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LEGAL STATUS

Federal Acquisition Regulation: Sustainable Procurement

A Rule by the Defense Department, the General Services Administration, and the National Aeronautics and Space Administration on 04/22/2024

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Federal Acquisition Regulation: Sustainable Procurement (FAR Case 2022-006)

FAR-2022-0006 (https://www.regulations.gov/docket/FAR-2022-0006)

Supporting Documents:

- 2022-006 (p) TAB B FAR Part 23 Restructuring 2023.06.12 (https://www.regulations.gov/document?D=FAR-2022-0006-0003)
- 2022-006 (p) TAB C Distribution_Derivation Tables 2023.03.15 (https://www.regulations.gov/document?D=FAR-2022-0006-0002)

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PUBLISHED DOCUMENT

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AGENCY:

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

ACTION:

Final rule.

SUMMARY:

DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to restructure and update the regulations to focus on current environmental and sustainability matters and to implement a requirement for agencies to procure sustainable products and services to the maximum extent practicable.

DATES:

Effective: May 22, 2024.

FOR FURTHER INFORMATION CONTACT:

Ms. Jennifer Hawes, Procurement Analyst, at 202-255-9194 or by email at *jennifer.hawes@gsa.gov (mailto:jennifer.hawes@gsa.gov),* for clarification of content. For information pertaining to status, publication schedules, or alternate instructions for submitting comments if *https://www.regulations.gov (https://www.regulations.gov)* cannot be used, contact the Regulatory Secretariat Division at 202-501-4755 or *GSARegSec@gsa.gov (mailto:GSARegSec@gsa.gov).* Please cite FAC 2024-05, FAR Case 2022-006.

SUPPLEMENTARY INFORMATION:

I. Background

On December 8, 2021, the President signed Executive Order (E.O.) 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability. Section 208(a) directs agencies to reduce emissions, promote environmental stewardship, support resilient supply chains, drive innovation, and incentivize markets for sustainable products and services by purchasing sustainable products and services in accordance with relevant statutory requirements, and, to the maximum extent practicable, as identified or recommended by the Environmental Protection Agency (EPA). The Executive Office of the President's Office of Management and Budget (OMB), Council on Environmental Quality (CEQ), and Climate Policy Office jointly issued Memorandum M-22-06 on the same date to provide direction for agency compliance with the E.O. Paragraph G of section I of the memorandum reiterates the requirement to purchase, to the maximum extent practicable and after meeting statutory mandates, sustainable products and services identified or recommended by EPA.

In August 2022, CEQ issued Implementing Instructions for E.O. 14057 (/executive-order/14057). Section 4.6 of the instructions further directs agencies to prioritize multi-attribute products and delineates when it is considered not practicable to procure sustainable products and services. The CEQ implementing instructions provide additional direction as it relates to Federal facility requirements, such as goals for pollution prevention and waste diversion and requirements for waste reduction, as well as direction for certain construction and modernization projects to meet and (where practicable) exceed the CEQ's Guiding Principles for Sustainable Federal Buildings and Associated Instructions (Guiding Principles) (available at *https://www.sustainability.gov/pdfs/guiding_principles_for_sustainable_federal_buildings.pdf (https://www.sustainability.gov/pdfs/guiding_principles_for_sustainable_federal_buildings.pdf)*).

In alignment with E.O. 14057 (/executive-order/14057), memorandum M-22-06, and the CEQ Implementing Instructions, DoD, GSA, and NASA published a proposed rule at 88 FR 51672 (/citation/88-FR-51672) on August 3, 2023, to amend the FAR to restructure and update FAR part 23 to focus on current

environmental and sustainability matters, implement a requirement for agencies to procure sustainable products and services to the maximum extent practicable, and update requirements for construction and architect-contracts. The following changes are made to the FAR as a result of this final rule:

- Dedicates FAR part 23 to environmental matters by moving content related to drug-free workplaces and encouraging contractors to ban texting while driving to FAR part 26.
- Adds a definition of "sustainable products and services" in FAR 2.101.
- Consolidates and updates statutory and other environmental purchasing program requirements in FAR subpart 23.1, Sustainable Products and Services.
- Creates a new omnibus contract clause at FAR 52.223-23, Sustainable Products and Services, to uniformly communicate the Government's requirements for sustainable products and services.
- Dedicates FAR subpart 23.2 to energy savings performance contracts.
- Consolidates requirements related to hazardous and radioactive material in FAR subpart 23.3.
- Consolidates and updates Federal facility and pollution prevention requirements in FAR subpart 23.4.
- Redesignates the remaining content at FAR subpart 23.8 as FAR subpart 23.5.
- Makes other conforming changes throughout the FAR to align with the revision in FAR part 23.
- Updates agency requirements for construction and architect-engineer contracts at FAR 36.104(b)(1) to align with the CEQ's Guiding Principles for Sustainable Federal Buildings and Associated instructions.
- Removes certain contractor reporting requirements in the clauses at FAR clauses 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons; 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners; and the alternates to FAR clause 52.223-5, Pollution Prevention and Right-to-Know Information.
- Finalizes the interim rule published under FAR Case 2010-001 (see 76 FR 31395 (/citation/76-FR-31395), May 31, 2011).

A presentation illustrating the overarching changes at the FAR part/subpart level and more detailed distribution and derivation tables illustrating changes at the section/paragraph level are provided as supplemental documents to this final rule. To access the presentation and tables, go to *https://www.regulations.gov (https://www.regulations.gov),* search for "FAR Case 2022-006," click "Open Docket," and view "Supporting Documents".

II. Discussion and Analysis

Fifty-two respondents submitted comments on the proposed rule and twenty-three respondents submitted comments on the interim rule. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule are provided as follows:

A. Summary of Changes

1. APPLICABILITY OF STATUTORY PURCHASING PROGRAMS

The phrase "all applicable statutory purchasing program requirements" at FAR 23.103(b)(1) and 23.104(c)(1) is changed to "applicable statutory purchasing program requirements." This change addresses a concern that the word "all" suggests sustainable products and services must meet the requirements of all four statutory purchasing programs in all cases, which is incorrect. Sustainable products and services must meet applicable statutory purchasing program requirements. In some cases, there may be more than one applicable statutory purchasing program requirement. For example, roofing-related products are covered under three of the statutory purchasing programs: recovered content, biobased, and energy efficient.

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2. REASONABLE PRICE CONSIDERATIONS

FAR 23.103(a)(2) is revised to clarify that agencies should consider the life-cycle cost of any sustainable product or service, when considering whether the sustainable product or service can be procured at a reasonable price. The paragraph is further revised to clarify that the life-cycle cost tools referenced in the paragraph are for "energy-efficient products." FAR 23.103(a)(1)(iii) is revised to include a cross-reference to FAR 23.103(a)(2). These changes respond to a public comment suggesting that life-cycle cost considerations should not be limited to ENERGY STAR® or Federal Energy Management Program (FEMP)-designated products.

3. IDENTIFICATION OF APPLICABLE SUSTAINABLE PRODUCTS AND SERVICES

The instructions at FAR 23.104(b) are revised to require the contracting officer to ensure that the solicitation and contract identify the sustainable products and services, including the purchasing program and type of product or service, that are applicable to the acquisition, as identified by the requiring activity. This change aligns with the revisions that were proposed at FAR 11.002(d)(2) and are implemented in this final rule. FAR 11.002(d)(2)(ii) requires agencies to incorporate the use of sustainable products and services when describing Government requirements for products and services. In other words, the requiring activity is responsible for identifying the sustainable products and services that are applicable to the requirement and for justifying when certain sustainable products and services are not practicable (see 23.104(b)(1)(i) and 23.104(a), respectively). This facilitates the technical personnel and contracting officer's ability to determine whether offers are responsive to the solicitation requirements, as well as the ability of the administrative contracting officer to ensure compliance during performance of the contract.

Conforming changes are also made to the clause at FAR 52.223-23. The previously proposed paragraph (b)(2) is removed and replaced by a new paragraph (b)(1). The new paragraph states that the Government will set forth in the statement of work or elsewhere in the contract the sustainable products and services that apply to the acquisition, as well as any products or services that are not subject to the clause. In addition, paragraph (c) regarding prioritization is removed from the clause, since the decision regarding which sustainable products and services are applicable to the acquisition resides with the requiring activity. These changes ensure that potential offerors have access to the same information on applicable specifications, standards, and ecolabels when preparing their offers. It also provides an opportunity for potential offerors to provide feedback to the contracting officer if they believe that certain sustainable products and services may have been inadvertently left out of the statement of work or solicitation.

A conforming change is also made to FAR 42.302(a)(68)(ii) to ensure that the administrative contracting officer is monitoring compliance with contractual requirements to deliver, use, or furnish sustainable products and services in accordance with the clause at FAR 52.223-23, instead of FAR part 23.

4. UPDATES RELATED TO THE ENVIRONMENTAL PROTECTION AGENCY RECOMMENDATIONS OF SPECIFICATIONS, STANDARDS, AND ECOLABELS

Paragraph (2)(iii) of the definition of "sustainable products and services" at FAR 2.101 and in the clause at FAR 52.223-23 is revised to specify that products and services must meet the Environmental Protection Agency (EPA) Recommendations of Specifications, Standards, and Ecolabels (EPA Recommendations) in effect as of October 2023. The EPA website at *https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing (https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing)* now provides a search functionality to allow users to search for EPA recommended specifications, standards, and ecolabels in effect since October 2023.

This change is in response to public comments that stated updates to the EPA Recommendations should be subject to formal notice and comment and expressed concern regarding the ability of industry to meet shifting or unpredictable requirements. If EPA makes updates to its recommendations in the future, the Federal Acquisition Regulatory Council (FAR Council) will consider updating this paragraph and will seek notice and comment on such changes.

5. APPLICABILITY TO SUBCONTRACTS

Paragraph (b)(1) of the clause at FAR 52.223-23 is moved to paragraph (b)(2) and revised to state that the contractor must "ensure" sustainable products and services, as required by the contract, are delivered, furnished, or incorporated during performance of the contract. This change is in response to a public comment that interpreted the clause as not applicable to subcontracts, based solely on the absence of a paragraph on subcontracts. The change makes clear that the prime contractor is ultimately responsible for ensuring sustainable products and services are delivered, furnished, or incorporated, regardless of whether performance is by the prime contractor or subcontractors. No subcontract paragraph is necessary. Prime contractors flow down the clause to their subcontractors as appropriate or necessary.

6. APPLICABILITY TO SUPPLIES VERSUS SERVICES

This rule makes several clarifications regarding applicability to supplies versus services. Revisions are made to better align the instructions to agencies at FAR 23.103(c) with the requirements for contractors in paragraph (b)(2) of FAR clause 52.223-23. The differing lists in these sections generated some questions regarding applicability. This rule revises both sections to make clear that contractors must provide sustainable products and services, including products that meet the definition of sustainable products and services, if the products and services are: (1) delivered to the Government; (2) furnished for Government use; (3) incorporated into the construction of a public building or public work; or (4) used by the contractor in performing services under a Government contract where the cost of the products is a direct cost to the contract.

In addition, the phrase "including use at Government-owned contractor-operated facilities" is removed from paragraph (b)(2)(i) of the clause. Instead, a new sentence is added at the end of FAR 52.223-23(b)(2)(iv) to clarify that contractors performing management and operation of Government-owned facilities are required to use products that meet the definition of sustainable products and services to the same extent that an agency would be required to comply if an agency operated or supported the facility. Start Printed Page 30214

7. APPLICABILITY OUTSIDE THE UNITED STATES

FAR 23.105(a) is revised to clarify that the requirement to procure sustainable products and services to the maximum extent practicable does not apply to contracts performed and supplies delivered outside of the United States, unless the agency head determines that such application is in the interest of the United States. This change is modeled after the exception previously provided at FAR 23.804(a) and accords with section 601(a) of Executive Order 14057 (/executive-order/14057).

8. REMOVAL OF INSTRUCTION REGARDING CONFLICT WITH STATUTE

The language previously proposed at FAR 23.104(c)(4) and 52.223-23(c)(4) is removed in the final rule. This language stated that agencies and contractors should procure products and services that meet the EPA Recommendations, unless doing so would conflict with statute, Executive orders, or regulations that impose domestic manufacturing and content requirements. This final rule requires agencies to identify the standards and ecolabels that are applicable to the acquisitions and provides a process for agencies to document when the EPA Recommendations do not meet reasonable performance requirements. Should a statute, Executive

order, or regulation impose any performance requirement that makes use of any statutory or other EPA purchasing program requirement impracticable, agencies may document the conflict and proceed with procuring other than sustainable products and services.

9. REVISION OF PROCEDURES FOR SIMPLIFIED ACQUISITIONS

The special instructions proposed at FAR 13.302(d)(5) are not included in this final rule. The proposed paragraph directed contracting officers to delete FAR 52.223-23 from the clause at FAR 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services), and mark the paragraph as reserved when there is an authorized exception, exemption, or a written justification that it is not practicable to procure sustainable products and services, and the scope of the exception, exemption, or justification covers the entirety of the acquisition. This final rule revises 52.213-4 to state that the omnibus clause at 52.223-23 is applicable when the contract identifies in the statement of work, or elsewhere in the contract, the types of sustainable products and services that apply to the acquisition. As a result, the special instructions proposed at FAR 13.302(d)(5) are no longer necessary.

10. RENUMBERING FAR SUBPART 23.8 AS SUBPART 23.5

This rule renumbers FAR subpart 23.8 as subpart 23.5 to complete the streamlining of FAR part 23. A conforming change is made at FAR 52.223-22 to change the cross-reference for the clause prescription from FAR 23.804(b) to 23.502.

B. Analysis of Public Comments

1. FAR PART 23 RESTRUCTURING

Comment: Several respondents expressed support for restructuring, streamlining, and updating FAR part 23. Two of the respondents specifically expressed support for the consolidation of purchasing preference program requirements in FAR subpart 23.1, with one respondent highlighting the helpful references to statutory authority, lead agency implementing regulations, and other lead agency information on particular programs. One of these respondents also expressed support for removing extraneous items from FAR part 23 and consolidating Federal facility requirements in FAR subpart 23.4.

Response: Noted.

Comment: One respondent suggested that the FAR subpart on encouraging contractors to ban texting while driving should be eliminated altogether, instead of moving the subpart to FAR part 26.

Response: This comment is outside the scope of this FAR rule, which sought only to relocate the existing content at FAR subpart 23.11 to FAR subpart 26.6 to dedicate FAR part 23 to environmental and sustainability matters. This subpart implements Executive Order 13513 (/executive-order/13513), Federal Leadership on Reducing Text Messaging While Driving, which remains in effect.

2. SUSTAINABLE PRODUCTS AND SERVICES

A. GENERAL

I. SUPPORT

Comment: Many respondents expressed general support for implementing the requirement to procure sustainable products and services to the maximum extent practicable. One of these respondents asserted that by requiring or incentivizing purchasing programs to consider environmental factors when sourcing products and services, the Federal Government can standardize the use of sustainable materials and practices in contracts and, consequently, create demand. Another respondent suggested that the proposed

revisions would ensure that the environmental benefits of recycling are realized. Another respondent noted that by consolidating the full list of products and services identified by EPA, Department of Energy (DOE), and Department of Agriculture (USDA), the FAR Council would greatly increase the visibility and usage of a wide array of sustainable products and services and help agencies and contractors better understand and comply with existing sustainable procurement requirements.

Response: Noted.

II. OPPOSE

Comment: Two respondents expressed concern regarding the proposal to require sustainable products and services to the maximum extent practicable with only a few exceptions. The respondents stated that changing Federal procurement across 34 purchase categories and that requiring sustainable products and services be procured to the maximum extent practicable will have far reaching impacts and implications for both Government suppliers and Federal agency procurement offices. They further asserted that the proposed rule would have a direct and damaging impact on companies supplying the Federal Government and on the Government's readiness and operational capacity; place product sustainability procurement above national security; and have a disproportionate impact on small businesses throughout the contracting supply chain that will be ineligible to participate in Federal procurement.

Response: The requirement for Government agencies to procure sustainable products and services is not new. Since 2011, FAR 23.103(a) has required Federal agencies to advance sustainable acquisition by ensuring that 95 percent of new contract actions are for products that are energy-efficient, water-efficient, biobased, environmentally preferable, non-ozone depleting, or made with recovered materials (see 76 FR 31395 (/citation/76-FR-31395), May 31, 2011). In addition, since 2002, FAR 23.703 has required agencies to employ acquisition strategies that maximize the utilization of environmentally preferable products and services (based on EPA-issued guidance) and promote energy-efficiency and water conservation (see 66 FR 65351 (/citation/66-FR-65351), December 18, 2001).

This rule standardizes the procedures across the Federal Government to ensure sustainable products and services are procured to the maximum extent practicable. National security and mission readiness are enduring priorities; this rule retains a process to allow procurement of other than sustainable products and services when mission specifications (*i.e.,* reasonable performance requirements) cannot otherwise be met (see FAR 23.103(a)(1)(ii) and 23.104(a)). This rule also continues to include statutory exceptions and other exemptions related to national security for certain types of acquisitions in certain product categories (see FAR 23.105 and 23.106).

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To improve transparency, this rule includes amendments that will require agencies to specify in their solicitations and contracts the sustainable products and services that apply to the acquisition (see 23.104(b)). This will ensure offerors are proposing solutions against the same requirements and facilitate the agency's ability to evaluate the responsiveness of offers in a fair and consistent manner. In addition, the rule will only require compliance with the EPA Recommendations in effect as of October 2023. This will provide industry an opportunity to provide input on future updates to the EPA Recommendations and ensure adequate time for compliance.

Comment: One respondent expressed concern regarding the basis for the preference provided to products and services qualified under EPA programs identified in FAR 23.108-1 through 23.108-3.

Response: A cornerstone of the Pollution Prevention Act (PPA) of 1990 (Pub. L. 101-508, 42 U.S.C. 13101 (https://www.govinfo.gov/link/uscode/42/13101)) is the establishment of the national policy that pollution should be prevented or reduced at the source whenever feasible. Under the PPA, EPA is specifically charged with identification of Federal procurement opportunities to encourage source reduction. Using the EPA programs on a governmentwide basis to qualify goods and services for a preference enhances efficiency while reducing costs for both offerors and the Government. Absent governmentwide standards, offerors would need to qualify products on a contract-by-contract basis, and it would impair both the offeror and Government's ability to benefit from economies of scale. In alignment with the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104-113 (https://www.govinfo.gov/link/plaw/104/public/113)) and OMB Circular A-119, this rule relies on standards and ecolabels that meet voluntary consensus standards or other private sector standards when they are fit for purpose. While similar to a qualified products list, acquisition of goods and services listed under FAR 23.108 are subject to the exceptions in FAR 23.105 and the exemptions in FAR 23.106 and are only required to be procured to the maximum extent practicable as described at FAR 23.103(a). While the PPA is of general applicability, other statutory authority exists for specific environmental aspects, such as energy pursuant to the authorities cited at FAR 23.107-3(a). The FAR has provided a preference for several of these programs for over two decades.

III. ENVIRONMENTALLY PREFERABLE

Comment: One respondent sought clarification regarding the terms “sustainable products and services” and “environmentally preferable products and services.” The respondent also asked how the term “environmentally preferable products and services” will be applied in FAR 23.108-3 and how this term will interact with FAR 23.103 and 23.109(a) or 23.107.

Response: Both terms are defined in FAR 2.101. This rule will require agencies to procure sustainable products and services. One of the categories of sustainable products and services includes products and services that meet the EPA Recommendations of Specifications, Standards, and Ecolabels. The term “environmentally preferable” applies when addressing types of products and services that meet the EPA Recommendations (see FAR 23.108-3(a)).

Comment: One respondent requested clarification regarding how agencies will be required to source products from the “sustainable products and services” and “environmentally preferable products and services” categories.

Response: There are numerous tools and resources available to agencies when conducting market research. This rule provides links to the lead agency websites for information regarding specific purchasing programs. In addition, the rule highlights at FAR 11.102(d), 23.104(d), and 52.223-23(d) GSA's Green Procurement Compilation, available at *https://sftool.gov/greenprocurement (https://sftool.gov/greenprocurement),* which provides a comprehensive list of sustainable products and services and sustainable acquisition guidance. Agencies are encouraged to review GSA's Green Procurement Compilation when assessing which purchasing programs apply to a specific product or service.

IV. STANDARDS

Comment: One respondent encouraged the Government to leverage existing global sustainability frameworks that reference recognized standards and ecolabels, rather than creating new, U.S. Government-specific specifications.

Response: The standards and ecolabels referenced in this rule are not Government-specific specifications. While some of these ecolabels are established and maintained by Government agencies, they have been developed for public use; none were intended for Government use only. This rule also allows the Government to access and utilize recognized private sector environmental performance standards and ecolabels that are recommended by the EPA, in alignment with the NTTAA and OMB Circular A-119. EPA's Recommendations consider and incorporate private sector standards and ecolabels that are used across the global marketplace.

Comment: One respondent suggested that the Government enact standards for the procurement of sustainable products and services and transition away from voluntary guidelines. The respondent asserted that, under a circular economy, sustainable purchasing must become the default and not just a suggestion.

Response: This rule advances sustainable purchasing by requiring agencies to procure sustainable products and services to the maximum extent practicable. Some of the standards and ecolabels referenced in this rule are statutorily mandated. Others are recommended by the EPA and are in alignment with the NTTAA and OMB Circular A-119 direction to agencies to adopt voluntary consensus standards or private sector standards when fit for purpose.

Comment: Two respondents suggested the FAR Council consider alternative means for showing that a product or service is “environmentally preferable” beyond the directory/registry approach required in the EPA Framework. One respondent suggested permitting flexibility in what is required to demonstrate conformance in a manner that is relevant for a particular requirement or solicitation. The other respondent encouraged the FAR Council to provide an illustrative list of standards, rather than an exhaustive one, which could be used to consider multiple economic impacts over time, such as job creation, workforce, development, supply chain resilience, or other outcomes.

Response: Nothing in this rule prohibits agencies from pursuing environmentally preferable products and services in categories not covered by the EPA Recommendations. This rule leverages the EPA Recommendations as a means of efficiency for Government acquisition. Both offerors and the Government benefit from the economies of scale associated with leveraging EPA's efforts to assess standards and ecolabels. Absent use of the EPA Recommendations, offerors and the Government would need to conduct their own assessment of standards and ecolabels on a contract-by-contract basis.

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V. CLARIFY PROCEDURES

Comment: Two respondents requested additional clarity and guidance on implementing the rule and the new clause. One of the respondents asked that the FAR Council provide clear instructions to both Government contracting officials and offerors on how to understand and appropriately account for sustainability information in the proposal evaluation and contract award process. This respondent also asked for additional clarification regarding how agencies will ensure that statutory purchasing program requirements are met. The other respondent asked how contracting officers will assess a contractor's compliance with the requirements of this rule and whether compliance will be considered in contract award decisions.

Response: This rule is revised to require the Government to identify the types of sustainable products and services that are applicable to the acquisition. The procedures at FAR 23.104(b) are revised to direct the contracting officer to include in the solicitation the sustainable products and services that are applicable to the solicitation, as identified by the requiring activity, as well as any products and services that are not subject to the requirements of the clause at 52.223-23, based on a written justification from the requiring

activity or an authorized exception or exemption. Paragraph (b) of the clause at FAR 52.223-23 is also revised to advise offerors and contractors that the types of sustainable products and services that are applicable to the clause will be specified in the statement of work or elsewhere in the contract.

These changes in the final rule align with the changes that were proposed at FAR 7.103(p) and FAR 11.002(d) and implemented in this final rule, that agencies incorporate the use of sustainable products and services when developing specifications and standards and describing the Government's requirements. This rule also implements without change the requirement that was proposed at paragraph (b)(3) of FAR clause 52.223-23 that sustainable products and services must meet the applicable standards, specifications, or other program requirements at time of quote or offer submission, except for the EPA Recommendations, which are now as of October 2023. This language ensures transparency in the Government's specific requirements for sustainable products and services and that offerors include in their offers sustainable products and services that are subject to the same criteria.

VI. COST IMPACT

Comment: Two respondents commented on the cost impact of the rule. One respondent stated that the proposed rule should contain an estimate of the added costs of procured products that are required to adhere to these environmental impact, energy efficiency, and other requirements. The respondent asserted that product selection that favors products better meeting these requirements will result in added cost to taxpayers. The other respondent suggested that the rule raises the cost of procurement by discouraging nonconforming bids, which could provide agencies reference points in the form of lower-cost bids that may be used to determine if the sustainability requirements are impracticable. This respondent noted that the contracting officer would not know that a sustainable product or service is more expensive until receipt of offers.

Response: This rule is not expected to result in added costs for several reasons. First, the requirement for agencies to procure sustainable products and services is not new. Since 2002, FAR section 23.703 has required agencies to implement cost-effective contracting preference programs promoting energy-efficiency, water conservation, and the acquisition of environmentally preferable products and services (see 66 FR 65351 (/citation/66-FR-65351), December 18, 2001). In addition, since 2011, FAR 23.103(a) has required Federal agencies to advance sustainable acquisition by ensuring that 95 percent of new contract actions are for products that are energy-efficient, water-efficient, biobased, environmentally preferable, non-ozone depleting, or made with recovered materials (see 76 FR 31395 (/citation/76-FR-31395), May 31, 2011). This rule streamlines and standardizes procedures for accomplishing this goal. Second, products that display a required ecolabel or meet the required specifications and standards identified in this rule are not necessarily more expensive than other products in the market and may result in savings when considering the life-cycle costs of the item. Third, this rule allows agencies to justify procuring other than a sustainable product or service if the item cannot be procured at a reasonable price. A revision is made in the final rule to ensure that this market research is conducted by the Government prior to issuance of a solicitation.

B. APPLICABILITY

I. MAXIMUM EXTENT PRACTICABLE

Comment: Many respondents supported the proposed rule standard that agencies procure “sustainable products and services” to the maximum extent practicable. These respondents also expressed support for the position that procuring such products is practicable, unless the agency can demonstrate otherwise.

Response: Noted.

Comment: Two respondents commented that the language regarding what is considered “practicable” is too vague or subjective and could allow for too many exceptions, subverting the rule's effectiveness. One respondent suggested that the rule provide further guidance to clearly define the terms “reasonable” and “practicable.” The other respondent suggested that agencies should train procurement staff on the importance of buying products with recovered materials and provide clear guidelines on “unreasonable” parameters that allow for an exception.

Response: In accordance with FAR 1.108(a), this rule will rely on the common dictionary meanings of “practicable” and “reasonable.” FAR 23.103(a) provides an explanation of what is considered “practicable.” This basis for what is “practicable” is not new and does not necessitate a standalone definition; this language aligns with the exceptions for the statutory purchasing programs, which were already implemented in the FAR prior to this rule. The final rule makes one clarification regarding the term “reasonable” in response to another public comment. FAR 23.103(a)(2) is revised and a cross-reference to this paragraph is added at FAR 23.103(a)(1)(iii) to clarify that agencies must consider whether the sustainable product is cost-effective over the life of the product when determining whether the price of the product is reasonable.

Comment: One respondent, while generally supportive of the requirement to procure sustainable products and services to the maximum extent practicable, recommended also maintaining the goal for agencies to have 95 percent of contract actions require products that are energy-efficient and environmentally preferable, as a measurable goal.

Response: Given that agencies are required to procure sustainable products and services to the maximum extent practicable, there is no longer a need for a specific target. The Government tracks alignment with these and other sustainability requirements through the Federal Procurement Data System and other sustainability reporting submitted to the CEQ. See also response to comments on measuring and reporting in section II.B.5.b of this rule preamble.

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Comment: One respondent stated that the requirement to procure sustainable products and services to the maximum extent practicable is overly limiting and does not provide agencies with sufficient discretion in selecting alternative products and services where necessary.

