

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### 10 CFR Part 436

#### RIN 1904-AB68

### Federal Procurement of Energy Efficient Products

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Energy today publishes proposed regulations to promote Federal procurement of energy efficient products. Today's proposal would establish a requirement for Federal agencies to report implementation of amendments to the National Energy Conservation Policy Act (NECPA) that require Federal agencies to procure ENERGY STAR qualified and Federal Energy Management Program (FEMP) designated products in procurements involving energy consuming products and systems. Today's notice of proposed rulemaking also provides draft guidance for Federal agencies on implementing the procurement requirements of NECPA.

**DATES:** Public comment on this proposed rule must be received by August 20, 2007.

**ADDRESSES:** You may submit comments, identified by RIN 1904-AB68, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail to [cyrus.nasseri@ee.doe.gov](mailto:cyrus.nasseri@ee.doe.gov). Include RIN 1904-AB68 in the subject line of the e-mail. Please include the full body of your comments in the text of the message or as an attachment.

- *Mail:* Address written comments to Mr. Cyrus Nasser, U.S. Department of Energy, Office of Federal Energy Management Program, Mailstop EE-2L,

1000 Independence Avenue, SW., Washington, DC 20585-0121.

- *Hand Delivery/Courier:* Mr. Cyrus Nasser, U.S. Department of Energy, Federal Energy Management Program, Room 1M-048, 1000 Independence Avenue, SW., Washington, DC 20585-0121.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking.

Due to potential security-related delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, DOE encourages respondents to submit comments electronically to ensure timely receipt.

This notice of proposed rulemaking (NOPR) and any comments that DOE receives are being made available on the FEMP Web site at: <http://www.eere.energy.gov/femp/about/legislation.html>. You also may obtain copies of comments by contacting Mr. Cyrus Nasser.

**FOR FURTHER INFORMATION CONTACT:** Mr. Cyrus Nasser, U.S. Department of Energy, Office of Federal Energy Management Program, Mailstop EE-2L, 1000 Independence Avenue, SW., Washington, DC 20585-0121; (202) 586-1573 or [cyrus.nasseri@ee.doe.gov](mailto:cyrus.nasseri@ee.doe.gov), or Mr. Chris Calamita, U.S. Department of Energy, Office of the General Counsel, Mailstop GC-72, 1000 Independence Avenue, SW., Washington, DC 20585-0121; 202-586-1777 or [christopher.calamita@hq.doe.gov](mailto:christopher.calamita@hq.doe.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Introduction and Background
- II. Proposed Regulations
- III. Draft Guidance
- IV. Public Comment Procedures
- V. Regulatory Review
- VI. Approval by the Office of the Secretary

#### I. Introduction and Background

##### A. *The Energy Policy Act of 2005*

The Energy Policy Act of 2005 (EPACT) (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 qualified or FEMP 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 the General Services Administration (GSA) and the Defense Logistics Agency (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 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. A procurement may be exempted if the head of an agency finds in writing that either: (1) An ENERGY STAR qualified product or FEMP designated product is not cost-effective over the life of the product taking energy cost savings into account; or (2) no ENERGY STAR qualified product or FEMP designated product is reasonably available that meets the functional requirements of the agency. (42 U.S.C. 8259b(b)(2)). In addition, section 553 excludes from the definition of products subject to these requirements any energy consuming product or system designed or procured for combat or combat-related missions. (42 U.S.C. 8259b(a)(5)).

In the subsection entitled "REGULATIONS," section 553 of NECPA directs the Secretary of Energy to issue guidelines to carry out the statute. (42 U.S.C. 8259b(e)). The procurement requirements that NECPA section 553 imposes on agencies and the additional requirements it imposes on GSA and DLA are self-executing, and no implementing regulations are necessary to implement those requirements. However, this document proposes amendments to 10 CFR part 436, Federal Energy Management and Planning Programs, to establish a requirement for Federal agencies to report their compliance with aspects of

section 553. This document also proposes guidance for Federal agencies on the implementation of section 553.

