

RULEMAKING TITLE: Federal Procurement of Energy Efficient Products**RIN NUMBER: 1904-AB68****CLOSING DATE: August 20, 2007**

COMMENT NUMBER	DATE RECEIVED/ DATE OF LETTER	NAME & TITLE OF COMMENTATOR	AFFILIATION & ADDRESS OF COMMENTATOR
1	? 7/31/07	Edwin Pinero Federal Environmental Executive	Office of the Federal Environmental Executive 1200 Pennsylvania Avenue, NW Mail Code 1600J Washington, DC 20460
2	8/8/07 (e-mail)	Bob Null President	Arkansas Lamp Manufacturing bnull@arkansaslamp.com
3	8/10/07 (e-mail)	Dawn Gunning Environmental Program Manager	Department of Justice Dawn.M.Gunning@usdoj.gov
4	8/14/07 8/14/07	Kyle Pitsor Vice President, Government Relations	National Electrical Manufacturers Association 1300 North 17th Street, Suite 1752 Rosslyn, VA 22209
5	8/19/07 8/20/07	Rhett Dawson President & CEO	Information Technology Industry Council 1250 Eye Street, NW Suite 200 Washington, DC 20005
6	8/20/07 (e-mail)	Drew Ballensky General Manager, Iowa Plant	Duro-Last Roofing, Inc.. dballens@duro-last.com
7	8/20/07 (e-mail)	Regina Larrabee Energy Program Manager	Office of Real Estate Policy and Major Programs US Department of Commerce 14th & Constituion Ave., NW Room 1036 Washington, DC 20230 RLarrabee@doc.gov
8	8/20/07 8/20/07	Mike Ennis Technical Director	Single Ply Roofing Industry 1100 Rosehill Road Reynoldsburg, OH 43068
9	8/20/07 8/20/07	Edward Comer Vice President and General Counsel	Edison Electric Institute 701 Pennsylvania Avenue, NW Washington, DC 20004
10	8/20/07 8/20/07	Susan Young	Chemical Fabrics & Film Association, Inc. 1300 Sumner Avenue Cleveland, OH 44115-0105
11	8/20/07 8/20/07	Derek Dyson Representing Sika Sarnafil, Inc.	Law Offices: Duncan Weinberg, Genzer & Pembroke 1615 M Street, NW Suite 800 Washington, DC 20036
12	8/20/07 8/22/07	Joe Loper, Jeff Harris, Steve Capanna	Alliance to Save Energy 1850 M Street, NW Suite 600 Washington, DC 20036
13	8/28/07 (e-mail)	Sue Nogas	VA Environmental Affairs Program Office of Asset Enterprise Management US Department of Veterans Affairs Sue.Nogas@va.gov



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PROMOTING SUSTAINABLE ENVIRONMENTAL STEWARDSHIP THROUGHOUT THE FEDERAL GOVERNMENT

July 31, 2007

Mr. Cyrus Nasser
U.S. Department of Energy
FEMP
Mailstop EE-2L
1000 Independence Avenue, SW
Washington, DC 20585-0121

Re: RIN 1904-AB68

Dear Mr. Nasser:

The Office of the Federal Environmental Executive (OFEE) appreciates the opportunity to comment on the proposed rule on Federal procurement of energy efficient products under section 104 of the Energy Policy Act of 2005 (EPAAct 2005).

OFEE believes that the proposed rule fails to provide the agencies with needed guidance for meeting the requirements of section 104, while imposing a reporting requirement that is not authorized by section 104, justified by the section 104 requirements, nor possible for the agencies to meet without implementing expensive, manual recordkeeping.

Background. Section 104 requires Federal agencies to purchase Energy Star® and Federal Energy Management Program (FEMP)-designated products unless the head of the agency finds in writing that (1) such products are not life-cycle cost effective or (2) no such products are reasonably available that meet the functional requirements of the agency. Section 104 further requires agencies to incorporate energy efficient product requirements into specifications. There is no reporting provision in section 104.

Guidance. The agencies need guidance on evaluating life-cycle costs and determining what is “reasonably available that meet the functional requirements.” It is OFEE’s understanding from your presentation to the July 12, 2007 meeting of the Interagency Sustainable Acquisition and Materials Management Practices Workgroup (SAMM) that FEMP intends agencies to use the existing life-cycle regulations for making life-cycle determinations. If that is the case, then the section 104 regulations need to say so to the agencies. The regulations also should reference the calculators available on the Energy Star® and FEMP web site.

In addition, the agencies need guidance on two issues: (1) how to determine that a product is not reasonably available and (2) exceptions for emergency response. With regard to availability, DOE needs to provide guidance such as availability is determined

by an economic shipping distance or by a specific time period. Regarding emergency response needs, EPA 2005 excludes products “designed or procured for combat or combat-related missions” from the section 104 purchasing requirement, but it does not address emergency response. OFEE recommends that DOE provide a blanket exception for energy-consuming products purchased specifically as part of an emergency response – not those products purchased in advance to be used in the future during an emergency response but those purchased during and specifically for an emergency response effort.

Reporting. OFEE strongly recommends that FEMP drop the reporting requirement. The proposed regulations would require agencies to record and report on the number of covered products for which exceptions were found, the monetary value of the excepted procurements, a description of the products, and the reasons for the exceptions. Except for the last item, there is no relationship between the proposed recordkeeping and reporting requirements and the statutory exceptions, nor would collecting this information further the underlying statutory objective of increasing the purchase of Energy Star® and FEMP-designated items.