Response: The rule provides agencies with sufficient flexibility to address these concerns. When sustainable products and services do not meet an agency's reasonable performance requirements or reasonable delivery schedule, or cannot be procured at a reasonable price, agencies may document these circumstances and proceed with procuring other than sustainable products and services (see FAR 23.104(a)).

II. WRITTEN JUSTIFICATIONS

Comment: Two respondents expressed support for the written justification to be prepared by the requiring activity when it is determined that the procurement of sustainable products or services is not practicable. One respondent described this enforcement mechanism as an improvement from the 95 percent target, since it creates a written record that facilitates evaluation of performance and corrective actions at the individual and program levels. The other respondent noted the benefits of communicating to offerors and contractors in solicitations and contracts any products and services that are not subject to the FAR part 23 sustainable acquisition requirements.

Response: Noted.

Comment: One respondent recommended that the rule improve accountability by crafting a definition of "requiring activity," to make clear that requiring activities are those individuals who identify and define requirements for products and services and request initiation of, and provide funding for, an acquisition. The respondent asserted that use of this definition would help ensure that the appropriate agency official takes responsibility for any decision not to require a sustainable product or service in a solicitation or contract.

Response: The request to add a definition of "requiring activity" for the purposes of this rule is declined. The term "requiring activity" is used throughout the FAR and is well understood by the acquisition workforce.

Comment: One respondent suggested that the rule require collection of these written justifications, not only in the contract file, but centrally at OMB or CEQ, or by the respective program owners at EPA, USDA, or DOE. The respondent asserted that compiling this type of data and information could improve program performance.

Response: While it may be helpful to collect this information on a governmentwide basis, it is impracticable at this time as no central repository currently exists.

III. COMMERCIAL PRODUCTS AND SERVICES AND MICRO-PURCHASES

Comment: Two respondents were supportive of the proposed application of the rule to the acquisition of commercial products and services, including purchases below the micro-purchase threshold. One of these respondents noted that this broad approach demonstrates an understanding that industry is already embracing approaches to deliver sustainable products and services commercially.

Response: Noted.

IV. EXCEPTIONS AND EXEMPTIONS

Comment: One respondent expressed appreciation that the rule allows for exemptions when procuring a sustainable product or services is not practicable or is not in the interest of the United States.

Response: Noted.

Comment: One respondent noted the exception at FAR 23.105 from the requirement to procure sustainable products and services for "contracts performed outside of the United States." This respondent sought clarification regarding how this language applies to contracts for supplies. The respondent requested that the rule clarify whether the place of performance is determined by place of delivery for supply contracts or place of manufacture.

Response: The rule is revised at FAR 23.105(a) to state that contracts performed or supplies delivered outside of the United States are excepted from the requirement to procure sustainable products and services, unless the agency head determines that such application is in the interest of the United States. This change is modeled after the exception previously provided at FAR 23.804(a) and accords with section 601(a) of Executive Order 14057 (/executive-order/14057).

Comment: Two respondents requested that a categorical exemption for military equipment (and weapons systems) be eliminated or revised, and products evaluated on a case-by-case basis. These respondents asserted that there is no inherent weakness to biobased products as compared to traditional products and that the burden should be on DoD to exclude biobased products if shown to perform unequally to other embedded products.

Response: The USDA is responsible for providing guidelines for the use of procuring agencies in complying with the requirements of 7 U.S.C. 8102(a)(3) (https://www.govinfo.gov/link/uscode/7/8102). Those guidelines are provided in the USDA regulations at 7 CFR 3201.3 (https://www.ecfr.gov/current/title-7/section-3201.3). The categorical exception at FAR 23.105(d) regarding biobased products to be used in military equipment (products or systems designed or procured for combat or combat-related missions), spacecraft systems, or launch support equipment is based on USDA regulations at 7 CFR 3201.3(e) (https://www.ecfr.gov/current/title-7/section-3201.3#p-3201.3(e)).

Comment: One respondent recommended that any FAR amendments on sustainable procurement recognize the sole and exclusive authority of the Federal Aviation Administration (FAA) to regulate aviation, including aircraft operations, aircraft fuel specification, and certification of aircraft and other aviation equipment. This respondent noted the exceptions and exemptions at FAR 23.105 and 23.106 and suggested that the rule expressly exempt agencies from any requirements to procure sustainable products and services to the extent they conflict with FAA safety and operational policies and mandates.

Response: A blanket exception is not required. This FAR rule allows agencies to procure other than sustainable products and services if the sustainable products and services do not meet reasonable performance requirements (see FAR 23.103(a)(1)(ii)). This process aligns with the existing statutory exceptions for procuring Biobased products meeting the content requirement of the USDA under the BioPreferred® program, products containing recovered material designated by the EPA under the Comprehensive Procurement Guidelines, and energy- and water-efficient products that are ENERGY STAR® certified or Federal Energy Management Program (FEMP)-designated products. In the event that the procurement of a sustainable product or service conflicts with FAA safety or operational policies and mandates, the requiring activity can provide a written justification to the contracting officer who may proceed with procuring other than sustainable products and services.

Comment: One respondent recommended requiring agencies to justify in writing any decisions made pursuant to FAR 23.104(c)(4), and that these justifications be collected.

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Response: The paragraph that was proposed at FAR 23.104(c)(4) is removed in the final rule. That paragraph had sought to highlight that agencies need to ensure procuring certain sustainable products and services does not conflict with statutory or regulatory domestic manufacturing and content requirements. However, the rule already includes a process by which agencies consider whether sustainable products and services meet reasonable performance requirements, which would include those dictated by statute or regulation. As such, no additional guidance is necessary.

V. SERVICES

Comment: One respondent noted the changes related to defining applicability to service contracts. The respondent noted that focusing on products that are a direct cost to the Government contract was a reasonable and fair method to simplify the cost allocation process and should expedite the implementation and widespread acceptance of the rule by contracting officials and contractors bidding on highly complex and efficiency driven projects.

Response: Noted.

Comment: One respondent asked whether the clause would apply to firm-fixed-price contracts, given the proposed language that requires contractors to "furnish sustainable products and services for use in performing services under this contract, where the cost of the products is a direct cost to this contract (versus costs which are normally applied to the Contractor's general and administrative expenses or indirect costs)." The respondent noted that firm-fixed-price contracts do not identify indirect costs to the Government and, therefore, appear to be excluded.

Response: The clause at FAR 52.223-23 is prescribed at FAR 23.109 for use in solicitations and contracts, which includes firm-fixed-price contracts, unless the requiring activity provides a written justification that it is not practicable to procure sustainable products and services. FAR 52.223-23(b)(2)(iii) provides direction to the contractor regarding supplies furnished during the performance of services contracts. Specifically, where supplies are involved in the performance of the service, the Contractor must furnish products that meet the definition of "sustainable products and services" when the cost of such products is a direct cost to the contract. While a firm-fixed-price contract may not identify indirect or direct costs, it does not alleviate the requirement for a contractor to ensure that products that are a direct cost of the service contract are sustainable products and services.

Comment: Two respondents sought clarification regarding application of the clause to supply contracts versus service contracts. The respondents asked whether the proposed language at FAR 52.223-23(b)(1)(i) was meant to apply only to contracts for goods, or also contracts for services. That paragraph stated that, in performance of the contract, the contractor shall "deliver and furnish sustainable products and services for Government use, including use at Government-owned contractor-operated facilities." These respondents also asked whether the proposed language at 52.223-23(b)(1)(iii) was meant to apply to service contracts that involve goods, products, or hardware as part of that service. That paragraph had stated that the contractor shall "furnish sustainable products and services for use in performing services under this contract, where the cost of the products is a direct cost to this contract (versus costs which are normally applied to the Contractor's general and administrative expenses or indirect costs)."

Response: Paragraph (b)(2) of the clause is revised to make clear the Government's requirements for supplies versus services. In the case of a supply contract, the contractor must deliver or furnish products that meet the definition of "sustainable products and services." In the case of a service contract, where supplies are involved in the performance of the service, the contractor must furnish products that meet the definition of "sustainable products and services" when the cost of such products is a direct cost to the contract.

VI. GOVERNMENT-OWNED, CONTRACTOR-OPERATED FACILITIES

Comment: One respondent expressed support for language in the rule that clarifies the policy covers products provided by a contractor during performance at Government-owned contractor-operated facilities, as well as certain products used by contractors while performing services at a Federally-controlled facility.

Response: Noted. However, see revisions to FAR 52.223-23 in response to other public comments to make clear at paragraph (b)(2)(i) that the contractor shall deliver or furnish sustainable products and services generally and clarify at (b)(2)(iv) that the requirement to furnish sustainable products when performing services under the contract includes services performed by contractors performing management and operation of Government-owned facilities to the same extent that the Government would be required to comply.

C. PRIORITIZATION

I. PRIORITIZATION OF MULTI-ATTRIBUTE PRODUCTS AND SERVICES

Comment: Two respondents expressed support for the focus on prioritization of multi-attribute products and services that meet at least one statutory purchasing program and one or more of the non-statutory EPA programs. One of these respondents noted that businesses developing products and services that achieve multiple positive environmental outcomes will be able to move forward knowing that this kind of innovation will likely be rewarded.

Response: Noted.

Comment: Two respondents expressed support for multi-attribute products and the purchasing prioritization for such products, as long as biobased products continue to receive equal (or preferred) treatment, especially if prioritization of other attributes is not required in statute. These respondents stated that they have heard of instances of agencies not buying "biobased" based on claims of prioritization of other types of products, such as those that are recycled or otherwise mandated, or for other questionable or illegitimate reasons.

Response: This rule continues to implement the statutory requirement to procure biobased products meeting the content requirements of the U.S. Department of Agriculture under the BioPreferred® program, unless the agency cannot acquire products competitively within a reasonable performance schedule, that meet reasonable performance requirements, or at a reasonable price. Also, this rule will continue to require, when both an EPA-designated item and a biobased product in a USDA-designated product category could be used for the same purposes and both meet the agency's needs, that the agency procure the EPA-designated item (see FAR 23.104(c)(1) of this final rule). This requirement is based on the USDA implementing regulations at 7 CFR 3201.3(b), which provides that the requirements for biobased products do not apply to the extent that they are inconsistent with the EPA regulations for the Comprehensive Procurement Guidelines (see 40 CFR part 247 (https://www.ecfr.gov/current/title-40/part-247)). Questions regarding an agency's compliance with requirements to procure biobased products, as outlined in the FAR, should be directed to the contracting officer for the specific procurement and/or an agency's affirmative procurement program.

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Comment: Two respondents sought clarification regarding how an agency will inform vendors and contractors of the agency's intent to provide a preference for multi-attribute ecolabels over other sustainable products categories. One of these respondents asked whether "prioritize" means that agencies should give preference to these products during source selection and, if so, how the Government should weigh sustainability considerations against price and other non-price factors. The other respondent asked, if the current FAR clauses on Electronic Product Environmental Assessment Tool (EPEAT®) are replaced with the clause at FAR 52.223-23, how vendors and contractors will be made aware that agencies intend to preference EPEAT® ecolabel registered products as recommended by the EPA.

Response: This rule is revised to require the Government to identify the types of sustainable products and services that are applicable to the acquisition. The procedures at FAR 23.104(b) are revised to direct the contracting officer to include in the solicitation the sustainable products and services, including the purchasing program and type of product or service, that are applicable to the solicitation, as identified by the requiring activity, as well as any products and services that are not subject to the requirements of the clause at 52.223-23, based on a written justification from the requiring activity or an authorized exception or exemption. Paragraph (b) of the clause at FAR 52.223-23 is also revised to advise offerors and contractors that the types of sustainable products and services that are applicable to the clause will be specified in the statement of work or elsewhere in the contract. Given that there are possible variations in the ways agencies

procure sustainable products and services, agencies are given discretion in determining how to consider compliance during the evaluation of offers and how to monitor compliance during performance of the contract. Contractors will need to offer and deliver products and services that meet applicable specifications, standards, and ecolabels in accordance with agency solicitations.

II. STATUTORY PROGRAMS AND MULTI-ATTRIBUTES

Comment: One respondent requested that the rule make clear that statutory requirements must be met prior to meeting the requirements of other EPA programs. The respondent noted that many Federal agencies are still not meeting the requirements for biobased purchasing, which is a statutory requirement and should be implemented before these additional non-statutory programs.

Response: No additional clarification is necessary. FAR 23.103(b)(1) and 23.104(c)(1) direct agencies to procure sustainable products and services that meet statutory purchasing program requirements. FAR 23.104(c)(3) states that, if no statutory purchasing program requirements apply, then agencies must procure sustainable products and services that meet required EPA purchasing program requirements.

Comment: One respondent requested that the rule clarify that preference should be given to ecolabels that address one or more, not all, statutory and EPA program requirements or attributes. The respondent believes that ecolabels like EPEAT®, which apply multiple criteria addressing everything from electronic stewardship, energy and water efficiency, greenhouse gas emission reductions, pollution prevention, and recovered content should be prioritized by Federal purchasers over similar products that may only address a single statutory attribute, such as ENERGY STAR® or recovered content or biobased content, which are all covered in EPEAT® criteria.

Response: FAR 23.103(b)(1), 23.104(c)(1), and 23.104(c)(2) have been revised to remove the term “all” preceding “applicable statutory purchasing program requirements.” This change makes clear that sustainable products and services must meet “applicable” statutory requirements, not “all” four statutory purchasing program requirements. No additional clarification is necessary. FAR 23.104(c)(1) provides direction to ensure that agencies, first and foremost, comply with the statutory purchasing preference program requirements. FAR 23.104(c)(2) provides the additional direction the respondent seeks, which is to prioritize multi-attribute sustainable products and services, which are those that meet all applicable statutory purchasing program requirements and one or more required EPA purchasing programs.

III. OTHER POLICY PRIORITIES

Comment: Two respondents suggested that the rule clarify the relationship and prioritization of sustainability requirements versus other policy requirements, such as cost, quality, availability, cybersecurity, supply chain risk management, equity, domestic sourcing, and other requirements, including how to deal with potential trade-offs or conflicts between sustainability and other procurement objectives. One of these respondents suggested providing guidance or principles under which agencies prioritize sustainability over other objectives when feasible and justified, take a precautionary approach when there is uncertainty or risk, and seek win-win solutions that optimize multiple objectives.

Response: This rule seeks to require contractors to deliver sustainable products and services, as defined in the rule, to the maximum extent practicable. Agencies are not required to procure sustainable products and services if an exception or exemption applies, or if there is a written justification that the agency cannot acquire products or services competitively within a reasonable performance schedule; that meet reasonable

performance requirements; or at a reasonable price. The justification provides agencies a mechanism to document when a reasonable performance requirement conflicts with the requirement to procure sustainable products and services.

Comment: One of these respondents asked how the Government will approach situations where a foreign product is more sustainable than a domestically-produced product, and the acquisition is subject to the Buy American Act.

Response: This rule directs agencies to procure sustainable products and services, which are those that meet applicable statutory and required EPA purchasing program requirements. It establishes the specifications, standards, and ecolabels that apply to the acquisition, unless an exception or exemption applies or there is a written justification. Contractors are to deliver or furnish conforming supplies and services. Agencies should continue to follow FAR subparts 25.1 and 25.2 regarding the Buy American Act.

Comment: One respondent expressed concern regarding the materials used in products provided by the Federal Prison Industries (FPI) or AbilityOne participating nonprofit agencies.

Response: The materials used by FPI or by AbilityOne vendors are outside the scope of this FAR rule. Per FAR 8.002(a) and 8.004, except as required by FAR 8.003 or as otherwise provided by law, agencies are required to satisfy requirements for supplies and services from or through mandatory Government sources, such as supplies from FPI or supplies on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled, before satisfying requirements through non-mandatory sources.

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Comment: One respondent commented that the proposed rule failed to establish safeguards to prevent EPA and USDA decision-making pursuant to separately administered programs from interfering with statutorily mandated divisions of authority among various Federal agencies. The respondent further suggested that the FAR rule should expressly provide that EPA and USDA must, at a minimum, confer with the FAA to ensure any changes to their designations of “sustainable products and services” will not conflict with FAA safety or operational mandates.

Response: This FAR rule has appropriate safeguards in place to ensure the requirement to procure sustainable products and services to the maximum extent practicable do not supersede reasonable performance requirements (such as FAA safety or operational policies and mandates). In the event that procurement of a sustainable product or service conflicts with FAA safety or operational policies and mandates, the requiring activity can provide a written justification to the contracting officer who may proceed with procuring other than sustainable products and services. Comments on administration of the purchasing program have been shared with EPA and USDA.

D. CONTRACT CLAUSE

Comment: Two respondents expressed support for the new clause at FAR 52.223-23, Sustainable Products and Services. One of these respondents noted that the clause ensures the intent of the regulations is included in the actual purchase. The other respondent noted that the clause would strengthen accountability by requiring the contracting officer to identify in solicitations and contracts any products or services not covered by the clause due to exceptions or exemptions.

Response: Noted.

Comment: One respondent expressed appreciation that the new clause at FAR 52.223-23 did not include a mandatory flow-down requirement and, therefore, applied only to the prime contractor.

Response: While there is no subcontracts paragraph within FAR clause 52.223-23, the clause includes the Government's requirement for sustainable products and services. The prime contractor is responsible for ensuring sustainable products and services are delivered or furnished under the contract in accordance with FAR 52.223-23. Paragraph (b)(2) of the clause is revised in the final rule to make this clear. How the prime contractor communicates this requirement to its subcontractors is at the discretion of the prime contractor.

Comment: One respondent sought clarification regarding language in the proposed preamble regarding the mechanics of the clause at FAR 52.212-5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services, and application of the policy to commercial products and commercial services. Based on the language in the preamble, the respondent was unsure whether the omnibus clause would be required for use as a standard contract term and condition for all commercial products and commercial services, unless a written justification, exception, or a specific exemption is provided by the requiring official to the contracting officer.

Response: The requirements of FAR 52.223-23 apply to acquisitions of commercial products and services, as well as acquisitions valued at or below the simplified acquisition threshold, unless an exception or exemption applies or there is a written justification that it is not practicable to acquire sustainable products and services (*i.e.,* the agency cannot acquire sustainable products or services competitively within a reasonable performance schedule, that meet reasonable performance requirements, or at a reasonable price). This rule amends the clause at FAR 52.212-5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services, to ensure that the clause is included in contracts for commercial products and services. This rule amends the clause at FAR 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services), to ensure that the omnibus clause is also included in simplified acquisitions, when the acquisition is not for commercial products or commercial services (in other words, not covered by FAR 52.212-5).

Comment: One respondent expressed support for the removal of EPEAT® clauses to streamline the FAR part 23 requirements and promotion of an omnibus clause, as long as the omnibus clause requires agencies to procure the EPA recommended ecolabels and could be used by agencies to preference multi-attribute ecolabels, developed in a Voluntary Consensus Process, over single-attribute products to ensure the highest quality and performance for sustainability as required by Executive Order 14057 (/executive-order/14057).

Response: This rule will require agencies to procure sustainable products and services to the maximum extent practicable. Agencies must identify in their solicitations and contracts the sustainable products and services that are applicable to the acquisition, including those that are covered by the EPA Recommendations for Specifications, Standards, and Ecolabels. EPA currently recommends EPEAT® for electronic products.

E. PROGRAM-SPECIFIC COMMENTS

I. ENERGY STAR/FEMP

Comment: One respondent asked why price reasonableness was defined for ENERGY STAR or FEMP-designated products only. The respondent suggested that FAR 23.103(a)(2) be revised to state, “For all designated products, a price is reasonable if it is cost-effective over the life of the product taking life-cycle costing into account.”

Response: An introductory statement has been added at FAR 23.103(a)(2) to advise agencies that, when considering whether the price of any sustainable product or service is reasonable, the agency should consider whether it is cost-effective over the life of the product.

II. RECOVERED MATERIALS

Comment: Several respondents expressed support for including within the definition of "sustainable products and services" those products listed under the EPA Comprehensive Procurement Guidelines (CPG). Some of these respondents noted the benefits of the Guidelines for specific products such as landscaping products and compost, recycled paper products, and tires. Another respondent expressed support for the EPA CPG distinction between post-consumer and post-industrial recycled plastics.

Response: Noted. Paragraph (1)(i) of the definition in the proposed rule is implemented without change in the final rule.

Comment: Several respondents commented that the EPA CPG and its product listing should be updated more frequently to better reflect the market, technology, and product changes, with some noting that the Program's last update was in 2007. One of these respondents noted that technology to process and use recovered materials is rapidly improving. Two respondents, who were supportive of the rule, encouraged EPA to update the designated paperboard and packaging products list and revise its recovered material content levels for paperboard and packaging products. Another respondent expressed concern regarding the EPA guidelines and recovered material content levels for products containing steel or steelmaking. Another respondent, while supportive of the EPA CPG distinction between post-consumer recycled content and overall recycled content, suggested rates of post-consumer recycled content should be updated to reflect best practices to achieve greater environmental benefits.

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Response: This rule continues to implement the statutory requirement for agencies to procure products that meet the minimum recovered material content standards established by the EPA, in accordance with 42 U.S.C. 6962 (https://www.govinfo.gov/link/uscode/42/6962) and as implemented at 40 CFR part 347 (https://www.ecfr.gov/current/title-40/part-347). This comment is on EPA's administration of the CPG Program and is, therefore, outside the scope of this FAR rule; however, these comments have been shared with the EPA.

Comment: Two respondents suggested that the FAR require independent, third-party certification of post-consumer recycled content. One respondent made this comment specifically in relation to plastic items containing recovered materials, suggesting that such items be certified as Postconsumer Recycled Content based on the ISO 14021 standard, to ensure that materials the Federal Government is using have met the end of their previously intended life. The other respondent stated that certification programs have largely been voluntary to date but noted that California and Oregon now require certified postconsumer recycled content in some products, while several other states give authority to their state agencies to consider requiring third party post-consumer recycled plastics certification through future rulemaking.

Response: This comment is outside the scope of this FAR rule, which continues to implement the statutory requirement for agencies to procure products that meet the minimum recovered material content standards established by the EPA, in accordance with 42 U.S.C. 6962 (https://www.govinfo.gov/link/uscode/42/6962) and as implemented at 40 CFR part 347 (https://www.ecfr.gov/current/title-40/part-347). However, these comments have been shared with the EPA.

Comment: Two respondents commented on the definition of "recovered material" in the proposed rule. One respondent noted that the definition is identical to the statutory definition in the Resource Conservation and Recovery Act, (RCRA) and expressed support for minor revisions in the proposed rule to add the statutory citation (42 U.S.C. 6903 (https://www.govinfo.gov/link/uscode/42/6903)) for the definition and reflect the proposed removal of special paper requirements from FAR subpart 4.3 and FAR 11.303. The other respondent recommended that the final rule not rely on the definition of "recovered material" designated in the EPA CPG, expressing concerns about the impact on the steelmaking industry.

Response: No changes are made to the definition of "recovered material." This rule continues to implement the statutory requirement for agencies to procure products that meet the minimum recovered material content standards established by the EPA, in accordance with 42 U.S.C. 6962 (https://www.govinfo.gov/link/uscode/42/6962) and as implemented at 40 CFR part 347 (https://www.ecfr.gov/current/title-40/part-347). As noted by one of the respondents, the definition of the term "recovered material" comes directly from statute being implemented in the FAR.

Comment: One respondent, in expressing support for the EPA CPG Program, commented that EPA's National Recycling Strategy should incorporate increasingly aggressive preferences for environmentally sustainable products.

Response: This comment on EPA's National Recycling Strategy and is, therefore, outside the scope of this FAR rule.

III. BIOBASED PRODUCTS

Comment: A few respondents expressed support for the requirement to purchase biobased products that meet the content requirement of the USDA under the BioPreferred® program to the maximum extent practicable. Two respondents expressed strong support for the rule to ensure full compliance with applicable statutory purchasing preference programs and, in particular, section 9002 of the Farm Bill.

Response: Noted.

Comment: One respondent provided several recommendations for the USDA BioPreferred® Program, to include the following: extend incentives that already exist for biofuels to biomaterials as well; provide incentives for use of biobased feedstocks to be manufactured into bioplastics in addition to the existing incentives for biofuels; and formally recognize the biogenic component of biobased polymers in lifecycle cost assessment methodology.

Response: This comment is on USDA's administration of the BioPreferred® Program and is, therefore, outside the scope of this FAR rule. However, these comments have been shared with USDA.

Comment: One respondent recommended that the rule further elaborate on the phrase at FAR 23.107-2(e)(2), "highest percentage of biobased material practical." The respondent suggested that agency contracts that specify having the "highest percentage of biobased material practical" also comply with biobased testing requirements in accordance with the USDA BioPreferred® Program, specifically ASTM D6866 method B.

Response: The FAR specifies that contracts include language requiring compliance with the regulations implementing the Biobased Markets Program (the BioPreferred® Program). The BioPreferred® Program has established "minimum" biobased content requirements for qualifying biobased products. These minimum biobased contents are determined by examining the biobased content of the various

manufacturer's products offered within each designated product category. The BioPreferred® Program recognizes that within a given product category the available products may vary significantly in biobased content as a result of varying performance needs and features required of the product. It is the intent of the BioPreferred® Program that purchasers of biobased products choose to purchase the products with the highest biobased content that meets their performance needs. The BioPreferred® Program specifies that demonstration of a product's compliance with the required minimum biobased content must be verified using ASTM D6866. USDA believes it would be redundant for the FAR to specify the use of ASTM D6866 as this method is already specified in the BioPreferred® Program's regulations and the FAR specifies compliance with those regulations.

Comment: One respondent suggested that the rule include a new contract clause to specify that the USDA BioPreferred® Program requires a minimum of 25 percent biobased carbon content, which varies depending on the product category. This respondent also suggested that whenever biobased product procurement is mentioned in the FAR, it should clearly state that the biobased product must be third-party tested by an ISO 17025 accredited laboratory and contain a verified biobased carbon content percentage that meets or exceeds the "highest percentage of biobased material practical."

Response: The specific requirements included in the comment are already contained in the BioPreferred® Program's regulations. As stated in the previous response, USDA believes that, as long as the FAR requires compliance with the BioPreferred® Program's regulations, it would be redundant to list selected requirements in the FAR. Singling out specific requirements for inclusion in the FAR, but not including others, could also be confusing to the agencies.

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Comment: Several respondents commented on the definition of "biobased products." One respondent expressed support for the revised definition included in the proposed rule. The other respondents recommended updating the biobased products definition to fully reflect the exact language of Public Law 115-334 (https://www.govinfo.gov/link/plaw/115/public/334). The respondents noted that the statute refers to "renewable chemicals," terminology that is missing in the proposed rule.

Response: The definition of "biobased product" in section FAR 2.101(b)(2) aligns with the definition of "biobased product" in the USDA's implementing regulations at 7 CFR 3201.2 (https://www.ecfr.gov/current/title-7/section-3201.2). However, these comments have been shared with USDA. If the USDA's definition in its implementing regulations is updated to include "renewable chemicals," a conforming change will be made to the FAR.

Comment: One respondent commented that the rule should include the requirements in section 9002 of the Farm Security and Rural Investment Act of 2002, as amended (see 7 U.S.C. 8102(a)(2)(A)(i)(III) (https://www.govinfo.gov/link/uscode/7/8102)), for agencies to "establish a targeted biobased-only procurement requirement under which the procuring agency shall issue a certain number of biobased-only contracts when the procuring agency is purchasing products, or purchasing services that include the use of products, that are included in a biobased product category designated by the Secretary [of Agriculture]" and to "report quantities and types of biobased products purchased by procuring agencies."

Response: The comment on targeted biobased-only procurement requirements is outside the scope of this rule, which continues to implement the statutory requirement for agencies to establish affirmative procurement programs to promote a preference for biobased products (see content at FAR 23.107-2 of this rule, which was previously implemented at FAR subpart 23.4). Executive Order 14081 (/executive-

order/14081), Advancing Biotechnology and Biomanufacturing Innovation for a Sustainable, Safe, and Secure American Bioeconomy, addresses implementation of biobased products procurement, including agency efforts for biobased-only contracts. Efforts to monitor targets and reporting can be achieved through internal efforts outside the regulatory process.

