

EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET
29 Delaware Code, Section 6303A(16) and 6913 (29 Del.C. §§6303A and 6913)

PROPOSED

PUBLIC NOTICE

Environmentally Preferred Purchasing Policy

In accordance with procedures set forth in 29 Del.C. Ch. 11, Subch. III and 29 Del.C., Ch. 101, the Director of the Office of Management and Budget is proposing to adopt a regulation setting forth the State of Delaware Environmentally Preferred Purchasing Policy.

The Director of the Office of Management and Budget, or an employee of the Office of Management and Budget designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on May 2, 2012 at 11:00 a.m. at the Office of Management and Budget, Haslet Building, room 219, 122 William Penn St., Dover, DE 19901. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. Robert Scoglietti, Delaware Office of Management and Budget, 122 William Penn Street, Dover, DE, 19901. Written comments must be received on or before May 1, 2012. Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing Mr. Robert Scoglietti at the address of the Delaware Office of Management and Budget set forth above.

Environmentally Preferred Purchasing Policy

1.0 Purpose

The purpose of this Regulation is to set forth the policy and procedures for establishing environmentally preferred purchasing standards.

2.0 Enabling Legislation

Pursuant to 29 Del.C. §6301A, the Office was established. The Office has authority to make regulations pursuant to 29 Del.C. §6303A(16) and 6913. The Regulation is established in compliance with 29 Del.C. §6913 and Executive Order 18 (February 17, 2010).

3.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Biodegradable” means capable of being broken down by microorganisms into simple, stable compounds such as carbon dioxide and water.

“Chlorine Free Products Association” means an independent not-for-profit accreditation & standard setting organization, whose primary purpose is to promote Total Chlorine Free policies, programs, and technologies throughout the world.

“Composting” means the conversion of organic material to compost by microorganisms. Compost is organic material that can be used as a soil amendment or as a medium to grow plants. Composting reducing the organic portion of garbage include yard trimmings, leave and food scrapes.

“Director” means the Director of the Delaware Office of Management and Budget.

“DNREC” means the State of Delaware Department of Natural Resources and Environmental Control.

“DTI” means the State of Delaware Department Technology and Information.

“Electronic Product Environmental Assessment Tool (EPEAT)” means a system that helps the purchaser evaluate, compare and select electronic products based on their environmental attributes. The system currently covers desktop and laptop computers, thin clients, workstations and computer monitors.

“Energy Star” means EPA’s energy efficiency product labeling program.

“Energy Efficient” means a product that is in the upper 25 percent of energy efficiency for all similar products, or that is at least 10 percent more efficient than the minimum level that meets Federal standards.

“Environmental Performance” means considerations including the use of renewable resources, improved energy and water efficiency, the reduction of air contaminants and greenhouse gas emissions, increased reuse and recycling, and the reduction of hazardous waste and toxic pollutants.

“Environmentally Preferred” means products and services that have a less or reduced effect on human health and the environment over the life cycle of the products and services when compared with competing products or services that serve the same purpose.

“Forest Stewardship Council” means an independent, non-governmental, not-for-profit organization established to promote the responsible management of the world’s forests.

“Green Guard”: The GREENGUARD Environmental Institute (GEI) is an industry-independent, not-for-profit organization that oversees the GREENGUARD Certification programs. As an ANSI Accredited Standards Developer, GEI establishes acceptable product standards for building materials, interior furnishings, cleaners, electronics and children’s products. The GREENGUARD Environmental Institute also establishes building standards designed to protect the health of occupants through the control of mold, moisture and indoor pollutants.

“Green Seal” means an independent, non-profit environmental labeling organization.

“GSS” means the Delaware Office of Management and Budget, Government Support Services.

“Hardscape” means part of the building’s grounds made with hard materials such as patios, retaining walls and walkways.