The SAMM’s Reporting Workgroup has spent years evaluating whether the existing Federal procurement systems can be used to record and report agency purchases of green products and services. These data are used to meet requirements under the Resource Conservation and Recovery Act and the Farm Security and Rural Investment Act that the Office of Management and Budget report to Congress on agency progress in purchasing recycled content and biobased products. They also are used to meet the Executive Order 13423 requirement that OFEE prepare a report to the President on agency implementation of the E.O. It is our experience that the existing data systems do not allow the agencies to capture data on individual product purchases. Therefore, the only way for the agencies to record and report on the type of data specified in the proposed regulation is to create manual recordkeeping systems. Imposing such a costly requirement on the agencies is not justified, particularly when, as noted above, there is no relationship between the data to be reported and the objective of section 104.

Examples. It would be very helpful to the agencies to provide sample language for a finding that a product is not life-cycle cost effective and for a finding that a product is not reasonably available meeting the agency’s functional requirements.

If you have questions about our comments, please contact Dana Arnold of my staff at arnold.dana@ofee.gov or 202-343-9374.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edwin Pinero', written in a cursive style.

Edwin Pinero
Federal Environmental Executive

From: Bob Null [mailto:bnull@arkansaslamp.com]
Sent: Wednesday, August 08, 2007 6:50 PM
To: Nasser, Cyrus
Subject: RIN 1904-AB68

Arkansas Lamp Mfg. currently does almost \$1.5 million is government business. This is primarily in lighting for military bases. We certainly agree with the need to be more energy efficient, but the current Energy Star process presents several problems. The Energy Star program is primarily designed for hard wire fixtures, not portable lighting such as table lamps and floor lamps. For a table or floor lamp to meet Energy Star requirements currently means using a GU24 ballast/socket combination from an approved vendor. We are certainly able and willing to do this. The problem is that the current Energy Star process requires that each individual model number be listed. We sell several hundred different models of lamps to the government. From the socket up they can all be alike with a properly certified GU24 ballast/socket. However, from the socket down is a "style" question with many variations and options based on the individual base's needs.

Is there a way to modify the requirements so that the use of a proper Energy Star certified ballast, socket and bulb is sufficient without trying to list every possible combination of style lamp a base might want? Without this change it will either seriously limit a base's choice of lamps or they will chose what they want and bypast buying something that is Energy Star rated. We really don't want either of these two outcomes.

Thanks,
Bob Null
President
Arkansas Lamp Mfg.
479-474-0876

From: Gunning, Dawn M [mailto:Dawn.M.Gunning@usdoj.gov]

Sent: Friday, August 10, 2007 2:06 PM

To: Nasser, Cyrus

Cc: Arnold.Dana@ofee.gov; Maniwang, Jose; Belcher, Harold; Hartzberg, Barry J

Subject: RIN 1904-AB68 COMMENTS

Cyrus,

I have one comment for the Department of Justice. The reporting requirement for "excepted procurements" under section 436.42 would be unreasonable. We do not have a system in place to track this information.

Dawn Gunning
Environmental Program Manager
Department of Justice
202 353-0761



KYLE PITSOR

Vice President, Government Relations

August 14, 2007

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

Submitted electronically to cyrus.nasser@ee.doe.gov

Subject: RIN 1904-AB68

Dear Mr. Nasser,

Thank you for the opportunity to provide comments on the June 19 *Federal Register* notice of proposed rulemaking and draft guidance, "Federal Procurement of Energy Efficient Products".

NEMA is the trade association of choice for the electrical manufacturing industry. NEMA's approximately 450 member companies manufacture products used in the generation, transmission and distribution, control, and end-use of electricity. These products are used in utility, medical imaging, industrial, commercial, institutional, and residential applications. Domestic production of electrical products sold worldwide exceeds \$120 billion.

NEMA members are in the energy efficiency business. The litmus test for efficient products and systems is technological feasibility, economic justification and attractive return on investment, proven energy savings, and commercial availability. As part of the electroindustry's commitment and leadership to make energy efficiency a key component of a comprehensive energy policy, NEMA develops specific energy efficiency policy initiatives on a product or sector basis.

The government sector is the single largest consumer of energy in the U.S. As such, NEMA supports efforts for the government to lead by example in the use and deployment of energy efficient products and systems. These include lighting, motors, transformers, and control systems. NEMA has been active in working the Federal Energy Management Program (FEMP) in setting purchasing guidelines for energy efficient products, and in setting Energy Star product specifications for lighting, thermostats, transformers, and exit signs.

**National Electrical
Manufacturers Association**

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kyl_pitsor@nema.org

Therefore, we welcome and support FEMA's proposal to establish a requirement for Federal agencies to report their compliance with Section 553 of the National Energy Conservation Policy Act (NECPA) and to describe in detail any exceptions made to the requirement to procure only Energy Star qualified and FEMP designated products.

As noted above, the litmus test for energy efficient products is multi-faceted and it is conceivable that in some cases agencies may not see sufficient return on investment in a FEMP-rated product. This should be a signal to manufacturers and to FEMP.

In other cases, an agency could choose to purchase an energy efficient product that is not yet rated by FEMP or Energy Star. For example, NEMA is preparing release of a new NEMA Premium® Specification for Electronic Fluorescent Lamp Ballasts, which NEMA will promote to FEMP and to other federal agencies. Any delay in rating these products by FEMP should not prevent federal agencies on the leading edge of efficiency from purchasing high quality and high efficiency NEMA Premium® ballasts. As noted in the proposal, FEMP can use reports for agencies to identify new technologies and products for which it should develop purchasing guidance.