Comment: One respondent, who supports usage of biobased materials when appropriate or necessary, strongly urged the Federal Government to only use biobased products that have been responsibly sourced.

Response: This comment is outside the scope of this rule, which continues to implement the statutory requirement for agencies to procure biobased products that meet the content requirement of the USDA under the BioPreferred® program in accordance with 7 U.S.C. 8102 (https://www.govinfo.gov/link/uscode/7/8102) and the USDA implementing regulations at 7 CFR part 3201 (https://www.ecfr.gov/current/title-7/part-3201). The USDA's implementing regulations at 7 CFR 3201.3(c) (https://www.ecfr.gov/current/title-7/section-3201.3#p-3201.3(c)) direct agencies to procure qualified biobased products composed of the highest percentage of biobased content practicable or such products that meet the minimum standards issued by the USDA. The direction to agencies at FAR 23.107-2 is in alignment with these USDA regulations.

Comment: One respondent commented that reliance on the biobased products in categories designated by USDA for crop and other biobased purchasing options under this rule works contrary to the overall objective to procure sustainable products and services to the maximum extent practicable. The respondent suggested that biobased products must demonstrate they have not contributed to deforestation or conversion of critical habitats/ecosystems such as grasslands; (2) the Government should ensure that the program is not causing environmental harm, such as no deforestation or grassland conversion; (3) prioritize and give preference to those products that demonstrate more sustainable production methods; and (4) create ways to incentivize environmental benefit, such as participation in sustainable agriculture/regenerative agriculture programs or use of metrics/models that document sustainability outcomes.

Response: This rule continues to implement the statutory requirement for agencies to procure biobased products that meet the content requirement of the USDA under the BioPreferred® program in accordance with 7 U.S.C. 8102 (https://www.govinfo.gov/link/uscode/7/8102) and the USDA implementing regulations at 7 CFR part 3201 (https://www.ecfr.gov/current/title-7/part-3201). This comment is on the USDA's administration of the BioPreferred® Program and is, therefore, outside the scope of this case. However, the comment has been shared with the USDA.

Comment: One respondent recommended that GSA consider integration of the BioPreferred® Products Catalog available at *https://www.biopreferred.gov/BioPreferred/faces/catalog/Catalog.xhtml (https://www.biopreferred.gov/BioPreferred/faces/catalog/Catalog.xhtml)* into its procurement system along with links to approved suppliers who stock the products to ensure contracting officers can easily access information about biobased options when making purchasing decisions and that training be offered to contracting officers. This respondent also noted that DoD and NASA would have interest in new sustainable technologies and their resulting biobased products, some of which are displayed in the BioPreferred® Catalog but are not receiving the attention they should be since there is no connection with the BioPreferred® Catalog and the Federal agencies.

Response: The BioPreferred® Program is currently integrated into several GSA procurement tools and databases, including the following:

• *GSAAdvantage:* GSA's online shopping and ordering system provides access to thousands of contractors and millions of products and services and Federal buyers can use filters to locate BioPreferred® compliant products. See *https://www.gsaadvantage.gov/advantage/ws/search/special_category_search?cat=ADV.ENV (https://www.gsaadvantage.gov/advantage/ws/search/special_category_search?cat=ADV.ENV).*

• *GSA's Green Procurement Compilation:* GSA's comprehensive green purchasing resource designed for Federal contracting personnel and program managers, as well as vendors working with Federal agencies. It helps identify applicable green purchasing requirements by consolidating and organizing information from Federal environmental programs in one place. The BioPreferred® categories are included in GSA's Green Procurement Compilation. See *https://sftool.gov/gpcsearch?query=BioPreferred (https://sftool.gov/gpcsearch?query=BioPreferred).*

• *GSA's SFTool Product Search:* A product database aimed at simplifying procurement, documentation, and reporting by creating digital catalogs of commercially available, environmentally preferable products that align with Federal requirements. GSA's SFTool Product Search is the largest curated database of environmentally preferable, high-performance products in the marketplace, including over 150 categories and subcategories that represent over 5,700 brands and more than 300,000 products. The BioPreferred® product catalog is included in GSA's SFTool Product Search; see *https://sftool.ecomedes.com (https://sftool.ecomedes.com).*

IV. WATERSENSE®

Comment: One respondent requested clarification regarding how WaterSense® would be applied to services, since the WaterSense® site only describes its applicability to products. 🗋

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Response: As a result of this rule, when performing on a service contract, contractors will be expected to provide products that meet the definition of sustainable products and services, which includes WaterSense® products, during performance of the contract if such products are a direct cost to the contract. See paragraph (b)(2)(iii) of the clause at FAR 52.223-23.

V. SAFERCHOICE

Comment: One respondent noted that FAR subpart 23.7, which is superseded by FAR subpart 23.1 as a result of this rule, directed agencies to give preference to the procurement of acceptable alternative chemicals and products that reduce the overall risks to human health. The respondent suggested that this rule acknowledge and/or promote the viability of all relevant ecolabels, so as not to create an unfair position in the marketplace.

Response: This rule seeks to implement statutory and other EPA purchasing program requirements. Federal agencies benefit from the efforts of EPA under the SaferChoice program in that they can easily and efficiently identify products that contain safer chemicals for procurement versus duplicating the effort of assessing viable specifications, standards, and ecolabels on a contract-by-contract or agency-by-agency basis. However, nothing in this rule prohibits an agency from considering other factors when procuring other products and services that meet their mission needs.

VI. EPA RECOMMENDATIONS OF SPECIFICATIONS, STANDARDS, AND ECOLABELS

Comment: Several respondents expressed support for the inclusion of EPA Recommendations of Specifications, Standards, and Ecolabels in its definition of sustainable products and services. One respondent noted that the EPA Recommendations give preference to multi-attribute or life cycle-based standards and ecolabels that address key environmental and human health impact areas, and where product conformance is determined by a competent third-party certification body. Several respondents noted that including this resource will ensure that, should a third-party certification for products and services that reduce food waste be added to the EPA Recommendations, Federal purchasers would have access to that information. One of the respondents expressed appreciation for EPA's evaluation of labels and standards, and extension of the Recommendations to cover uniforms and clothing.

Response: Noted.

Comment: Several respondents supported the replacement of the requirement for agencies to procure products that have the EPEAT® ecolabel with the requirement to procure products and services that meet EPA Recommendations of Specifications, Standards, and Ecolabels. One respondent noted that it had formally petitioned the FAR Council to initiate rulemaking that would amend FAR part 23 to address sole reliance on EPEAT®. This respondent and others commented that this change will allow multiple voluntary consensus standards and labels to be added to the EPA Recommendations and make them available to the Government when purchasing electronic products. One respondent noted that this change will increase competition and remove barriers to doing business with the Government, without penalizing companies that have voluntarily invested in similar efforts. Another respondent strongly advocated for the independent, qualified third-party conformance assessments for standards and ecolabels used by the Federal Government, as well as the transparency of products or services that meet these standards or ecolabels. This respondent noted that independent third-party assessments ensure that the Federal Government procures products and services that conform to the recommended standard or ecolabel and saves Federal resources as agency staff do not have to conduct their own evaluations of products and services or hire third parties to conduct necessary research and separate evaluations.

Response: Noted. As highlighted by the respondents, this rule removes the EPEAT®-specific requirements at FAR 23.704 and the associated contract clauses at FAR 52.223-13, 52.223-14, 52.223-16. These clauses are replaced by the omnibus clause at FAR 52.223-23, which directs contractors to deliver or furnish sustainable products and services, including those that meet EPA Recommendations of Specifications, Standards, and Ecolabels. The EPEAT® ecolabel remains an EPA Recommendation for the electronic products category; however, this product category could be expanded to cover additional ecolabels in the future.

Comment: A few of the respondents who expressed support for the removal of EPEAT®, also urged EPA to commit to revising the EPA Recommendations of Specifications, Standards and Ecolabels for Federal Purchasing to allow eligibility for additional ecolabels for electronic products. One respondent described this as an important step toward compliance with the principles of fair competition in contracting and the rigor of EPA Recommendations as a required resource in the FAR and would align the electronics category with other product categories in the EPA Recommendations.

Response: These comments are on EPA's application of their Framework for the Assessment of Environmental Performance Standards and Ecolabels for Federal Purchasing and expansion of their Recommendations of Specifications, Standards, and Ecolabels for Federal Purchasing for certain product categories (primarily the electronic product category), which are outside the scope of this rulemaking. However, these comments have been shared with the EPA.

Comment: A few respondents commented that the EPA should establish a clear and transparent process for the identification, evaluation, and selection of standards, specifications, and ecolabels for the EPA Recommendations of Specifications, Standards, and Ecolabels. One of the respondents asserted that this must be done in close coordination with all stakeholders to ensure harmonization with established global standards and ecolabels. The other respondent suggested EPA establish a formal timeline, application, and review process to facilitate approval and/or endorsement of new ecolabels and expressed support for an adjudicative process for ecolabel review that is fair and can be used to provide scientifically valid sustainability standards.

Response: This rule is revised to incorporate the EPA Recommendations as of October 2023. Future updates to the EPA Recommendations will be incorporated in the FAR via notice and comment to ensure industry has an opportunity to provide inputs on the incorporation of new standards, specifications, and ecolabels in the FAR and enough time to comply with the Recommendations.

EPA advises that it has a formal application and review process for the assessment of new standards and ecolabels for consideration for inclusion in the EPA Recommendations. EPA conducts assessments against EPA's Framework for the Assessment of Environmental Performance Standards and Ecolabels for Federal Purchasing, which was developed using a consensus-based process and went through several public comment periods. EPA also issues **Federal Register** notices inviting standards and ecolabels to apply for assessment. The **Federal Register** notice also included timeline targets for the current assessment process.

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Public input regarding plans to assess and potentially add new standards and ecolabels to EPA's Recommendations are sought via issuance of a notice in the **Federal Register** (see 87 FR 66176 (/citation/87-FR-66176), November 2, 2022). EPA recently issued a notice to seek input on possible product and/or service categories to add to the Recommendations and invited standards and ecolabel owners addressing these product and/or service categories to apply to be considered for assessment.

Comment: Several respondents stated that any environmental standards or ecolabels that are evaluated by EPA must have a public notice and opportunity for public comment. One of these respondents stated that the references to externally administered programs and recommendations subject contractors to shifting and unpredictable requirements. This respondent suggested that, given the lack of opportunity for companies whose products and services are subject to the EPA Recommendations to inform or challenge the EPA's decisions, the definition of sustainable products and services in this rule should be limited to those categories addressed in the designated statutory programs and the EPA Recommendations at the time of the rule's adoption, and that the FAR be amended through formal notice and comment to incorporate any subsequent changes. One respondent asked what the FAR Council will do to ensure that contracting officers and contractors are made aware that ecolabels have been added to the EPA Recommendations of Specifications, Standards, and Ecolabels for Federal Purchasing list. The respondent noted that contractors may not be aware that ecolabels that apply to their products and services are in the EPA Recommendations.

Response: Paragraph (2)(iii) of the definition of “sustainable products and services” at FAR 2.101 and in the clause at FAR 52.223-23 is revised to specify that products and services must meet the EPA Recommendations of Specifications, Standards, and Ecolabels in effect as of October 2023. The EPA website at *https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing (https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing)* now provides a search functionality to allow users to search for EPA

recommended specifications, standards, and ecolabels in effect since October 2023. If EPA makes updates to its Recommendations in the future, the FAR will consider updating this paragraph and will seek notice and comment on such changes.

Comment: One respondent noted that the EPA Recommendations include endorsed third-party certifications for product end-of-life (such as the Biobased Products Institute certification for compostable products) and full product life cycle (such as Cradle to Cradle certification) and recommended that a third-party certification for products and services that reduce food waste be added to the EPA's Recommendations.

Response: This comment suggests expanding the EPA Recommendations of Specifications, Standards, and Ecolabels for Federal Purchasing, which are outside the scope of this rulemaking; however, these comments have been shared with the EPA.

Comment: One respondent stated that any environmental standards or ecolabels that are evaluated by EPA must be consensus standards as described by OMB Circular A-119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities.

Response: OMB Circular A-119 gives a preference for using voluntary consensus standards. Agencies are also directed to use private sector standards that are fit for purpose. If there are voluntary consensus standards, which are not fit for purpose, agencies have the authority to utilize non-consensus-based standards. EPA indicates on the Recommendations website which standards are voluntary consensus standards.

Comment: One respondent recommended that the EPA add a compost certification program to its Recommendations, such as the U.S. Composting Council's Seal of Testing Assurance, or recommend a compost testing protocol to site users, such as the Test Method for the Examination of Composting and Compost.

Response: This comment suggests expanding the EPA Recommendations of Specifications, Standards, and Ecolabels for Federal Purchasing, which are outside the scope of this rulemaking; however, these comments have been shared with the EPA.

Comment: One respondent requested clarification regarding which Federal agencies are involved in the administration and/or implementation of the EPA Recommendations, including the development of criteria for how products are included, and whether lead agencies will be required to coordinate with GSA and/or DoD.

Response: Paragraph (2)(iii) of the definition of “sustainable products and services” at FAR 2.101 and in the clause at FAR 52.223-23 is revised to specify that products and services must meet the EPA Recommendations of Specifications, Standards, and Ecolabels in effect as of October 2023. If EPA makes updates to its Recommendations in the future, DoD, GSA, and NASA will consider updating this paragraph and will seek notice and comment on such changes.

Comment: One respondent encouraged GSA, EPA, and other Federal agencies to prioritize working together to minimize any information gaps in identifying environmentally preferable products for sustainable acquisition.

Response: Noted.

F. TRAINING AND OUTREACH

Comment: Two respondents recommended that the Government allocate additional resources to training and technical assistance for the acquisition workforce to drive adoption of and successfully implement the rule in Government contracts. One of these respondents suggested drawing from state and local procurement efforts.

Response: These comments have been shared with the Federal Acquisition Institute (FAI) and the Defense Acquisition University (DAU). FAI and DAU are responsible for determining training requirements and identifying, creating, or updating training for the acquisition workforce to ensure understanding of the FAR requirements. Federal agencies also take steps necessary to educate their workforce regarding new or revised FAR requirements and provide additional guidance as appropriate for their specific mission and needs.

Comment: Two respondents supported Government training, assistance, education, and outreach to Federal suppliers to help them understand and successfully implement sustainable procurement requirements. One of these respondents suggested DoD, GSA, and NASA identify ways to improve education and outreach, with the objectives of expanding markets and advancing fairness and equity. The respondent noted that the education and outreach should be heavily focused on assisting small and medium-sized businesses as well as low-income communities, communities of color, and other vulnerable communities. The respondent also suggested the Administration announce an education and outreach plan with clear strategies, metrics, and timelines for helping disadvantaged businesses and communities fully participate in the transition to a more sustainable, clean energy economy that is underway, as well as actions to ensure meaningful participation from nongovernmental organizations and other representatives from disadvantaged businesses and vulnerable communities.

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Response: Establishing an education and outreach plan or providing Government assistance and training to Federal suppliers is outside the scope of this rule. However, industry will benefit from the restructuring of FAR part 23 and consolidation of the purchasing preference programs requirements and procedures in FAR subpart 23.1, which lends itself to a better understanding of the Government's requirements for sustainable products and services. FAR 23.107 and 23.108 include links to lead agency websites where additional information on the specific program and, in some cases, additional training material is available. Paragraph (d) of clause at FAR 52.223-23 also includes a link to GSA's Green Procurement Compilation available at *https://sftool.gov/greenprocurement (https://sftool.gov/greenprocurement)*, which is a publicly available research tool that may be used to better understand which programs apply to products and services procured by the Government. Also, FAR sections 23.107-1 and 23.107-2 require agencies to, as part of their affirmative procurement programs, promote recovered materials and biobased product preference programs. Finally, it is anticipated that industry may also benefit from any new or updated training developed by FAI or DAU in response to this FAR rule.

3. SPECIAL REQUIREMENTS FOR PAPER

Comment: One respondent expressed support for the proposed changes to remove special requirements for paper on the basis that e-commerce is now the primary means of conducting acquisition-related activities, printing double-sided on recycled paper is a common practice, and agencies will be required to procure products (including paper) that meet the minimum recovered material content standards established by EPA's CPG Program.

Response: Noted.

Comment: One respondent commented that increased recycled content mandates beyond those set in the U.S. Environmental Protection Agency's Comprehensive Procurement Guidelines, especially 100 percent recycled content in products, should be avoided for paper and paper packaging. The respondent asserted that such mandates ignore performance requirements and are not necessary given the circular nature of paper and paper packaging.

Response: This rule does not increase recycled content mandates beyond those set by EPA's CPG Program.

Comment: One respondent expressed concern about the proposed removal of the clause at FAR 52.204-4, Printed or Copied Double-Sided on Postconsumer Fiber Content Paper, which addresses contractor-submitted paper document requirements. The respondent questioned whether removal of the clause would result in less double-sided printing and copying on recycled paper when paper documents are used. The respondent suggested adjusting the definition of “contract action” to address paper requirements, as an alternative to retaining the clause.

Response: The requirement to print or copy double-sided on postconsumer fiber content paper was based on direction provided in E.O. 13423 (/executive-order/13423), Strengthening Federal Environmental, Energy, and Transportation Management, and E.O. 13514 (/executive-order/13514), Federal Leadership in Environmental, Energy, and Economic Performance, both of which have been rescinded. In addition, electronic commerce is the predominant mechanism for conducting acquisitions since agencies are required to use electronic commerce in contracting whenever practicable or cost-effective in accordance with FAR 4.502.

4. CONSTRUCTION

Comment: One respondent expressed support for the proposed changes to FAR part 36 to ensure that Federal construction and modernization projects meet or, wherever practicable, exceed CEQ's Guiding Principles. The respondent noted several benefits to incorporating CEQ's Guiding Principles, to include increasing efficiency, optimizing performance, eliminating unnecessary use of resources, ensuring the health of occupants, protecting the environment, generating cost savings, and mitigating risks to assets.

Response: Noted.

Comment: Another respondent suggested incentivizing the use and incorporation of whole building life-cycle assessments in procurement to understand the overall impacts of a particular building and the project's products by utilizing GSA's Facilities Standards for the Public Buildings Service (P100) section 1.9.2.9 on Decarbonization. The respondent noted that taking a holistic view enables buildings to be designed with significantly lower carbon footprints through smart material selection across multiple product categories throughout the project. In particular, the respondent noted the potential benefits of wood products.

Response: GSA's Facilities Standards for the Public Buildings Service (P100) establishes mandatory performance-based standards and prescriptive requirements that design and construction professionals must use in the programming, design, and documentation of GSA buildings. While other Federal agencies and the commercial construction industry look to the P100 as a leadership design standard, it applies only to buildings under GSA's jurisdiction, custody, and control and lease construction facilities that GSA intends to own or has an option to purchase.

FAR 36.104(b) directs agencies to ensure compliance with the Guiding Principles for Sustainable Federal Buildings (Guiding Principles), available at *https://www.sustainability.gov/pdfs/guiding_principles_for_sustainable_federal_buildings.pdf (https://www.sustainability.gov/pdfs/guiding_principles_for_sustainable_federal_buildings.pdf)*. The Guiding Principles provide a consistent governmentwide portfolio approach for Federal agencies to design, mitigate, and measure the impact of their buildings. The Guiding Principles incentivize use of holistic sustainable design practices in material selection through several sections:

- New Construction and Modernization (NC&M) Criteria 5.1 and Existing Building (EB) Criteria 5.1 require that agencies use Resource Conservation and Recovery Act (RCRA) section 6002 compliant products that meet or exceed EPA's Comprehensive Procurement Guideline Program.
- NC&M Criteria 5.2 and EB Criteria 5.2 require that agencies implement a policy and verify procedures are in place to procure and use USDA BioPreferred® products, which are designated products with the highest biobased content level per USDA's recommendations.
- NC&M Criteria 5.3 and EB Criteria 5.3 require that agencies verify that a policy or procedures are in place to procure and use products recommended under EPA's Recommendations of Specifications, Standards, and Ecolabels for Federal Purchasing, as appropriate and applicable. Option 2 of this same criterion also allows agencies with renovation projects to meet this guiding principle by conforming to 2018 International Green Construction Code (IgCC) Section 901.4.1.4 (9.4.1.4) Multiple-Attribute Product Declaration or Certification.

5. OTHER APPROACHES

A. GENERAL

Comment: Two respondents commented generally on the Government's approach to sustainable procurement. One respondent suggested that the rule define sustainability and provide criteria for determining the sustainability of a product or service that agencies should consider. The 🗋 respondent suggested that, when evaluating the sustainability of a product or service, agencies should consider factors such as the results of a life-cycle assessment, environmental impact, social responsibility, circular economy, etc. The other respondent urged the FAR Council and the EPA to allow contractors to identify the most efficient and effective pathways to show compliance with the sustainability provisions of the FAR and avoid adopting a “one size fits all” approach for assessing contractors' compliance with Federal sustainability requirements through the rulemaking process.

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Response: This rule seeks to implement statutory and other EPA purchasing program requirements. Federal agencies benefit from the efforts of DOE, USDA, and EPA in that they can easily and efficiently identify sustainable products and services for procurement versus duplicating these efforts by assessing viable specifications, standards, and ecolabels on a contract-by-contract or agency-by-agency basis. However, nothing in this rule prohibits an agency from considering other factors when procuring products and services that meet their mission needs.

Comment: Several respondents recommended expanding the rule to encourage the Federal Government to promote circular economy approaches by its vendors, which keeps products and materials in circulation through processes like maintenance, reuse, refurbishment, remanufacture, recycling, and composting. One respondent emphasized that the sustainability of a product depends on not only how the product is manufactured, but also how it is disposed of and whether it brings benefits (*e.g.,* diversion from landfill, compost, recyclability, reuse) or causes harm.

Response: These comments are outside the scope of the current rulemaking but have been shared with the CEQ.

Comment: One respondent stated that the definition of "diversion," which relies on CEQ instructions, fails to specify composting of organic waste that is not recoverable. This respondent recommended that the definition of "diversion" be revised to include composting and that the rule more clearly specify how Government purchasing decisions can support these end-of-life benefits.

Response: FAR 36.001 provides a definition of "diverting," which is developed based on CEQ's Implementing Instructions. Adjustment of this definition is not appropriate since this definition is provided for the purposes of construction. However, the respondent's suggestion regarding adjustment of the definition has been shared with CEQ.

B. MEASURE AND REPORT ON PROGRESS

Comment: Several respondents recommended or supported specifying how agencies should measure and report their progress and performance in procuring sustainable products and services. Some of these respondents asserted that the lack of measurement and reporting mechanisms could limit the accountability, transparency, and effectiveness of the rule. These respondents suggested that the rule should require agencies to establish and report on specific goals, objectives, benchmarks, and metrics for sustainable procurement, such as percentage of spending, number of contracts, and greenhouse gas emissions.

Response: The respondents' comments are noted and will be taken into consideration for future efforts as the Government seeks to advance sustainable acquisition objectives. Internal Government measuring, benchmarking, goaling, and other efforts are frequently addressed via internal procedures rather via regulatory language.

Comment: One respondent encouraged GSA to develop and implement a plan to establish stronger Federal data standards and protocols for ecolabel certifications. This respondent acknowledged that such an effort is outside the purview of the FAR Council but emphasized the importance of creating a Federal green data standard and data collection protocol.

Response: As the respondent noted, such activities are outside the scope of this FAR rule; however, the comments will be taken into consideration for future efforts as the Government seeks to advance sustainable acquisition objectives.

Comment: Two respondents suggested that the rule should have stronger verification and enforcement mechanisms. One of these respondents stated that the current framework, including the requirement for agency affirmative procurement programs, is not working. Both respondents suggested that there should be regular audits and assessments of agencies' adherence to and contractor performance in sustainable procurement requirements.

Response: The respondents' comments are noted and will be taken into consideration for future efforts as the Government seeks to advance sustainable acquisition objectives. This rule continues to implement the statutory requirement for agencies to establish affirmative procurement programs to promote a preference for biobased products (see content at FAR 23.107-2 of this rule, which was previously implemented at FAR subpart 23.4). Internal Government tracking can be done external to the regulation, such as in Executive Order 14081 (/executive-order/14081), Advancing Biotechnology and Biomanufacturing Innovation for a Sustainable, Safe, and Secure American Bioeconomy, which reinforces the requirements for agency affirmative procurement programs, and addresses implementation of biobased products procurement, including agency efforts for biobased-only contracts.

Comment: Two respondents supported stronger transparency requirements. One respondent suggested that there should be an annual public announcement of sustainable procurement performance metrics by Federal agencies. Another respondent suggested that written decisions to not procure sustainable products and services, and other data should be stored in an easily searchable, publicly accessible website. This respondent further suggested that GSA should prepare and publish a biannual evaluation and analysis of decision documents and related materials and recommend improvements to Federal sustainable procurement policies and procedures.

Response: The respondents' comments are noted and will be taken into consideration for future efforts as the Government seeks to advance sustainable acquisition objectives. Internal Government measuring, benchmarking, goaling, and other efforts are frequently addressed with internal procedures rather than regulatory language.

Comment: Several respondents recommended that FAR clause 52.223-2, Reporting of Biobased Products Under Service and Construction Contracts, be updated to include supply contracts. Two of these respondents also recommended that agencies should be required to report the types and dollar amounts of biobased products purchased to obtain information necessary to assess uptake and gaps, or to improve innovation.

Response: This is outside the scope of this FAR rule, which does not seek to modify existing biobased requirements.

Comment: One respondent suggested that suppliers should be expected to report in pounds the amount of recovered material used in the products acquired by the Government. This respondent also suggested that, when there are supply gaps, suppliers should be required to show proof of how they will procure recovered materials, instead of just resorting to virgin materials. The respondent further advocated for a supplier feedback or scorecard program, as well as incentives to encourage suppliers to innovate to use higher percentages of recovered materials and to secure future supply to meet those higher thresholds.

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Response: Nothing in this rule prohibits agencies from pursuing other environmentally preferable products and services beyond those specified in the definition of “sustainable products and services.” Agencies also have flexibility to determine what incentives and evaluation criteria to use when evaluating offerors' proposals.

C. OTHER ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES

Comment: One respondent suggested the requirement to procure sustainable products and services, as defined, to the maximum extent practicable, should be the basic requirement. The respondent stated that the rule should clarify that agencies and contracting officers are permitted to or should procure environmentally preferable products and services beyond those subject to statutory or other EPA purchasing program requirements to promote the policy objectives of E.O. 14057 (/executive-order/14057).

Response: Nothing in this rule prohibits agencies from pursuing other environmentally preferable products and services beyond those specified in the definition of “sustainable products and services.”

Comment: Several respondents submitted comments related to promoting reuse programs over single use. Comments from two respondents focused on increasing reusable products or packaging, which may be more environmentally impactful than using recovered materials. These respondents suggested that the FAR identify where reusable products should be prioritized, such as pallets, conference supplies, food service

items, office products, composite railroad ties and decking, storage containers, crates, and other durable goods. The other respondent requested that the FAR explicitly discourage the purchasing of single-use plastic products to the maximum extent practicable and prioritize and refillable alternatives.

Response: These comments are outside the scope of the current rulemaking but have been shared with the CEQ.

Comment: Several respondents requested that the definition of sustainable products and services be expanded to cover sustainable food procurement. Some of these respondents suggested requiring agencies to hire food service contractors that follow the principles of EPA's Food Recovery Hierarchy to prevent food waste. The respondents generally acknowledged that the FAR contains at subpart 26.4 a requirement to donate any wholesome, surplus food; however, the respondents expressed concern about nondonatable food being diverted from going to landfills. Another respondent suggested that the EPA Recommendations for Specifications, Standards, and Ecolabels should be expanded to cover climate-friendly food and food services. Another respondent offered recommendations for ways in which GSA should look to structure its procurement of food and food service contracts.