“Green Building Council (LEED)” means an internationally recognized green building certification system, providing third-party verification that a building or community was designed and built using strategies aimed at improving performance across all the metrics that matter most: energy savings, water efficiency, CO₂ emissions reduction, improved indoor environmental quality, and stewardship of resources and sensitivity to their impacts

“Heat-Island Effect” means warmer temperatures in urban areas compared to the adjacent rural areas as a result of solar energy retention on constructed surfaces such as streets, sidewalks, parking lots and buildings.

“Impervious” means surfaces that do not permit the passage of liquids.

“Integrated Pest Management (IPM)” means an ecosystem-based strategy that focuses on long-term prevention of pests or their damage through a combination of techniques such as biological control, habitat manipulation, modification of cultural practices and use of resistant varieties.

“Life-cycle Cost analysis” means the study of the costs associated with a product through its life cycle – from acquisition to its end-of-life management.

“Office” means the Delaware Office of Management and Budget.

“Permeable” means the permitting of liquids to pass through.

“Post-Consumer Material” means a finished material which would normally be disposed of as a solid waste, having reached its intended end-use and completed its life cycle as a consumer item, and does not include manufacturing or converting wastes.

“Recycled Content” means the percentage of recovered material, including pre-consumer and post-consumer materials, in a product that otherwise would have been discarded.

“Reused Product” means any product designed to be used many times for the same or other purposes without additional processing except for specific requirements such as cleaning, painting or minor repairs.

“Source Reduction” means products that result in a net reduction in the generation of waste compared to their previous or alternate version and includes durable, reusable, and remanufactured products.

“State” means the State of Delaware.

“Surfactant” means an agent that, when dissolved in water, works to loosen dirt to allow cleaning agents better removal of dirt from surfaces.

“Sustainable” means the needs of the present are met without compromising the ability of future generations to meet their own needs.

“EPA” means the U.S. Environmental Protection Agency a federal agency that leads the nation’s environmental science, research, education and regulation efforts to protect human health and the environment.

“Water-Saving Products” means products that are in the upper 25 percent of water conservation for all similar products, or at least 10 percent more water conserving than the minimum level that meets the Federal standards.

“WaterSense” means a partnership program sponsored by EPA, to help Americans save water and protect the environment.

4.0 Third Party Certification

- 4.1 To prevent unsubstantiated claims of environmental benefit or reduced impact, any product deemed to be approved or considered under this policy shall be certified by an independent 3rd party entity. Such certifications shall be recognized by the U.S. EPA Design for the Environment (DfE) Formulator Program or recognized by the State, DNREC or DTI as consistent with environmental goals with claims verified through independent 3rd party certification. These certifications include, but not limited to: [Chlorine Free Products Association](#), [EcoLogo](#), [EnergyStar](#), [EPEAT](#), [Forest Stewardship Council](#), [Green-e](#), [Green Guard](#), [Green Seal](#), [Green Building Council \(LEED\)](#), and [Environmental Choice](#)
- 4.2 The costs of any certification required under this Regulation shall be solely at the expense of the vendor/supplier and no costs above the product/services price shall be permitted.
- 4.3 Suppliers may still seek environmentally preferable recognition for products that are not so certified or recognized by the above certifications by submitting an affidavit from a certified laboratory stating that the products meet or exceed the performance and health and environmental criteria and demonstrating a cost benefit of these products over established certified products.

5.0 Source Reduction

- 5.1 Wherever feasible, transition to environmentally and health-friendly products and services shall occur in a manner that avoids wasting of existing inventories, accommodates establishment of supply chains for new products, enables the training of personnel in appropriate work practices, and allows the phase-out of products and practices inconsistent with this Regulation.
- 5.2 Purchase products that are durable, long lasting, reusable or refillable.
- 5.3 Purchase remanufactured products such as toner cartridges, tires, furniture, equipment and automotive parts, but without reducing safety, quality, effectiveness or the warranty that supports the original product.
- 5.4 Consider short-term and long-term costs in comparing product choices. This includes an evaluation of the total costs expected during the time the product is owned including, but not limited to, acquisition, extended warranties, operation, maintenance and end-of-life management.
- 5.5 Request vendors reduce packaging or use the minimum amount necessary for product protection.
- 5.6 Require that surplus or outdated electronic equipment, including but not limited to, computers, monitors, printers and copiers, be designated for reuse or recycled under the requirement of 29 **Del.C.** §7002(b).

