

Testing EPA's Draft Guidelines for Environmental Performance Standards & Ecolabels for Federal Procurement

Charter and Operating Procedures

Governance Committee

Charge

Pilot Goals

Executive departments and agencies of the US government are directed via Executive Order 13693 to specify in the procurement of products and services federal standards and ecolabels that identify products meeting strict federal standards for energy efficiency, water efficiency, and safer chemicals (e.g., Energy Star, WaterSense, and Safer Choice). The Executive Order recognizes, however, that there are hundreds of non-federal standards and ecolabels in the marketplace claiming to validate environmental and human health benefits. This presents the federal acquisition community both great opportunities and challenges.

EPA's overall objective in developing the guidelines is to create a transparent, fair, and consistent approach to selecting environmental performance standards and ecolabels that support the agency's mission and federal environmentally preferable¹ purchasing mandates. The fundamental aim of the guidelines is to establish a cross-sector framework to be used in recognizing non-governmental environmental standards and ecolabels for use in federal procurement. By designating individual guidelines as baseline or leadership², EPA believes the Guidelines encourage continuous improvement of both standards and ecolabels and the products and services that those standards and ecolabels address, while providing flexibility to accommodate the variety of approaches to and types of standards and ecolabels that exist in the marketplace today. Specifically, the goals of the Guidelines and pilot are to:

1. Leverage existing standards and ecolabels to create positive and measurable change in the environmental performance attributes of the products and services procured by the US Government.
2. Develop a framework that recognizes environmental performance that is better than standard industry practice and further distinguishes higher performance.
3. Develop a framework that filters out standards or ecolabels that are not appropriate for federal procurement and/or do not support environmentally preferable purchasing and/or do not address the key environmental or health impacts of a particularly product category.

¹ Environmentally preferable is defined as "products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, use, operation, maintenance, or disposal related to the product or service."

² Based on EPA's initial analysis of the draft Guidelines, "Baseline" Guidelines align with federal goals and requirements, are relatively straightforward to evaluate, and are applicable across industry sectors. "Leadership" Guidelines represent best practices and are currently achievable by some standards and ecolabels or for some product sectors, but not for others. Some commenters assumed that with Baseline and Leadership Guidelines, EPA was also proposing that standards and ecolabels themselves would be rated as "Baseline" or "Leadership." The pilot thus will explore if/how to distinguish higher-performing standards and ecolabels (e.g., those that satisfy a number of optional "Leadership" Guidelines) from those that do not go beyond Baseline criteria.

The pilot aims to support environmentally preferable purchasing at the federal level as described above by addressing remaining questions regarding both the finalization of the guidelines and the proposed approach to assessing standards and ecolabels. More specifically, the primary tasks of the pilot are to:

- Provide recommendations for refining, augmenting and applying the guidelines in particular to purchase categories - considering both previously received public comments and outcomes from the pilot's expert and balanced stakeholder panels and associated work program.
- Convene three product panels – Paints/Coatings, Flooring, and Furniture – to develop product category-specific assessment criteria (based on the guidelines) that one or more independent assessment entities will use to determine conformity of those standards and ecolabels that voluntarily submit their programs for pilot evaluation. Note that it is EPA's intent to use the panel recommendations informed by these conformity assessment results in developing recommendations for meeting federal environmentally preferable purchasing mandates in these purchase categories (per EO 13693 Section 3).
- Determine in which circumstances, if any, the guidelines might not be a useful tool for assisting purchasers in achieving meaningful environmental and human health outcomes.
- Convene a fourth panel to provide preliminary analysis and recommendations regarding potential future application of the guidelines to service sector standards and ecolabels.
- Provide insights on if/how the guidelines could facilitate useful comparison among standards and ecolabels – for example, distinguishing between baseline and higher performing criteria, and considering how to address purchase categories that have both:
 - single-attribute or lifecycle stage standards as well as multi-attribute, multi-lifecycle stage standards; and
 - stand-alone standards as well as ecolabels (which manage conformity to a standard).
- Test the long-term feasibility and potential for an appropriate external entity (or collaboration among entities) to work with multiple stakeholder panels and independent assessment entities to expand application of the guidelines and maintain up-to-date assessments as part of a self-sustaining program.

Governance Committee Charge and Scope

The primary roles of the Governance Committee (GC) are to coordinate, guide, and advise the panels; ensure consistency among the panels where appropriate; make recommendations on key pilot phases (e.g., selecting one or more independent assessment entities); give final approval on outcomes and recommendations to be reflected in the Panel Criteria and Assessment Reports; add insight and perspective on the pilot's value, scalability, and other questions on which EPA is seeking input through an overarching Final Pilot Report. As such, the GC will play a key role supporting the pilot's immediate goals, as well as support the potential opportunity to build momentum and leadership beyond the pilot as part of an ongoing self-sustaining effort. The panels and the GC may therefore continue beyond the initial pilot period. GC membership may also involve:

- Helping to envision and potentially engage in a long-term effort to expand application of the guidelines (where deemed valuable) and maintain up-to-date assessments as part of a self-sustaining program.
- Serving as a liaison and helping the pilot effectively reach, and positively impact, key audiences within the pilot's identified stakeholder groups.