Response: These comments are outside the scope of the current rulemaking but have been shared with the CEQ, EPA, and GSA.

Comment: Several respondents also made comments related to composting. Two respondents stated that agencies should prioritize purchasing finished compost products, noting that purchasing compost has a direct environmental benefit, as well as positive downstream effects by supporting compost end markets. Another respondent suggested that food scraps should be recycled at organics recycling processing facilities, such as composting facilities or anaerobic digestion facilities that produce digestate that is then composted and noted the benefits of such soil amendments when added to the land. Several respondents suggested that the EPA add a compost certification program to its Recommendations of Specifications, Standards, and Ecolabels, such as the U.S. Composting Council's Seal of Testing Assurance Program (STA) or recommend a compost testing protocol to site users such as the Test Method for the Examination of Composting and Compost.

Response: These comments are outside the scope of the current rulemaking but have been shared with the EPA. EPA has designated the landscaping products, including compost, under the CPG Program to promote the use of materials recovered from municipal solid waste. See the EPA web page at *https://www.epa.gov/smm/comprehensive-procurement-guidelines-landscaping-products (https://www.epa.gov/smm/comprehensive-procurement-guidelines-landscaping-products).*

Comment: One respondent noted that there are opportunities beyond the referenced purchasing programs to address the materials manufacture, production, and waste management stages of product life. The respondent suggested expanding sustainable products to include products that have the following attributes: manufactured with renewable energy; sourced with upstream agricultural interventions or from deforestation-free supply chains; reuse systems; or end-of-life and waste management, including whether products are recyclable and compostable.

Response: These comments are outside the scope of the current rulemaking but have been shared with the CEQ, EPA, and GSA. Nothing in this rule prohibits agencies from pursuing other environmentally preferable products and services beyond those specified in the definition of “sustainable products and services.”

D. IMPACT ASSESSMENTS

Comment: Several respondents made recommendations to expand the rule to require agencies to consider environmental and social benefits and costs of their procurement decision. One respondent suggested that the FAR encourage inclusion of the social costs of carbon and, eventually, plastic in decision making, particularly regarding any guidance to reduce single-use plastics. Another respondent suggested that agencies could go further to consider indirect social equity and justice issues (such as risks of labor exploitation, deforestation, or other harmful practices) throughout the supply chain that impact sustainability beyond the direct purchase.

Response: These comments are outside the scope of the current rulemaking. This rule is focused on requiring agencies to procure sustainable products and services, as defined in the rule, to the maximum extent practicable. The respondents' suggestions are similar to inputs received in response to the advance notice of proposed rulemaking published under FAR Case 2021-016, Minimizing the Risk of Climate Change in Federal Acquisitions (see 86 FR 57404 (/citation/86-FR-57404), October 15, 2021). The FAR Council is currently considering those public inputs as it develops a proposed rule under that FAR Case. The FAR Council notes that nothing in this final rule prohibits agencies from pursuing other goals beyond those specified in the definition of "sustainable products and services."

Comment: Two respondents cautioned against incorporating rigid life-cycle assessment (LCA) methodologies. One of these respondents emphasized the need for agencies to have flexibility and remain adaptive to newer techniques as they become available. Another respondent noted that the assessment of greenhouse gas emissions under LCAs should be supplemented with other analyses regarding reduced packaging, alternative delivery systems, and alternative materials to understand the performance of these alternatives in the context of broader energy system decarbonization.

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Response: These comments are outside the scope of the current rulemaking. This final rule does not implement a requirement for agencies to conduct life-cycle assessments (LCA) or mandate specific LCA methodologies. Rather, this final rule advises agencies, when considering whether the price of a sustainable product is reasonable, that they should consider whether the product is cost-effective over the life of the product (see FAR 23.103(a)(2)). The respondents' comments are similar to inputs received in response to the advance notice of proposed rulemaking published under FAR Case 2021-016, Minimizing the Risk of Climate Change in Federal Acquisitions (see 86 FR 57404 (/citation/86-FR-57404), October 15, 2021). The FAR Council is currently considering those public inputs as it develops a proposed rule under that FAR Case.

6. COMMENTS ON INTERIM RULE

The following is a summary of public comments received on the interim rule published in 2011, which is finalized by this rule.

A. GENERAL

Comment: Some respondents were supportive of the interim rule and the Government's leadership in advancing sustainable acquisition goals, while others were unsupportive of the use of an interim rule for this purpose.

Response: Support for the overarching policy objective is noted. The decision to use an interim rule for initial implementation of the requirements for sustainable acquisition were justified in the interim rule. Given that the requirements of the interim rule have been in place since 2011, DoD, GSA, and NASA sought public comments on making further changes to the interim rule prior to finalizing the interim rule.

B. APPLICABILITY

Comment: Two respondents expressed concerns regarding the previous 95 percent target at FAR 23.103. One respondent recommended a phased approach in implementation of the objective to allow for development of intermediate steps that include educating the acquisition workforce on sustainable acquisition, identification of sustainable products and services, and development of supporting agency processes. Another respondent believed that each agency should be given the flexibility to determine how to impose the requirements on its acquisitions.

Response: Implementation of the interim rule in 2011 was supplemented with training for the acquisition workforce and efforts to ensure that agencies are identifying sustainable products and services. This final rule achieves governmentwide efficiencies by pointing agencies to specifications, standards, and ecolabels that are required by statute or recommended by the EPA. The alternative would require each agency or procurement office to conduct such market research on a contract-by-contract basis. The rule also includes procedures to provide flexibility to agencies when sustainable products and services do not meet the agency's performance requirements or cannot be procured in a timely manner at a reasonable price.

Comment: Several respondents requested clarifications regarding applicability of the sustainable procurement requirements to multiple-award contracts, such as the GSA Multiple Award Schedule, and questioned whether compliance with the 95 percent target would be measured at the contract-level or the order-level.

Response: This rule replaces the 95 percent target with the requirement for agencies to procure sustainable products and services to the maximum extent practicable. The sustainable products and services that apply to the acquisition will be incorporated into the statement of work or other requirement document and incorporated into the solicitation and contract. For multiple-award contracts or governmentwide acquisition contracts, the contracting officer for the contract will need to ensure all potential sustainable products and services that may be ordered under the contract are listed in the solicitation and resulting contract, while ordering agencies will need to specify in their statement of work or other requirement document the sustainable products and services that apply to their task order or delivery order under the contract.

Comment: Two respondents requested that the rule be revised to require the Government advance sustainable acquisition “where such products and services meet agency performance requirements.”

Response: This rule provides procedures and FAR 23.104(a) when sustainable products and services do not meet the agency's reasonable performance requirements.

Comment: One respondent commented that the language at FAR 12.102 is unclear and inconsistent. The respondent stated that FAR part 12 should govern the acquisition of commercial items and that Government-unique acquisition requirements should be prohibited when acquiring commercial items.

Response: FAR part 12, Acquisition of Commercial Products and Commercial Services, implements the Federal Government's preference for the acquisition of commercial products and commercial services. FAR 12.102(c) states that contracts for the acquisition of commercial products or commercial services are subject to the policies in other parts of the FAR; however, FAR part 12 takes precedence for the acquisition of commercial products or commercial services, when other parts are inconsistent with FAR part 12. The

requirements in FAR subpart 23.1 do not conflict with FAR part 12. This rule applies to the acquisition of commercial products and commercial services to the extent that sustainable products and services are available to meet the Government's needs.

Comment: A respondent recommended adding exceptions in the rule for repair of existing building infrastructure, systems, and components that are not designated as sustainable and still have a useful life and products for which no formal environmental label is available.

Response: The exceptions and exemptions cited in FAR 23.105 and 23.106 are based on law or provided by Executive order. This rule does not prohibit agencies from procuring products where no formal environmental label is available.

Comment: One respondent expressed concern that the rule lacks flexibility for approving new technologies, such as emerging technologies that may not qualify as providing a “renewable” resource, despite the obvious nature of the energy product being renewable.

Response: This rule revises FAR subpart 23.1 to focus on procedures for procuring sustainable products and services, which include those that are ENERGY STAR® or FEMP-designated products and services, a statutory requirement. Language regarding renewable technologies is removed.

Comment: Two respondents recommend reconsideration of applicability of the requirements for energy efficiency, water efficiency, and renewable energy below the micro-purchase threshold. One of these respondents suggested that the policy only apply above the simplified acquisition threshold.

Response: The requirement to procure energy- and water-efficient products that are ENERGY STAR® certified or FEMP-designated products is based in statute (see 42 U.S.C. 8259b (https://www.govinfo.gov/link/uscode/42/8259b) and the implementing regulations at 10 CFR part 436 subpart C (https://www.ecfr.gov/current/title-10/part-436/subpart-C)). This rule continues to apply these requirements to acquisitions valued at or below the simplified acquisition threshold and micro-purchases to ensure agencies are achieving energy savings, while also protecting the environment.

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Comment: One respondent requested clarification regarding how the rule will apply to service contracts. The respondent requested advice as to how the rule will impact the selection of service providers and by what metrics service providers will be measured during performance.

Response: Applicability to service contracts is described at FAR 23.103(c) and in the clause at FAR 52.223-23. Under service contracts, the contractor is required to provide products that meet the definition of sustainable products and services, if the products are delivered to the Government, furnished for use by the Government, incorporated into the construction of a public building or public work, or acquired by the contractor for use in performing services under a Government contract where the cost of the products is a direct cost to a Government contract. Agencies have discretion on how to monitor a contractor's compliance with this term and condition during performance of the contract.

Comment: One respondent stated that a preference for “environmentally friendly” products will require a phase-in period to develop agency processes, identify products, develop technologies, address availability, and educate the acquisition workforce.

Response: The FAR has addressed environmental programs (use of biobased, energy-efficient, environmentally preferable, and recycled products) in FAR subpart 23.2, Energy and Water Efficiency and Renewable Energy, subpart 23.4, Use of Recovered Materials and Biobased Products, subpart 23.7, Contracting for Environmentally Preferable Products and Services, and subpart 23.8, Ozone-Depleting Substances, for many years at this point.

Agencies will need to monitor updates to specifications, standards, and ecolabels covered by the definition of sustainable products and services as they define their requirements. Per paragraph (b)(3) of the clause at FAR 52.223-23, offerors will need to ensure that their offers comply with the specifications, standards, and ecolabels in effect at the time of quote or offer submission, except for the EPA Recommendations of Specifications, Standards, and Ecolabels, which are those in effect as of October 2023. Future updates to the EPA Recommendations will be incorporated into the FAR via formal rulemaking to obtain notice and comments on the recommended specifications, standards, and ecolabels, and to allow enough time for industry to come into compliance.

C. DEFINITIONS

Comment: One respondent requested that a definition be added for “reasonable price” and “cost-effective,” as addressed in FAR 23.403. The respondent was concerned that contracting officers will purchase a cheaper product based on initial price and suggested adding policy to allow the purchase of products which are environmentally preferable but have a price up to 10 percent higher than a product that is not environmentally preferable.

Response: Applying a price premium does not align with some of the statutory requirements to consider life-cycle costs. Instead, FAR 23.103(a) is revised to clarify that, when considering whether the price of a sustainable product is reasonable, agencies should consider whether the product is cost-effective over the life of the product.

Comment: Two respondents requested revisions to the definition of “environmentally preferable” at FAR subpart 23.7. One respondent suggested adding more suggestions of environmentally preferable items. Another respondent recommended deleting EPEAT® from the list of examples in the definition of “environmentally preferable.”

Response: The definition of “environmentally preferable” in FAR 2.101 is updated to provide a reference to the source of the definition, which is based in statute (section 314 of Pub. L. 107-314 (https://www.govinfo.gov/link/plaw/107/public/314), 10 U.S.C. Chapter 223 (https://www.govinfo.gov/link/uscode/10/22301) note). As used in FAR subpart 23.1, this term refers to environmentally preferable products and services that meet EPA Recommendations for Specifications, Standards, and Ecolabels (see FAR 23.108-3). EPEAT® is no longer referenced by name, but remains an EPA recommendation, and therefore required, for electronic products.

Comment: Several respondents commented on definitions related to renewable energy and use of those terms. One respondent noted that the definition of “renewable energy” does not include hydroelectric energy, new pumped hydro storage, or energy storage technologies. Two respondents also found the definition of “biomass” to be inadequate. One respondent suggested revisions to align 7.103(p)(2) with 11.002(d) regarding use of products and services that utilize “renewable energy technologies.”

Response: This rule revises the FAR in a manner that no longer uses the terms "renewable energy" and "renewable energy technology." As such these definitions are removed from FAR 2.101. This rule also revises FAR 7.103(p) and 11.002(d) to now refer more generally to the requirements for sustainable products and services in FAR subpart 23.1.

Comment: One respondent suggested that the FAR rule should make clear that the policy applies to "construction," in addition to the acquisition of supplies and services. The respondent suggested, for example, that the definition of "sustainable acquisition" at FAR 2.101 should be revised to state "acquiring . . . and services, including construction."

Response: Adjustment to the definition of "sustainable procurement" is not necessary. The new omnibus clause at FAR 52.223-23, Sustainable Products and Services, is prescribed for use at FAR 23.109(a) in all solicitations and contracts, unless there is a written justification from the requiring activity or an authorized exception or exemption. The clause directs contractors to incorporate sustainable products and services, as specified in the contract, into the construction of a public building or public work.

Comment: Several respondents commented on the definition of "contract action." Two respondents expressed concerns about a separate definition for FAR part 23. One of these respondents objected to the inclusion of "oral action." Another respondent noted that "contract action" is defined, but also described in another section for the purposes of achieving the 95 percent target; the respondent noted that the definition includes micro-purchases, but the description does not.

Response: This definition previously mirrored the definition of "contract action" at FAR 4.601, except to clarify that it includes "oral or written actions" valued at or below the micro-purchase threshold. It is necessary to retain a definition of "contract action" for the purposes of specifying applicability of the requirement to procure sustainable products and services under contract actions for services. However, the definition is revised to remove the reference to "micro-purchases" and other information that is not necessary for the purposes of the subpart. FAR 13.201(f) clarifies that the requirements of FAR subpart 23.1 apply to micro-purchases.

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Comment: Two respondents found the definition of "sustainable acquisition" at FAR 2.101(b)(2) overly broad and thought it may lead to misinterpretation. The respondent expressed special concern about the phrase "social, economic and other requirements" because, according to the respondent, this phrase "is not commonly used in the context of federal procurement."

Response: No changes to the definition are necessary. The term aligns with one of the FAR guiding principles at FAR 1.102(d) to fulfill public policy objectives. The term is also used as an overarching term; specific requirements related to "sustainable acquisition" are found in the streamlined subparts of FAR part 23.

D. COMPLIANCE

Comment: Several respondents expressed concerns about the use of EPEAT® standards. One of these respondents recommended that references to EPEAT® should be replaced with individual standards. Others suggested that the Government rely on the underlying technical standards used by EPEAT®. Another respondent believed the embedded references to EPEAT® could result in time-to-market delays and additional costs that could reduce the competitiveness of U.S. products.

Response: This rule removes specific references to EPEAT® from the FAR and instead references the EPA Recommendations of Specifications, Standards, and Ecolabels as of October 2023. EPA continues to recommend EPEAT® for electronic products; however, the Recommendations could be expanded to cover additional ecolabels in this space.

Comment: Two respondents expressed support for utilizing Federal Procurement Data System (FPDS) data to measure and assess the effect of Federal contracting to promote sustainable acquisition.

Response: Noted.

Comment: One respondent noted that there are FAR clauses addressing recycled, biobased, and energy-efficient products, and recommended additional FAR clauses to address water-efficient, non-ozone depleting, and environmentally preferable products.

Response: As a result of this rule, the requirements for procuring sustainable products and services, to include those that meet statutory purchasing program requirements and those that meet other EPA purchasing programs, are consolidated into a single omnibus clause at FAR 52.223-23.

Comment: One respondent requested a new contract clause to require contractors to report all types of green products purchased under construction and service contracts, similar to the reporting requirement under FAR clause 52.223-2, now titled "Reporting of Biobased Products Under Service and Construction Contracts."

Response: The Government will continue to leverage information reported to the FPDS, the System for Award Management (SAM), or directly to the agency, such as the reports under FAR clause 52.223-2 and 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-designated Items, in lieu of including new contractor reporting requirements at this time.

Comment: One respondent recommended that FAR 11.002(d)(2), which requires documentation of an exception when acquiring sustainable products and services, specify the responsible approving official and state whether the documentation should be included in the contract file.

Response: FAR 11.002(d)(2) requires that agencies incorporate sustainable products and services when describing agency needs unless it is not practicable. FAR 23.104(a) allows the contracting officer to consider it not practicable to procure sustainable products and services if the requiring activity submits a written justification addressing the reasons it is not practicable as described at FAR 23.103(a). FAR 23.104(a) also requires the contracting officer to maintain the written justification in the contract file.

E. OTHER COMMENTS

Comment: Two respondents commented on the overarching policy statement at FAR 23.002. One respondent expressed concern regarding the overarching policy statement at FAR 23.002, which did not include or reference Environmental Management Systems (EMS) requirements. Another respondent recommended using the introductory policy statement at FAR 23.202 as the introduction for the part.

Response: The overarching policy statement for FAR part 23, continues to be located at FAR 23.002, but has been revised to align with the current direction provided in E.O. 14057 (/executive-order/14057). It is not necessary to restate the specific policy objective of each subpart in this section.

Comment: Several respondents commented on the requirements for EMS. Two respondents believed that EMS plans will vary from agency to agency and may contradict one another or create overly burdensome requirements. Two respondents suggested that the rule should require the contracting officer to incorporate the EMS requirements into the contract so that the contractor is aware of these requirements prior to award. One of these respondents suggested that the rule state that EMS requirements are provided by the requiring activity.

Response: The requirements for EMS previously at FAR subpart 23.9 have been consolidated with other Federal facility requirements in FAR subpart 23.4. FAR section 23.404 now states that agencies may implement an EMS when it aligns with and supports its agency's mission needs and facilitates implementation and progress toward E.O. 14057 (/executive-order/14057) goals. When doing so, the rule requires that EMS requirements be included in the contract to ensure proper implementation and execution of EMS roles and responsibilities. How agencies incorporate specific EMS requirements remains at the discretion of the agency.

Comment: One respondent requested that the web address for the Guiding Principles for Federal Leadership in High-Performance and Sustainable Buildings ("Guiding Principles") at FAR 7.103(p)(3) be replaced with the text of the guiding principles.

Response: This final rule revises FAR 7.103(p)(3) and 36.104(b)(1) to replace the reference to the Guiding Principles for Federal Leadership in High-Performance and Sustainable Buildings with a reference to the current Guiding Principles for Sustainable Federal Buildings and Associated Instructions. It is standard practice in the FAR to provide a link to a referenced guidance document in lieu of summarizing or repeating the content in the FAR.

Comment: Several respondents requested clarification regarding changes to the paper content requirements in FAR 11.303 and the clause at FAR 52.204-4.

Response: Both FAR 11.303 and the clause at FAR 52.204-4 are removed as a result of this rule.

Comment: One respondent asked whether it was clear that contractors are to submit documents electronically whenever possible.

Response: The policy at FAR 4.502(a) to use electronic commerce "whenever practicable or cost-effective" has been in effect since October 30, 1998 (see 63 FR 58590 (/citation/63-FR-58590)) and was not impacted by the interim rule or proposed rule.

Comment: One respondent suggested that information should be disseminated about the availability of resources and procurement-based tools for biobased products. The respondent listed a few web-based training videos and templates created by the USDA. 🗋

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Response: FAR subpart 23.1, Sustainable Products and Services, now includes links to each purchasing program website where resources, training, and information for both buyers and sellers is available. A link to *https://www.biopreferred.gov (https://www.biopreferred.gov)* and an instruction to consult an agency's affirmative procurement program are provided at FAR 23.107-2(f). This rule also encourages requiring activities, contracting officers, and contractors to consult GSA's Green Procurement Compilation available at *https://sftool.gov/greenprocurement (https://sftool.gov/greenprocurement),* when determining which

purchasing programs apply to a specific product or service (see FAR 11.002, 23.104(d), and 52.223-23(d)). This tool provides a comprehensive list of sustainable products and services and other related sustainable acquisition guidance.

Comment: One respondent expressed concerns regarding the disposal of spent batteries generated by operations funded by, or conducted for, the Federal Government.

Response: This comment is outside the scope of both the 2011 interim rule and this final rule.

Comment: One respondent requested that the phrase “availability of competition” in the first sentence of FAR 23.403 be revised to state “availability” only. The respondent stated that the phrase “availability of competition” is not used in section 6002 of the Resource Conservation and Recovery Act of 1976 and that “availability” and “competition” are separate concepts that should not be merged.

Response: As a result of this rule, the content of FAR 23.403 is removed. Requirements for procuring sustainable products and services, including products containing recovered material and biobased products, to the maximum extent practicable are now located in FAR subpart 23.1. Per the policy at FAR 23.103(a)(1)(i), procuring sustainable products and services is considered practicable, unless the agency cannot acquire the products or services competitively within a reasonable performance schedule. This new language addresses the respondent's concern by not confusing availability of a product or services with availability of competition.

Comment: One respondent suggested that, at FAR 23.803(b)(2), the word “safe” be replaced by the word “acceptable” to align with the EPA SNAP web page, and because the term “safe,” according to the respondent, seemed ambiguous and undefined.

Response: The respondent's suggestion was already addressed by the final rule for FAR Case 2014-026, High Global Warming Potential Hydrofluorocarbons, published at 81 FR 30429 (/citation/81-FR-30429) on May 16, 2016. As a result of this rule, the content of FAR 23.803 has been transferred to FAR 23.108-4; the section continues to use the term “acceptable.”

Comment: One respondent requested removal of FAR 23.205(a) directing agencies to maximize the use of energy savings performance contracts, when life-cycle cost-effective to reduce energy use and cost in the agency's facilities and operations. The respondent stated that the E.O. that supported such a statement had been revoked.

Response: As a result of this rule, FAR 23.205(a) has been transferred to FAR 23.202(a). This content is not removed; the authority for agencies to use energy savings performance contracts is based on the National Energy Conservation Policy Act (42 U.S.C. 8287 (https://www.govinfo.gov/link/uscode/42/8287)).

Comment: One respondent suggested adding FAR subpart 23.8 to the list of subparts that apply to micro-purchases.

Response: As a result of this rule, the purchasing program requirements in FAR subpart 23.8 have been consolidated with the other purchasing programs in FAR subpart 23.1 (see FAR 23.107-4 of this rule). Based on this consolidation, it is no longer necessary to separately cite the subparts for each purchasing program at FAR 13.201(f). As a result of this rule, FAR 13.201(f) now states that the procurement requirements in FAR subpart 23.1 apply to purchases at or below the micro-purchase threshold.

7. GREENHOUSE GAS EMISSIONS

Comment: One respondent expressed support for the Government's goal of doing business with the most sustainable suppliers; however, the respondent recommended, if the Government intends to consider corporate sustainability (for example through a responsibility determination as contemplated by FAR Case 2021-015), then the Government should consider existing corporate investments in sustainability performance, rather than adopting new or U.S. Government-specific corporate requirements. Another respondent suggested that the Government should allow contractors to utilize business-to-business cloud-based collaboration platforms and business networks accessible via public websites or mobile applications to satisfy the requirement in FAR 23.801(c) for certain contractors to provide the websites.

Response: This comment is outside of the scope of this rule, which does not make any substantive changes to the existing disclosure requirements.

Comment: One respondent supported the inclusion of FAR subpart 23.8 requiring the attestation of whether an offeror registered within SAM publicly discloses greenhouse gas emissions and whether the offeror publicly discloses greenhouse gas emissions reduction goals, as well as providing websites for such public disclosures. The respondent recommended that the rule be revised to, over time, require disclosure from all offerors outside of the current threshold of $7.5 million to encompass a more comprehensive supplier base.

Response: This comment is outside of the scope of this rule, which does not make any substantive changes to the existing disclosure requirements.

Comment: A suggestion was made by one respondent to remove the existing greenhouse gas emissions disclosure requirements at FAR subpart 23.8 and the provision at FAR 52.223-22 based on the revocation of E.O. 13693 (/executive-order/13693), Planning for Federal Sustainability in the Next Decade.

Response: This comment is outside the scope of this rulemaking, which is not creating a new disclosure requirement or making any substantive changes to the current disclosure requirements at FAR subpart 23.8 and the associated provision. In any event, while E.O. 13693 (/executive-order/13693) has been revoked, subsequent Executive orders continue the policy direction regarding greenhouse gas emissions. For example, E.O. 13990 (/executive-order/13990), Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis, discusses bolstering resilience to climate change. E.O. 14008 (/executive-order/14008), Tackling the Climate Crisis at Home and Abroad, provided direction to move quickly to build resilience, both at home and abroad, against the impacts of climate change that are already manifest and will continue to intensify according to current trajectories. E.O. 14057 (/executive-order/14057), Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, provides direction to improve the Nation's preparedness and resilience to the effects of a changing climate and establishes the target of net-zero emissions from Federal procurement by 2050. The existing FAR disclosure provisions, while not within the scope of this rule, are also well-grounded in statutory authority (see, for example, 41 U.S.C. 1303(d) (https://www.govinfo.gov/link/uscode/41/1303); 40 U.S.C. 121(c) (https://www.govinfo.gov/link/uscode/40/121); 10 U.S.C. chapter 4 (https://www.govinfo.gov/link/uscode/10/401) and 10 U.S.C. chapter 137 (https://www.govinfo.gov/link/uscode/10/13701) legacy provisions (see 10 U.S.C. 3016 (https://www.govinfo.gov/link/uscode/10/3016)); and 51 U.S.C. 20113 (https://www.govinfo.gov/link/uscode/51/20113)).

Comment: One respondent highlighted that EPA is reevaluating aspects of its Greenhouse Gas Reporting Program to improve the accuracy of greenhouse gas emissions data. The respondent noted that it submitted comments to EPA to express concern should EPA continue to use scientific approaches to ensure reported methane emission from landfills is accurate.

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Response: This comment is outside the scope of this FAR rule.

8. OTHER OUT OF SCOPE

Comment: One respondent suggested that GSA employees should be allowed to bid on GSA auctions.

Response: This comment is outside the scope of this FAR rule.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

The new clause at FAR 52.223-23, Sustainable Products and Services, is prescribed at FAR 23.109(a) for use in all solicitations and contracts, unless a justification, exception, or exemption applies to all potential sustainable products and services in an acquisition. The new omnibus clause is required to be included in covered solicitations and contracts valued at or below the simplified acquisition threshold and for commercial products, including COTS items, or commercial services. It is necessary to apply the requirements of this clause to these types of acquisition to achieve the intended policy outcome, which is for the Government to meet statutory purchasing program requirements and to procure sustainable products and services under required EPA purchasing programs to the maximum extent practicable.

The following FAR clauses are removed by this final rule and will no longer be listed in FAR clause 52.212-5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services, as applicable to acquisitions of commercial products or commercial services:

- FAR 52.223-13, Acquisition of EPEAT®-Registered Imaging Equipment, and its Alternate I.
- FAR 52.223-14, Acquisition of EPEAT®-Registered Televisions, and its Alternate I.
- FAR 52.223-15, Energy Efficiency in Energy-Consuming Products.
- 52.223-16, Acquisition of EPEAT®-Registered Personal Computer Products, and its Alternate I.

Since it is being removed, FAR clause 52.223-15 will also no longer be listed in 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services), as applicable to simplified acquisitions. Though these clauses are removed from the FAR the requirement to procure energy-efficient products and produces that meet EPA Recommendations of Specifications, Standards, and Ecolabels, such as EPEAT®, remains; these requirements continue to be implemented via the omnibus clause at FAR 52.223-23.

