

Questions and Answers: Green Chemistry Procurement Guidelines

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I. SAFER PRODUCT AND PROCUREMENT INFORMATION

A. Given the broad guidelines, what approach is preferred?

1. The Governor’s 2012 EO and the guidelines emphasize the priority of green chemistry procurement, while encouraging other procurement sustainability options. The EO states that the guidelines should be integrated into the agencies’ Sustainability Plans. If an agency seeks help in prioritizing its efforts to reduce Chemicals of Concern in products, the agency is encouraged to consult with subject matter experts or the Green Chemistry Steering Committee.
2. Agencies are encouraged to exercise judgment and move toward the goal of the EO with continual improvement. This approach may involve research, consultation, planning, strategy, and consideration of costs and staffing. The guidelines are designed to empower and support an agency and its procurement professionals.

B. What specific product information is available or being considered?

1. **Many examples of product information are included in the guidelines.** Section IV provides examples of green criteria developed by others, and this criteria may include reducing chemicals of concern in products. The guidelines encourage agencies to informally share specific product information that they have developed with subject matter experts.
2. **Building materials.** The Green Chemistry Steering Committee and interested people are conducting research and discussing the development of a possible guide. Green chemistry resources include, but are not limited to, <http://www.pharosproject.net/>. Green chemistry principles are a part of a LEED certification, which is beyond the scope of these FAQs.
3. **Children’s products.** In addition to the Green Chemistry Procurement Guidelines, the State of Washington, Department of Ecology, has developed a database for Children’s products, including chemicals of concern, categories of products, and large companies. Under the Washington law, The Children’s Safe Product Act, large manufacturers are required to provide notice to the Department of Ecology if their product contains certain chemicals. Oregon agencies may access the manufacturers’ data on children’s products, and the database is available for searches at <https://fortress.wa.gov/ecy/cspareporting/>.

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4. **Furniture.** The Green Chemistry Steering Committee, other states, and interested people are conducting research and discussing the development of possible product information. The key is to know what to ask for, given California's new standard, toxic flame retardants, and safer products.
5. **Office Supplies.** DAS EGS Procurement Services on behalf of WSCA/NASPO is developing a cooperative procurement for office supplies, resulting in the award of multi-state price agreements. As a part of this work, Responsible Purchasing Network is assisting in the development of requirements for a green line of products.
6. **Other.** The Guidelines encourage agencies, individually or collectively, to develop, share, and consider specific information about other safer products.

C. How should agencies share experts, successes, lessons, and their safer products?

1. Agencies are encouraged to share information and tools through the DPO Council, Gov.Space, iLearn; listserves like buyerslink, dpolink, and OPPA@memberclicks-mail.net; and the Inter-Agency Sustainability Coordinators Network.
2. As agencies apply the guidelines and award contracts for safer products, the Green Chemistry Steering Committee will explore a common website, a shared database of certifications used by agencies, a central list of approved or certified products, templates, training for SPOTS cards best practices, and other assistance.

D. What is the Inter-Agency Sustainability Coordinators Network?

1. Many larger state agencies have sustainability coordinators. Collectively, they make up the Inter-agency Sustainability Coordinators Network (ISCN). This network encourages and provides opportunities for agency collaboration; ensures agencies receive information, updates and clarity regarding sustainability expectations and sustainability planning; and regularly interacts with the Oregon Sustainability Board. Network members also coordinate their agencies' Sustainability Plan.
2. The coordinators will periodically report on agency progress to the Oregon Sustainability Board.
3. More information is available at the following links: (<http://www.oregon.gov/DAS/EAM/SUST/pages/index.aspx>), the ISCN (<http://www.oregon.gov/DAS/EAM/SUST/Pages/network.aspx>), and the Oregon Sustainability Board (http://www.oregon.gov/DAS/EAM/SUST/Pages/osb_home.aspx)

E. How can the guidelines apply to services with related or incidental products?

This is where sharing of information and best practices can help an agency. For example, at a designated procurement officer (DPO) Council meeting, one group shared an example where the guidelines were applied to the procurement of audit services. Preference points were

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given for using Skype, teleconferencing, and laptops; using hotels that are going green; and using safer white board cleaner and markers.