Although the proposed regulation only concerns Executive Branch agencies, we strongly encourage other Federal agencies and the legislative and judicial branches to use and adhere to the proposal and guidance.

We look forward to further opportunities to work with FEMP to improve the energy efficiency of the U.S. government.

Sincerely,

A handwritten signature in black ink that reads "Kyle Pitson". The signature is written in a cursive, flowing style.



August 19, 2007

Mr. Cyrus Nasser
Office of Federal Energy Management Program
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Submitted Via Email

Ref: RIN 1904-AB68

Dear Mr. Nasser:

I am pleased to submit comments on behalf of the Information Technology Industry Council, ITI, in response to the Proposed Rule published by the Department of Energy (DoE) on June 19, 2007 (72 Federal Register 117, 33696-700). The Rule would implement relevant provisions of the Energy Policy Act of 2005 (EPACT, Pub. L. 109-58) regarding government procurement of energy efficient products, with emphasis on “ENERGY STAR[®] qualified” and “FEMP designated” products.

ITI’s members have long been committed to producing energy efficiency products. We partnered with the Environmental Protection Agency (EPA) and DoE to launch the ENERGY STAR program in the early 1990s. We also worked closely with the Federal Energy Management Program (FEMP) earlier this decade to identify appropriate standby power levels for information technology (IT) office products. Today, our members continue to innovate new approaches to reducing IT energy consumption to help our customers more effectively manage their energy investments.

Overall, we believe that the Proposed Rule accurately reflects Congress’ intent in passing EPACT. The law is fairly straightforward, creating a federal procurement preference for ENERGY STAR qualified or FEMP designated products. We do, however, wish to bring to your attention a few concerns regarding the draft Rule.

Criteria for Energy Efficiency

In Section I, “Introduction and Background,” the Rule provides a summary of EPACT’s energy efficiency provisions. It includes the following statement:

“Further, each agency is required to incorporate into the specifications of call 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...”

This provision (42 U.S.C. 8259b(b)(3)) is also referenced in the Rule in Section III.B, "Procurement Planning." We believe that Congress was referring to the ENERGY STAR technical specifications that the Environmental Protection Agency (EPA) has established for various product categories, i.e., desktop computers, copiers, etc. In order to make that clear, we recommend the insertion of the word "technical" prior to the word "criteria" in both locations of the Rule.

This is important because EPA also requires manufacturers to accept mandatory-labeling criteria in order to have products considered for ENERGY STAR, even though EPACT designates product labeling as "voluntary." Labeling criteria have no bearing on the actual energy efficiency rating of a product. Accordingly, by inserting the word "technical" as recommended, it will be clearer to federal agencies that only the ENERGY STAR criteria directly related to a product's energy usage should be used to identify qualified offers for energy consuming products and systems.

Life Cycle Cost Analysis

In Section I.B, "ENERGY STAR Qualified and FEMP Designated Products," fourth paragraph, it states the following:

"ENERGY STAR qualified and FEMP designated products have been determined to be life-cycle cost-effective in normal usage."

A similar reference is made in Section III.C, "Exceptions:"

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."

We are concerned that these statements are based on assumptions that may no longer be accurate and therefore should be modified.

The term "normal usage" or "use" implies that there is a generally agreed definition of normalcy. This may be true with some ENERGY STAR product categories, but that is not the case with IT equipment. The requirements for IT and office products are growing increasingly more complex, with EPA adding an array of usage "modes" and creating component-specific energy efficiency requirements. In addition, as with the commercial sector, federal use of IT has become far more pervasive and varied in recent years, making it increasingly difficult for the government to define what is meant by "normal usage" or "normal use." Industry has been working with EPA and its consultants in an attempt to develop testable usage model definitions, but progress has been slow and it is not yet clear whether consensus will be achieved.

As to the broader issue of life-cycle cost-effectiveness, Congress has clearly recognized the continuing need for federal agencies to conduct such analyses. EPACT authorizes the heads of agencies to waive the requirement to purchase ENERGY STAR qualified or FEMP designated products if the purchase of such products would not be "cost effective over the life of the product

taking energy cost savings into account” or would not meet the “functional requirements of the agency” (42 U.S.C. 8259b(b)(1)). In recent legislative activity, the House of Representatives approved language that would eliminate the “functional requirements” exception but left intact the life cycle waiver (see Sec. 6203 of H.R. 3221, the Renewable Energy and Energy Conservation Tax Act of 2007).

ITI is concerned that the statements referenced above may discourage some agencies from conducting life cycle evaluations and possibly prevent the consideration of products that may be more cost effective while still achieving significant energy savings. Accordingly, we recommend that the words “In the past” be inserted at the beginning of the first statement. We recommend that the second statement be revised as follows:

Although *traditionally* ENERGY STAR qualified and FEMP designated products ~~are~~ *have been determined to be* life-cycle cost-effective under normal use conditions, they may not be *in every circumstance, e.g.,* if used in a specialized way or for very limited hours.”

“Covered” Products

EPACT provides definitions for some of the terminology initiated by Congress relative to the Energy Star program. In the proposed §436.41, Definitions, however, the Rule includes a new definition, “covered product,” that is not in the law:

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

It appears to be somewhat circular in that it in effect echoes the newly-created statutory definitions for “Energy Star product” and FEMP designated product.” Further, it is not altogether clear what is meant by “of a category.” We recommend replacing the above text with the following:

Covered product means a product for which ENERGY STAR or FEMP technical criteria have been established.