This rule does not include any changes to the existing prescriptions for other FAR part 23 solicitation provisions or contract clauses, except to renumber the section or paragraph where content has been relocated to a new FAR part or subpart.

IV. Severability

If any portion (*e.g.,* section, clause, sentence) of this rule is held to be invalid or unenforceable facially, or as applied to any entity or circumstance, it shall be severable from the remainder of this rule, and shall not affect the remainder thereof, or its application to entities not similarly situated or to other dissimilar circumstances. The various portions of this rule are independent and serve distinct purposes. Even if one aspect were rendered invalid, the other benefits of the rule would still be applicable. As an illustrative but not exhaustive example, were a court to stay or invalidate the changes to FAR subpart 23.1 regarding sustainable products and services, the agencies would intend the broader restructuring of FAR part 23 to remain effective.

V. Expected Impact of the Rule

A. FAR Part 23 Restructuring

The revisions to FAR part 23 establish a clear and simplified framework for the Government to communicate current requirements related to environmental matters and sustainable acquisition. First, non-environmental matters, such as drug-free workplace and banning texting while driving, are transferred to FAR part 26. Then, existing content on similar topics, such as requirements for sustainable products and services, hazardous and radioactive materials, and pollution prevention at Federal facilities, are consolidated into single subparts. These changes more clearly communicate current policies and procedures and are expected to improve agency compliance with requirements in each of these areas.

B. Sustainable Products and Services

In addition to consolidating existing statutory and other EPA purchasing program requirements in FAR subpart 23.1, this rule directs agencies to procure sustainable products and services to the maximum extent practicable. As stated in the proposed rule, the requirement to procure sustainable products and services is not new; agencies have been required to ensure that most of their contract actions meet statutory and other EPA purchasing program requirements for over a decade. This rule consolidates, streamlines, and updates the procedures for procuring sustainable products and services to ensure more effective communication and implementation of these requirements.

For example, agencies were previously required to include in 95 percent of new contract actions requirements for products that are energy-efficient; water-efficient; biobased; environmentally preferable, or non- or less toxic alternatives; non-ozone depleting; or made with recovered materials. They were also directed to maximize the use of environmentally preferable products and services based on EPA-issued guidance, promote water conservation, and give preference to the procurement of acceptable alternative chemicals and products that reduce overall risks to human health. This rule removes the 95 percent target and other generic directions and makes procuring sustainable products and services the default position. The process that allows agencies to explain why purchasing a sustainable product or service is not practicable in terms of performance requirements, availability, and price remains, but is expanded to all categories of sustainable products and services for uniformity and ease of implementation. The exceptions, such as those for acquisitions performed outside the United States, weapon systems, and space systems, and exemptions also remain, though the emergency response exemption previously at FAR 23.105(a)(3) is expanded at FAR 23.106(c).

This rule also provides a definition of “sustainable products and services” that helps Government agencies and suppliers better understand how to identify sustainable products and services. As illustrated in the following table, generic terms are supplemented with references to the applicable statutory or other EPA

purchasing program requirements, standards, or ecolabels: 🗋

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Product or service	Program/standard/ecolabel
Made with recovered materials	Products containing recovered material designated by the U.S. Environmental Protection Agency (EPA) under the Comprehensive Procurement Guidelines.
Energy-efficient and water-efficient	Energy- and water-efficient products that are ENERGY STAR® certified or Federal Energy Management Program (FEMP)-designated products.
Biobased	Biobased products meeting the content requirement of the U.S. Department of Agriculture under the BioPreferred® program.
Non-ozone depleting	Acceptable chemicals, products, and manufacturing processes listed under EPA's Significant New Alternatives Policy (SNAP) program, which ensures a safe and smooth transition away from substances that contribute to the depletion of stratospheric ozone.
Water-efficient	WaterSense® labeled (water efficient) products and services.
Non-/less toxic alternatives	Safer Choice-certified products (products that contain safer chemical ingredients).
Environmentally preferable	Products and services that meet EPA Recommendations of Specifications, Standards, and Ecolabels.

Other information on statutory purchasing program requirements previously implemented at FAR subparts 23.2, 23.4, and 23.8 is consolidated at FAR 23.107. Agencies are required to continue ensuring that products and services meet statutory purchasing program requirements. Agencies are also directed to prioritize multi-attribute products and services, which are products and services that meet both statutory purchasing program and other EPA purchasing programs, to maximize environmental benefits.

Finally, this rule standardizes the way in which agencies communicate their requirements for sustainable products and services to contractors. This rule makes clear in FAR 11.002(d)(2) and 23.104(b) that agencies are required to identify in their requirement documents, such as the statement of work, the sustainable products and services that apply to the acquisition. A new omnibus clause at FAR 52.223-23, Sustainable Products and Services, notifies offerors and contractors that they are expected to ensure that the sustainable products and services required under the contract are delivered; furnished for Government use; incorporated into the construction of a public building or public work; and furnished for use in performing services, where the cost of the products is a direct cost to the contract. These changes will help the Government ensure it is meeting its goal to procure sustainable products and services to the maximum extent practicable to reduce emissions, save natural resources, and protect individuals, communities, and the environment.

According to data available in the Federal Procurement Data System for fiscal years 2019 through 2021, on average approximately 85,826 contractors are awarded Federal contracts each year, of which approximately 61,797 contractors are small businesses. These contractors should be familiar with the purchasing program requirements identified in this rule since agencies have been directed to procure these types of products and services for many years. However, contractors will no longer be required to review the stand-alone provisions and clauses at FAR 52.223-13, 52.223-14, 52.223-15, 52.223-16, and 52.223-17 removed under this rule, all of which provide varying instructions to contractors on the requirements for existing purchasing programs, such as ENERGY STAR®, FEMP, products containing recovered material, and EPEAT®-registered electronic products. This information is consolidated in the omnibus clause at FAR 52.223-23. For example, EPEAT® is no longer referenced by name in the FAR. Contractors will no longer see standalone FAR clauses

on EPEAT®-registered electronic products (formerly FAR clause 52.223-13, 52.223-14, and 52.223-15) in solicitations and contracts. However, EPEAT® is one of EPA's Recommendations of Specifications, Standards, and Ecolabels, which means it is required for electronic products unless it is not practicable to procure such items (see 23.103(a)). The Government will now specify in the solicitation the sustainable products and services that apply to the acquisition. For electronic products, this would include the EPA Recommendation of EPEAT® and other statutory ecolabels for energy-efficient products, such as ENERGY STAR®. Contractors will be required to provide sustainable products and services as specified in the contract in accordance with the new omnibus clause at FAR 52.223-23.

Contractors that do not currently prioritize or propose sustainable products and services when developing offers in response to Government solicitations may need to adjust their internal processes and supply chains, as necessary, to ensure that they are in fact delivering sustainable products and services under Government contracts. Contractors not familiar with the specific programs will need to review the definition of "sustainable products and services," the information available on the lead agency purchasing program website, and GSA's Green Procurement Compilation available at *https://sftool.gov/greenprocurement (https://sftool.gov/greenprocurement)* to identify conforming products and services. While this effort for some contractors is acknowledged, it is not viewed as imposing additional burden. Prior to this final rule, contractors were already required to ensure products included in their offers met the Government's requirements for environmentally preferable products and other sustainable requirements.

Two respondents commented on the potential cost impact of the rule. One respondent stated that the proposed rule should contain an estimate of the added costs of procured products that are required to adhere to these environmental impact, energy efficiency, and other requirements. The respondent asserted that product selection that favors products better meeting these requirements will result in added cost to taxpayers. The other respondent suggested that the rule raises the cost of procurement by discouraging nonconforming bids, which will likely deprive agencies of lower-cost bids that can be used to determine if the sustainability requirements are impracticable. This respondent noted that the contracting officer would not know that a sustainable product or service is more expensive until receipt of offers.

The Government does not agree that this will necessarily result in added costs for several reasons. As illustrated in this section, the requirement for agencies to procure sustainable products and services is not new. Since 2002, FAR section 23.703 has required agencies to implement cost-effective contracting preference programs promoting energy efficiency, water conservation, and the acquisition of environmentally preferable products and services (see 66 FR 65351 (/citation/66-FR-65351), December 18, 2001). In addition, since 2011, FAR 23.103(a) has required Federal agencies to advance sustainable acquisition by ensuring that 95 percent of new contract actions are for products that are energy-efficient, water-efficient, biobased, environmentally preferable, non-ozone depleting, or made with recovered materials (see 76 FR 31395 (/citation/76-FR-31395), May 31, 2011). This rule streamlines and standardizes procedures for accomplishing this goal. Also, products that display a required ecolabel or meet the required specifications and standards identified in this rule are not necessarily more expensive than other products in the market and may result in savings when considering the life-cycle costs of the item. Finally, this rule allows agencies to justify procuring other than a sustainable product or service if the item cannot be procured at a reasonable price. A revision is made in the final rule to ensure that this market research is conducted by the Government prior to issuance of a solicitation.

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C. Other Changes

While the clause at FAR 52.204-4 to require printing and copying double-sided on postconsumer fiber content paper is removed, the impact is not considered significant, since most acquisitions are conducted electronically. Contractors are also no longer be required to report information on hydrofluorocarbons under contracts that contain FAR clause 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons, and 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners, a reduction in burden for contractors. The alternates to FAR clause 52.223-5, Pollution Prevention and Right-to-Know Information, and associated reporting requirements related to agency EMS are also removed; however, per FAR 52.223-19, contractors will still be required to comply with any agency-specific requirements for EMS.

VI. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 (as amended by E.O. 14094 (/executive-order/14094)) and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 (/executive-order/13563) emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866 (/executive-order/12866), Regulatory Planning and Review, dated September 30, 1993.

VII. Congressional Review Act

Pursuant to the Congressional Review Act, DoD, GSA, and NASA will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this rule does not meet the definition in 5 U.S.C. 804(2) (https://www.govinfo.gov/link/uscode/5/804).

VIII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601-612 (https://www.govinfo.gov/link/uscode/5/601). The FRFA is summarized as follows:

Executive Order (E.O.) 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, signed December 8, 2021, directs agencies to reduce emissions, promote environmental stewardship, support resilient supply chains, drive innovation, and incentivize markets for sustainable products and services. As part of this effort, and pursuant to memorandum M-22-06 issued jointly by the Office of Management and Budget (OMB), Council on Environmental Quality (CEQ), and the Climate Policy Office and pursuant to the CEQ Implementing Instructions for E.O. 14057 (/executive-order/14057), agencies are required to purchase, to the maximum extent practicable and after meeting statutory mandates, sustainable products and services identified or recommended by the U.S. Environmental Protection Agency (EPA). This rule is in alignment with the direction in E.O. 14057 (/executive-order/14057), Memorandum M-22-06, and the CEQ Implementing Instructions.

The rule streamlines FAR part 23 by consolidating similar content into specific subparts and providing uniform procedures to ensure agencies procure sustainable products and services to the maximum extent practicable. Consolidated in FAR subpart 23.1 are the existing requirements for agencies to procure products

that meet the statutory environmental purchasing program requirements previously implemented in FAR subparts 23.2, 23.4, and 23.8, and the requirement to procure environmentally preferable products and services previously implemented in FAR subpart 23.7. FAR subpart 23.1 now directs agencies to specify in the statement of work, or elsewhere in the contract, which sustainable products and services are applicable to the acquisition. The new omnibus contract clause at FAR 52.223-23, Sustainable Products and Services, requires the contractor to ensure the sustainable products and services identified in the contract are delivered, incorporated, or furnished under the contract.

As part of the FAR part 23 streamlining effort, content on energy savings performance contracts, hazardous materials, pollution prevention at Federal facilities, and greenhouse gases are consolidated into single subparts at FAR 23.2, 23.3, 23.4, and 23.5, respectively. Non-environmental matters, to include requirements for a drug-free workplace and encouraging contractors to ban texting while driving, are moved to FAR part 26 (see FAR subparts 26.5 and 26.6, respectively). This rule also removes several reporting requirements, including those under FAR clauses 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons, and 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners. Reporting requirements associated with agency environmental management systems in the alternates to FAR clause 52.223-5, Pollution Prevention and Right-to-Know Information, are also removed, though compliance with agency-specific requirements for their environmental management systems is still required.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis (IRFA). While not a comment on the IRFA, one respondent suggested that the rule will have a disproportionate impact on small businesses throughout the contracting supply chain that will be ineligible to participate in Federal procurement. Nothing in this rule is viewed as rendering a small business as ineligible for Government contracts. As another respondent noted, the efforts to streamline and consolidate sustainability purchasing requirements throughout the FAR reduce implementation burdens—especially for small businesses that may be new to demonstrating sustainability in Government purchasing. Agencies have been directed to procure sustainable products and services, including those mandated by statute and environmentally preferable products and services per EPA-issued guidance, for over a decade. This rule continues this policy by providing clear and uniform procedures for agencies regarding requirements for specifying sustainable products and services in their solicitations and contracts and improves communication to industry of the Government's requirements through use of an omnibus clause. This rule also continues to maintain the statutory exceptions, provides other exemptions, and includes a process for justifying when it is not practicable.

Any small business competing on Federal contracts for products or services will need to become familiar with this rule. According to data available in the Federal Procurement Data System for Fiscal Years 2019 through 2021, on average approximately 85,826 contractors are awarded Federal contracts each year, of which approximately 61,797 contractors (72 percent) are small businesses.

These small businesses will need to ensure they are including in their offers sustainable products and services as specified in the solicitation and delivering, incorporating, or furnishing sustainable products and services, as specified in the resulting contract. Sustainable products and services include the following:

• Products containing recovered material designated by the EPA under the Comprehensive Procurement Guidelines (CPG) (see *https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#products (https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-*

program#products)).

• Energy- and water-efficient products that are ENERGY STAR® certified or Federal Energy Management Program (FEMP)-designated products (see *https://www.energy.gov/eere/femp/search-energy-efficient-products (https://www.energy.gov/eere/femp/search-energy-efficient-products)* and *https://www.energystar.gov/products?s=mega (https://www.energystar.gov/products?s=mega)*).

• Biobased products meeting the content requirement of the U.S. Department of Agriculture under the BioPreferred® program (see *https://www.biopreferred.gov (https://www.biopreferred.gov)*).

• Acceptable chemicals, products, and manufacturing processes listed under EPA's Significant New Alternatives Policy (SNAP) program, which ensures a safe and smooth transition away from substances that contribute to the depletion of stratospheric ozone (see *https://www.epa.gov/snap (https://www.epa.gov/snap)*).

• WaterSense® labeled (water efficient) products and services (see *https://www.epa.gov/watersense/watersense-products (https://www.epa.gov/watersense/watersense-products)*).

• Safer Choice-certified products (products that contain safer chemical ingredients) (see *https://www.epa.gov/saferchoice/products (https://www.epa.gov/saferchoice/products)*).

• Products and services that meet EPA Recommendations of Specifications, Standards, and Ecolabels as of October 2023 (see *https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing (https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing)*).

As shown above, the definition of sustainable products and services at FAR 2.101 and in the omnibus clause at FAR 52.223-23 includes links to each lead agency's purchasing program website, where information on conforming products and services is provided for both buyers and sellers. In addition, FAR 11.002(d)(3), 23.104(d), and the clause reference as a resource GSA's Green Procurement Compilation available at *https://sftool.gov/greenprocurement (https://sftool.gov/greenprocurement)*. GSA's Green Procurement Compilation provides a comprehensive list of required sustainable products and services and other related sustainability guidance and may be used by small businesses to identify and source sustainable products and services.

Two changes are adopted in this final rule that will minimize the impact on small businesses. First, the final rule will require the Government to specify which sustainable products and services are applicable to the acquisition. This change from the proposed rule in the final rule eliminates the need for small businesses to determine which purchasing programs apply to a specific acquisition and ensures all offerors have access to the same information about the Government's requirements. Second, this rule will require compliance only with the EPA Recommendations for Specifications, Standards, and Ecolabels in effect as of October 2023. The FAR Council will consider incorporating future updates to the EPA Recommendations through rulemaking to ensure that businesses are afforded an opportunity to provide inputs on any expansions of the EPA Recommendations and have adequate time to implement new standards, specifications, and ecolabels.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

IX. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501-3521 (https://www.govinfo.gov/link/uscode/44/3501)) applies. The rule contains information collection requirements. The Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve revisions to previously approved information collection requirements in FAR part 23 and the transfer of a previously approved information collection requirement to a new OMB Control Number for FAR part 26.

A. OMB Control Number, Title, and Any Associated Form(s)

OMB Control Number 9000-0107, Federal Acquisition Regulation Part 23 Requirements, and OMB Control Number 9000-0207, Federal Acquisition Regulation Part 26 Requirements.

B. Need and Uses

The rule renumbers FAR clause 52.223-6, Drug-Free Workplace, as 52.226-7. As such the associated information collection requirements are being transferred from OMB Control Number 9000-0107 to the new OMB Control Number 9000-0207 for FAR part 26. The rule also proposes to remove previously approved information collection requirements under OMB Control Number 9000-0107, to include the contractor environmental management system and facility compliance audit reporting requirements under FAR clause 52.223-5, Pollution Prevention and Right-to-Know Information, and the contractor hydrofluorocarbon reporting requirements under FAR clauses 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons, and 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners.

C. Annual Burden

Public reporting burden for this collection of information includes the time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the collection of information.

1. OMB CONTROL NUMBER 9000-0207, FEDERAL ACQUISITION REGULATION PART 26 REQUIREMENTS

Respondents: 228.

Total Annual Responses: 228.

Total Burden Hours: 114.

2. OMB CONTROL NUMBER 9000-0107, FEDERAL ACQUISITION REGULATION PART 23 REQUIREMENTS

Respondents: 34,527.

Total Annual Responses: 160,600.

Total Burden Hours: 706,089.

D. Public Comment to OMB on Information Collections

A 60-day notice was published in the **Federal Register** at 88 FR 51672 (/citation/88-FR-51672), on August 3, 2023. No comments were received. Written comments and recommendations for these information collections should be sent within 30 days of publication of this rule to *www.reginfo.gov/public/do/*

PRAMain (http://www.reginfo.gov/public/do/PRAMain). Find these information collections by selecting "Currently under Review—Open for Public Comments" or by using the search function.

E. Obtaining Copies

Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202-501-4755 or emailing *GSARegSec@gsa.gov (mailto:GSARegSec@gsa.gov)*. Please cite OMB Control Number "9000-0107, Federal Acquisition Regulation Part 23 Requirements" or "9000-0207, Federal Acquisition Regulation Part 26 Requirements."

List of Subjects in 48 CFR Parts 1 (https://www.ecfr.gov/current/title-48/part-1), 2 (https://www.ecfr.gov/current/title-48/part-2), 4 (https://www.ecfr.gov/current/title-48/part-4), 5 (https://www.ecfr.gov/current/title-48/part-5), 7 (https://www.ecfr.gov/current/title-48/part-7), 9 (https://www.ecfr.gov/current/title-48/part-9), 10 (https://www.ecfr.gov/current/title-48/part-10), 11 (https://www.ecfr.gov/current/title-48/part-11), 12 (https://www.ecfr.gov/current/title-48/part-12), 13 (https://www.ecfr.gov/current/title-48/part-13), 15 (https://www.ecfr.gov/current/title-48/part-15), 18 (https://www.ecfr.gov/current/title-48/part-18), 23 (https://www.ecfr.gov/current/title-48/part-23), 26 (https://www.ecfr.gov/current/title-48/part-26), 36 (https://www.ecfr.gov/current/title-48/part-36), 37 (https://www.ecfr.gov/current/title-48/part-37), 39 (https://www.ecfr.gov/current/title-48/part-39), 42 (https://www.ecfr.gov/current/title-48/part-42), and 52 (https://www.ecfr.gov/current/title-48/part-52)

- Government procurement

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Accordingly, the interim rule amending 48 CFR parts 1 (https://www.ecfr.gov/current/title-48/part-1), 2 (https://www.ecfr.gov/current/title-48/part-2), 4 (https://www.ecfr.gov/current/title-48/part-4), 5 (https://www.ecfr.gov/current/title-48/part-5), 7 (https://www.ecfr.gov/current/title-48/part-7), 11 (https://www.ecfr.gov/current/title-48/part-11), 12 (https://www.ecfr.gov/current/title-48/part-12), 13 (https://www.ecfr.gov/current/title-48/part-13), 23 (https://www.ecfr.gov/current/title-48/part-23), 36 (https://www.ecfr.gov/current/title-48/part-36), 37 (https://www.ecfr.gov/current/title-48/part-37), 39 (https://www.ecfr.gov/current/title-48/part-39), and 52 (https://www.ecfr.gov/current/title-48/part-52), which published in the **Federal Register** at 76 FR 31395 (/citation/76-FR-31395) on May 31, 2011, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR parts 1 (https://www.ecfr.gov/current/title-48/part-1), 2 (https://www.ecfr.gov/current/title-48/part-2), 4 (https://www.ecfr.gov/current/title-48/part-4), 5 (https://www.ecfr.gov/current/title-48/part-5), 7 (https://www.ecfr.gov/current/title-48/part-7), 9 (https://www.ecfr.gov/current/title-48/part-9), 10 (https://www.ecfr.gov/current/title-48/part-10), 11 (https://www.ecfr.gov/current/title-48/part-11), 12 (https://www.ecfr.gov/current/title-48/part-12), 13 (https://www.ecfr.gov/current/title-48/part-13), 15 (https://www.ecfr.gov/current/title-48/part-15), 18 (https://www.ecfr.gov/current/title-48/part-18), 23 (https://www.ecfr.gov/current/title-48/part-23), 26 (https://www.ecfr.gov/current/title-48/part-26), 36 (https://www.ecfr.gov/current/title-48/part-36), 37 (https://www.ecfr.gov/current/title-48/part-37), 39 (https://www.ecfr.gov/current/title-48/part-39), 42 (https://www.ecfr.gov/current/title-48/part-42), and 52 (https://www.ecfr.gov/current/title-48/part-52) continues to read as follows:

> **Authority:** 40 U.S.C. 121(c) (https://www.govinfo.gov/link/uscode/40/121); 10 U.S.C. chapter 4 (https://www.govinfo.gov/link/uscode/10/401) and 10 U.S.C. chapter 137 (https://www.govinfo.gov/link/uscode/10/13701) legacy provisions (see 10 U.S.C. 3016 (https://www.govinfo.gov/link/uscode/10/3016)); and 51 U.S.C. 20113 (https://www.govinfo.gov/link/uscode/51/20113).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. In section 1.106, amend the table by—

a. Removing the entry for FAR segment “52.223-6(b)(5); and

b. Adding in numerical order an entry for “52.226-7”.

The addition reads as follows:

1.106 🗋 Start Printed Page 30236

OMB approval under the Paperwork Reduction Act.

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FAR segment	OMB control No.
* * * * *	
52.226-7	9000-0207
* * * * *	

PART 2—DEFINITIONS OF WORDS AND TERMS

3. Amend section 2.101 by—

a. Revising the definition of “Biobased product”;

b. In the definition of “Conviction”, removing “23.5” and “23.503” and adding “26.5” and “26.503” in their place, respectively;

c. Removing the definition of "Energy-savings performance contract" and adding the definition of "*Energy savings performance contract"* in its place;

d. Revising the definition of "Environmentally preferable";

e. Removing the definitions of "Global warming potential", "High global warming potential hydrofluorocarbons", and "Hydrofluorocarbons";

f. Revising the definition of "Recovered material";

g. Removing the definitions of "Renewable energy" and "Renewable energy technology";

h. In the definition of "Sustainable acquisition", removing from the introductory text "acquiring goods" and adding "acquiring products" in its place;

i. Adding in alphabetic order the definition of "Sustainable products and services";

j. In the definition of "United States", revising paragraph (9); and

k. Removing the definition "Water consumption intensity".

The revisions and additions read as follows:

2.101 Definitions.

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Biobased product means a product determined by the U.S. Department of Agriculture to be a commercial product or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials, or that is an intermediate ingredient or feedstock. The term includes, with respect to forestry materials, forest products that meet biobased content requirements, notwithstanding the market share the product holds, the age of the product, or whether the market for the product is new or emerging. (7 U.S.C. 8101 (https://www.govinfo.gov/link/uscode/7/8101)) (7 CFR 3201.2 (https://www.ecfr.gov/current/title-7/section-3201.2)).

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Energy savings performance contract, pursuant to 42 U.S.C. 8287 (https://www.govinfo.gov/link/uscode/42/8287) and 10 CFR 436.31 (https://www.ecfr.gov/current/title-10/section-436.31), means a contract that requires the contractor to—

(1) Perform services for the design, acquisition, financing, installation, testing, operation, and where appropriate, maintenance and repair, of an identified energy conservation measure or series of measures at one or more locations;

(2) Incur the costs of implementing the energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel in exchange for a predetermined share of the value of the energy savings directly resulting from implementation of such measures during the term of the contract; and

(3) Guarantee future energy and cost savings to the Government.

Environmentally preferable means, in the case of a product or service, having 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, operation, maintenance, or disposal of the product or service. (Section 314 of Pub. L. 107-314 (https://www.govinfo.gov/link/plaw/107/public/314), 10 U.S.C. chapter 223 (https://www.govinfo.gov/link/uscode/10/22301) note)

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Recovered material means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. (42 U.S.C. 6903 (https://www.govinfo.gov/link/uscode/42/6903))

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Sustainable products and services means products and services that are subject to and meet the following applicable statutory mandates and directives for purchasing:

(1) *Statutory purchasing programs.* (i) Products containing recovered material designated by the U.S. Environmental Protection Agency (EPA) under the Comprehensive Procurement Guidelines (42 U.S.C. 6962 (https://www.govinfo.gov/link/uscode/42/6962)) (40 CFR part 247 (https://www.ecfr.gov/current/title-40/part-247)) (*https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#products (https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#products)*).

(ii) Energy- and water-efficient products that are ENERGY STAR® certified or Federal Energy Management Program (FEMP)-designated products (42 U.S.C. 8259b (https://www.govinfo.gov/link/uscode/42/8259b)) (10 CFR part 436, subpart C (https://www.ecfr.gov/current/title-10/part-436/subpart-C)) (*https://www.energy.gov/eere/femp/search-energy-efficient-products (https://www.energy.gov/eere/femp/search-energy-efficient-products)* and *https://www.energystar.gov/products?s=mega (https://www.energystar.gov/products?s=mega)*).

(iii) Biobased products meeting the content requirement of the U.S. Department of Agriculture under the BioPreferred® program (7 U.S.C. 8102 (https://www.govinfo.gov/link/uscode/7/8102)) (7 CFR part 3201 (https://www.ecfr.gov/current/title-7/part-3201)) (*https://www.biopreferred.gov (https://www.biopreferred.gov)*).

(iv) Acceptable chemicals, products, and manufacturing processes listed under EPA's Significant New Alternatives Policy (SNAP) program, which ensures a safe and smooth transition away from substances that contribute to the depletion of stratospheric ozone (42 U.S.C. 7671l (https://www.govinfo.gov/link/uscode/42/7671l)) (40 CFR part 82, subpart G (https://www.ecfr.gov/current/title-40/part-82/subpart-G)) (*https://www.epa.gov/snap (https://www.epa.gov/snap)*).

(2) *Required EPA purchasing programs.* (i) WaterSense® labeled (water efficient) products and services (*https://www.epa.gov/watersense/watersense-products (https://www.epa.gov/watersense/watersense-products)*).

(ii) Safer Choice-certified products (products that contain safer chemical ingredients) (*https://www.epa.gov/saferchoice/products (https://www.epa.gov/saferchoice/products)*).

(iii) Products and services that meet EPA Recommendations of Specifications, Standards, and Ecolabels in effect as of October 2023 (*https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing (https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing)*).

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United States * * *

(9) For use in subpart 23.1, see definition at 23.101.