6.0 Recycled-content Products

- 6.1 Apply, as a general rule, the 5 percent price preference for purchasing recycled-content products as specified in 29 **Del.C.** §6938. Specify and purchase products that contain the highest percentage of post-consumer recycled-content practicable.
- 6.2 Specify that all printed materials (e.g., reports, brochures, letters, forms, business cards) that are purchased or produced must be printed on recycled-content paper and contain a statement on the material that the paper contains recycled-content. The statement should also indicate the percentage of post-consumer recycled content it contains.
- 6.3 Specify and purchase recycled-content transportation products such as signs, traffic cones, barricades, parking stops and delineators.
- 6.4 Specify the use of recycled, reusable, or reground materials for paved constructions projects.

7.0 Energy And Water Savings

- 7.1 Purchase energy efficient equipment with the most up-to-date, economically feasible and proven energy efficiency functions. This includes, but is not limited to, high-efficiency heating and cooling equipment, high-efficiency motors and equipments controls.
- 7.2 Purchase appliances and equipment that meets or exceeds the EPA's EnergyStar standards and have the EnergyStar label (www.energystar.gov) as specified in 29 **Del.C.** §6939.
- 7.3 Replace non-energy efficient lighting, including interior and exterior lightning, street lighting and traffic signal lights with energy-efficient equipment and bulbs.
- 7.4 Replace incandescent light bulbs with compact fluorescent or light emitting diode (LED) bulbs when the incandescent bulbs need to be replaced.
- 7.5 Purchase water-saving products, including but not limited to, high-performance fixtures like low-flow, waterless urinals, tankless water heaters, low-flow faucets and aerators as well as faucets with motion-activated sensors. When possible, purchase products receiving EPA's WaterSense designation (www.epa.gov/WaterSense).

8.0 Pollution Prevention And Toxics Reduction

- 8.1 When procuring or contracting for cleaning services, require such contracted services to use environmentally preferable cleaning products and services, wherever practical. All chemical cleaning products and services purchased should conform to Green Seal, EcoLogo standards, Environmental Choice, or other 3rd party certification standards which are recognized by the U.S. EPA Design for the Environment (DfE) Formulator Program.
- 8.2 For purposes of this policy, "cleaning product" does not include any disinfectant, disinfecting cleaner, sanitizer or any other antimicrobial product regulated by the Federal Insecticide, Fungicide and Rodenticide Act, 7 USC 136 et seq.
- 8.3 Products shall not be toxic or highly toxic as defined by the OSHA Hazard Communication Standard, (29 CFR 1910.1200). Require that all surfactants and detergents be biodegradable and not contain phosphates.
- 8.4 Products and services should not include any ingredients recognized as carcinogenic by the EPA.
- 8.5 Purchase building products, such as paint, carpet, adhesives, furniture and casework, with the lowest amount of volatile organic compounds (VOCs), highest recycled content, and low or no urea formaldehyde.
- 8.6 Purchase paper products that are unbleached or that are processed without chlorine or chlorine derivatives.
- 8.7 Purchase soy-based ink for printing. Include the use of soy-based ink in printing contracts.
- 8.8 Purchase rechargeable instead of single use batteries.
- 8.9 Do not purchase products that use polyvinyl chloride (PVC) such as, but not limited to, office binders, furniture, flooring and medical supplies.
- 8.10 Specify that desktop computers, notebooks and monitors purchased or leased meet, at a minimum, the bronze standard of the Electronic Product Environmental Assessment Tool (EPEAT) criteria (www.epeat.net).
- 8.11 As a practice in Integrated Pest Management, purchase chemical controls only as a last resort. Purchase and use pesticides only after monitoring indicates they are needed and treatments are designed with the goal of removing only the target organism.

