquisition Officers and Senior Officials appointed under Section 3(d) of E.O. 13423 to identify opportunities and establish policies to automatically substitute functionally equivalent green products and services in place of non-green products and services ordered by customer agencies. These products and services may include, but are not limited to, general office products, other paper products such as tissues and towels, biobased cleaning products, and/or any other green products and services appropriate to agencies' needs.

GSA and DLA shall report to the OFPP Administrator annually on the products and services for which these automatic substitution policies have been implemented.

(2) GSA and DLA shall provide only Energy Star® and FEMP-designated energy efficient products for all categories of products covered by the Energy Star® and FEMP programs, unless the head of an agency provides written justification as covered in paragraph 8.G.(2) of this policy letter.

D. Compliance and listing of green products in federal catalogs and on-line ordering systems. GSA, DLA and any other central supply source shall:

(1) Clearly identify and prominently display designated green products and services covered in this policy letter in federal catalogs and on-line ordering systems; and

(2) Phase out competing non-green products from their supply catalogs, contracts, specifications, inventories, and schedules, in accordance with the following deadlines:

(a) For a green product designated prior to the publication of this policy letter—by January 1, 2010 or an

alternative deadline established in consultation with the Federal Environmental Executive and the Administrator of OFPP.

(b) For a green product designated after the publication of this policy letter—the latter of January 1, 2010 or within one year after the date specified in subparagraph (c) or an alternative deadline established in consultation with the Federal Environmental Executive and the Administrator of OFPP.

(c) The date referred to in subparagraph (b) is the date a notice is issued in the **Federal Register** by the manager of a green product program at USDA, EPA, or DOE designating new products for its lists that :

(i) Can meet the functional performance requirements of competing non-green products in the same or similar product category; and

(ii) Adequately address factors that would otherwise justify exemptions from green purchasing products as described in paragraph 8.G of this policy letter.

E. Requirements for paper and printing. In implementing the policy for paper and paper products acquired through GSA, the Government Printing Office, or private entities, Executive agencies shall:

(1) Require the use of printing and writing paper containing a minimum of 30 percent postconsumer fiber;

(2) To the maximum extent practicable, ensure that all copier machines, faxes, and printers are set up to print double-sided documents and that any reports, studies, analyses, assessments or any other contract deliverables are provided as double-sided copies;

(3) To the maximum extent practicable, require that all printing services require the use of recycled content paper and double-sided copying;

(4) To the maximum extent practicable, refrain from specifying printing and writing papers that do not contain a minimum of 30 percent postconsumer fiber for products with a limited useful life such as annual reports, catalogues, training materials, and telephone directories as appropriate; and

(5) To the maximum extent practicable, provide and transfer documents electronically to eliminate paper requirements.

F. Service contracting. Executive agencies must include requirements and preferences for the use of green products in all new service contracts and recompeted service contracts where green products may be substituted for

equivalent non-green products in the performance of the contract. Agencies are also encouraged to incorporate these requirements and preferences into existing contracts as they are modified or extended through options.

Requirements and opportunities to incorporate sustainable practices and green products in service contracts are provided below. Agencies should explore further opportunities for including these practices and products in all relevant service contracts.

(1) Buildings and leased space: When acquiring leased space or entering into construction contracts for buildings and other major assets, agencies shall:

(a) implement the five Guiding Principles for High Performance and Sustainable Buildings identified in the *Federal Leadership in High Performance and Sustainable Buildings*

Memorandum of Understanding and relate technical guidance found on the Whole Building Design Guide (www.wbdg.org) as long as it is life cycle cost effective to do so; and

(b) ensure that new buildings are 30 percent more energy efficient than the 2004 International Energy Conservation Code for residential buildings or the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1–2004 for non-residential buildings, if life-cycle cost effective.