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PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

Subpart 4.3 [Removed and Reserved]

4. Remove and reserve subpart 4.3.

4.602 [Amended]

5. Amend section 4.602 by removing from paragraph (a)(3) the words “products, and high-performance” and adding the words “products, services, and high-performance” in its place.

4.1202 [Amended]

6. Amend section 4.1202 by removing paragraph (a)(25) and redesignating paragraphs (a)(26) through (34) as paragraphs (a)(25) through (33).

PART 5—PUBLICIZING CONTRACT ACTIONS

7. Amend section 5.207 by revising paragraph (c)(11) to read as follows:

5.207 🗋 **Preparation and transmittal of synopses.**

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(c) * * *

(11) Sustainable acquisition requirements, such as a description of high-performance sustainable building practices required, if for design, construction, renovation, repair, or deconstruction (see part 23 and 36.104).

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PART 7—ACQUISITION PLANNING

8. Amend section 7.103 by revising paragraph (p) to read as follows:

7.103 Agency-head responsibilities.

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(p) Ensuring that agency planners—

(1) Comply with the policy in 11.002(d) regarding procurement of sustainable products and services (as defined in 2.101) in accordance with subpart 23.1;

(2) Comply with the Guiding Principles for Sustainable Federal Buildings and Associated Instructions (Guiding Principles), for the design, construction, renovation, repair, or deconstruction of Federal buildings (see 36.104). The Guiding Principles can be accessed at *https://www.sustainability.gov/pdfs/guiding_principles_for_sustainable_federal_buildings.pdf (https://www.sustainability.gov/pdfs/guiding_principles_for_sustainable_federal_buildings.pdf);* and

(3) Require contractor compliance with Federal environmental requirements, when the contractor is operating Government-owned facilities or vehicles, to the same extent as the agency would be required to comply if the agency operated the facilities or vehicles.

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9. Amend section 7.105 by revising paragraph (b)(17) to read as follows:

7.105 Contents of written acquisition plans.

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(b) * * *

(17) *Environmental and energy conservation objectives.* Discuss—

(i) All applicable environmental and energy conservation objectives associated with the acquisition (see part 23);

(ii) The applicability of an environmental assessment or environmental impact statement (see 40 CFR part 1502 (https://www.ecfr.gov/current/title-40/part-1502));

(iii) The proposed resolution of environmental issues; and

(iv) Any sustainable acquisition requirements to be included in the solicitation and contract (see 11.002 and part 23).

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PART 9—CONTRACTOR QUALIFICATIONS

9.405 [Amended]

10. Amend section 9.405 by removing from paragraph (a) “23.506(e)” and adding “26.505(e)” in its place.

9.406-1 [Amended]

11. Amend section 9.406-1 by removing from paragraph (c) “23.506(e)” and adding “26.505(e)” in its place.

9.406-2 [Amended]

12. Amend section 9.406-2 by—

a. In paragraph (b)(1)(ii)(A), removing “52.223-6” and adding “52.226-7” in its place; and

b. In paragraph (b)(1)(ii)(B), removing “23.504” and adding “26.504” in its place.

9.406-4 [Amended]

13. Amend section 9.406-4 by removing from paragraph (a)(1)(i) “23.506” and adding “26.505” in its place.

9.407-1 [Amended]

14. Amend section 9.407-1 by removing from paragraph (d) “23.506(e)” and adding “26.505(e)” in its place.

9.407-2 [Amended]

15. Amend section 9.407-2 by—

a. In paragraph (a)(4)(i), removing “52.223-6” and adding “52.226-7” in its place; and

b. In paragraph (a)(4)(ii) “23.504” and adding “26.504” in its place.

PART 10—MARKET RESEARCH

16. Amend section 10.001 by revising paragraph (a)(3)(v) to read as follows:

10.001 Policy.

(a) * * *

(3) * * *

(v) Ensure maximum practicable use of sustainable products and services (as defined in 2.101) in accordance with subpart 23.1;

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PART 11—DESCRIBING AGENCY NEEDS

17. Amend section 11.002 by revising paragraphs (d)(1) and (d)(2) introductory text and adding paragraph (d)(3) to read as follows:

11.002 Policy.

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(d)(1) Agencies shall procure sustainable products and services (as defined in 2.101) in accordance with subpart 23.1.

(2) Unless it is not practicable (see 23.104(a)) or an exception or exemption applies (see 23.105 and 23.106, respectively), agencies shall incorporate the use of sustainable products and services when —

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(3) The Green Procurement Compilation (GPC) available at *https://sftool.gov/greenprocurement (https://sftool.gov/greenprocurement)* provides a comprehensive list of sustainable products and services and other related sustainable acquisition guidance. Agencies should—

(i) Consult the GPC when determining which purchasing programs apply to a specific product or service; and

(ii) Incorporate into agency requirements any required standards, specifications, or ecolabels identified in the GPC for a specific product or service.

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11.301 [Removed]

18. Remove section 11.301.

11.302 [Redesignated as 11.301]

19. Redesignate section 11.302 as section 11.301.

11.303 [Removed]

20. Remove section 11.303.

11.304 [Redesignated as 11.302]

21. Redesignate section 11.304 as section 11.302.

PART 12—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

12.503 [Amended]

22. Amend section 12.503 by removing from paragraph (a)(8) “23.501” and adding “26.501” in its place.

12.504 [Amended]

23. Amend section 12.504 by removing from paragraph (a)(10) “23.5” and adding “26.5” in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.006 [Amended]

24. Amend section 13.006 by removing from paragraph (f) “52.223-6” and adding “52.226-7” in its place.

13.201 [Amended]

25. Amend section 13.201 by removing from paragraph (f) “subparts 23.1, 23.2, 23.4, and 23.7” and adding “subpart 23.1” in its place.

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PART 15—CONTRACTING BY NEGOTIATION

15.603 [Amended]

26. Amend section 15.603 by removing from paragraph (e) the words “energy-savings” and adding the words “energy savings” in its place.

PART 18—EMERGENCY ACQUISITIONS

27. Amend section 18.202 by adding paragraph (e) to read as follows:

18.202 Defense or recovery from certain events.

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(e) *Sustainable products and services.* Contracting officers are encouraged, but not required, to procure sustainable products and services if the head of the agency determines the supplies or services are to be used to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to facilitate provision of international disaster assistance; or to support response to an emergency or major disaster (see 23.106(c)).

PART 23—ENVIRONMENT, SUSTAINABLE ACQUISITION, AND MATERIAL SAFETY

28. Revise the heading for part 23 to read as set forth above.

29. Revise section 23.000 to read as follows:

23.000 Scope of part.

This part prescribes acquisition policies and procedures supporting the Government's program to protect and improve the quality of the environment, to foster markets for sustainable products and services, and to ensure proper handling and notification of hazardous materials.

30. Amend section 23.001 by—

a. Removing the definition of “Greenhouse gases” and adding the definition of “Greenhouse gas” in its place; and

b. Removing the definition of “United States”.

The addition reads as follows:

23.001 Definitions.

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Greenhouse gas means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, nitrogen trifluoride, or sulfur hexafluoride.

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31. Revise section 23.002 to read as follows:

23.002 Policy.

In accordance with section 208(a) of Executive Order 14057 (/executive-order/14057), Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, agencies shall reduce emissions, including greenhouse gas emissions; promote environmental stewardship; support resilient supply chains; drive innovation; and incentivize markets for sustainable products and services.

32. Revise subpart 23.1 to read as follows:

Subpart 23.1—Sustainable Products and Services

23.100	Scope of subpart.
23.101	Definitions.
23.102	Authorities.
23.103	Policy.
23.104	General procedures.
23.105	Exceptions.
23.106	Exemptions.
23.107	Statutory purchasing programs.
23.107-1	Products containing recovered materials.
23.107-2	Biobased products.
23.107-3	Energy-consuming products and water-consuming products.
23.107-4	Products that contain, use, or are manufactured with ozone-depleting substances or products that contain or use high global warming potential hydrofluorocarbons.
23.108	Required Environmental Protection Agency purchasing programs.
23.108-1	Water-efficient products.
23.108-2	Chemically-intensive products.
23.108-3	Products and services that are subject to EPA Recommendations of Specifications, Standards, and Ecolabels.
23.109	Solicitation provisions and contract clauses.

Subpart 23.1—Sustainable Products and Services

23.100 Scope of subpart.

This subpart provides policies and procedures for procuring sustainable products and services. This subpart applies to all contract actions, including those using part 12 procedures for the acquisition of commercial products, including commercially available off-the-shelf (COTS) items, and commercial services and acquisitions valued at or below the micro-purchase threshold.

23.101 Definitions.

As used in this subpart—

Contract action means any oral or written action that results in the purchase, rent, or lease of supplies or equipment, services, or construction.

Environmental Protection Agency (EPA)-designated item means a product that is or can be made with recovered material—

(1) That is listed by EPA in a procurement guideline (40 CFR part 247 (https://www.ecfr.gov/current/title-40/part-247)); and

(2) For which EPA has provided recommended recovered material content levels and other purchasing recommendations in a related Recovered Materials Advisory Notice (RMAN) (available at *https://www.epa.gov/smm/regulatory-background-comprehensive-procurement-guideline-*

program-cpg#rman (https://www.epa.gov/smm/regulatory-background-comprehensive-procurement-guideline-program-cpg#rman)).

Global warming potential means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

High global warming potential hydrofluorocarbons means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G (https://www.ecfr.gov/current/title-40/part-82/subpart-G), with supplemental tables of alternatives available at *https://www.epa.gov/snap/ (https://www.epa.gov/snap/)*.

Hydrofluorocarbons means compounds that only contain hydrogen, fluorine, and carbon.

Ozone-depleting substance means any substance the EPA designates in 40 CFR part 82 (https://www.ecfr.gov/current/title-40/part-82) as—

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

United States, as defined in the Executive Office of the President's Office of Management and Budget, Council on Environmental Quality, and Climate Policy Office Memorandum M-22-06, when used in a geographical sense means—

(1) The fifty States;

(2) The District of Columbia;

(3) The commonwealths of Puerto Rico and the Northern Mariana Islands;

(4) The territories of Guam, American Samoa, and the United States Virgin Islands; and

(5) Associated territorial waters and airspace.

U.S. Department of Agriculture (USDA)-designated product category means a generic grouping of products that are or can be made with biobased materials—

(1) That are listed by USDA in a procurement guideline (7 CFR part 3201, subpart B (https://www.ecfr.gov/current/title-7/part-3201/subpart-B)); and

(2) For which USDA has provided purchasing recommendations (available at *https://www.biopreferred.gov (https://www.biopreferred.gov)*).

23.102 Authorities.

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(a) Section 208 of Executive Order 14057 (/executive-order/14057), Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, dated December 8, 2021.

(b) Paragraph G of section I of the Executive Office of the President's Office of Management and Budget, Council on Environmental Quality, and Climate Policy Office Memorandum M-22-06, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, dated December 8, 2021.

(c) Implementing instructions for Executive Order 14057 (/executive-order/14057), Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, dated August 2022.

(d) The authorities referenced in 23.107 for statutory purchasing programs.

23.103 Policy.

(a) Agencies shall procure sustainable products and services (as defined in 2.101) to the maximum extent practicable.

(1) Procuring sustainable products and services is considered practicable, unless the agency cannot acquire products or services—

(i) Competitively within a reasonable performance schedule;

(ii) That meet reasonable performance requirements; or

(iii) At a reasonable price (see 23.103(a)(2)).

(2) When considering whether the price of a sustainable product is reasonable, agencies should consider whether the product is cost-effective over the life of the product. For ENERGY STAR® or Federal Energy Management Program (FEMP)-designated products, a price is reasonable if it is cost-effective over the life of the product taking energy cost savings into account (42 U.S.C. 8259b(b)(2) (https://www.govinfo.gov/link/uscode/42/8259b)). Life-cycle cost savings tools for energy-efficient products are available at *https://www.energystar.gov/buildings/save_energy_commercial_buildings/ways_save/energy_efficient_products (https://www.energystar.gov/buildings/save_energy_commercial_buildings/ways_save/energy_efficient_products)* and *https://www.nrel.gov/analysis/tech-lcoe.html (https://www.nrel.gov/analysis/tech-lcoe.html).*

(b) When procuring sustainable products and services, agencies shall—

(1) Ensure compliance with applicable statutory purchasing program requirements (see 23.107); and

(2) Prioritize multi-attribute sustainable products and services (see 23.104(c)(2)).

(c) Regarding products under contract actions for services or construction, the contractor is required to provide products that meet the definition of sustainable products and services at 2.101, if the products are—

(1) Delivered to the Government;

(2) Furnished by the contractor for use by the Government;

(3) Incorporated into the construction of a public building or public work; or

(4) Acquired by the contractor for use in performing services under a Government contract where the cost of the products is a direct cost to a Government contract (versus costs which are normally applied to a contractor's general and administrative expenses or indirect costs).

23.104 General procedures.

(a) *Maximum extent practicable.* If the requiring activity submits a written justification addressing the reasons described in 23.103(a)(1), the contracting officer may consider it not practicable to procure sustainable products or services. A written justification may be for a specific product or service or at the line item or contract level. The contracting officer shall maintain the written justification in the contract file.

(b) *Identification.* (1) Except as provided in paragraph (b)(2) of this section, the contracting officer shall ensure the solicitation and contract identifies—

(i) The sustainable products and services, including the purchasing program and type of product or service, that are applicable to the acquisition, as identified by the requiring activity; and

(ii) Any products and services that are not subject to the requirements of this subpart and the clause at 52.223-23, Sustainable Products and Services, based on the written justification under paragraph (a) of this section, an exception at 23.105, or an exemption at 23.106.

(2) The requirement in paragraph (b)(1) of this section does not apply if the justification, exception, or exemption covers the entirety of the contract action requirements.

(c) *Prioritization.* Agencies shall prioritize sustainable products and services as follows:

(1) Procure products and services that meet applicable statutory purchasing program requirements (see 23.107). When both an EPA-designated item (see 23.107-1) and a biobased product in a USDA-designated product category (see 23.107-2) could be used for the same purposes, and there is not an EPA-designated item that is also a biobased product in a USDA-designated product category that meets the agency's needs, procure the EPA-designated item.

(2) Consistent with other statutory procurement requirements, prioritize multi-attribute sustainable products and services, which are those that meet applicable statutory purchasing program requirements (see 23.107) and one or more required EPA purchasing programs (see 23.108).

(3) If no statutory purchasing program requirements apply, procure sustainable products and services that meet required EPA purchasing program requirements (see 23.108).

(d) *Resource*. The Green Procurement Compilation (GPC) available at *https://sftool.gov/greenprocurement (https://sftool.gov/greenprocurement)* provides a comprehensive list of sustainable products and services and other related sustainable acquisition guidance. In addition to the resources identified for each purchasing program listed in 23.107 and 23.108, agencies should consult the GPC when determining which purchasing programs apply to a specific product or service.

23.105 Exceptions.

The following are excepted from the requirement to procure sustainable products and services:

(a) Contracts performed or supplies delivered outside of the United States, unless the agency head determines that such application is in the interest of the United States.

(b) Weapon systems; however, compliance with applicable agency affirmative procurement programs is required for recovered materials per 23.107-1 (see 23.109(b)) (42 U.S.C. 6962 (https://www.govinfo.gov/link/uscode/42/6962)) and for alternatives for ozone depleting substances per 23.107-4 (see 23.109(d)) (42 U.S.C. 7671l (https://www.govinfo.gov/link/uscode/42/7671l)), unless a written justification exists as described at 23.104(a) (42 U.S.C. 6962(c)(1) (https://www.govinfo.gov/link/uscode/42/6962) and 7 U.S.C. 8102(a)(1)(B) (https://www.govinfo.gov/link/uscode/7/8102)).

(c) Energy-consuming products or systems designed or procured for combat or combat-related missions are not subject to the requirements in 23.107-3 (42 U.S.C. 8259b(a)(5) (https://www.govinfo.gov/link/uscode/42/8259b)).

(d) Biobased products to be used in military equipment (products or systems designed or procured for combat or combat-related missions), spacecraft systems, or launch support equipment are not subject to the requirements in 23.107-2 (7 CFR 3201.3(e) (https://www.ecfr.gov/current/title-7/section-3201.3#p-3201.3(e))).

23.106 Exemptions.

(a) The Director of National Intelligence may exempt an intelligence activity of the United States and related personnel, resources, and facilities to the extent the Director determines necessary to protect intelligence sources and methods from unauthorized disclosure.

(b) The head of an agency may exempt the following:

(1) Particular agency activities and related personnel, resources, and facilities when it is in the interest of national security, to protect intelligence sources and methods from unauthorized disclosure, or where necessary to protect undercover law enforcement operations from unauthorized disclosure. The agency shall notify the Chair of the Council on Environmental Quality (CEQ) in writing within 30 days of issuance of the exemption under this paragraph (b)(1).

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(2) On an individual or class basis, any manned and unmanned vehicle, vessel, aircraft, or non-road equipment that is used in combat support, combat service support, military tactical or relief operations, or training for such operations or spaceflight vehicles, including associated ground-support equipment.

(c) Contracting officers are encouraged, but not required, to procure sustainable products and services if the head of the agency determines the supplies or services are to be used to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to facilitate provision of international disaster assistance; or to support response to an emergency or major disaster.

(d) The head of the agency may submit to the President, through the Chair of CEQ, a request for an exemption of an agency activity, and related personnel, resources, and facilities from this subpart for any reason not otherwise addressed in this section.

23.107 Statutory purchasing programs.

Agencies shall ensure compliance with statutory purchasing program requirements described in 23.107-1 through 23.107-4.

23.107-1 Products containing recovered materials.

(a) *Authorities*. The Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6962 (https://www.govinfo.gov/link/uscode/42/6962), as implemented at 40 CFR part 247 (https://www.ecfr.gov/current/title-40/part-247).

(b) *EPA Comprehensive Procurement Guidelines (CPG) Program*. Under RCRA, EPA must designate items that are or can be made with recovered materials and must also recommend practices to assist procuring agencies in meeting their obligations.

(c) *Applicability*. (1) This section applies to contract actions involving an EPA-designated item, if—

(i) The price of the EPA-designated item exceeds $10,000; or

(ii) The aggregate amount paid for multiple purchases of the EPA-designated item, or a functionally equivalent item, in the preceding fiscal year was $10,000 or more.

(2) While micro-purchases are included in determining the aggregate amount paid under paragraph (c)(1) of this section, it is not necessary for an agency to track micro-purchases when—

(i) The agency anticipates the aggregate amount paid will exceed $10,000; or

(ii) The agency intends to establish or continue an affirmative procurement program as described in paragraph (d) of this section in the following fiscal year.

(d) *Agency affirmative procurement program*. An agency shall establish an affirmative procurement program for EPA-designated items if the agency's purchases of EPA-designated items exceed the threshold set forth in paragraph (c)(1) of this section.

(1) Agency affirmative procurement programs must include—

(i) A recovered materials preference program;

(ii) A program to promote the recovered materials preference program;

(iii) A program for requiring reasonable estimates and certification of recovered material used in the performance of contracts, including a preaward certification that products will meet EPA recommendations (see 52.223-4, Recovered Material Certification), and either an estimate or a certification at contract completion (see 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items, and its Alternate), as well as agency procedures for verification of estimates and certifications;

(iv) Annual review and monitoring of the effectiveness of the affirmative procurement program; and

(v) Guidance for purchases of EPA-designated items at or below the micro-purchase threshold.

(2) Technical or requirements personnel and procurement personnel are responsible for the preparation, implementation, and monitoring of affirmative procurement programs.

(3) Agencies have a period of 1 year to revise their affirmative procurement program(s) after the designation of any new item by EPA.

(e) *Procedures*. The following procedures apply when the thresholds set forth in paragraph (c)(1) of this section are exceeded.

(1) Once an item has been designated by EPA, agencies shall purchase conforming products to the maximum extent practicable in accordance with 23.104(a), unless a justification, exception, or exemption applies (see 23.104(a), 23.105, and 23.106, respectively).

(2) Agencies may use their own specifications or commercial product descriptions when procuring products containing recovered materials; however, the contract should specify that the product is composed of the—

(i) Highest percentage of recovered materials practicable; or

(ii) Minimum content standards in accordance with EPA's RMANs.

(3) When acquiring products with recovered material, the contracting officer may request information or data on such products, including recycled content or related product standards (see 11.301(c)).

(f) *Resources*. (1) For information on EPA-designated items and associated minimum content standards, see *https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#products (https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#products)*.

(2) Contracting officers should also consult their agency's affirmative procurement program for agency-specific guidance.

23.107-2 Biobased products.

(a) *Authorities*. (1) The Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102 (https://www.govinfo.gov/link/uscode/7/8102), as implemented at 7 CFR part 3201 (https://www.ecfr.gov/current/title-7/part-3201).

(2) The Energy Policy Act of 2005, Public Law 109-58 (https://www.govinfo.gov/link/plaw/109/public/58).

(b) *USDA BioPreferred ® Program*. The BioPreferred Program was created in the 2002 Farm Bill and is managed by the USDA. The goal of the BioPreferred Program is to increase the purchase and use of biobased products (as defined in 2.101) by agencies.

(c) *Applicability*. (1) This section applies to contract actions involving a biobased product in a USDA-designated product category if—

(i) The price of the biobased product exceeds $10,000; or

(ii) The aggregate amount paid for multiple purchases of the biobased product, or for a functionally equivalent product, in the preceding fiscal year was $10,000 or more.

(2) While micro-purchases are included in determining the aggregate amount paid under paragraph (c)(1) of this section, it is not necessary for an agency to track micro-purchases when—

(i) The agency anticipates the aggregate amount paid will exceed $10,000; or

(ii) The agency intends to establish or continue an affirmative procurement program in the following fiscal year.

(d) *Agency affirmative procurement program*. An agency shall establish an affirmative procurement program for biobased products in USDA-designated product categories if the agency's purchases of such products exceed the threshold set forth in paragraph (c)(1) of this section.

(1) Agency affirmative procurement programs must include— 🗋

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(i) A biobased products preference program;

(ii) A program to promote the biobased products preference program;

(iii) A program for requiring preaward certification that products meet USDA recommendations (see 52.223-1, Biobased Product Certification) and reporting on biobased products used in performance of contracts (see 52.223-2, Reporting of Biobased Products Under Service and Construction Contracts); and

(iv) Annual review and monitoring of the effectiveness of the program.

(2) Technical or requirements personnel and procurement personnel are responsible for the preparation, implementation, and monitoring of affirmative procurement programs.

(3) Agencies have a period of 1 year to revise their procurement program(s) after USDA updates any USDA-designated product categories.

(e) *Procedures*. The following procedures apply when the thresholds set forth in paragraph (c)(1) of this section are exceeded.

(1) Once a biobased product is included in a USDA-designated product category, agencies shall purchase conforming products to the maximum extent practicable in accordance with 23.104(a), unless a justification, exception, or exemption applies (see 23.104(a), 23.105, and 23.106, respectively).

(2) Agencies may use their own specifications or commercial product descriptions when procuring biobased products; however, the contract should specify that the biobased product is composed of the—

(i) Highest percentage of biobased material practicable; or

(ii) USDA's recommended minimum contents standards.

(3) When acquiring biobased products, the contracting officer may request information or data on such products, including biobased content or related standards of the products (see 11.301(c)).

(4) Agencies shall treat as eligible for the preference for biobased products, products from designated countries, as defined in 25.003, provided that those products—

(i) Meet the criteria for the definition of biobased product, except that the products need not meet the requirement that renewable agricultural materials or forestry materials in such product must be domestic; and

(ii) Otherwise meet all requirements for participation in the preference program.

(f) *Resources*. (1) For information on USDA-designated product categories and minimum content standards for biobased products, see *https://www.biopreferred.gov (https://www.biopreferred.gov)*.

(2) Contracting officers should also consult their agency's affirmative procurement program for agency-specific guidance.

23.107-3 Energy-consuming products and water-consuming products.

(a) *Authorities*. (1) Energy Policy and Conservation Act (42 U.S.C. 6361(a)(1) (https://www.govinfo.gov/link/uscode/42/6361)).

(2) National Energy Conservation Policy Act (42 U.S.C. 8253 (https://www.govinfo.gov/link/uscode/42/8253), 8259b (https://www.govinfo.gov/link/uscode/42/8259b), and 8262g (https://www.govinfo.gov/link/uscode/42/8262g)).

(3) Executive Order 11912 (/executive-order/11912) of April 13, 1976, Delegations of Authority under the Energy Policy and Conservation Act.

(4) Executive Order 13221 (/executive-order/13221) of July 31, 2001, Energy-Efficient Standby Power Devices.

(b) *Programs* —(1) ENERGY STAR® *Program*. The ENERGY STAR® program is a voluntary product-labeling initiative that identifies and promotes energy and water efficiency and the reduction of greenhouse gas emissions. This joint U.S. EPA and Department of Energy program helps buyers save money and protect the environment through energy- and water-efficient products and practices.

(2) *Federal Energy Management Program (FEMP)*. FEMP publishes acquisition guidance to help Federal buyers meet requirements for purchasing energy-efficient and water-efficient products. In addition, in product categories not covered by the ENERGY STAR® program, FEMP sets efficiency requirements for product categories that have the potential to generate significant Federal energy savings.

(c) *Procedures*. To the maximum extent practicable in accordance with 23.104(a), unless a justification, exception, or exemption applies (see 23.104(a), 23.105, and 23.106, respectively)—

(1) When acquiring energy- and water-consuming products listed in the ENERGY STAR® Program or FEMP—

(i) Agencies shall purchase ENERGY STAR® certified or FEMP-designated products; and

(ii) For products that consume power in a standby mode and are listed on FEMP's Low Standby Power Devices product listing *at https://www.energy.gov/eere/femp/low-standby-power-product-list (https://www.energy.gov/eere/femp/low-standby-power-product-list)*, agencies shall—

(A) Purchase items that meet FEMP's standby power wattage recommendation or document the reason for not purchasing such items; or

(B) If FEMP has listed a product without a corresponding wattage recommendation, purchase items that use no more than one watt in their standby power consuming mode. When it is impracticable to meet the one-watt requirement, agencies shall purchase items with the lowest standby wattage practicable; and

(2) When contracting for services or construction that will include the provision of energy- and water-consuming products, agencies shall specify products that comply with the applicable requirements in paragraph (c)(1) of this section.

(d) *Resources*. (1) For information on products under the ENERGY STAR® Program, go to *https://www.energystar.gov/products (https://www.energystar.gov/products)*.

(2) For information on energy-efficient products, go to *https://www.energy.gov/eere/femp/search-energy-efficient-products (https://www.energy.gov/eere/femp/search-energy-efficient-products).*

(3) For information on low standby power products, go to *https://www.energy.gov/eere/femp/low-standby-power-product-purchasing-requirements-and-compliance-resources (https://www.energy.gov/eere/femp/low-standby-power-product-purchasing-requirements-and-compliance-resources).*

23.107-4 Products that contain, use, or are manufactured with ozone-depleting substances or products that contain or use high global warming potential hydrofluorocarbons.

(a) *Authorities.* (1) Title VI of the Clean Air Act (42 U.S.C. 7671 (https://www.govinfo.gov/link/uscode/42/7671), *et seq.*).

(2) Section 706 of Division D, title VII of the Omnibus Appropriations Act, 2009 (Pub. L. 111-8 (https://www.govinfo.gov/link/plaw/111/public/8)).

(3) EPA regulations, Protection of Stratospheric Ozone (40 CFR part 82 (https://www.ecfr.gov/current/title-40/part-82)).

(b) *Program.* The EPA SNAP Program.

(c) *Agency program* s. Agencies shall implement cost-effective programs to minimize the procurement of materials and substances that contribute to the depletion of stratospheric ozone and/or result in the use, release, or emission of high global warming potential hydrofluorocarbons.