### *B. ENERGY STAR Qualified and FEMP Designated Products*

In 1992, the United States Environmental Protection Agency (EPA) introduced ENERGY STAR as a voluntary labeling program designed to identify and promote energy efficient products to reduce greenhouse gas emissions. The ENERGY STAR label is now on major appliances, office equipment, lighting, home electronics, and other products. Through partnerships with private and public sector organizations, the ENERGY STAR Program provides technical information and tools for organizations and consumers to choose energy efficient solutions and best management practices.

In 1996, EPA partnered with DOE's FEMP program to develop labels and Federal purchasing specifications for particular product categories. In 1999, the partnership between EPA and DOE was furthered by Executive Order 13123, "Greening the Government Through Efficient Energy Management," which directed EPA and DOE to expedite the process of designating products as ENERGY STAR qualified and to merge their efficiency rating procedures (E.O. 13123, § 403(b)(1), 64 FR 30851 (June 8, 1999)). That Executive Order was recently replaced with Executive Order 13423, "Strengthening Federal Environmental, Energy, and Transportation Management," which requires among other things that in acquisitions of goods and services Federal agencies use sustainable environmental practices, including acquisition of biobased, environmentally preferable, energy-efficient, water-efficient, and recycled-content products.<sup>1</sup> 72 FR 3919 (January 26, 2007).

In EPACT, Congress established statutory parameters for the ENERGY STAR program. (42 U.S.C. 6294a). 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.

Currently, ENERGY STAR qualified and FEMP designated products cover 62 types of products in the following

categories: (1) Lighting; (2) commercial and industrial equipment; (3) food service equipment; (4) office equipment; (5) home electronics; (6) appliances; (7) residential equipment; (8) plumbing; and (9) construction products. ENERGY STAR qualified and FEMP designated products have been determined to be life-cycle cost-effective in normal usage. However, purchasers are encouraged to evaluate products according to their specific applications and circumstances. Life-cycle cost calculators for many of the ENERGY STAR qualified and FEMP designated products can be accessed at: [http://www.eere.energy.gov/femp/procurement/eep\\_eccalculators.cfm](http://www.eere.energy.gov/femp/procurement/eep_eccalculators.cfm).

## **II. Proposed Regulations**

As discussed above, NECPA section 553(e), entitled "REGULATIONS," directs DOE to issue guidelines to carry out the section. (42 U.S.C. 8259b(e)). Today's document provides draft guidance to assist Federal agencies in complying with the procurement requirements established in section 553(e). Additionally, DOE is proposing a reporting requirement to track agency compliance with the procurement requirements.

NECPA section 553 applies to the procurement of energy consuming products. Section 553 defines "product" as excluding energy consuming products or systems designed or procured for combat or combat-related missions. (42 U.S.C. 8259b(a)(5)). For the purpose of the reporting requirement, today's proposal would further define "product" as an energy consuming product or system that is in a category covered by the ENERGY STAR or FEMP program, i.e., a "covered product." Covered products are those energy consuming products that the ENERGY STAR or FEMP programs determined to hold the greatest promise for energy savings. The range of life-cycle costs associated with products in the categories covered by the ENERGY STAR and FEMP programs is usually significant. Both programs will continue to review market trends and product availability, and may determine that additional products should be added to the list of covered products.

Section 553 establishes general procurement requirements for all Federal agencies and for Federal catalog and ordering systems. For the purpose of the proposed reporting requirement, DOE defines "agency" consistent with the definition contained in Title 5 of the United States Code. 5 U.S.C. 551(1) The 5 U.S.C. 551(1) definition and the proposed definition essentially limit the term "agency" to mean any Executive Branch agency. Section 553(a)(1)

specifies a definition of agency that includes an agency under any branch of the Government (including a congressional agency), and is inappropriate for the proposed regulation given the authority of DOE. (42 U.S.C. 8259b(a)(1)) Moreover, the definition of "agency" in 5 U.S.C. 551(1) is incorporated by reference into subchapter III, Federal Energy Initiative, of Chapter 91 of Title 42 of the United States Code, which includes section 553. The other branches of the Government may, in their discretion, use DOE's proposed regulation and draft guidance in implementing section 553.