Thank you for this opportunity to comment on the Proposed Rule. We would welcome the opportunity to meet with you and provide greater detail regarding our concerns and recommendations.

Sincerely,



Rhett B. Dawson
President & CEO

From: Drew Ballensky, Duro-Last Roofing [mailto:dballens@duro-last.com]
Sent: Monday, August 20, 2007 11:05 AM
To: Nasser, Cyrus
Subject: RIN 1904-AB68

In reference to the Proposed Rules for promoting Federal procurement of energy efficient products we would like to submit a comment for your consideration.

Under the section II. Proposed Regulations it is stated that "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." To narrowly define products to include only energy consuming products would exclude those ENERGY STAR products that offer significant opportunities to save energy yet are not energy consumers themselves. Cool roofing systems are examples of products that offer significant energy savings benefits, are ENERGY STAR labeled, yet are not energy consuming products.

Drew Ballensky
General Manager, Iowa Plant
Duro-Last Roofing, Inc.
877-556-6700
641-622-1079

From: RLarrabee@DOC.GOV [mailto:RLarrabee@DOC.GOV]
Sent: Monday, August 20, 2007 2:05 PM
To: Nasser, Cyrus
Cc: BRamon@doc.gov; FFanning@doc.gov; nBarrere@doc.gov
Subject: RIN 1904-AB68 Comments

Cyrus,

The Department of Commerce would like to offer the following comment on Proposed Rule RIN 1904-AB68.

The stated purpose of this rule is to promote "the procurement of energy efficient products by Federal agencies" and to promote "procurement practices which facilitate the procurement of energy efficient products".

In reality, it's purpose is to require reporting of data to show compliance with the EPACT 2005 requirements.

We don't believe that this will accomplish either purpose.

Rather, it will discourage the actual requesting of exceptions due to the tracking that must be done for the mandated reporting.

That doesn't mean that people will buy only Energy Star and FEMP listed items; they just won't request the exceptions and will buy what they want to buy.

We agree with the fundamental concepts in the NOPR, but do not see how we can ensure compliance with it.

It will also be hard to identify noncompliance with the Rule, unless we look at each and every item that is purchased.

Thank you for your consideration of our concern.

- Regina

Regina M. Larrabee, CEM
DOC Energy Program Manager
Office of Real Estate Policy and Major Programs
U.S. Department of Commerce
14th & Constitution Ave. NW, Room 1036
Washington, DC 20230
Phone: 202-482-2345
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Website: www.osec.doc.gov/oas/energy/

August 20, 2007

Cyrus Nasser
U.S. Department of Energy
Office of Federal Energy Management Program
Mailstop EE-2L
100 Independence Ave. SW
Washington DC 20585-0121

Subject: RIN1904-AB68

Dear Mr. Nasser,
SPRI Inc. is an Association that represents the single-ply roofing industry. I am writing to provide comments on the proposed rule number RIN 1904-AB68.

SPRI objects to the proposed rule change. The proposed change would limit the scope of the Federal Procurement of Energy Efficient Products section of the National Energy Conservation Policy Act (NECPA) to include only energy consuming products and systems. We do not believe that this meets the intent of the NECPA. This change will exclude products that are not energy consuming, however they can reduce energy consumption, which is the intent of the NECPA.

For example, SPRI members manufacture highly reflective roof membranes that are Energy Star labeled products. Numerous studies have clearly demonstrated that these products can reduce the energy consumption of a building by reflecting heat energy before it enters the building. These products should be included in the Federal Procurement of Energy Efficient Products Program.

Sincerely,



Mike Ennis
SPRI Technical Director
1100 Rosehill Road
Reynoldsburg, OH 43068
614-501-8909-m.ennis@mac.com



**EDISON ELECTRIC
INSTITUTE**

August 20, 2007

Mr. Cyrus Nasser
U.S. Department of Energy
Federal Energy Management Program
Mailstop EE-2L
1000 Independence Avenue, N.W.
Washington, DC 20585-0121

RE: Energy Federal Procurement of Energy Efficient Products
Docket No. RIN 1904-AB68

Dear Mr. Nasser:

The Edison Electric Institute (EEI) appreciates the opportunity to submit these comments regarding the Department's Notice of Proposed Rulemaking (NOPR) on the federal government's procurement of energy efficient products, which were published at 72 Fed. Reg. 33696 (June 19, 2007). EEI is the association of the U.S. shareholder-owned electric companies, international affiliates and industry associates worldwide. Our U.S. members serve over 97 percent of all customers served by the shareholder-owned segment of the industry. They service 71% of all ultimate customers in the United States. Many of our members are combination electric/gas companies, and provide efficiency services for both fuel types.

EEI believes that energy efficiency has a very important role in our Nation's energy strategy. Our Board of Directors has approved a new EEI Energy Efficiency Initiative. We believe that high efficiency Energy Star and FEMP designated products will help the federal government become more energy-efficient. We also agree with the use of life-cycle cost calculations for these products and the requirement for agency reporting of progress.

EEI has reviewed this proposed rule and supports it wholeheartedly. EEI would suggest that it made into a final rule as quickly as possible, to accelerate the energy savings that would result from this rule.

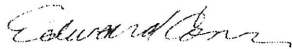
EEI believes that DOE has created a rule that will help agencies become more energy efficient with the use of Energy Star and FEMP designated products.

Conclusion

EEI believes that DOE has done a thorough and admirable job in meeting the provisions of Section 553 of the Energy Policy Act of 2005, and urges DOE to finalize the rule as quickly as possible.

EEI sincerely appreciates the opportunity to submit these comments.

