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Dear members of the FAR Council and Mr. Mayock;

On December 8, 2021, President Biden signed an Executive Order (EO) 14057 on “Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability”. This EO and the Federal Sustainability Plan, released simultaneously, align with ITI’s petition that was submitted to the FAR Council on June 1, 2021. ITI respectfully requests the FAR Council to consider the EO and Federal Sustainability Plan in its deliberations on our June 1 Petition.

In particular, we point out Sec. 208 of the EO, which directs Federal Agencies to purchase products and services “identified or recommended by the Environmental Protection Agency,” is the same request we made in our petition. For comparison, we provide the language below:

EO Sec. 208: Sustainable Acquisition and Procurement. (a) Agencies shall reduce emissions, promote environmental stewardship, support resilient supply chains, drive innovation, and incentivize markets for sustainable products and services by prioritizing products that can be reused, refurbished, or recycled; maximizing environmental benefits and cost savings through use of full lifecycle cost methodologies; purchasing products that contain recycled

content, are biobased, or are energy and water efficient, *in accordance with relevant statutory requirements; and, to the maximum extent practicable, purchasing sustainable products and services identified or recommended by the Environmental Protection Agency (EPA) (emphasis added).*

ITI Petition: We are petitioning the USG to initiate a rulemaking to amend the FAR to remove the reference to the EPEAT® program in subparts 39.101, 23.704, 23.705 and, instead, *instruct the EPA to create a list of acceptable labels and voluntary consensus standards based on review by its assessment guidelines (emphasis added).*

In contrast, the current FAR states: “[a]s required by EOs 13423 and 13514, agencies, when acquiring an electronic product to meet their requirements, shall meet at least 95 percent of those requirements with Electronic Product Environmental Assessment Tool (EPEAT®)-registered electronic products...”

The sole mention in the FAR of EPEAT as the qualifying standard, versus language that allows EPA to designate appropriate ecolabels and standards, is contrary to the latest Biden Administration requirements for sustainable procurement as detailed in Section 208. Furthermore, it is contrary to Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA; PL 104 – 113) and the Office of Management and Budget Circular A-119 recommendations to give preference to Voluntary Consensus Standards (VCSs).

Our request is also reinforced in the Federal Sustainability Plan, which states::

The Federal Government will maximize procurement of sustainable products and services, including ENERGY STAR rated equipment; products that are bio-based, made from recycled content, water-efficient, fuel-efficient, made with safer chemical ingredients, and non-ozone-depleting; and products that have earned third-party ecolabels *reviewed and recommended by the Environmental Protection Agency.* (emphasis added).

As noted in our petition, “EPA’s Guidelines for the Environmental Performance and Ecolabels” gives preference to Voluntary Consensus Standards. Allowing EPA to designate VCSs as a procurement preference for electronics would fulfill this federal requirement; however, EPA is precluded from doing so due to current FAR language, which only allows EPEAT – an independently-owned third party program – for the federal procurement of IT equipment. When ITI met with the FAR council on November 10, 2021, we discussed how the FAR Part 23.704 inadvertently created a monopoly for EPEAT that is inconsistent with the NTTAA and Executive Order 14036.¹ For every product category for which EPA has designated an ecolabel or standard for federal procurement that is consistent with the Guidelines, EPA has listed more than one standard or ecolabel that meets the Guidelines, allowing for competition, except for electronic products.² The explicit language of the

¹ EO 14036, on Promoting Competition in the American Economy, calls for agencies to address competition issues across the economy, including using procurement as per Section 5 (a) (ii).

² For example, there are four EPA recommended ecolabels on adhesives, two recommended ecolabels on copy paper and three for cleaning products. See <https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing>

current FAR bars the EPA from evaluating any other ecolabel or standards for electronic products other than EPEAT.

Finally, we note that the EO and Federal Sustainability Plan articulate a vision of public and private partnership to achieve sustainable federal procurement. Members of the electronics industry have proven to be dedicated partners with the federal government on issues related to sustainability. Several ITI members are called out for their leadership in the Federal Sustainability Plan and our members have been partners in EPA's ENERGY STAR program since its inception.³ ITI and our members led the development of the EPEAT program and continue to participate directly in the development of sustainability criteria. However, as we point out in our petition, by designating EPEAT as the sole authority for federal procurement of electronic products, the FAR undermines the goal of federal, private, and nonprofit sector partnership and more importantly, competition in federal procurement, as there are many other standards and ecolabels in addition to EPEAT that are not eligible for federal procurement of IT products.

In summary, we are requesting a status update in light of the release of these recent publications of EO 14057 and the accompanying Federal Sustainability Plan, which reinforce the asks contained in our petition. Please contact me at 202-626-5759 or ccelet@itic.org if you wish to discuss further.

Regards



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The Information Technology Industry Council (ITI) is the premier advocacy and policy organization for the world's leading innovation companies. ITI navigates the constantly changing relationships between policymakers, companies, and non-governmental organizations to promote creative policy solutions that advance the development and deployment of technology and the spread of digitization around the world.

³ When the ENERGY STAR program was created in 1992, the first labeled products were computers and monitors. See <https://www.energystar.gov/about/history/reports>