As stated above, section 553 of NECPA contains two exceptions to the requirement to procure only ENERGY STAR qualified and FEMP designated products. In order to track exceptions, DOE is proposing reporting requirements to track the exception findings made by agency heads. Under the proposed section 436.42, "Reporting Requirement," agency officials would be required to document the number, monetary value, and the product description of excepted procurements, as well as the reasons the exceptions were granted. This information would be required to be included in an agency's annual report to the DOE under the applicable Executive Order. This information would help DOE and EPA determine if there is a need for revisions to ENERGY STAR qualified or FEMP designated products. It would also help determine the level of compliance with section 553.

## **III. Draft Guidance**

Section 553(b) requires that when agencies procure energy consuming products, either directly or through part of a larger contract (e.g., construction, renovation, and service or maintenance contracts) that they procure either an ENERGY STAR qualified product or a FEMP designated product. (42 U.S.C. 8259b(b)(1)). Section 553(c) requires GSA and DLA to clearly identify and prominently display ENERGY STAR qualified and FEMP designated products in any inventory or listing of products by these agencies and that they supply only ENERGY STAR qualified and FEMP designated products when appropriate. (42 U.S.C. 8259b(c)). DOE encourages agencies other than GSA and DLA that operate procurement ordering systems to achieve the goals of section 553. The discussion below provides draft guidance for Federal agencies in complying with section 553.

Paragraph (d) in section 553 also establishes requirements for the procurement of specific products. (42 U.S.C. 8259b(d)). DOE has addressed

<sup>1</sup> Executive Order 13423 revoked Executive Order 13123.

that paragraph in a previous rulemaking published in the **Federal Register** on August 18, 2006. 71 FR 47791.

#### A. Procurements

Requirements for Federal procurement are governed, in part, by the Federal Acquisition Regulations (FAR). 48 CFR part 1 *et seq.* Currently, FAR includes energy efficient procurement requirements at FAR § 23.203, which were based on the provisions of Executive Order 13123 and Executive Order 13221, "Energy Efficient Standby Power Devices," 66 FR 40571 (August 2, 2001). DOE anticipates that the FAR Council will update the FAR to reflect the requirements in section 553. To date, DOE has worked closely with members of the FAR Council to ensure a consistent interpretation of the legislative language. If the FAR revisions are finalized prior to issuance of a final rule for 10 CFR part 436, DOE will ensure that this guidance is consistent with the FAR.

Federal agencies are generally required to procure an ENERGY STAR qualified or FEMP designated product whenever procuring a covered product. Additionally, products furnished by contractors while performing at a federally controlled facility should be qualified products regardless of whether the government receives title at the end of contract performance. A list of product categories, which contain ENERGY STAR qualified and FEMP designated products, is located at [http://www1.eere.energy.gov/femp/pdfs/eep\\_productfactsheet.pdf](http://www1.eere.energy.gov/femp/pdfs/eep_productfactsheet.pdf).

To identify actual products that are ENERGY STAR rated, potential purchasers can go to <http://www.energystar.gov/products>.

Currently, there is no companion list of FEMP designated products, but the FEMP specifications for energy efficiency products are located at [http://www.eere.energy.gov/femp/procurement/eep\\_requirements.cfm](http://www.eere.energy.gov/femp/procurement/eep_requirements.cfm).

#### B. Procurement Planning

In addition to establishing requirements for the actual procurement of certain products, section 553(b)(3) directs heads of agencies to incorporate into the specifications for all procurements involving covered products criteria for energy efficiency that are consistent with the criteria used to rate ENERGY STAR products and FEMP designated products. (42 U.S.C. 8259b(b)(3)). This requirement applies to general specifications, project specifications, and construction, renovation and service contracts that involve the procurement of covered

products. Agencies should consider this requirement to apply to:

- Design, design/build, renovation, retrofit and services contracts; facility maintenance and operations contracts; as well as energy savings performance contracts and utility energy service contracts.

- If applicable, lease agreements for buildings or equipment, including build-to-lease contracts, such as those used to implement the Military Housing Privatization Initiative.