F. Will Contractors be unduly burdened by requests to disclose product information?

1. **Generally.** Contractors already need to obtain and manage product information as part of their sales of products to agencies. Agency requests may vary according to specific needs, different markets, and methods of public procurement. In some industries, manufacturers are accustomed to complying with regulatory disclosures. For example, Safety Data Sheets provide some product information, including ingredients. In addition, more manufacturers and suppliers now see the benefits to disclose product ingredients.
2. **Resources.** Product information management (or product data/resource management) is a framework of resources to help contractors; including processes, technologies, and consultants. Product information is centrally managed for marketing and selling the products and feeding that information to multiple audiences in a cost-effective manner. As needs for product information increase, a central solution may be advisable.
3. **Certifying Organizations.** Contractors may not need to disclose product information under Section III or IV of the guidelines, if agencies rely on Certifying Organizations under Section II. This may encourage more contractors to become certified.

G. What should an agency do if no safer product exists or an EO exemption is needed?

1. **No Safer Product.** If no certification, verification, or alternative exists for a safer product, an agency should document its research and determination in the procurement file and inform a member of the Governor's Office Green Chemistry Steering Committee.
2. **Limited Exemption.** The Governor's Office is open to developing an exemption process in limited exceptional circumstances, if it is available to all agencies and based on findings of fact, criteria, assessment, and recommendation to the Governor's Office for a decision.

H. Where can we find an introduction to green chemistry and sustainability?

1. **Oregon Law and Executive Orders.**
 - a. In 2000, the Governor and the Legislature declared that state government must become a leader in sustainable practices, pursuant to Executive Order 00-07, which was followed by ORS 184.421 and 184.423, the Oregon Sustainability Act of 2001. ORS 184.423 and Executive Order 03-03 created and implemented the Oregon Sustainability Board. Two Governors issued subsequent Executive Orders, including 06-02 and 12-05. Specific agencies have developed Sustainability Plans and designated Sustainability Coordinators.

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- b. The DAS Director adopted Public Contracting Rules: OAR 125-246-0120(3) (policy on sustainability), 125-246-320 through 125-246-324 (recycling preferences), 125-247-165 (practices regarding electronic goods), and 125-247-170 (life cycle costing). DAS also issued statewide policies: Sustainable Facilities Standards and Guidelines no. 125-6-010 (2004) Statewide Sustainable Acquisition and Disposal of Electronic Equipment (E-waste/Recovery Policy) (no. 107-009-0050), and Resource Conservation no. 07-01-09 (2010).
2. **OHSU. Center for Research on Occupational and Environmental Toxicology (CROET).** For a visual, scientific, and anecdotal description of the problems and people harmed, see the Symposium on Green Chemistry, Safer Alternatives, and Work, found at: <http://www.ohsu.edu/xd/research/centers-institutes/croet/outreach/green-chemistry-symposium.cfm>.
3. **University of Massachusetts, Lowell Center for Sustainable Production.** For an understanding of safe chemistry in government purchasing, informed substitution of chemicals, and prioritizing, see www.sustainableproduction.org. Webinars offer perspectives, tools, and resources.

II. EXECUTIVE ORDER INFORMATION

A. Are industries free to produce and market their products to an agency?

Yes. Nothing in Executive Order No. 12-05 constitutes either “de facto” or “de jure” regulation of industries. Industries remain free to produce and market otherwise lawful materials to anyone who chooses to purchase them, including state agencies. The EO provides direction on how agencies procure products.

B. Is the EO an internal management policy directive by the Governor?

1. **The Governor has authority to issue internal management policy directives.**
 - a. The Governor possesses both constitutional and statutory authority to provide internal management policy directives to DAS. Under Article V, section 1, of the Oregon Constitution, the “cheif [sic] executive power of the State shall be vested in a Governor.” Under Article V, section 13, the Governor also is directed “to transact all necessary business with the officers of government.”
 - b. The Governor has an especially close statutory relationship with DAS. The Governor appoints the DAS director and that person “shall hold office at the pleasure of the Governor.” ORS 184.315(2). The DAS director must organize and reorganize DAS, “with the approval of the Governor.” ORS 184.325(1). The DAS director appoints the supervisors of each division or office of DAS, again “with the approval of the Governor.” ORS 184.325(2). The Governor even may assume the office of DAS director, whenever “the Governor deems advisable.” ORS 184.315(1). There is no doubt that the Governor may provide internal management policy directives to DAS.

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C. Why wasn't prior rulemaking necessary?

