

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**52.214–9 [Removed and Reserved]**

■ 17. Remove and reserve section 52.214–9.

52.214–10 [Amended]

■ 18. Amend section 52.214–10 in the prescription by removing “14.201–6(e)(2)” and adding “14.201–6(e)” in its place.

PART 53—FORMS**53.214 [Amended]**

■ 19. Amend section 53.214 by removing and reserving paragraph (e).

53.301–129 [Removed]

■ 20. Remove section 53.301–129.

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 2, 11, and 23**

[FAC 2001–15; FAR Case 2001–028; Item II]

RIN 9000–AJ47

Federal Acquisition Regulation; Energy-Efficient Standby Power Devices

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13221 of July 31, 2001, Energy-Efficient Standby Power Devices, and to clarify requirements for the purchase of recovered material.

DATES: *Effective Date:* August 25, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Laura Smith, at (202) 501–1224. Please cite FAC 2001–15, FAR case 2001–028.

SUPPLEMENTARY INFORMATION:**A. Background**

The Councils have agreed to amend the FAR to—

1. Implement E.O. 13221, by providing guidance on energy-efficient standby power devices; and

2. Clarify requirements for the purchase of recovered material.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 64010, October 16, 2002. Four respondents submitted public comments. A discussion of the comments is provided below. The Councils concluded that the proposed rule should be converted to a final rule, with only minor editorial changes made to the proposed rule (*see Response*) to comment number 3).

1. *Comment:* The respondent supported the proposed revisions to the FAR, as “they provide the needed clarity in both these areas and will enhance contracting officers’ ability to effectively purchase green products.”

Councils’ Response: No change.

2. *Comment:* The proposed FAR 23.203(a)(1)(ii) authorizes the purchase of products that meet a Department of Energy Federal Energy Management Program (FEMP) standby power wattage recommendation. However, the FEMP recommended standby power wattage for about half of the product categories is higher than the one watt limit mandated by the E.O., even though the listing of products for the categories identify numerous products that consume one watt or less in their standby mode.

Councils’ Response: Nonconcur. In accordance with Section 1. of E.O. 13221, adherence to the one watt requirement is mandated only “when life-cycle cost-effective and practicable and where the relevant product’s utility and performance are not compromised as a result.” Pursuant to this direction, FEMP does not recommend restricting procurement within a product category to items that use only one watt or less of electricity when such a restriction would not permit adequate competition among producers.

3. *Comment:* The definition of energy-efficient standby power devices that was added in FAR 2.101 could apply to all products that use power (*e.g.*, a flashlight), rather than “commercially available, off-the-shelf products that use external standby power devices, or that contain an internal standby power function” per Section 1. of the E.O. The respondent recommended revising paragraph 1 of the definition to read: “(1) Use external standby power devices, or that contain an internal standby power function.”

Councils’ Response: Concur. The Councils have revised the definition of energy-efficient standby power devices at FAR 2.101 accordingly.

4. *Comment:* The proposed rule would amend FAR 11.002, Policy, by adding to paragraphs (d)(1) and (2) a reference to E.O. 13221 and text regarding products containing energy-efficient standby power devices. The amendment, as proposed, could be interpreted as giving preference to products that consume one watt or less while in standby mode over products that consume zero watts when switched off. This, of course, would run contrary to the intent of the E.O. Moreover, many office products rarely enter into a standby power mode and, hence, greater energy can be conserved via a power management function, a feature typical on Energy Star-qualified products.

Councils’ Response: Nonconcur. The policy statement does not express a preference for products with energy-efficient standby power devices over products which do not contain a standby power function. Rather, the policy statement indicates that if the Government requires a product that consumes power in a standby mode, the standby power device should be energy-efficient. Whether a product contains a standby power device will, in most instances, be determined by agency needs and related functions required of the product. For product categories covered by Energy Star, FEMP only considers a product for its standby power device list if it also meets the Energy Star criteria which includes power management functions.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule simply provides additional guidance to Government contracting and technical personnel with respect to the Government’s preference, set forth in FAR Subpart 23.2, for buying energy-efficient products and services. This rule requires a contracting officer, when acquiring a product that uses an external standby power device or that