Further, agencies should modify existing multi-year contracts and contracts with multiple option years, if possible, to require the procurement of ENERGY STAR and FEMP designated products when an option year is awarded, and at other times if the agency determines it is appropriate.

As directed by section 553(b)(3), Federal agencies should include criteria for energy efficiency that are consistent with the criteria used for rating qualified products in the factors for the evaluation of:

- Offers received for procurements involving covered products, and
- Offers received for construction, renovation, and services contracts that include provisions for covered products.

Agencies should notify their vendors of the Federal requirements for energy efficient purchasing.

Guidance is available for developing model contract language for contracts which involve covered products. Model contract language for all ENERGY STAR qualified and FEMP designated products can be found at [http://www.eere.energy.gov/femp/procurement/eep\\_modellang.cfm](http://www.eere.energy.gov/femp/procurement/eep_modellang.cfm).

Moreover, there are guide specification requirements which have already been incorporated in existing specifications such as the Unified Facilities Guide Specifications, which are available at [http://www.wbdg.org/cc/b/browse\\_org.php?o=70](http://www.wbdg.org/cc/b/browse_org.php?o=70), and EPA's Federal Guide for Green Construction Specifications, which is available at <http://www.wbdg.org/design/greenspec.php>.

Further, FEMP offers a series of training opportunities for procurement staff that are listed at [http://www.eere.energy.gov/femp/services/training\\_catalog.html](http://www.eere.energy.gov/femp/services/training_catalog.html). New classes are periodically added to the Web site. Procurement officials are encouraged to take advantage of these training opportunities, which can provide a useful context to understand the benefits of energy efficient technologies and the innovative financing strategies available to fund them.

Although energy consuming products or systems that are designed or procured

for combat or combat-related missions are not subject to the requirements of this subpart (see § 436.40 of this subpart), DOE encourages the Department of Defense to incorporate energy efficiency criteria into procurements of combat-related equipment, to the extent practicable.

#### C. Exceptions

As stated above, section 553 provides for exceptions to the procurement requirements. Under the statute, an agency may only procure an energy consuming product that is not an ENERGY STAR qualified or FEMP designated product if the head of the agency finds in writing that an exception applies. (42 U.S.C. 8259b(b)(2)). Under section 553(b)(2) a written exception can only be made if one of two criteria are met. (42 U.S.C. 8259b(b)(2)). The first criterion requires an agency head to find that a product is not life-cycle cost-effective in the application for which it will be used. (42 U.S.C. 8259b(b)(2)(A)). Although ENERGY STAR qualified and FEMP designated products are life-cycle cost-effective under normal use conditions, they may not be if used in a specialized way or for very limited hours. When making a determination that a product is not life-cycle cost-effective, an agency should rely on the life-cycle cost analysis method in part 436, subpart A, or another method determined by the agency to be equivalent. The second criterion requires an agency head to find that there is no ENERGY STAR qualified or FEMP designated product reasonably available that meets the functional requirements of the agency. (42 U.S.C. 8259b(b)(2)(B))

### IV. Public Comment Procedures

#### A. Written Comments

Interested persons are invited to participate in this proceeding by submitting data, views, or arguments. Written comments should be submitted to the address and in the form indicated in the **ADDRESSES** section of this notice of proposed rulemaking. To help DOE review the comments, interested persons are asked to refer to specific proposed rule provisions, if possible.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the DOE Freedom of

Information regulations at 10 CFR 1004.11.

## V. Regulatory Review

### A. Executive Order 12866

This proposed regulatory action has been determined to be a "significant regulatory action" under Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

### B. National Environmental Policy Act

DOE has initially determined that this proposed rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A.6 of Appendix A to subpart D, 10 CFR part 1021. That Categorical Exclusion applies to rulemakings that are strictly procedural, such as rulemaking establishing a reporting requirement applicable to contracting practices for the purchase of goods and services. The proposed rule would establish a reporting requirement for Federal agencies that would assist DOE in tracking compliance with the requirements of section 553, to procure energy efficient products and develop procurement practices which facilitate the purchase of energy efficient products. The proposed rule would not establish any procurement requirements. Accordingly, DOE has not prepared an environmental assessment or an environmental impact statement.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. (5 U.S.C. 605(b)). As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>.