1. Oregon has enacted an Administrative Procedures Act, ORS chapter 183 (APA). The APA provides for rulemaking and contested case procedures to be followed in various circumstances. There are two exceptions to the APA definition of a "rule" that are pertinent to this question.
 - a. First, ORS 183.310(9)(e) provides that, for purposes of the APA, a "rule" does not include "Executive orders of the Governor."
 - b. Second, ORS 183.310(9)(a) provides that a "rule" does not include:
 - * * * ***internal management directives, regulations or statements*** which do not substantially affect the interests of the public:
 - (A) Between agencies, or their officers or their employees; or
 - (B) ***Within an agency, between its officers or between employees.*** (Emphasis added).
2. The EO does not regulate any activity by members of the public. Instead, it merely provides internal management policy directives. For example, in the context of the EO's janitorial pilot procurement process, the EO and pilot guidelines merely provided internal direction as to the drafting of an individual procurement's specifications, much like specifications from agency management that they want to procure, for example, engines with at least 100 horsepower or round – not square – tables. The specifications to be used in a specific procurement are matters for internal government direction and decision. By themselves, those specifications do not affect the interests of the public. It is up to potential vendors to decide whether they want to participate in a particular procurement process. If a vendor currently makes only square tables, it is up to that vendor to decide whether to expand its product line in order to participate in a procurement calling for round tables or to pass on the opportunity.
3. The Oregon appellate courts have said that an internal management directive does not affect the interests of the public for purposes of ORS 183.310(9)(a) when an agency must take some step beyond the mere establishment of the directive before any public or private interest is affected. In the context of the EO's pilot janitorial procurement, it appeared that the interests of the public were not affected until a contract award was made. A contract award is not a rule. In APA terms, it is an "order in other than a contested case," albeit one subject to the special judicial review provisions of the Public Contracting Code.
4. The Public Contracting Code clearly states that contract specifications are largely a discretionary decision for the contracting agency. Consistent with ORS 279A.015, specifications must seek to promote optimal value and suitability for the purposes intended and to reasonably encourage competition in satisfying a contracting agency's needs. Subject to ORS 279B.205, ***the specification content must be determined in the sole discretion of the contracting agency*** (emphasis added).

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D. What is the agency's authority to follow the EO and guidelines?

1. ORS 279A.140(1) provides in relevant part:

The Oregon Department of Administrative Services shall conduct all procurements and administer the contracting for goods, services and personal services, including architectural, engineering, photogrammetric mapping, transportation planning or land surveying services and related services, for state agencies unless a state agency is specifically authorized by ORS 279A.050 or provisions of law other than the Public Contracting Code to enter into a contract. The authority described in this subsection may be delegated in whole or in part in accordance with ORS 279A.075.
2. ORS 279B.205 provides that the agency has the sole discretion to determine the specification content of procured products. An agency's specifications will seek to promote optimal value and suitability for the purposes intended and to reasonably encourage competition in satisfying an agency's needs.
3. When an agency's specifications seek to promote optimal value and suitability, this includes Sustainability, as defined in ORS 184.421. ORS 184.423 provides in relevant part:

The Legislative Assembly finds and declares the following goals for the State of Oregon regarding sustainability:

 - (1) In conducting internal operations, state agencies shall, in cooperation with the Oregon Department of Administrative Services, seek to achieve the following objectives:
 - (a) State purchases should be made so as to serve the broad, long term financial interests of Oregonians, including ensuring that environmental, economic and societal improvements are made so as to enhance environmental, economic and societal well-being.
 - ...
 - (j) State operations and purchases should reflect the efficient use and reuse of resources and reduction of contaminants released into the environment.

E. Do the EO and the guidelines apply to grants?

1. The EO and guidelines apply to procurement of public contracts. ORS 279A.025(2)(d) excludes Grants from the Public Contracting Code. ORS 279A.010(1)(k) and OAR 125-246-0110(69) provide the same definition of a "Grant." Agency must apply this definition to an agreement in order to determine whether it is a public contract or grant, regardless of the agreement's name. If the agreement is in fact a public contract, then the EO and the Procurement Guidelines apply.

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2. OAR 125-246-0130(2) and its Commentary, section (1), assist the agency in making this determination. OAR 125-246-0130(2) states: These Rules do not apply to the following:

...

(e) Grants.

Agency as Recipient. If an Agency is a recipient in an agreement with a grantor, the definition of Grant in ORS 279A.010 and OAR 125-246-0110 determines if the agreement is subject to the Code and these Rules. If the grantor has substantial involvement in the program or activity of the Agency, the agreement is not a Grant. The agreement is subject to the Code and these Rules.

Agency as Grantor. If an Agency is a grantor in an agreement with a recipient, the definition of Grant in ORS 279A.010 and OAR 125-246-0110 determines if the agreement is subject to the Code and these Rules. If the Agency has substantial involvement in the program or activity of the Agency's recipient, the agreement is not a Grant. The agreement is subject to the Code and these Rules.

3. The Commentary on OAR 125-246-0130(2)(e), Grants, states:

(a) Grants do not constitute Public Contracts that are subject to the Public Contracting Code. ORS 279A.025(2)(d). The definition of "Grant" in ORS 279A.010(1)(k) has two facets.