Respectfully submitted,



Edward H. Comer
Vice President and General Counsel
Edison Electric Institute
701 Pennsylvania Avenue N.W.
Washington, D.C. 20004

cc: Rick Tempchin, EEI
Steven Rosenstock, EEI



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August 20, 2007

Mr. Cyrus Nasser
U.S. Department of Energy
Office of Federal Energy Management Program
1000 Independence Avenue, S.W.
Washington, DC 20585-0121

SUBJECT: RIN1904-AB68

Dear Mr. Nasser:

The following comments are filed by the Vinyl Roofing Division of the Chemical Fabrics & Film Association in response to "Notice of Proposed Rulemaking, RIN 1904-AB68, Federal Procurement of Energy Efficient Products, 10 C.F.R. Part 436" published in the Federal Register, Vol. 722, No. 117, June 19, 2007, pp. 33696-33700. Public comments on the proposed rule are due August 20, 2007.

The Vinyl Roofing Division represents major manufacturers of energy efficient, reflective roofing systems. These products reduce energy consumption and contribute to greenhouse gas emission reduction.

The Vinyl Roofing Division strenuously objects to the Department of Energy ("DOE" or "Department") proposed definition of "product" with the limitation of "an energy consuming product or system that is a category covered by the ENERGY STAR or FEMP program, *i.e.*, a 'covered product.'" Federal Register Vol. 72, No. 177, p. 33697. This unexplained narrowing of the definition of product is contrary to the definition provided in the Energy Policy Act of 2005 ("EPA05"), eliminates an important segment of energy efficient products and frustrates the overall goal of increased energy efficiency by the Federal Government. The proposed definition has the effect of undoing the guidance provided to Federal departments and agencies later in the proposed rulemaking.

Under Section 104 of EPA05, the relevant definitions applicable to this proposed rulemaking are:

- (2) ENERGY STAR PRODUCT - The term "Energy Star product" means a product that is rated for energy efficiency under an Energy Star program.

- (4) FEMP DESIGNATED PRODUCT – The term “FEMP designated product” means a product that is designated under the Federal Energy Management Program of the Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.
- (b) PRODUCT – the term “product” does not include any energy consuming product or system designed or procured for combat or combat-related missions.

The proposed rulemaking has applied the limitation created for specific war exemptions for the Department of Defense to a general exclusion of a class of available products for all Federal departments. This was not the intent of Congress in enacting this section of EAct05. Neither the definition of ENERGY STAR product or FEMP designated product has limiting language describing a product as “energy consuming.” The limitation of energy consuming products is directly linked to those items for “. . . combat or combat related missions” (EAct05, Sec. 104 “SEC 553(a)(5)). Thus, Congress intended that even the Department of Defense should only have a limited exemption from use of energy efficient products. To now take the limited exemption and turn it into a product exclusion turns Congress’ goal of expanded energy efficiency product use by the federal government on its head.

Under a related section in EAct05, federal buildings have an energy reduction goal measuring energy consumption per gross square foot then reducing that by increasing percentages from FY2006 through FY2015. An integral part of the reduction of energy usage for a building is the energy efficiency of the roof. While the roof is not an energy consuming product, its effectiveness as an energy efficiency component does impact the efficiency of heating and air conditioning units. It is the whole building approach – roof to basement which determines the energy consumption level of a particular building.

The proposed rulemaking, in providing guidance to federal agencies in complying with the mandate to procure ENERGY STAR and FEMP products, makes reference to design/build, renovation and build-to-lease contracts. In all of those building related activities, primary factors determining energy consumption are windows and roofs. By maximizing the efficiency of windows and roofs, the overall energy consumption of the building is reduced due to the contributions of items not defined under the rulemaking as energy consuming. The proposed rulemaking reinforces this point with its citation of the Environmental Protection Agency’s (“EPA”) Federal Guide for Green Construction Specifications (“Green Construction”) as a reference for agencies seeking to comply with the requirement. Under the Green Construction specifications, Division 07: Thermal and Moisture Protection offer model specifications which describe: steep slope roofing, vegetated roof covering, membrane roofing and vegetated protected membrane roofing. These specifications are contained in a larger document, the “Whole Building Design

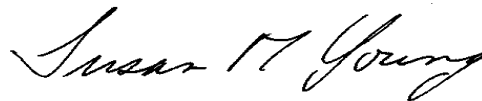
Guide”. It would frustrate the policy goals of the Department in seeking energy usage reductions by government departments and agencies through the use of energy efficiency activities with ENERGY STAR and FEMP designated products to eliminate the potential energy savings achieved through windows and roofs due to the unnecessarily narrow definition of product.

Construction and renovation of buildings and facilities are a significant investment by the federal government. By the nature of the activity, these provide unique one-time opportunities to achieve significant energy reductions. However, these savings are only achievable if high efficiency windows and roofs are part of the construction and/or renovation action. Once energy efficient windows and roofs are made part of the building system, these items contribute to the overall building’s energy efficiency no matter what heating and air conditioning system is in use.

The Department of Energy should not unintentionally eliminate an important component of the Government’s energy efficient effort. For the purpose of the reporting requirement created by the proposed rulemaking the definition of the word “product” should be amended in the final rulemaking to include all ENERGY STAR-labeled and/or FEMP designated energy efficiency products and categories; not just energy consuming ones. This definitional change will comply with the Congressional intent as expressed in EPAct05 and further the Government’s policy goal of reduced energy consumption through energy efficiency.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Susan M. Young".