DOE has reviewed today's proposed rule under the provisions of the

Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. Today's proposed regulations for reporting of agency procurement of energy efficient products would apply only to Federal agencies. Today's proposal would not impact small entities. In addition, the proposal only facilitates Federal agency compliance with a statutory mandate to procure ENERGY STAR qualified and FEMP designated products. On the basis of the foregoing, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

### D. Paperwork Reduction Act

Proposed 10 CFR 436.42 would require Federal agencies to annually report on the progress of their efforts to implement the procurement requirements of NECPA section 553, including specific information about any exceptions that were determined during the reporting year. The proposed rule requires agencies to report on the status of their efforts to meet the requirements of section 553. This status is added to an existing report. However, because this information is to be collected from Federal agencies as part of the annual energy report to the President pursuant to the applicable Executive Order and is to be collected only to improve the internal management of the executive branch and is not used for general statistical purposes, the Paperwork Reduction Act requirements would not apply. Accordingly, OMB clearance is not required.

### E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments, or the private sector. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State,

local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of \$100 million or more. Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments.

This proposed rule would not impose a Federal mandate on State, local, or tribal governments or the private sector. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

### F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. The proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

### G. Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

### H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of

new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

#### *I. Treasury and General Government Appropriations Act, 2001*

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

#### *J. Executive Order 13211*

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that

promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of the OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

#### **VI. Approval by the Office of the Secretary**

The issuance of this proposed rule has been approved by the Office of the Secretary.

Issued in Washington, DC, on May 11, 2007.

**Alexander A. Karsner,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

#### **List of Subjects in 10 CFR Part 436**

Energy conservation, Federal buildings and facilities, Reporting and recordkeeping requirements, Solar energy.

For the reasons set forth in the preamble, DOE proposes to amend Chapter II of Title 10 of the Code of Federal Regulations as set forth below.

#### **PART 436—FEDERAL ENERGY MANAGEMENT AND PLANNING PROGRAMS**

1. The authority citation for part 436 is revised to read as follows:

**Authority:** 42 U.S.C. 7101 *et seq.*; 42 U.S.C. 8258; 42 U.S.C. 8259b.

2. Subpart C is added to part 436 to read as follows:

#### **Subpart C—Agency Procurement of Energy Efficient Products**

Sec.

436.40 Purpose and scope.

436.41 Definitions.

436.42 Reporting requirement.

#### **§ 436.40 Purpose and scope.**

This subpart promotes the procurement of energy efficient products by Federal agencies and promotes procurement practices which facilitate the procurement of energy

efficient products, consistent with the requirements in section 553 of the National Energy Conservation Policy Act. (42 U.S.C. 8259b.)

#### **§ 436.41 Definitions.**

*Agency* means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

- (1) The Congress;
- (2) The courts of the United States;
- (3) The governments of the territories or possessions of the United States;
- (4) The government of the District of Columbia.

*Covered product* means a product that is of a category for which an ENERGY STAR qualification or FEMP designation is established.

*ENERGY STAR qualified 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 (42 U.S.C. 6294a).

*FEMP designated product* means a product that is designated under the Federal Energy Management Program as being among the highest 25 percent of equivalent products for energy efficiency.

#### **§ 436.42 Reporting requirement.**

(a) Each agency must report on its progress toward implementing the procurement requirements of section 553 of the National Energy Conservation Policy Act (42 U.S.C. 8259b) in its annual report on energy management to the President under the appropriate Executive Order. The report must include:

- (1) The number of covered product for which exceptions were found by the head of the agency under section 42 U.S.C. 8259b(b)(2);
- (2) The monetary value of the excepted procurements;
- (3) A description of the products for which exceptions were granted; and
- (4) The reasons the exceptions were granted.

(b) Each agency must also report compliance with this section as may be required by the Office of Management and Budget, including as part of the Environmental Stewardship Score Card.

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