(d) *Procedures.* Agencies shall—

(1) Give preference to the procurement of acceptable alternative chemicals, products, and manufacturing processes that reduce overall risks to human health and the environment by minimizing—

(i) The depletion of ozone in the upper atmosphere; and

(ii) The potential use, release, or emission of high global warming potential hydrofluorocarbons; and

(2) In preparing specifications and purchase descriptions and in the acquisition of products and services—

(i) Comply with the requirements of title VI of the Clean Air Act; section 706 of division D, title VII of Public Law 111-8 (https://www.govinfo.gov/link/plaw/111/public/8); and 40 CFR 82.84(a)(2) (https://www.ecfr.gov/current/title-40/section-82.84#p-82.84(a)(2)) through (5) (https://www.ecfr.gov/current/title-40/section-82.84#p-82.84(a)(5)); Start Printed Page 30242

(ii) Substitute acceptable alternatives to ozone-depleting substances, as identified under 42 U.S.C. 7671k (https://www.govinfo.gov/link/uscode/42/7671k), to the maximum extent practicable, as provided in 40 CFR 82.84(a)(1) (https://www.ecfr.gov/current/title-40/section-82.84#p-82.84(a)

(1)), except in the case of Class I substances being used for specified essential uses, as identified under 40 CFR 82.4(n) (https://www.ecfr.gov/current/title-40/section-82.4#p-82.4(n)); and

(iii) Unless a particular contract requires otherwise, specify that, when feasible, contractors shall use another acceptable alternative in lieu of a high global warming potential hydrofluorocarbon in products and services in a particular end use for which EPA's SNAP program has identified other acceptable alternatives that have lower global warming potential.

(e) *Resource.* Refer to EPA's SNAP program website at *https://www.epa.gov/snap (https://www.epa.gov/snap)* for the list of alternatives found at 40 CFR part 82, subpart G (https://www.ecfr.gov/current/title-40/part-82/subpart-G), as well as supplemental tables of alternatives.

23.108 Required Environmental Protection Agency purchasing programs.

In accordance with 23.104(c), contracting officers shall, after meeting statutory purchasing program requirements in 23.107, purchase to the maximum extent practicable products and services that meet EPA purchasing program requirements described in 23.108-1 through 23.108-3.

23.108-1 Water-efficient products.

(a) *Program.* EPA's WaterSense® Program makes it easy to find and select water-efficient products that can save water, energy, and money. WaterSense®-labeled products are backed by independent, third-party certification and meet EPA's specifications for water efficiency and performance.

(b) *Resource.* For additional information on WaterSense® products, see *https://www.epa.gov/watersense/watersense-products (https://www.epa.gov/watersense/watersense-products).*

23.108-2 Chemically-intensive products.

(a) *Program.* Safer Choice is EPA's label for products that contain safer chemicals. Every chemical, regardless of percentage, in a Safer Choice-certified product is evaluated through EPA's rigorous scientific process and only the safest ingredients are allowed.

(b) *Resource.* For information on Safer Choice-certified products, see *https://www.epa.gov/saferchoice (https://www.epa.gov/saferchoice).*

23.108-3 Products and services that are subject to EPA Recommendations of Specifications, Standards, and Ecolabels.

(a) *Program.* The EPA Environmentally Preferable Purchasing (EPP) Program helps Federal agencies identify and procure environmentally preferable products and services to meet zero emissions and other sustainable procurement goals by providing Recommendations of Specifications, Standards, and Ecolabels. The EPP recommendations give preference to multi-attribute or life-cycle based standards and ecolabels that address key environmental and human health impact areas and where product conformance is determined by a competent third-party certification body.

(b) *Resource.* For additional information on EPA Recommendations of Specifications, Standards, and Ecolabels, see *https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing*

(https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing).

23.109 Solicitation provisions and contract clauses.

(a) *General.* Insert the clause at 52.223-23, Sustainable Products and Services, in solicitations and contracts—

(1) Unless—

(i) The requiring activity has provided a written justification that it is not practicable to procure sustainable products and services (see 23.104(a));

(ii) An exception under 23.105 applies; or

(iii) An exemption under 23.106 applies; and

(2) The scope of the written justification, exception, or exemption covers the entirety of the contract action requirements.

(b) *EPA-designated items.* Except for the acquisition of COTS items—

(1) Insert the provision at 52.223-4, Recovered Material Certification, in solicitations that require the delivery or specify the use of EPA-designated items; and

(2) Insert the clause at 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-designated Items, in solicitations and contracts exceeding $150,000 that are for, or specify the use of, EPA-designated items containing recovered materials. If technical personnel advise that estimates can be verified, use the clause with its Alternate I.

(c) *Biobased products in USDA-designated product categories.* (1) Insert the provision at 52.223-1, Biobased Product Certification, in solicitations, other than for acquisitions described at 23.105(d), that—

(i) Require the delivery or specify the use of biobased products in USDA-designated product categories; or

(ii) Include the clause at 52.223-2.

(2) Insert the clause at 52.223-2, Reporting of Biobased Products Under Service and Construction Contracts, in service and construction solicitations and contracts, unless the contract will not involve the use of biobased products in USDA-designated product categories at *https://www.biopreferred.gov (https://www.biopreferred.gov)* or 7 CFR part 3201 (https://www.ecfr.gov/current/title-7/part-3201).

(d) *Products containing ozone-depleting substances and hydrofluorocarbons.* Except for contracts for supplies that will be delivered outside the United States and its outlying areas, or contracts for services that will be performed outside the United States and its outlying areas, insert the following clauses:

(1) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons, in solicitations and contracts for-

(i) Refrigeration equipment (in product or service code (PSC) 4110);

(ii) Air conditioning equipment (PSC 4120);

(iii) Clean agent fire suppression systems/equipment (*e.g.,* installed room flooding systems, portable fire extinguishers, aircraft/tactical vehicle fire/explosion suppression systems) (in PSC 4210);

(iv) Bulk refrigerants and fire suppressants (in PSC 6830);

(v) Solvents, dusters, freezing compounds, mold release agents, and any other miscellaneous chemical specialty that may contain ozone-depleting substances or high global warming potential hydrofluorocarbons (in PSC 6850);

(vi) Corrosion prevention compounds, foam sealants, aerosol mold release agents, and any other preservative or sealing compound that may contain ozone-depleting substances or high global warming potential hydrofluorocarbons (in PSC 8030);

(vii) Fluorocarbon lubricants (primarily aerosols) (in PSC 9150); and

(viii) Any other manufactured end products that may contain or be manufactured with ozone-depleting substances.

(2) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners, in solicitations and contracts that include the maintenance, service, repair, or disposal of-

(i) Refrigeration equipment, such as refrigerators, chillers, or freezers; or

(ii) Air conditioners, including air conditioning systems in motor vehicles.

(3) 52.223-20, Aerosols, in solicitations and contracts—

(i) For products that may contain high global warming potential hydrofluorocarbons as a propellant, or as a solvent; or

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(ii) That involve maintenance or repair of electronic or mechanical devices.

(4) 52.223-21, Foams, in solicitations and contracts for—

(i) Products that may contain high global warming potential hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons as a foam blowing agent, such as building foam insulation or appliance foam insulation; or

(ii) Construction of buildings or facilities.

33. Revise subpart 23.2 to read as follows:

Subpart 23.2—Energy Savings Performance Contracts

23.200 Scope.
23.201 Authorities.
23.202 Policy.

Subpart 23.2—Energy Savings Performance Contracts

23.200 Scope.

(a) This subpart prescribes policies and procedures for using an energy savings performance contract to obtain energy-efficient technologies at Government facilities without Government capital expense.

(b) This subpart applies to acquisitions in the United States and its outlying areas. Agencies conducting acquisitions outside of these areas must use their best efforts to comply with this subpart.

23.201 Authorities.

This subpart implements the National Energy Conservation Policy Act (42 U.S.C. 8287 (https://www.govinfo.gov/link/uscode/42/8287)).

23.202 Policy.

(a) Agencies should make maximum use of the authority provided in the National Energy Conservation Policy Act (42 U.S.C. 8287 (https://www.govinfo.gov/link/uscode/42/8287)) to use an energy savings performance contract (ESPC), when life-cycle cost-effective to reduce energy use and cost in the agency's facilities and operations.

(b)(1) Under an ESPC, an agency can contract with an energy service company for a period not to exceed 25 years to improve energy efficiency in one or more agency facilities at no direct capital cost to the United States Treasury. The energy service company finances the capital costs of implementing energy conservation measures and receives, in return, a contractually determined share of the cost savings that result.

(2) Except as provided in 10 CFR 436.34 (https://www.ecfr.gov/current/title-10/section-436.34), ESPC's are subject to subpart 17.1.

(c) To solicit and award an ESPC, the contracting officer—

(1) Must use the procedures, selection method, and terms and conditions provided in 10 CFR part 436, subpart B (https://www.ecfr.gov/current/title-10/part-436/subpart-B); and

(2) May use the “Qualified List” of energy service companies established by the Department of Energy and other agencies.

(d) For procedures related to unsolicited proposals for energy savings performance contracts, see 15.603(e).

(e) For more information see *https://energy.gov/eere/femp/energy-savings-performance-contracts-federal-agencies (https://energy.gov/eere/femp/energy-savings-performance-contracts-federal-agencies).*

34. Revise the heading for subpart 23.3 to read as follows:

Subpart 23.3—Hazardous Material Identification, Material Safety Data, and Notice of Radioactive Materials

35. Revising section 23.300 to read as follows:

23.300 Scope of subpart.

This subpart prescribes policies and procedures for the following:

(a) Acquiring deliverable items, other than ammunition and explosives, that require the furnishing of data involving hazardous materials. Agencies may prescribe special procedures for ammunition and explosives.

(b) Providing notification of radioactive materials prior to delivery.

36. Revise the heading of section 23.302 to read as follows:

23.302 Hazardous material identification and notice of material safety data.

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23.303 [Redesignate as 23.304]

37. Redesignate section 23.303 as section 23.304.

38. Add a new section 23.303 to read as follows:

23.303 Notice of radioactive materials.

(a) The clause at 52.223-7, Notice of Radioactive Materials, requires the contractor to notify the contracting officer prior to delivery of radioactive material.

(b) Upon receipt of the notice, the contracting officer shall notify receiving activities so that appropriate safeguards can be taken.

(c) The clause permits the contracting officer to waive the notification if the contractor states that the notification on prior deliveries is still current. The contracting officer may waive the notice only after consultation with cognizant technical representatives.

(d) The contracting officer is required to specify in the clause at 52.223-7, the number of days in advance of delivery that the contractor will provide notification. The determination of the number of days should be done in coordination with the installation/facility radiation protection officer (RPO). The RPO is responsible for ensuring the proper license, authorization, or permit is obtained prior to receipt of the radioactive material.

39. Revise newly redesignated section 23.304 to read as follows:

23.304 Contract clauses.

(a)(1) The contracting officer shall insert the clause at 52.223-3, Hazardous Material Identification and Material Safety Data, in solicitations and contracts if the contract will require the delivery of hazardous materials as defined in 23.301.

(2) If the contract is awarded by an agency other than the Department of Defense, the contracting officer shall use the clause at 52.223-3 with its *Alternate I*.

(b) The contracting officer shall insert the clause at 52.223-7, Notice of Radioactive Materials, in solicitations and contracts for supplies that are or that contain—

(1) Radioactive material requiring specific licensing under regulations issued pursuant to the Atomic Energy Act of 1954; or

(2) Radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such supplies include, but are not limited to, aircraft, ammunition, missiles, vehicles, electronic tubes, instrument panel gauges, compasses, and identification markers.

40. Revise subpart 23.4 to read as follows:

Subpart 23.4—Pollution Prevention, Environmental Management Systems, and Waste Reduction

23.400 Scope of subpart.
23.401 Definitions.
23.402 Authorities.
23.403 Emergency planning and toxic release reporting.
23.404 Environmental management systems.
23.405 Waste reduction program.
23.406 Contract clauses.

Subpart 23.4—Pollution Prevention, Environmental Management Systems, and Waste Reduction

23.400 Scope of subpart.

This subpart prescribes policies and procedures for— Start Printed Page 30244

(a) Obtaining information needed for Government compliance with right-to-know laws and pollution prevention requirements;

(b) Contractor compliance with environmental management systems; and

(c) Ensuring waste reduction at Federal facilities.

23.401 Definitions.

As used in this subpart—

Federal agency means an executive agency (see 2.101).

Federal facility means a facility owned or operated by a Federal agency in the customs territory of the United States.

23.402 Authorities.

(a) Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001-11050 (https://www.govinfo.gov/link/uscode/42/11001) (EPCRA).

(b) Pollution Prevention Act of 1990, 42 U.S.C. 13101-13109 (https://www.govinfo.gov/link/uscode/42/13101) (PPA).

(c) Executive Order 14057 (/executive-order/14057), Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, dated December 8, 2021.

23.403 Emergency planning and toxic release reporting.

(a) Federal facilities are required to comply with the emergency planning and toxic release reporting requirements in EPCRA and PPA.

(b) Pursuant to EPCRA, PPA, and any agency implementing procedures, every contract that provides for performance on a Federal facility shall require the contractor to provide information necessary for the Federal agency to comply with paragraph (a) of this section.

23.404 Environmental management systems.

Agencies may implement an environmental management system (EMS) when it aligns with and supports its agency's mission needs and facilitates implementation and progress toward E.O. 14057 (/executive-order/14057) goals. If an agency uses an EMS for contractor operation of Government-owned or -leased facilities or vehicles, and contractor activities affect the agency's environmental management aspects—

(a) EMS requirements shall be included in contracts to ensure proper implementation and execution of EMS roles and responsibilities; and

(b) The contracting officer shall—

(1) Specify the EMS directives with which the contractor must comply; and

(2) Ensure contractor compliance to the same extent as the agency would be required to comply if the agency operated the facilities or vehicles.

23.405 Waste reduction program.

To support pollution prevention and agency efforts to minimize waste in accordance with E.O. 14057 (/executive-order/14057), contracts for contractor operation of Government-owned or -leased facilities or for support services at Government-owned or -operated facilities shall require the contractor to promote cost-effective waste reduction in all operations and facilities covered by the contract.

23.406 Contract clauses.

(a) Insert the clause at 52.223-5, Pollution Prevention and Right-to-Know Information, in solicitations and contracts that provide for performance, in whole or in part, on a Federal facility.

(b) Insert the clause at 52.223-19, Compliance With Environmental Management Systems, in solicitations and contracts for contractor operation of Government-owned or -leased facilities or vehicles located in the United States if an agency uses an EMS and contractor activities affect aspects of the agency's environmental management. For facilities located outside the United States, the agency head may determine that use of the clause is in the best interest of the Government.

(c) Insert the clause at 52.223-10, Waste Reduction Program, in solicitations and contracts for contractor operation of Government-owned or -leased facilities and all solicitations and contracts for support services at Government-owned or -operated facilities.

Subpart 23.5 [Transferred to Part 26]

41. Transfer subpart 23.5, consisting of sections 23.500 through 23.506, to part 26.

42. Add a new subpart 23.5 to read as follows:

Subpart 23.5—Greenhouse Gas Emissions

23.500 Scope of subpart.
23.501 Policy.
23.502 Solicitation provision.

Subpart 23.5—Greenhouse Gas Emissions

23.500 Scope of subpart.

This subpart addresses public disclosure of greenhouse gas emissions and reduction goals.

23.501 Policy.

In order to better understand both direct and indirect greenhouse gas emissions that result from Federal activities, offerors that are registered in the System for Award Management (SAM) and received $7.5 million or more in Federal contract awards in the prior Federal fiscal year are required to—

(a) Represent whether they publicly disclose greenhouse gas emissions;

(b) Represent whether they publicly disclose a quantitative greenhouse gas emissions reduction goal; and

(c) Provide the website for any such disclosures.

23.502 Solicitation provision.

The provision at 52.223-22, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation, is required only when 52.204-7, System for Award Management, is included in the solicitation (see 52.204-8, Annual Representations and Certifications).

Subpart 23.6 [Removed and Reserved]

43. Remove and reserve subpart 23.6, consisting of sections 23.601 and 23.602.

Subpart 23.7 [Removed and Reserved]

44. Remove and reserve subpart 23.7, consisting of sections 23.700 through 23.705.

Subpart 23.8 [Removed and Reserved]

45. Remove and reserve subpart 23.8, consisting of sections 23.800 through 23.804.

Subpart 23.9 [Removed and Reserved]

46. Remove and reserve subpart 23.9, consisting of sections 23.900 through 23.903.

Subpart 23.10 [Removed and Reserved]

47. Remove and reserve subpart 23.10 consisting of sections 23.1000 through 23.1005.

Subpart 23.11 [Transferred to Part 26]

48. Transfer subpart 23.11, consisting of sections 23.1101 through 23.1105, to part 26.

PART 26—OTHER SOCIOECONOMIC PROGRAMS

Subpart 23.5 [Redesignated as Subpart 26.5]

49. Redesignate newly transferred subpart 23.5, consisting of sections 23.500 through 23.506, as subpart 26.5 as indicated in the table below:

Old section	New section
23.500	26.500
23.501	26.501
23.502	26.502
23.503	26.503
23.504	26.504
23.505	26.506
23.506	26.505

26.504 [Amended]

50. Amend newly redesignated section 26.504 by—

a. Removing from the last sentence of paragraph (a)(5) the words “the postion title” and adding the words “the position title” in its place; and

b. Removing from the end of paragraph (a)(6)(i) “; or” and adding a period in its place.

26.505 [Amended]

51. Amend newly redesignated section 26.505 by removing from paragraph (d)(1) “52.223-6” and adding “52.226-7” in its place.

26.506 [Amended]

52. Amend newly redesignated section 26.506 by removing “23.501” and “52.223-6” and adding “26.501” and “52.226-7” in their place, respectively.

Subpart 23.11 [Redesignated as Subpart 26.6]

53. Redesignate newly transferred subpart 23.11, consisting of sections 23.1101 through 23.1105, as subpart 26.6 as indicated in the table below:

Old section	New section
23.1101	26.601
23.1102	26.602
23.1103	26.603
23.1104	26.604
23.1105	26.605

26.605 [Amended]

54. Amend newly redesignated section 26.605 by removing “52.223-18” and adding “52.226-8” in its place.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.001 [Amended]

55. Amend section 36.001 by—

a. Removing from the definition of “Construction and demolition materials and debris” the phrase “means materials and debris generated” and adding the phrase “means waste materials and debris generated” in its place;

b. Revising the definition of “Diverting”; and

c. Adding the definition of “Modernization project” in alphabetical order.

The revision and addition read as follows:

36.001 Definitions.

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Diverting means redirecting materials from disposal in landfills or incinerators to recycling or recovery, excluding diversion to waste-to-energy facilities.

Modernization project means a project that includes the comprehensive replacement or restoration of virtually all major systems, interior finishes (such as ceilings, partitions, doors, and floor finishes), and building features.

56. Amend section 36.104 by revising paragraph (b) to read as follows:

36.104 Policy.

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(b) Agencies shall implement high-performance sustainable building design, construction, renovation, repair, commissioning, operation and maintenance, management, and deconstruction practices so as to—

(1) Ensure that—

(i) All new construction and modernization projects greater than 25,000 gross square feet are designed, constructed, and maintained to meet and, wherever practicable, exceed Federal sustainable design and operations principles for new construction and modernization projects in accordance with the Council on Environmental Quality's Guiding Principles for Sustainable Federal Buildings and Associated Instructions (Guiding Principles) (available at *https://www.sustainability.gov/pdfs/guiding_principles_for_sustainable_federal_buildings.pdf (https://www.sustainability.gov/pdfs/guiding_principles_for_sustainable_federal_buildings.pdf)*); and

(ii) All renovation projects of existing Federal buildings must use, to the greatest extent technically feasible and practicable, Federal sustainable design and operations principles for existing buildings in accordance with the Guiding Principles;

(2) Identify alternatives to renovation that reduce existing assets' deferred maintenance costs;

(3) Ensure that rehabilitation of Federally-owned historic buildings utilizes best practices and technologies in retrofitting to promote long-term viability of the buildings; and

(4) Ensure pollution prevention and eliminate waste by diverting at least 50 percent of non-hazardous construction and demolition materials and debris.

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36.601-3 [Amended]

57. Amend section 36.601-3 by removing from paragraph (a)(2) “subpart 23.2” and adding “23.107-3” in its place.

PART 37—SERVICE CONTRACTING

37.102 [Amended]

58. Amend section 37.102 by removing from paragraph (i) “part 23” and adding “subpart 23.1 (see 23.103(c))” in its place.

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

59. Amend section 39.101 by revising paragraphs (a)(1)(ii) and (iii) to read as follows:

39.101 Policy.

(a)(1) * * *

(ii) The requirements for sustainable products and services (as defined in 2.101) in accordance with subpart 23.1;

(iii) Policies to enable power management and other energy-efficient or environmentally preferable features on all agency electronic products; and

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PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

60. Amend section 42.302 by—

a. In paragraph (a)(66), removing "23.5" and adding "26.5" in its place; and

b. Revising paragraphs (a)(68)(ii) and (iii).

The revision reads as follows:

42.302 Contract administration functions.

(a) * * *

(68) * * *

(ii) Monitoring contractor compliance with specifications or other contractual requirements requiring the delivery, use, or furnishing of sustainable products and services (as defined in 2.101) in accordance with the clause at 52.223-23. This must occur as part of the quality assurance procedures set forth in part 46; and

(iii) As required in the contract, ensuring that the contractor complies with the reporting requirements relating to recovered material content (see 52.223-9) and biobased products (see 52.223-2) utilized in contract performance.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.204-4 [Removed and Reserved]

61. Remove and reserve section 52.204-4.

62. Amend section 52.204-8 by—

a. Revising the date of the provision and paragraph (c)(1)(xvii);

b. Removing from the end of paragraph (c)(1)(xix) the parenthesis; 🗋 Start Printed Page 30246

c. Removing paragraph (c)(2)(vi); and

d. Redesignating paragraphs (c)(2)(vii) and (viii) as paragraphs (c)(2)(vi) and (vii), respectively.

The revisions read as follows:

52.204-8 Annual Representations and Certifications.

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Annual Representations and Certifications (MAY 2024)

(xvii) 52.223-1, Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of biobased products in USDA-designated product categories; or include the clause at 52.223-2, Reporting of Biobased Products Under Service and Construction Contracts.

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52.211-5 [Amended]

63. Amend section 52.211-5 by removing from the introductory text "11.304" and adding "11.302" in its place.

64. Amend section 52.212-5 by—

a. Revising the date of the clause; and

b. Revise and republish paragraph(b).

The revisions read as follows:

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

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Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (MAY 2024)

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(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services: [*Contracting Officer check as appropriate.*]

__(1) 52.203-6, Restrictions on Subcontractor Sales to the Government (JUN 2020), with Alternate I (NOV 2021) (41 U.S.C. 4704 (https://www.govinfo.gov/link/uscode/41/4704) and 10 U.S.C. 4655 (https://www.govinfo.gov/link/uscode/10/4655)).

__(2) 52.203-13, Contractor Code of Business Ethics and Conduct (NOV 2021) (41 U.S.C. 3509 (https://www.govinfo.gov/link/uscode/41/3509)).

__(3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5 (https://www.govinfo.gov/link/plaw/111/public/5)). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

__(4) 52.203-17, Contractor Employee Whistleblower Rights (NOV 2023) (41 U.S.C. 4712 (https://www.govinfo.gov/link/uscode/41/4712)); this clause does not apply to contracts of DoD, NASA, the Coast Guard, or applicable elements of the intelligence community—see FAR 3.900(a).

__(5) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020) (Pub. L. 109-282 (https://www.govinfo.gov/link/plaw/109/public/282)) (31 U.S.C. 6101 note (https://www.govinfo.gov/link/uscode/31/6101)).

__(6) [Reserved]

__(7) 52.204-14, Service Contract Reporting Requirements (OCT 2016) (Pub. L. 111-117 (https://www.govinfo.gov/link/plaw/111/public/117), section 743 of Div. C).

__(8) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (OCT 2016) (Pub. L. 111-117 (https://www.govinfo.gov/link/plaw/111/public/117), section 743 of Div. C).

__(9) 52.204-27, Prohibition on a ByteDance Covered Application (JUN 2023) (Section 102 of Division R of Pub. L. 117-328 (https://www.govinfo.gov/link/plaw/117/public/328)).

__(10) 52.204-28, Federal Acquisition Supply Chain Security Act Orders—Federal Supply Schedules, Governmentwide Acquisition Contracts, and Multi-Agency Contracts. (DEC 2023) (Pub. L. 115-390 (https://www.govinfo.gov/link/plaw/115/public/390), title II).

__(11)(i) 52.204-30, Federal Acquisition Supply Chain Security Act Orders—Prohibition. (DEC 2023) (Pub. L. 115-390 (https://www.govinfo.gov/link/plaw/115/public/390), title II).

__(ii) Alternate I (DEC 2023) of 52.204-30.

__(12) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (NOV 2021) (31 U.S.C. 6101 note (https://www.govinfo.gov/link/uscode/31/6101)).

__(13) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (OCT 2018) (41 U.S.C. 2313 (https://www.govinfo.gov/link/uscode/41/2313)).

__(14) [Reserved]

__(15) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (OCT 2022) (15 U.S.C. 657a (https://www.govinfo.gov/link/uscode/15/657a)).

__(16) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (OCT 2022) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a (https://www.govinfo.gov/link/uscode/15/657a)).

__(17) [Reserved]

__(18)(i) 52.219-6, Notice of Total Small Business Set-Aside (NOV 2020) (15 U.S.C. 644 (https://www.govinfo.gov/link/uscode/15/644)).

__(ii) Alternate I (MAR 2020) of 52.219-6.

__(19)(i) 52.219-7, Notice of Partial Small Business Set-Aside (NOV 2020) (15 U.S.C. 644 (https://www.govinfo.gov/link/uscode/15/644)).

__(ii) Alternate I (MAR 2020) of 52.219-7.

__(20) 52.219-8, Utilization of Small Business Concerns (FEB 2024) (15 U.S.C. 637(d)(2) (https://www.govinfo.gov/link/uscode/15/637) and (3) (https://www.govinfo.gov/link/uscode/15/637)).

__(21)(i) 52.219-9, Small Business Subcontracting Plan (SEP 2023) (15 U.S.C. 637(d)(4) (https://www.govinfo.gov/link/uscode/15/637)).

__(ii) Alternate I (NOV 2016) of 52.219-9.

__(iii) Alternate II (NOV 2016) of 52.219-9.

__(iv) Alternate III (JUN 2020) of 52.219-9.

__(v) Alternate IV (SEP 2023) of 52.219-9.

__(22)(i) 52.219-13, Notice of Set-Aside of Orders (MAR 2020) (15 U.S.C. 644(r) (https://www.govinfo.gov/link/uscode/15/644)).

__(ii) Alternate I (MAR 2020) of 52.219-13.

__(23) 52.219-14, Limitations on Subcontracting (OCT 2022) (15 U.S.C. 657s (https://www.govinfo.gov/link/uscode/15/657s)).

__(24) 52.219-16, Liquidated Damages—Subcontracting Plan (SEP 2021) (15 U.S.C. 637(d)(4)(F)(i) (https://www.govinfo.gov/link/uscode/15/637)).

__(25) 52.219-27, Notice of Set-Aside for, or Sole-Source Award to, Service-Disabled Veteran-Owned Small Business (SDVOSB) Concerns Eligible Under the SDVOSB Program (FEB 2024) (15 U.S.C. 657f (https://www.govinfo.gov/link/uscode/15/657f)).

__(26)(i) 52.219-28, Post-Award Small Business Program Rerepresentation (FEB 2024) (15 U.S.C. 632(a)(2) (https://www.govinfo.gov/link/uscode/15/632)).

__(ii) Alternate I (MAR 2020) of 52.219-28.

__(27) 52.219-29, Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (OCT 2022) (15 U.S.C. 637(m) (https://www.govinfo.gov/link/uscode/15/637)).