SUSAN M. YOUNG

SMY:cmd
cfa

cc: Vinyl Roofing Division
Vinyl Roofing Technical Subcommittee

Law Offices
Duncan, Weinberg, Genzer & Pembroke, P.C.

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August 20, 2007

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+OF COUNSEL

Mr. Cyrus Nasser
U.S. Department of Energy
Office of Federal Energy Management Program
1000 Independence Avenue, S.W.
Washington, DC 20585-0121

Re: RIN 1904-AB68
Comments of Sika Sarnafil, Inc. on Department of Energy's Notice of Proposed
Rulemaking on Federal Procurement of Energy Efficient Products

The following comments submitted on behalf of Sika Sarnafil, Inc. ("Sika"), in response to the Department of Energy's Office of Energy Efficiency and Renewable Energy's "Notice of Proposed Rulemaking, RIN 1904-AB68, Federal Procurement of Energy Efficient Products" ("NOPR") to amend 10 C.F.R. Part 436, as published in the Federal Register, Vol. 722, No. 117, June 19, 2007, pp. 33696-33700. These comments are timely submitted pursuant to the instructions contained in the NOPR.

Sika is a major manufacturer of roofing systems and has pioneered The EnergySmart Roof®. This product reduces energy consumption and contributes to greenhouse gas emission reduction. Sika is a Charter Partner in the ENERGY STAR Roof Products

Program. Please include the following Sika representative on any correspondence in response to these comments:

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Sika strenuously objects to the Department of Energy (“DOE”) further definition of “‘product’ as an energy consuming product or system that is a category covered by the ENERGY STAR or FEMP program, *i.e.*, a ‘covered product.’” Federal Register Vol. 72, No. 177, p. 33697. This definition inappropriately narrows the definition of *product* and is contrary to the definition provided in the Energy Policy Act of 2005 (“EPAct 2005”). The proposed definition has the effect of undoing the guidance provided to Federal departments and agencies later in the proposed rulemaking. This further definition eliminates an important segment of energy efficient products from being purchased under these guidelines by the Federal Government, thereby frustrating the stated goal of NOPR of increasing energy efficiency within the Federal Government.

Under Section 104 of EAct 2005, the relevant definitions applicable to this proposed rulemaking are:

- (2) ENERGY STAR PRODUCT - The term “Energy Star product” means a product that is rated for energy efficiency under an Energy Star program.

and

- (4) FEMP DESIGNATED PRODUCT – The term “FEMP designated product” means a product that is designated under the Federal Energy Management Program of the Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.

and

- (b) PRODUCT – the term “product” does not include any energy consuming product or system designed or procured for combat or combat-related missions.

The proposed rulemaking has applied the limitation created for specific war exemptions for the Department of Defense to a general exclusion of a class of available products for all Federal agencies. This was not the intent of Congress in enacting this section of EAct 2005.

Neither the definition of ENERGY STAR product or FEMP designated product has limiting language describing a product as “energy consuming.” The limitation of energy consuming products is directly linked to those items for “. . . combat or combat related missions” (EAct 2005, Sec. 104 “SEC 553(a)(5)). Thus, Congress intended that even the Department of Defense should only have a limited exemption from use of energy efficient products. To now take the limited exemption and turn it into a product exclusion turns Congress’ goal of expanded energy efficiency product use by the Federal Government on its head.

Under a related section in EAct 2005, federal buildings have an energy reduction goal measuring energy consumption per gross square foot then reducing that by increasing percentages from FY2006 through FY2015. An integral part of the reduction of energy usage for

a building is the energy efficiency of the roof. While the roof is not an energy consuming product, its effectiveness as an energy efficiency component does impact the efficiency of heating and air conditioning units. It is the whole building approach – roof to basement which determines the energy consumption level of a particular building.

The proposed rulemaking, by providing guidance to federal agencies in complying with the mandate to procure ENERGY STAR and FEMP products, makes reference to design/build, renovation and build-to-lease contracts. In all of those building related activities, primary factors determining energy consumption are windows and roofs. By maximizing the efficiency of windows and roofs, the overall energy consumption of the building is reduced due to the contributions of roofing materials and windows. Each of these items would be excluded under the further definition of *product* included in the NOPR, because they are not considered as energy consuming. It would frustrate the policy goals of DOE in seeking energy usage reductions by government departments and agencies through the use of energy efficiency activities with ENERGY STAR and FEMP designated products to eliminate the potential energy savings achieved through windows and roofs due to the unnecessarily narrow definition of product.

The NOPR's further defining of *product* would be direct contradiction of Executive Order 13423, which requires that the acquisition of goods and services use sustainable environmental practices including acquisition of biobased, environmentally preferable, energy-efficient, water-efficient, and recycled content products. E.O. 13423, *Strengthening Federal Environmental Energy and Transportation Management*, 72 FR 3919 (January 26, 2007). The NOPR's further defining of *product* to limit the inclusion of windows and roofs contradicts the NOPR's guidance regarding the Environmental Protection Agency's ("EPA") Federal Guide for

Green Construction Specifications (“Green Construction”) as a reference for agencies seeking to comply with the requirement. Under the Green Construction specifications, Division 07: Thermal and Moisture Protection offer model specifications which describe: steep slope roofing, vegetated roof covering, membrane roofing and vegetated protected membrane roofing. These specifications are further contained in the Whole Building Design Guide.