(2) Energy efficiency: In order to meet government-wide goals for energy efficiency, sustainable building, green product and service acquisition, and renewable energy, agencies are authorized and encouraged to use Energy Savings Performance Contracts (ESPC) and Utility Energy Savings Contracting (UESC) programs. ESPC and UESC programs are innovative tools for investing in building improvements to reduce energy and water use and increase the portion of remaining energy needs supplied from renewable energy sources. Agencies may use any combination of appropriated funds and private financing to carry out an individual project by covering its up front costs, as long as the entire project's future cost savings exceed the amounts required over time to repay the private financing.

(3) Fleet and rental car services: GSA and other federal fleet service providers shall, to the maximum extent practicable, include requirements for increasing alternative fuel use, retread tires, re-refined motor oil, biolubricants, and other vehicle related products designated as recycled content, energy efficient, biobased or environmentally preferable and reducing petroleum use to the maximum extent practicable.

Agencies should also ensure that Government travel arrangements for federal employee travel contain preferences for alternative fuel vehicles filled with alternative fuel, hybrids, and other designated green products as feasible and applicable.

(4) Janitorial services: Agencies shall include requirements for recycled content products (e.g., towels, sanitary tissue products, and plastic trash can liners) and biobased and/or environmentally preferable cleaning products in all janitorial contracts.

(5) Laundry services: Agencies and their contractors shall request energy and water efficient equipment, and environmentally preferable or biobased detergents in laundry service contracts.

(6) Meeting and conference services: Agencies shall, wherever possible, contract for meeting and conference services with contractors offering such green attributes as proximity to mass transportation, shuttle services using alternative fuel vehicles, recycling services, the use of recycled content and/or biobased products, energy and water efficient facilities, linen/towel reuse programs, reusable china and linens for food service, or sourcing food from local providers.

G. *Exemptions from requirements.* Exemptions from the purchase requirements covered in this policy letter require written justifications in accordance with the following:

(1) A decision not to procure EPA-designated recycled content products or USDA-designated biobased items directly or through a service contract requires written justification by the agency that a determination was made that such items:

(a) Are not reasonably available within the time required;

(b) Fail to meet performance standards established in applicable specifications or fail to meet the reasonable performance standards of the procuring agency;

(c) Are only available at an unreasonable price (based on life cycle cost); or

(d) Are not available from a sufficient number of sources to maintain a satisfactory level of competition.

(2) A decision not to procure Energy Star® or FEMP designated energy efficient products directly or through a service contract requires written justification by the head of the agency that a determination was made that such products:

(a) Are not cost effective over the life of the product taking energy cost savings into account; or

(b) Are not reasonably available to meet the functional requirement of the agency.

9. *Federal Acquisition Regulatory Councils.* The Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council shall conduct periodic reviews of the relevant parts of the FAR to assure (1) that no unintended limitations to the acquisition of green products and services are contained therein, and (2) that the procurement policies established by this policy letter are fully reflected in the FAR.

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.

11. *Information.* Questions or inquiries about this policy letter should be directed to the Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503, telephone: 202–395–3501.

12. *Judicial review.* This Policy Letter is not intended to provide a constitutional or statutory interpretation of any kind and it is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any persons. It is intended only to provide policy guidance to agencies in the exercise of their discretion concerning federal contracting. Thus, this Policy Letter is not intended, and should not be construed, to create any substantive or

procedural basis on which to challenge any agency action or inaction on the ground that such action or inaction was not in accordance with this Policy Letter.

13. *Effective date.* This policy letter is effective December 28, 2007.

Paul A. Denett,
Administrator.

[FR Doc. E7-25211 Filed 12-27-07; 8:45 am]

BILLING CODE 3110-01-P

POSTAL REGULATORY COMMISSION

[Docket No. MC2008-1; Order No. 50]

Notice

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is establishing a docket to develop a record which will allow it to meet statutory requirements pertaining to a review of nonpostal services. It solicits comments from the Postal Service and others to assist in this task.

DATES: Initial briefs due June 18, 2008; reply briefs due July 2, 2008. See Supplementary Information section for additional dates.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202-789-6820 and stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION: The Postal Accountability and Enhancement Act (PAEA), Public Law No. 109-435, 120 Stat. 3198 (December 20, 2006), amends the Postal Reorganization Act, 39 U.S.C. 101, *et seq.*, by, among other things, limiting the Postal Service's authority to provide nonpostal services to those it offered as of January 1, 2006. 39 U.S.C. 404(e)(2). The term "nonpostal service" is defined in section 404(e)(1) as "any service that is not a postal service defined under section 102(5)[.]" which defines the term "postal service" to mean "the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto[.]" *Id.* at § 102(5).