(b) **Agency as Recipient.** The first is the situation in which an Agency receives a grant of money from a private or government source. In that case, if the grantor will not be significantly involved in the program or government activity the grant moneys were intended to support, then the agreement under which the moneys were given to the Agency constitutes a Grant. The grantor's mere monitoring of the grant recipient's compliance with the grant conditions, like inspecting a completed project, requiring a report on the achievement of grant objectives, or auditing the expenditure of the moneys, does not convert the Grant into a Public Contract.

(c) **Agency as Grantor.** The second situation appears when the Agency gives money to an organization or program to support a governmental or social services activity of the recipient. The same test applies. If the Agency as grantor will become substantially involved in the recipient's program or activity its money supports, then the transaction is a Public Contract and not a Grant. If the Agency as grantor will not become substantially involved in the recipient's program or activity, the transaction qualifies as a Grant.

(d) **Example of Agency as Grantor.** To illustrate, if an Agency gives another government body money to fund the construction of a useful structure, but the Agency merely conducts an inspection of the completed structure and an audit of the expenditure of the moneys to ensure the recipient obeyed the grant conditions, the transaction remains a Grant that is not subject to the Code. However, if, in addition, the Agency also undertakes to maintain or repair the facility, or to help

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the grant recipient operate it, then the Agency has become substantially involved in the grant-assisted activity, and the transaction is a Public Contract.

III. LIFE CYCLE ANALYSIS (LCA) INFORMATION

A. What is the difference between environmental *attributes* and environmental *impacts*? Is one more useful than the other? How do we compare two Products if one makes an attribute-based claim (such as “recyclable”) and the other makes an impact-based claim (such as “carbon footprint”)?

1. Attributes describe the physical characteristics of a Product. Examples include “recycled content,” “recyclable,” “biodegradable,” “compostable,” “bio-based,” “non-toxic” and even “local.” In contrast, impacts describe actual environmental impacts, such as emissions of greenhouse gases. Impact information is rarely available, as it typically requires a life cycle analysis to generate this kind of information, and those can be time-consuming and expensive. Lacking information on actual impacts, the environmentally preferable purchasing community has turned to using attributes instead. Unfortunately, attributes do not consistently correlate with lower-impact Products, particularly when comparing dissimilar materials. For example, a highly recyclable aluminum can may have higher environmental impacts than a difficult-to-recycle plastic pouch.
2. If you’re comparing two Products, and one is using an attribute-based claim and the other is using an impact-based claim, it is very difficult to compare them. However, if the impact-based claim is derived from an ISO-compliant life cycle analysis (LCA), or an Environmental Product Declaration (EPD) based on such an LCA, that may indicate that the brand owner has made a significant effort to understand the environmental impact of their Product. All other things being equal, agency may give preference to a Product for which an ISO-compliant LCA or EPD is provided, versus competing Products for which ISO-compliant LCAs or EPDs are not provided

B. How do we compare two different Products that provide information about different environmental benefits/impacts? For example, one Product has information about its greenhouse gas emissions, while the other has information about water use?

1. First, confirm that you are in fact comparing two different impact-based claims (as opposed to an impact-based claim vs. an attribute claim). If in fact one of the claims is based on attributes, see the immediately prior question (above).
2. The reality is that Products can impact the environment in many different ways. Full LCAs often report multiple types of environmental impacts, such as energy use, global warming potential, acidification potential, carcinogenic potential, ecotoxicity potential, eutrophication potential, ozone depletion potential, respiratory effects potential, smog potential, and other human health impacts. There is no recommended method for comparing trade-offs between different types of environmental impacts. Oregon has

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statutory goals to reduce greenhouse gas emissions, while reducing emissions of human health toxics and other pollutants are also priorities shared by many citizens.

C. Why can't environmental results be combined into a single environmental score? Why are there multiple environmental criteria used in LCA?

Combining dissimilar results (such as global warming and carcinogenic chemicals) requires weighting the impacts relative to each other. There is no standard method for doing this, and the results will vary just as people's individual interests, concerns, and tolerance for different types of impacts or risks vary.

D. Are there other toxicity concerns besides toxic chemicals in Products?

Yes. For many Products, the toxic chemicals released during production (or elsewhere in the supply chain) may be far more impactful than the toxic chemicals that are actually contained in the Product, particularly if these toxic chemicals are contained or otherwise stable.

Understanding the toxic chemical releases during the production of a Product requires a life cycle analysis. These kinds of studies can be quite useful for understanding emissions elsewhere in the lifecycle, such as manufacturing. In contrast, life cycle analysis will rarely provide much information about the toxic chemicals actually embedded in Products, which is the direct exposure pathway for users of those Products.