Construction and renovation of buildings and facilities are a significant investment by the Federal Government. By the nature of the activity, these provide unique one-time opportunities to achieve significant energy reductions. However, these savings are only achievable if high efficiency windows and roofs are part of the construction and/or renovation action. Once ENERGY STAR roofs, such as Sika’s EnergySmart Roof[®], and windows are made part of the building system, these items contribute to the overall building’s energy efficiency no matter what heating and air conditioning system is in use.

DOE should not eliminate an important component of the Government’s energy efficiency effort. The Final Rule should be modified to clarify that the further defining of the term “*product*” does include ENERGY STAR-labeled and/or FEMP designated energy efficiency products and categories (e.g., Sika’s EnergySmart Roof[®]); not just energy consuming ones. This definitional change will comply with the Congressional intent as expressed in EPAct 2005 and further the Federal Government’s goal to reduce its energy consumption through energy efficiency.

Dated: August 20, 2007

Respectfully submitted,

/s/ Derek A. Dyson
Derek A. Dyson
Frederick H. Hoover



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Mr. Cyrus Nasser
U.S. Department of Energy
Office of Federal Energy Management Program

“Federal Procurement of Energy Efficient Products” Notice of proposed rulemaking, Office of Energy Efficiency and Renewable Energy, Department of Energy, RIN 1904-AB68.

Dear Cyrus Nasser:

Please accept these comments on the proposed Rule on Federal Procurement of Energy Efficient Products which appeared in the Federal Register on June 19, 2007. The proposed Rule issues guidance by the Department of Energy (DOE) in response to Section 104 of the Energy Policy Act of 2005 (EPAAct) (Public Law 109-58), requiring federal agencies to purchase Energy Star qualified and Federal Energy Management Program (FEMP) designated products, when available and cost-effective.

The federal government is the largest energy consumer in the United States and spends about \$5.5 billion annually on facility energy bills and emits close to 12 million metric tons of carbon equivalent (almost 43 million metric tons of carbon dioxide) from its facilities per year. Ensuring that federal agencies purchase energy-efficient products could realize literally hundreds of millions of dollars in savings to American taxpayers and huge reductions in greenhouse gas emissions.

Even before EPAAct, federal agencies were already required to procure energy-efficient equipment where possible, according to the Federal Acquisition Regulations and a presidential executive order. But until the passage of EPAAct, Congress had not codified those requirements into law. Consequently, compliance with the procurement requirements has been spotty at best. Of the 25 facility-level federal employees we spoke with who write specifications for solicitations or post solicitations, more than two-thirds were either unfamiliar with the energy-efficiency procurement regulations or had heard about them but were unsure which products they applied to.

Section 104 of EPAAct was significant for placing the burden on non-compliance, in contrast to past legislation. By requiring agencies to give a written justification for purchasing inefficient products, EPAAct indicated that agencies should presume that ENERGY STAR and FEMP products are cost-effective until proven otherwise. The law also referred not only to direct agency purchases but to products procured under design and construction, maintenance and other service contracts. The legislation also specifies that exceptions to energy-efficient procurements must be approved at the highest agency level – namely the Secretary. Each of the above components helps ensure that exceptions to energy-efficient procurement really are exceptions and not the rule, as has long been the case.

Unfortunately, most of the DOE guidance is in the form of comments rather than formally codified as regulations, thus raising questions about enforceability and possibly creating confusion regarding interpretation of the law. For example, with respect to products purchased under service agreements, the discussion in the proposed Rule seems less forceful than the law (it states that contractors “should” rather than “shall” furnish qualified products). Nor is there any mention of contracts in the amendments to the Code of Federal Regulations as provided in the proposed Rule. Presumably the law is binding, but the discussion in the notice of proposed rulemaking (NOPR) and lack of regulatory codification could give the impression that this component is merely a recommendation.

Perhaps of greatest concern, the law intended to prohibit the General Services Administration (GSA) and the Defense Logistics Agency (DLA) from selling non-compliant (inefficient) products without written justification from the customer agency. While the discussion in the proposed Rule seems to underscore this, the proposed regulations themselves do not touch the issue. Declaring that requirements with respect to GSA and DLA are “self-executing and that no implementing regulations are necessary to implement” them, as DOE claims in the proposed Rule, amounts to an abdication of DOE’s responsibilities.

DOE also denies its authority to issue regulations for agencies outside the Executive Branch, despite Section 553(a)(1) of the National Energy Conservation Policy Act (NECPA), as modified by Section 104 of EPCA specifically stating that the law applies to buildings in all branches of government. Given that Congress passed the law and defined federal agencies to include agencies in all Branches of the government, we encourage DOE to change the proposed rule to be consistent with the law. DOE should also work with agencies of other Branches (e.g., the Architect of the Capitol) to help implement these requirements and facilitate reporting from those agencies.

DOE’s guidance states that an agency can justify a non-qualified purchase when “...an agency head [finds] that there is no ENERGY STAR qualified or FEMP designated product *reasonably available* that meets the functional requirements of the agency” (emphasis added, Section III(C)). DOE does not define “reasonably available,” potentially creating a vague, easily applied rationale for non-compliant procurements along the lines of, “it was an emergency, the air conditioner broke and we needed one quickly.” In this example, simply stating that no efficient product was “reasonably available” should not suffice as an excuse for an inefficient purchase. An agency should instead have to demonstrate in the exception that they attempted to procure a compliant model from at least three vendors before purchasing the inefficient model, for instance.