9.0 Green Landscaping

- 9.1 Purchase environmentally friendly landscape services that includes design, construction, renovation and maintenance. These services may include grasscycling, composting and the reduction of hazardous products.
- 9.2 Purchase recycled-content materials when constructing hardscape and landscape structures.
- 9.3 Reduce water used for irrigation by purchasing plants that are native to the area and drought-tolerant that require minimal or no watering once established.
- 9.4 Reduce water pollution and heat-island effect by reducing the amount of impervious surfaces in the landscape. Permeable substitutes such as pervious concrete or pavers are preferred for walkways, patios, driveways and low-volume traffic areas.

10.0 End-of-life Management

- 10.1 Require that all surplus or outdated equipment/facilities/materials be identified as surplus, and, as required by 29 Del.C. §7002, be considered to have no remaining useful life and available for disposal.
- 10.2 Focus on in-state reuse by State agencies, towns, municipalities and other State supported agencies to avoid duplicate procurement and encourage reuse of resources throughout every level of State government.
- 10.3 Preplan projects with one-time contracting to remove items considered surplus property and deliver to other state agencies or sell to the general public.
- 10.4 Consider buying material that at the end-of-life can be reutilized as-is or recycled, such as aluminum signs, metal fencing and metal shelving.

11.0 Agricultural Products

- 11.1 Procurement of Agricultural Goods and Services shall consider the environmental impact as follows:
 - 11.1.1 Above threshold spend shall allow points of the total award that considers:
 - 11.1.1.1 Reduced fuel consumed to reach market/ Agency recipient.
 - 11.1.1.2 Products and/or Services that are provided by Agricultural Businesses which are certified for Best Management Practices(BMP), Good Food Handling Practices(GHP) and Good Agricultural Practices (GAP) through the Delaware Department of Agriculture or surrounding State's equivalent program.

11.1.1.3 The consideration given for environmental impact shall not exceed 10% of the total points awarded or costs of the goods/ services.

11.1.1.4 Fruit and vegetable consumption is an important component of a balanced diet consistent with the *Dietary Guidelines for Americans* and the Food Guide Pyramid. In order to maximize the nutritional value and reduce the use of carbon fuels, fresh produce to support the Farm to School Initiative should be required to be delivered within 2 days of harvest.

11.2 Under Threshold.

11.2.1 State Agencies shall obtain 3 quotes from local distributors, one of which must be a Delaware vendor, supplier or farmer to reduce the impact of transportation to market and the consumption of fossil fuels.

11.3 If a product or service is available by an agricultural business that is certified by the Delaware Department of Agriculture for Best Management Practices(BMP), Good Food Handling Practices(GHP) and Good Agricultural Practices (GAP) or an equivalent surrounding states program, they shall receive consideration equal to10% of the total decision criteria.

12.0 Implementation

12.1 GSS will oversee the statewide implementation of this Regulation.

12.2 GSS will establish an Environmentally Preferable Purchasing (EPP) Workgroup of no less than seven members to be selected from State agencies that will meet at least quarterly. The State GSS Director will chair the workgroup. The mission of the workgroup will be to enhance and facilitate the coordination and implementation of this Regulation as follows.

12.2.1 Identify immediate priorities, establish a process for identifying additional priorities and set deadlines for implementation.

12.2.2 Develop and implement an education and outreach program on this Regulation that may include workshops, conferences training, media events and electronic newsletters

12.2.3 Research and recommend recycled-content products for consideration on State contracts.

12.2.4 Develop, implement and assist State agencies in tracking their environmentally preferred purchasing progress.

12.2.5 Review and revise, if necessary, the standards of this Regulation on at least an annual basis.

12.3 The procurement solicitations for goods and services shall afford prospective vendors with an opportunity to quote prices for environmentally preferred products and non-preferred products, leaving the opportunity to purchase the preferred products to the State agency's discretion.

12.4 New purchasing contracts for the purchase of such products or cleaning services shall include an appropriate requirement consistent with this Regulation and guidelines provided by the Office.

12.5 This Regulation will become effective 10 days after being published as a final regulation.

15 DE Reg. 1469 (04/01/12) (Prop.)