E. How do we compare different Products that provide information about different stages of the Life Cycle? For example, consider four competing Products, where one makes claims of low impacts in manufacturing, one makes claims of low impacts associated with transportation, one makes claims of low impacts during use, and the last makes claims of low impacts associated with recycling or disposal.

1. For most products, environmental impacts associated with supply chain and manufacturing are far greater than impacts in other stages of the life cycle. A few notable exceptions include Products that require significant amounts of energy to operate (such as vehicles) or that offgas or emit toxic chemicals during use. For these types of Products, use phase impacts may be greater than supply chain and manufacturing ("cradle to gate") impacts.
2. Transportation is rarely the significant cause of impacts (for Products) that many people intuitively believe. For example, an evaluation of the greenhouse gas emissions associated with growing, processing, and transporting food eaten by the average US consumer found that only 4 percent of the greenhouse gas emissions were associated with transporting the food from the final producer (manufacturer, or in the case of fresh food, the farm) to the retailer. In contrast, 83 percent of the emissions were associated with food growing and manufacturing. Infrequently, however, transportation can be more significant. Examples include Products that are unusually heavy and that have high

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transportation impacts relative to production (such as gravel), as well as Products shipped via air freight.

3. Emissions at end-of-life (disposal) rarely contribute more than 5 percent of the life cycle emissions of Products, although recycling can in some cases reduce emissions by a far greater amount, by providing industry with materials that can be used in lieu of virgin resources to manufacture new goods.

F. What is more important, the Product or the packaging? For example, in comparing two different Products, one seems to have lower environmental impacts associated with the Product, while the other has environmentally preferable packaging.

For most packaged Products, environmental impacts of the Product far exceed the impacts of their packaging. The Product is more important; the packaging less so.

G. Should agencies prefer degradable Products?

It depends. For Products that pose a significant environmental hazard if released to the environment, such as lubricants or other oils, degradability may be a positive attribute. But for Products that are typically disposed of in solid waste, degradability is not a useful attribute. Oregon now has hundreds of years of disposal capacity, and when wastes degrade in landfills, they emit methane, a potent greenhouse gas. Even as some landfills capture some of this gas and use it for energy, the remaining emissions can have significant, negative impacts. Further, for Products that might be recycled (such as plastic bags), degradability can harm the integrity of Products made out of these recycled wastes, and even threaten the economic viability of the recycling industry.

H. Should agencies prefer recyclable Products?

1. If comparing two Products, and both Products provide comparable performance and have a comparable life cycle cost (financial cost), and if both Products are made of the same or a very similar material, yes. For example, an institution may have certain types of fresh produce shipped in corrugated boxes that are “wax coated”. Traditional wax coating is a contaminant in the paper recycling process; these cartons cannot be recycled. However, new formulations of coatings provide moisture resistance while not impeding recycling, and are preferable.
2. However, if comparing two dissimilar materials that provide the same function, “recyclability” is not a helpful selection criterion. For example, an agency may consider cardboard boxes or polyethylene shipping bags for shipping non-breakable items through the mail. Despite the fact that the boxes are easy to recycle and the bags are not, the bags will likely have significantly lower impacts. ([Click here](#) for an evaluation of this example.)

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I. Should agencies prefer recycled-content Products?

This is similar to “recyclable” Products. If comparing two options made of the same material, for example, two brands of copy paper, the one with higher recycled content may have lower environmental impacts. But if comparing two dissimilar materials (such as fiberglass insulation vs. foam insulation, or glass vs. plastic bottles), the environmental impacts will be different for reasons unrelated to recycled content, and higher recycled content will not consistently predict the lower-impact Product.

J. Should agencies prefer compostable Products?

Probably not. Many compostable Products, even those claiming “certification,” do not compost and create problems for composting facilities in Oregon. As a result, many composting facilities no longer want to accept any packaging Products, certified or not. In addition, the environmental impacts of different Products are largely a consequence of what materials they’re made of and how they’re made; compostability (or the lack thereof) does not predict or correlate with reduced environmental impacts.

K. How do we evaluate claims of “carbon footprint,” product footprint,” or “Life Cycle Analysis”?

The term “footprint” is used rather loosely. It sometimes refers to an estimate of actual environmental impacts, and as so, is (or should be) supported by a life cycle analysis. In this case, please refer to DAS Policy 107-009-0080-PO, section X. In contrast, if the term “footprint” is being used loosely and not supported with a meaningful quantitative analysis, then it can be very difficult to evaluate and might best be ignored.