__(28) 52.219-30, Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (OCT 2022) (15 U.S.C. 637(m) (https://www.govinfo.gov/link/uscode/15/637)).

__(29) 52.219-32, Orders Issued Directly Under Small Business Reserves (MAR 2020) (15 U.S.C. 644(r) (https://www.govinfo.gov/link/uscode/15/644)).

__(30) 52.219-33, Nonmanufacturer Rule (SEP 2021) (15 U.S.C. 657s (https://www.govinfo.gov/link/uscode/15/657s)).

__(31) 52.222-3, Convict Labor (JUN 2003) (E.O. 11755 (/executive-order/11755)).

__(32) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (FEB 2024) (E.O. 13126 (/executive-order/13126)).

__(33) 52.222-21, Prohibition of Segregated Facilities (APR 2015).

__(34)(i) 52.222-26, Equal Opportunity (SEPT 2016) (E.O. 11246 (/executive-order/11246)).

__(ii) Alternate I (FEB 1999) of 52.222-26.

__(35)(i) 52.222-35, Equal Opportunity for Veterans (JUN 2020) (38 U.S.C. 4212 (https://www.govinfo.gov/link/uscode/38/4212)).

__(ii) Alternate I (JULY 2014) of 52.222-35.

__(36)(i) 52.222-36, Equal Opportunity for Workers with Disabilities (JUN 2020) (29 U.S.C. 793 (https://www.govinfo.gov/link/uscode/29/793)).

__(ii) Alternate I (JULY 2014) of 52.222-36.

__(37) 52.222-37, Employment Reports on Veterans (JUN 2020) (38 U.S.C. 4212 (https://www.govinfo.gov/link/uscode/38/4212)).

__(38) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496 (/executive-order/13496)).

__(39)(i) 52.222-50, Combating Trafficking in Persons (NOV 2021) (22 U.S.C. chapter 78 (https://www.govinfo.gov/link/uscode/22/7801) and E.O. 13627 (/executive-order/13627)).

__(ii) Alternate I (MAR 2015) of 52.222-50 (22 U.S.C. chapter 78 (https://www.govinfo.gov/link/uscode/22/7801) and E.O. 13627 (/executive-order/13627)).

__(40) 52.222-54, Employment Eligibility Verification (MAY 2022). (E. O. 12989 (/executive-order/12989)). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial products or commercial services as prescribed in FAR 22.1803.)

__(41)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (MAY 2008) (42 U.S.C. 6962(c)(3)(A)(ii) (https://www.govinfo.gov/link/uscode/42/6962)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

__(ii) Alternate I (MAY 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C) (https://www.govinfo.gov/link/uscode/42/6962)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

__(42) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (MAY 2024) (42 U.S.C. 7671 (https://www.govinfo.gov/link/uscode/42/7671), *et seq*.).

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__(43) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (MAY 2024) (42 U.S.C. 7671 (https://www.govinfo.gov/link/uscode/42/7671), *et seq*.).

__(44) 52.223-20, Aerosols (MAY 2024) (42 U.S.C. 7671 (https://www.govinfo.gov/link/uscode/42/7671), *et seq*.).

__(45) 52.223-21, Foams (MAY 2024) (42 U.S.C. 7671 (https://www.govinfo.gov/link/uscode/42/7671), *et seq*.).

__(46) 52.223-23, Sustainable Products and Services (MAY 2024) (E.O. 14057 (/executive-order/14057), 7 U.S.C. 8102 (https://www.govinfo.gov/link/uscode/7/8102), 42 U.S.C. 6962 (https://www.govinfo.gov/link/uscode/42/6962), 42 U.S.C. 8259b (https://www.govinfo.gov/link/uscode/42/8259b), and 42 U.S.C. 7671l (https://www.govinfo.gov/link/uscode/42/7671l)).

__ (47)(i) 52.224-3, Privacy Training (JAN 2017) (5 U.S.C. 552a (https://www.govinfo.gov/link/uscode/5/552a)).

__ (ii) Alternate I (JAN 2017) of 52.224-3.

__ (48)(i) 52.225-1, Buy American—Supplies (OCT 2022)) (41 U.S.C. chapter 83 (https://www.govinfo.gov/link/uscode/41/8301)).

__ (ii) Alternate I (OCT 2022) of 52.225-1.

__ (49)(i) 52.225-3, Buy American—Free Trade Agreements—Israeli Trade Act (NOV 2023) (19 U.S.C. 3301 note (https://www.govinfo.gov/link/uscode/19/3301), 19 U.S.C. 2112 note (https://www.govinfo.gov/link/uscode/19/2112), 19 U.S.C. 3805 note (https://www.govinfo.gov/link/uscode/19/3805), 19 U.S.C. 4001 note (https://www.govinfo.gov/link/uscode/19/4001), 19 U.S.C. chapter 29 (https://www.govinfo.gov/link/uscode/19/2901) (sections 4501-4732), Public Law 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43.

__ (ii) Alternate I [Reserved].

__ (iii) Alternate II (DEC 2022) of 52.225-3.

__ (iv) Alternate III (FEB 2024) of 52.225-3.

__ (v) Alternate IV (OCT 2022) of 52.225-3.

__ (50) 52.225-5, Trade Agreements (NOV 2023) (19 U.S.C. 2501 (https://www.govinfo.gov/link/uscode/19/2501), *et seq.*,19 U.S.C. 3301 note (https://www.govinfo.gov/link/uscode/19/3301)).

__ (51) 52.225-13, Restrictions on Certain Foreign Purchases (FEB 2021) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

__ (52) 52.225-26, Contractors Performing Private Security Functions Outside the United States (OCT 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. Subtitle A, Part V, Subpart G Note).

__ (53) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (NOV 2007) (42 U.S.C. 5150 (https://www.govinfo.gov/link/uscode/42/5150)).

__ (54) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) (42 U.S.C. 5150 (https://www.govinfo.gov/link/uscode/42/5150)).

__ (55) 52.226-8, Encouraging Contractor Policies to Ban Text Messaging While Driving (May 2024) (E.O. 13513 (/executive-order/13513)).

__ (56) 52.229-12, Tax on Certain Foreign Procurements (FEB 2021).

__ (57) 52.232-29, Terms for Financing of Purchases of Commercial Products and Commercial Services (NOV 2021) (41 U.S.C.4505 (https://www.govinfo.gov/link/uscode/41/4505), 10 U.S.C. 3805 (https://www.govinfo.gov/link/uscode/10/3805)).

__ (58) 52.232-30, Installment Payments for Commercial Products and Commercial Services (NOV 2021) (41 U.S.C. 4505 (https://www.govinfo.gov/link/uscode/41/4505), 10 U.S.C. 3805 (https://www.govinfo.gov/link/uscode/10/3805)).

__ (59) 52.232-33, Payment by Electronic Funds Transfer—System for Award Management (OCT 2018) (31 U.S.C. 3332 (https://www.govinfo.gov/link/uscode/31/3332)).

__ (60) 52.232-34, Payment by Electronic Funds Transfer—Other than System for Award Management (JUL 2013) (31 U.S.C. 3332 (https://www.govinfo.gov/link/uscode/31/3332)).

__ (61) 52.232-36, Payment by Third Party (MAY 2014) (31 U.S.C. 3332 (https://www.govinfo.gov/link/uscode/31/3332)).

__ (62) 52.239-1, Privacy or Security Safeguards (AUG 1996) (5 U.S.C. 552a (https://www.govinfo.gov/link/uscode/5/552a)).

__ (63) 52.242-5, Payments to Small Business Subcontractors (JAN 2017)(15 U.S.C. 637(d)(13) (https://www.govinfo.gov/link/uscode/15/637)).

__ (64)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) (46 U.S.C. 55305 (https://www.govinfo.gov/link/uscode/46/55305) and 10 U.S.C. 2631 (https://www.govinfo.gov/link/uscode/10/2631)).

__ (ii) Alternate I (Apr 2003) of 52.247-64.

__ (iii) Alternate II (NOV 2021) of 52.247-64.

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65. Amend section 52.213-4 by—

a. Revising the date of the clause; and

b. Revise and republish paragraph (b)(1).

The revisions and addition read as follows:

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

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Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (MAY 2024)

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(b) * * *

(1) The clauses listed below implement provisions of law or Executive order:

(i) 52.203-17, Contractor Employee Whistleblower Rights (NOV 2023) (41 U.S.C. 4712 (https://www.govinfo.gov/link/uscode/41/4712)); this clause does not apply to contracts of DoD, NASA, the Coast Guard, or applicable elements of the intelligence community—see FAR 3.900(a).

(ii) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020) (Pub. L. 109-282 (https://www.govinfo.gov/link/plaw/109/public/282)) (31 U.S.C. 6101 note (https://www.govinfo.gov/link/uscode/31/6101)) (Applies to contracts valued at or above the threshold specified in FAR 4.1403(a) on the date of award of this contract).

(iii) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (FEB 2024) (E.O. 13126 (/executive-order/13126)) (Applies to contracts for supplies exceeding the micro-purchase threshold, as defined in 2.101 on the date of award of this contract).

(iv) 52.222-20, Contracts for Materials, Supplies, Articles, and Equipment (JUN 2020) (41 U.S.C. chapter 65 (https://www.govinfo.gov/link/uscode/41/6501)) (Applies to supply contracts over the threshold specified in FAR 22.602 on the date of award of this contract, in the United States, Puerto Rico, or the U.S. Virgin Islands).

(v) 52.222-35, Equal Opportunity for Veterans (JUN 2020) (38 U.S.C. 4212 (https://www.govinfo.gov/link/uscode/38/4212)) (Applies to contracts valued at or above the threshold specified in FAR 22.1303(a) on the date of award of this contract).

(vi) 52.222-36, Equal Employment for Workers with Disabilities (JUN 2020) (29 U.S.C. 793 (https://www.govinfo.gov/link/uscode/29/793)) (Applies to contracts over the threshold specified in FAR 22.1408(a) on the date of award of this contract, unless the work is to be performed outside the United States by employees recruited outside the United States). (For purposes of this clause, "United States" includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

(vii) 52.222-37, Employment Reports on Veterans (JUN 2020) (38 U.S.C. 4212 (https://www.govinfo.gov/link/uscode/38/4212)) (Applies to contracts valued at or above the threshold specified in FAR 22.1303(a) on the date of award of this contract).

(viii) 52.222-41, Service Contract Labor Standards (AUG 2018) (41 U.S.C. chapter 67 (https://www.govinfo.gov/link/uscode/41/6701)) (Applies to service contracts over $2,500 that are subject to the Service Contract Labor Standards statute and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer Continental Shelf).

(ix)(A) 52.222-50, Combating Trafficking in Persons (NOV 2021) (22 U.S.C. chapter 78 (https://www.govinfo.gov/link/uscode/22/7801) and E.O. 13627 (/executive-order/13627)) (Applies to all solicitations and contracts).

(B) Alternate I (MAR 2015) (Applies if the Contracting Officer has filled in the following information with regard to applicable directives or notices: Document title(s), source for obtaining document(s), and contract performance location outside the United States to which the document applies).

(x) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (/executive-order/14026) (JAN 2022) (Applies when 52.222-6 or 52.222-41 are in the contract and performance in whole or in part is in the United States (the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331 (https://www.govinfo.gov/link/uscode/43/1331), *et seq.*))).

(xi) 52.222-62, Paid Sick Leave Under Executive Order 13706 (/executive-order/13706) (JAN 2022) (E.O. 13706 (/executive-order/13706)) (Applies when 52.222-6 or 52.222-41 are in the contract and performance in whole or in part is in the United States (the 50 States and the District of Columbia.))

(xii) 52.223-5, Pollution Prevention and Right-to-Know Information (MAY 2024) (42 U.S.C. 11001-11050 (https://www.govinfo.gov/link/uscode/42/11001) and 13101-13109 (https://www.govinfo.gov/link/uscode/42/13101)) (Applies to services performed on Federal facilities).

(xiii) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (MAY 2024) (42 U.S.C. 7671 (https://www.govinfo.gov/link/uscode/42/7671), *et seq.*) (Applies to contracts for products as prescribed at FAR 23.109(d)(1)).

(xiv) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (MAY 2024) (42 U.S.C. 7671 (https://www.govinfo.gov/link/uscode/42/7671), *et seq.*) (Applies to maintenance, service, repair, or disposal of refrigeration equipment and air conditioners).

(xv) 52.223-20, Aerosols (MAY 2024) (42 U.S.C. 7671 (https://www.govinfo.gov/link/uscode/42/7671), *et seq.*) (Applies to contracts for products that may contain high global warming potential hydrofluorocarbons as a propellant or as a solvent; or contracts for maintenance or repair of electronic or mechanical devices). ▯

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(xvi) 52.223-21, Foams (MAY 2024) (42 U.S.C. 7671 (https://www.govinfo.gov/link/uscode/42/7671), *et seq.*) (Applies to contracts for products that may contain high global warming potential hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons as a foam blowing agent; or contracts for construction of buildings or facilities.

(xvii) 52.223-23, Sustainable Products and Services (MAY 2024) (E.O. 14057 (/executive-order/14057), 7 U.S.C. 8102 (https://www.govinfo.gov/link/uscode/7/8102), 42 U.S.C. 6962 (https://www.govinfo.gov/link/uscode/42/6962), 42 U.S.C. 8259b (https://www.govinfo.gov/link/uscode/42/8259b), and 42 U.S.C. 7671l (https://www.govinfo.gov/link/uscode/42/7671l)) (Applies to contracts when the agency identifies in the statement of work, or elsewhere in the contract, the sustainable products and services that apply to the acquisition).

(xviii)(A) 52.225-1, Buy American—Supplies (OCT 2022) (41 U.S.C. chapter 67 (https://www.govinfo.gov/link/uscode/41/6701)) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold, as defined in 2.101 on the date of award of this contract, and the acquisition—

(*1*) Is set aside for small business concerns; or

(*2*) Cannot be set aside for small business concerns (see 19.502-2), and does not exceed $50,000).

(B) Alternate I (OCT 2022) (Applies if the Contracting Officer has filled in the domestic content threshold below, which will apply to the entire contract period of performance. Substitute the following sentence for the first sentence of paragraph (1)(ii)(A) of the definition of *domestic end product* in paragraph (a) of 52.225-1:

(A) The cost of its components mined, produced, or manufactured in the United States exceeds __ percent of the cost of all its components. [*Contracting officer to insert the percentage per instructions at 13.302-5(d)(4).*])

(xix) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (JUN 2020) (42 U.S.C. 1792 (https://www.govinfo.gov/link/uscode/42/1792)) (Applies to contracts greater than the threshold specified in FAR 26.404 on the date of award of this contract, that provide for the provision, the service, or the sale of food in the United States).

(xx) 52.232-33, Payment by Electronic Funds Transfer—System for Award Management (OCT 2018) (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the System for Award Management (SAM) as its source of EFT information).

(xxi) 52.232-34, Payment by Electronic Funds Transfer—Other than System for Award Management (JUL 2013) (Applies when the payment will be made by EFT and the payment office does not use the SAM database as its source of EFT information.)

(xxii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) (46 U.S.C. 55305 (https://www.govinfo.gov/link/uscode/46/55305)) (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at 47.504(d).)

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66. Revise section 52.223-1 to read as follows:

52.223-1 Biobased Product Certification.

As prescribed in 23.109(c)(1), insert the following provision:

Biobased Product Certification (MAY 2024)

As required by the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8101(4) (https://www.govinfo.gov/link/uscode/7/8101)) and the Energy Policy Act of 2005 (7 U.S.C. 8102(a)(2)(F) (https://www.govinfo.gov/link/uscode/7/8102)), the offeror certifies, by signing this offer, that biobased products (within categories of products listed by the United States Department of Agriculture in 7 CFR part 3201, subpart B (https://www.ecfr.gov/current/title-7/part-3201/subpart-B)) to be used or delivered in the performance of the contract, other than biobased products that are not purchased by the offeror as a direct result of this contract, will comply with the applicable specifications or other contractual requirements.

(END OF PROVISION)

67. Revise section 52.223-2 to read as follows:

52.223-2 Reporting of Biobased Products Under Service and Construction Contracts.

As prescribed in 23.109(c)(2), insert the following clause:

Reporting of Biobased Products Under Service and Construction Contracts (MAY 2024)

(a) *Definitions*. As used in this clause—

Biobased product means a product determined by the U.S. Department of Agriculture (USDA) to be a commercial product or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials, or that is an intermediate ingredient or feedstock. The term includes, with

respect to forestry materials, forest products that meet biobased content requirements, notwithstanding the market share the product holds, the age of the product, or whether the market for the product is new or emerging. (7 U.S.C. 8101 (https://www.govinfo.gov/link/uscode/7/8101)) (7 CFR 3201.2 (https://www.ecfr.gov/current/title-7/section-3201.2)).

USDA-designated product category means a generic grouping of products that are or can be made with biobased materials—

(1) That are listed by USDA in a procurement guideline (7 CFR part 3201, subpart B (https://www.ecfr.gov/current/title-7/part-3201/subpart-B)); and

(2) For which USDA has provided purchasing recommendations (available at *https://www.biopreferred.gov (https://www.biopreferred.gov)*).

(b) The Contractor shall report to *https://www.sam.gov (https://www.sam.gov),* with a copy to the Contracting Officer, on the product types and dollar value of any biobased products in USDA-designated product categories purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30; and

(c) Submit this report no later than—

(1) October 31 of each year during contract performance; and

(2) At the end of contract performance.

68. Amend section 52.223-3 by revising the introductory text of the clause and the introductory text of Alternate I to read as follows:

52.223-3 Hazardous Material Identification and Material Safety Data.

As prescribed in 23.304(a)(1), insert the following clause:

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Alternate I (JUL 1995). As prescribed in 23.304(a)(2), add the following paragraph (i) to the basic clause:

52.223-4 [Amended]

69. Amend section 52.223-4 by removing from the introductory text “23.406(c)” and adding “23.109(b)(1)” in its place.

70. Amend section 52.223-5 by—

a. Revising the introductory text and the date of the clause;

b. Removing paragraph (c)(6), Alternate I, and Alternate II.

The revision reads as follows:

52.223-5 Pollution Prevention and Right-to-Know Information.

As prescribed in 23.406(a), insert the following clause:

Pollution Prevention and Right-to-Know Information (MAY 2024)

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52.223-6 [Redesignated as 52.226-7]

71. Redesignate section 52.223-6 as section 52.226-7.

72. Amend section 52.223-7 by:

a. Revising the section heading; and

b. Removing from the introductory text "23.602" and adding "23.304(b)" in its place.

The revision reads as follows:

52.223-7 Notice of Radioactive Materials.

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52.223-9 [Amended]

73. Amend section 52.223-9 by removing from the introductory text and the introductory text of Alternate I "23.406(d)" and adding "23.109(b)(2)" in its place.

74. Amend section 52.223-10 by—

a. Revising the introductory text and the date of the clause; and

b. Removing from paragraph (b) the text "3(e) of Executive Order 13423 (/executive-order/13423)" and adding the text "207 of Executive Order 14057 (/executive-order/14057)" in its place.

The revisions read as follows:

52.223-10 Waste Reduction Program.

As prescribed in 23.406(c), insert the following clause:

Waste Reduction Program (MAY 2024)

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75. Amend section 52.223-11 by—

a. Revising the introductory text and the date of the clause;

b. In paragraph (a), in the definition of "High global warming potential hydrofluorocarbons", removing "*http:// (http://www.epa.gov/snap/)* *www.epa.gov/snap/ (http://www.epa.gov/snap/)* " and adding " *https://www.epa.gov/snap/ (https://www.epa.gov/snap/)*" in its place.

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c. Removing paragraph (c);

d. Redesignating paragraph (d) as paragraph (c); and

e. Revising newly redesignated paragraph (c).

The revisions read as follows:

52.223-11 Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons.

As prescribed in in 23.109(d)(1), insert the following clause:

Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (MAY 2024)

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(c) The Contractor shall refer to EPA's SNAP program to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82, subpart G (https://www.ecfr.gov/current/title-40/part-82/subpart-G), with supplemental tables available at *https://www.epa.gov/snap/ (https://www.epa.gov/snap/)*.

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76. Amend section 52.223-12 by—

a. Revising the introductory text and the date of the clause;

b. In paragraph (a), in the definition of "High global warming potential hydrofluorocarbons", removing " *http://www.epa.gov/snap/ (http://www.epa.gov/snap/)* " and adding " *https://www.epa.gov/snap/ (https://www.epa.gov/snap/)* " in its place.

c. Revising paragraph (c)(4);

d. Removing paragraph (d);

e. Redesignating paragraph (e) as paragraph (d); and

f. In newly redesignated paragraph (d), removing " *http://www.epa.gov/snap/ (http://www.epa.gov/snap/)* " and adding " *https://www.epa.gov/snap/ (https://www.epa.gov/snap/)* " in its place.

The revisions read as follows:

52.223-12 Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners.

As prescribed in 23.109(d)(2), insert the following clause:

Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (MAY 2024)

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(c) * * *

(4) Using reclaimed hydrofluorocarbons to service and repair refrigeration and air conditioning equipment, where feasible.

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52.223-13 through 52.223-17 **[Removed and Reserved]**

77. Remove and reserve sections 52.223-13 through 52.223-17.

52.223-18 **[Redesignated as 52.226-8]**

78. Redesignate section 52.223-18 as section 52.226-8.

52.223-19 **[Amended]**

79. Amend section 52.223-19 in the introductory text by removing "23.903" and adding "23.406(b)" in its place.

80. Amend section 52.223-20 by—

a. Revising the introductory text and the date of the clause; and

b. In paragraph (a), in the definition of "High global warming potential hydrofluorocarbons", and in paragraph (c), removing " *http://www.epa.gov/snap/ (http://www.epa.gov/snap/)* " and adding " *https://www.epa.gov/snap/ (https://www.epa.gov/snap/)* " in both places.

The revisions read as follows:

52.223-20 **Aerosols.**

As prescribed in 23.109(d)(3), insert the following clause:

Aerosols (MAY 2024)

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81. Amend section 52.223-21 by—

a. Revising the introductory text and the date of the clause; and

b. In paragraph (a), in definition of "High global warming potential hydrofluorocarbons", and in paragraph (c), removing " *http://www.epa.gov/snap/ (http://www.epa.gov/snap/)* " and adding " *https://www.epa.gov/snap/ (https://www.epa.gov/snap/)* " in both places.

The revisions read as follows:

52.223-21 **Foams.**

As prescribed in in 23.109(d)(4), insert the following clause:

Foams (MAY 2024)

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52.223-22 **[Amended]**

82. Amend section 52.223-22 in the introductory text by removing "23.804(b)" and adding "23.502" in its place.

83. Add section 52.223-23 to read as follows:

52.223-23 Sustainable Products and Services.

As prescribed in 23.109(a), insert the following clause:

Sustainable Products and Services (MAY 2024)

(a) *Definitions*. As used in this clause—

Biobased product means a product determined by the U.S. Department of Agriculture (USDA) to be a commercial product or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials, or that is an intermediate ingredient or feedstock. The term includes, with respect to forestry materials, forest products that meet biobased content requirements, notwithstanding the market share the product holds, the age of the product, or whether the market for the product is new or emerging. (7 U.S.C. 8101 (https://www.govinfo.gov/link/uscode/7/8101)) (7 CFR 3201.2 (https://www.ecfr.gov/current/title-7/section-3201.2)).

Recovered material means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. (42 U.S.C. 6903 (https://www.govinfo.gov/link/uscode/42/6903)).

Sustainable products and services means products and services that are subject to and meet the following applicable statutory mandates and directives for purchasing:

(1) *Statutory purchasing programs*.

(i) Products containing recovered material designated by the U.S. Environmental Protection Agency (EPA) under the Comprehensive Procurement Guidelines (42 U.S.C. 6962 (https://www.govinfo.gov/link/uscode/42/6962)) (40 CFR part 247 (https://www.ecfr.gov/current/title-40/part-247)) (*https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#products (https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#products)*).

(ii) Energy- and water-efficient products that are ENERGY STAR® certified or Federal Energy Management Program (FEMP)-designated products (42 U.S.C. 8259b (https://www.govinfo.gov/link/uscode/42/8259b)) (10 CFR part 436, subpart C (https://www.ecfr.gov/current/title-10/part-436/subpart-C)) (*https://www.energy.gov/eere/femp/search-energy-efficient-products (https://www.energy.gov/eere/femp/search-energy-efficient-products)* and *https://www.energystar.gov/products?s=mega (https://www.energystar.gov/products?s=mega)*).

(iii) Biobased products meeting the content requirement of the USDA under the BioPreferred® program (7 U.S.C. 8102 (https://www.govinfo.gov/link/uscode/7/8102)) (7 CFR part 3201 (https://www.ecfr.gov/current/title-7/part-3201)) (*https://www.biopreferred.gov (https://www.biopreferred.gov)*).

(iv) Acceptable chemicals, products, and manufacturing processes listed under EPA's Significant New Alternatives Policy (SNAP) program, which ensures a safe and smooth transition away from substances that contribute to the depletion of stratospheric ozone (42 U.S.C. 7671l (https://www.govinfo.gov/link/uscode/42/7671l)) (40 CFR part 82, subpart G (https://www.ecfr.gov/current/title-40/part-82/subpart-G)) (*https://www.epa.gov/snap (https://www.epa.gov/snap)*).

(2) *Required EPA purchasing programs.*

(i) WaterSense® labeled (water efficient) products and services (*https://www.epa.gov/watersense/watersense-products (https://www.epa.gov/watersense/watersense-products)*).

(ii) Safer Choice-certified products (products that contain safer chemical ingredients) (*https://www.epa.gov/saferchoice/products (https://www.epa.gov/saferchoice/products)*).

(iii) Product and services that meet EPA Recommendations of Specifications, Standards, and Ecolabels in effect as of October 2023 (*https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing (https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing)*).

(b) *Requirements.*

(1) The sustainable products and services, including the purchasing program and type of product or service, that are applicable to this contract, and any products or services that are not subject to this clause, will be set forth in the statement of work or elsewhere in the contract.

(2) The Contractor shall ensure that the sustainable products and services required by this contract are—

(i) Delivered to the Government;

(ii) Furnished for use by the Government;

(iii) Incorporated into the construction of a public building or public work; and

(iv) Furnished for use in performing services under this contract, where the cost of the products is a direct cost to this contract (versus costs which are normally applied to the Contractor's general and administrative expenses or indirect costs). This includes services performed by contractors performing management and operation of Government-owned facilities to the same extent that, at the time of award, an agency would be required to comply if an agency operated or supported the facility.

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(3)(i) Except as provided in paragraph (b)(3)(ii) of this clause, sustainable products and services must meet the applicable standards, specifications, or other program requirements at time of quote or offer submission; and

(ii) Sustainable products and services must meet the EPA Recommendations of Specifications, Standards, and Ecolabels in effect as of October 2023.

(c) *Resource*. The Green Procurement Compilation (GPC) available at *https://sftool.gov/greenprocurement (https://sftool.gov/greenprocurement)* provides a comprehensive list of sustainable products and services and sustainable acquisition guidance. The Contractor should review the GPC when determining which purchasing programs apply to a specific product or service.

(END OF CLAUSE)

84. Amend newly redesignated section 52.226-7 by—

a. Revising the introductory text and the date of the clause; and

b. Removing from paragraph (d) "23.506" and adding "26.505" in its place.

The revisions read as follows:

52.226-7 Drug-Free Workplace.

As prescribed in 26.506, insert the following clause:

Drug-Free Workplace (MAY 2024)

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85. Amend newly redesignated section 52.226-8 by revising the introductory text and the date of the clause to read as follows:

52.226-8 Encouraging Contractor Policies To Ban Text Messaging While Driving.

As prescribed in 26.605, insert the following clause:

Encouraging Contractor Policies To Ban Text Messaging While Driving (MAY 2024)

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