Compliance verification has long been a challenge for federal energy efficiency purchasing requirements. The sheer number of people making purchases on behalf of the federal government (about one-third of federal employees have individual purchasing cards, with which they can independently make purchases of up to \$25,000 at a time) makes tracking those purchases exceedingly difficult. Reporting is an important element of verification of compliance, and is required in both the law and the proposed Rule. Specifying annual reporting requirements increases the likelihood that agencies will track the written exceptions they issue to their purchasers, and, by making them public, encourages agencies to issue

fewer of them. However, additional measures will need to be taken to ensure that agencies are in fact preparing and recording written exceptions where required. Either the DOE regulation or separate OMB policy guidance should require each agency to establish and enforce a written policy on exceptions to buying energy-efficient products. Agencies should not be able to avoid writing the required exceptions in order to avoid reporting them to FEMP.

Also, the DOE regulations do not even mention that GSA and DLA are required by law to obtain exceptions from agencies purchasing non-compliant products from their respective schedules. This is an enormous omission, as DLA and GSA have in the past been reluctant to refuse to sell any product – whether compliant or not – to other agencies, since such sales are a primary source of the supply agencies’ revenues. For some covered products, non-compliant products outnumber compliant products in the GSA and DLA online catalogues. If GSA and DLA are permitted to continue to sell inefficient products to whomever requests them, then the more than a million federal employees with purchasing cards will continue to buy them, and will continue to waste energy and taxpayers’ money. While it is possible, if not easy, to track solicitations posted on FedBizOpps (all solicitations greater than \$25,000 must be posted there), it is far more difficult at present to track compliance of purchases from DLA and GSA. In short, the DOE regulations should require GSA and DLA to verify with their agency customers that a written exception has been prepared, and to ensure that those exceptions are compiled and reported to FEMP, be it by the customer or by the supply agencies themselves.

The proposed Rule states that “NECPA section 553 applies to the procurement of energy consuming products.” This should be clarified to include all energy-saving products listed by ENERGY STAR or FEMP, whether or not the product itself directly consumes energy (for example, ENERGY STAR windows and roofing products).

DOE includes several other components in its non-binding NOPR “Supplemental Information” that should be included in the proposed regulatory language. For example, while the law excludes products or systems that are designed or procured for combat or combat-related missions, the Supplementary Information (but not the Regulation itself) “encourages the Department of Defense to incorporate energy efficiency criteria into procurements of combat-related equipment, to the extent practicable.” This useful and practical provision should be part of the Regulation.

Also, we agree that agencies should notify vendors of energy-efficiency procurement requirements. Agencies should also modify existing multi-year contracts to reflect the energy-efficiency procurement requirements, if possible, and should ensure that they are incorporated in energy savings performance contracts and utility energy service contracts. All of this guidance language is in Section III(B) of the Supplemental Information; it should instead be part of the DOE Regulation.

We were pleased to see Congress reinforce existing federal policy on energy efficient procurement by codifying these provisions in EAct Section 104. However, the proposed Rule, as written, is insufficient. One of the sections contains only definitions – and is

inconsistent with the statute in defining which agencies are subject to the procurement requirements. The other section addresses only reporting requirements. Beyond this the Rule does nothing to help overcome the continued intransigence of agencies, especially GSA and DLA, and their longstanding efforts to resist energy efficient purchasing requirements.

The regulations should be strengthened through the inclusion of the following components:

- Reiterate and explain the EPAct requirements for procurement (including service and construction contracts, DLA/GSA product identification, and prohibition of DLA and GSA from supplying non-qualifying products unless they have received or verified written exceptions from their agency customers);
- Translate these statutory directives into specific actions required of each agency (including reporting), specifically of DOE and OMB as regulatory and monitoring agencies, and of GSA and DLA as supply agencies; and
- Add information on what FEMP will do to assist the agencies in meeting these obligations.

In sum, much of DOE's discussion in the proposed Rule should be codified in regulation to make clear to agencies, especially GSA and DLA, that the procurement requirements must be met. While the non-binding Supplementary Information contains a good deal of helpful and instructive guidance, the proposed regulatory changes are far too limited.

Please feel free to contact us if you have any questions or wish to discuss these comments.

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From: Nogas, Sue [mailto:Sue.Nogas@va.gov]
Sent: Tuesday, August 28, 2007 6:47 PM
To: Calamita, Christopher; Nasser, Cyrus
Cc: Bradley, Ed; Cordova, Cynthia (CJ)
Subject: RIN 1904-AB68, "Federal Procurement of Energy Efficient Products"; VA comments on DOE proposed rule

Hello Chris and Cyrus,

Per my August 14, 2007 phone conversation with Chris, I am sending to you the following brief comments on behalf of the Department of Veterans Affairs. I will also try to submit them via www.regulations.gov. Please let me know if you have any questions. Thanks.

-- Sue Nogas
VA Environmental Affairs Program
Office of Asset Enterprise Management
U.S. Department of Veterans Affairs

U.S. Department of Veterans Affairs
Comments to the Department of Energy on the Proposed Rule, "Federal Procurement of Energy Efficient Products" (72 FR 33696, June 19, 2007)
(RIN 1904--AB68)

VA appreciates the opportunity to provide the following brief comments on the proposed reporting requirement for federal agencies concerning their decisions not to purchase energy efficient products:

VA would like to know if DOE is aware of any existing mechanisms for collecting the type of information that the proposed regulations would require.

VA would like clarification as to whether it is necessary that a department or agency head approve every decision made within the department/agency not to purchase an Energy Star or FEMP-designated product.

The guidance and proposed rule do not address the type of information agencies would need to submit in order to obtain an exception or waiver, particularly one based on performance concerns. VA suggests that DOE provide sample waivers.

An availability-based exception is needed for emergency situations, such as in a hospital setting where patient care may take priority.