Bylaws and Operating Procedures

Governance Committee Membership

The GC shall include a set of experts, with balanced participation from the following stakeholder groups:

Producers including, but not limited to: product/service brand owners; manufacturers; suppliers and related professional societies; industry consortia and trade associations.

Users including, but not limited to: institutional purchasers (federal/state government, university, healthcare and other private sector); retailers/resellers and related professional societies; users' groups; industry consortia and trade associations.

Environmental and public health / regulatory including, but not limited to: government and civil society representatives with environmental and/or public health expertise.

Standards and ecolabel community including, but not limited to: standard and ecolabel developers; accreditation organizations; and conformity assessment bodies/certifiers.

Selection of Governance Committee Members

The Governance Committee (GC) will include four representatives from the panels (one from each of the four panels),³ as well as additional individuals who are not panel members, but who instead can focus on the pilot's broader objectives while adding balance and credibility to the GC. Similar to the criteria for panel membership, GC membership criteria include:

- Knowledge of the environmental and/or human health impacts of the particular product category
- Experience working with diverse stakeholders towards consensus
- Familiarity with the draft guidelines and federal sustainable acquisition mandates
- Familiarity with standards development and conformity assessment approaches

In addition, the following criteria are particularly important for GC members:

- Familiarity and experience with several ecolabels and sustainability and human health standards – content, approach, standard development processes, verification processes, etc.
- Ability to contribute to the overall goals of the pilot
- Ability to devote the necessary time to the GC (in addition to time required for panel membership, as appropriate) and willingness to help synthesize and represent panel outcomes

Interested stakeholders may apply for the GC at the same time that they apply for panel membership or apply to participate in the Governance Committee only. RESOLVE will review all of the candidates against the criteria, taking the need for balance into account, and will present a list of panel-specific GC

³ Note: EPA anticipates that, if the pilot structure proves effective and additional purchase category panels are convened, only active panels (i.e., those that are currently convening to develop assessment tools per the Guidelines) would have representatives on the Governance Committee.

candidates to each panel for members' consideration. Panel members will then have the opportunity to rank their choices for the GC representative.

Panel members may register their rankings via email or online survey instrument to RESOLVE. RESOLVE shall offer all panel members the opportunity to participate in ranking and give a minimum of two weeks for responses. For decision-making purposes on selecting a Governance Committee representative, a quorum shall be a majority of the panel membership.

Once at least a quorum of members have submitted their rankings by the deadline established by RESOLVE, RESOLVE will consider both the results and the need for balance on the GC and make the final selections. If, for example, a particular stakeholder category is under-represented on the Governance Committee, RESOLVE may select the second-highest ranked candidate as a representative to the GC. In the absence of a need for balance, RESOLVE shall select the highest ranked candidate as the GC representative. The goal is to ensure proper representation and balance on the GC.

Transparency of Representation

GC members shall respond to the following questions and, depending on the answers, it may be determined that he/she should recuse him/herself from certain GC decision-making:

- Which organization(s) and role(s) are you currently representing?
- Which standards and ecolabels is your organization currently using (i.e., as a manufacturer, as a purchasers, and/or as a certifier)?

When the GC is making a decision regarding the IAE's assessment of a standard or ecolabel represented by or currently used by a member, RESOLVE will ask that member to recuse him or herself from the decision-making process (i.e., after having the opportunity to provide input to the discussion, the individual may be asked to leave the room or the call so that others may discuss freely; the member would not have a vote on these issues).

Terms

GC members shall serve for the period of the pilot project, estimated to conclude in June 2016. Depending upon the results of the pilot, the panels and/or the Governance Committee may continue beyond the initial pilot period as part of an ongoing self-sustaining effort and/or to provide additional support to EPA in providing recommendations to federal agencies.

Member Participation

GC members are expected to commit approximately 40 to 50 hours to the pilot over a 9-month period, which includes participation in a 1-day meeting, 6 conference calls, and time for reviewing and contributing to documents. If a member cannot attend a meeting or call, he or she shall designate an alternate from his or her organization to participate who can serve as a proxy for the purposes of decision-making and constituting a quorum.