Section 404(e)(3) directs the Commission to review each nonpostal service offered by the Postal Service on the date of the PAEA's enactment, December 20, 2006, within two years of that date. The purpose of the review is to determine which nonpostal services should continue, taking into account the

public need for the service and the private sector's ability to meet that need. Any nonpostal service that the Commission concludes should not continue shall terminate. Section 404(e)(4). Finally, for any nonpostal service that it concludes should continue, the Commission "shall designate whether the service shall be regulated under this title as a market dominant product, a competitive product, or an experimental product." Section 404(e)(5).

The Commission is initiating this docket to fulfill its responsibilities under section 404(e).¹ To develop a record on which to base its findings, the Commission adopts the following procedural schedule:

1. By no later than March 19, 2008, the Postal Service shall, in the form of a sworn statement, identify and provide a complete description of each nonpostal service offered by the Postal Service on the date of enactment of the PAEA.² The description shall include the current status of each nonpostal service and the Postal Service's proposed classification of each such service, *i.e.*, as a market dominant, competitive, or experimental product. The foregoing shall be accompanied by a sworn statement from a knowledgeable person (or persons) addressing the public need for each service and such other matters, if any, the Postal Service deems relevant (collectively, Postal Service statement).

2. By no later than April 30, 2008, any interested person (party) may respond to the Postal Service statement by submitting a sworn statement from a knowledgeable person (or persons) addressing, at a minimum, the ability of the private sector to meet the public need for any nonpostal service that the party asserts should not be offered by the Postal Service (party's statement). A party may also address such other matters, if any, the party deems relevant.

3. By no later than May 21, 2008, the Postal Service and any interested person may submit a reply to any party's statement. Such reply shall be in the

¹ As a result of this proceeding, the Commission will classify nonpostal services it determines should continue as either market dominant, competitive, or experimental products and will include those services in the Mail Classification Schedule. *See* 39 CFR 3020.13. Section 3642 of title 39 provides for adding to, removing from, or transferring products between the lists. Accordingly, because this proceeding has potential Mail Classification Schedule implications, the Commission is adopting the MC docket designation.

² If the services identified differ from the nonpostal services offered as of January 1, 2006, the Postal Service shall identify those services no longer offered, provide a brief description of such services, and indicate their current status.

form of a sworn statement by a knowledgeable person (or persons).³

4. Initial briefs are due no later than June 18, 2008. Reply briefs may be filed and are due no later than July 2, 2008.

Section 505 of title 39 requires the designation of an officer of the Commission in all public proceedings to represent the interests of the general public. The Commission hereby designates Robert Sidman to serve as the public representative, representing the interests of the general public. Pursuant to this designation, he will direct the activities of Commission personnel assigned to assist him and, will, upon request, provide their names for the record. Neither Mr. Sidman nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

It Is Ordered

1. Docket No. MC2008-1 is established for the purpose of developing a record concerning nonpostal services offered by the Postal Service.

2. The procedural schedule set forth in the body of this order is adopted.

3. Robert Sidman is designated as the public representative, representing the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

(Authority: 39 U.S.C. 404.)

By the Commission.

Steven W. Williams,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 57031/December 21, 2007]

Securities Exchange Act of 1934; Order Granting Registration of Egan-Jones Rating Company As A Nationally Recognized Statistical Rating Organization

Egan-Jones Rating Company, a credit rating agency, furnished to the Securities and Exchange Commission ("Commission") an application for registration as a nationally recognized statistical rating organization ("NRSRO") under Section 15E of the Securities Exchange Act of 1934 ("Exchange Act") for the classes of

³ Any party, including the Postal Service, may submit legal memoranda on matters at issue at any time prior to May 21, 2008.