Alternates

GC members may designate an alternate, ideally from their organization, who can serve as a proxy for decision-making purposes in the event the member cannot attend a meeting or call. Alternates shall also meet the criteria for membership, which will allow them to contribute productively to meetings in the member's absence. Members shall provide RESOLVE with the alternate's contact information and keep their alternate updated on the work of the GC.

Termination/Resignation

If a member or his/her alternate does not participate in three events (i.e., meeting or call), the member shall be required to step down from the GC. RESOLVE will track attendance and alert members when they have missed two events so they are aware of their status. Failure to abide by these bylaws and operating procedures or no longer meeting the eligibility criteria for membership also constitutes cause for removal. Once RESOLVE is aware that any of these conditions for removal exist, RESOLVE may inform the member of the risk of removal and offer an opportunity for appeal. If the conditions cannot be rectified, then RESOLVE shall ask the member to resign.

Vacancies

If a GC member steps down or cannot complete his or her term, it will be necessary to fill the vacancy if:

- 1) the number of GC members drops below three members per stakeholder category or
- 2) the member's departure affects the balance of stakeholder categories on the GC such that
 - a) there is more than a differential of two between the departing member's category and the other stakeholder categories on the GC; or
 - b) there are more representatives from the combined Producer and SDO categories than there are representatives from the combined EPHR and User categories.

In any of these cases, RESOLVE shall first invite the departing member's organization to provide another qualified representative. If this is not possible, RESOLVE shall seek to fill the vacancy by returning to the original set of applicants to identify qualified candidates who could maintain the necessary balance on the GC. RESOLVE shall extend an invitation to the candidate who is best qualified according to the criteria and brings balance to the GC.

Decision-Making Procedures and Quorum

The GC will make two types of decisions – key decisions and routine decisions.

The key decisions to be made by the GC are: 1) selection of the independent assessment entity or entities; 2) final approval on outcomes and recommendations to be reflected in the Panel Criteria and Assessment Reports; 3) final approval of the Final Pilot Report; 4) significant changes to the GC and panel charters, as determined by the facilitation team; and 5) others determined by the facilitator. Routine decisions are all other decisions.

The GC shall strive to reach all its decisions through consensus, meaning that all members can live with a particular decision. All members shall have the opportunity to express their viewpoints for consideration by the GC prior to any decision making. RESOLVE shall assist the GC in making an effort to reconcile any conflicting viewpoints. In most cases, the GC is expected to reach consensus.

If a member is opposed to a proposed decision, he or she will be asked to give his/her reasons during the in-person meeting or one of the scheduled conference calls, giving the group the opportunity to consider the opposing view during the decision-making process. In addition, the member will be asked to provide an alternate proposal. A member's reasons for opposition and any main points made in the discussion of that position shall be recorded in the meeting summary.

If after reasonable discussion (as described above), GC members feel consensus cannot be reached, members may propose (via a motion and a second) that the issue be decided via a vote. RESOLVE shall document all decisions, including recording whether they were made by consensus or a vote, as well as

how many members voted for the decision, abstained, or voted against the decision. If they wish, members may opt to have their names entered into the record along with their vote.

For decision-making associated with key decisions, 75% of the GC membership (with at least one representative from each stakeholder category) shall constitute a “key decision” quorum. Decision-making on key decisions by vote will be achieved by at least a 66% affirmative vote of the “key decision” quorum. If a higher number of GC members vote, the 66% applies to the total number of votes.

For decision-making purposes associated with routine decisions, 51% of the GC membership (with at least one representative from each stakeholder category) shall constitute a “routine decision” quorum. Decision-making on routine decisions by vote will be achieved by at least a 66% affirmative vote of the “routine decision” quorum. If a higher number of GC members vote, the 66% applies to the total number of votes.

For key or routine decisions that occur between calls, members shall submit their votes to RESOLVE staff via email by the designated deadline. Any negative votes shall also be submitted via email with reasons outlined.

Members may participate at in-person meetings via conference call for decision-making purposes.

Minority Report

If a minority of members disagrees with a majority decision, they may submit a summary of their rationale for inclusion in the meeting record.

Confidentiality

Call or meeting summaries will serve as a means of recording the discussions and decisions and the summaries will not attribute statements to specific members. During a call or meeting, specific conversations can be excluded from meeting documentation or attributed upon request. Summaries approved by call or meeting participants will be made available to the public on the pilot website. Other pilot materials will be identified as public or private before they are shared with participants.

To encourage open and honest dialogue, participants shall not characterize statements or positions shared by another member during the process without prior consent of that member. In addition, participants shall not disclose information that has been designated confidential without prior consent of the GC.

Amendments

The GC may make routine changes to this charter and operating procedures, as well as to the charter and operating procedures of the panels at any time. If the facilitation teams deems the proposed change to be significant, the GC will follow the process for key decision as described above. The GC may also decide to make changes upon the recommendation of the panels.