

4.304 Contract clause.

The contracting officer shall insert the clause at 52.204-4, Printing/Copying Double-Sided on Recycled Paper, in solicitations and contracts.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.204 is added to read as follows:

52.204-4 Printing/Copying Double-Sided on Recycled Paper.

As prescribed in 4.304, insert the following clause:

PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER (MAY 1995)

(a) In accordance with Executive Order 12873, dated October 20, 1993, the Offeror/Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed/copied double-sided on recycled paper that has at least 20% postconsumer material.

(b) The 20% standard applies to high-speed copier paper, offset paper, forms bond, computer printout paper, and carbonless paper. A higher standard of 50% recovered material, with 20% postconsumer material, applies to other uncoated printing and writing papers such as writing and office paper, book paper, cotton fiber paper, and cover stock. An alternative standard for either of the standards specified in this clause is 50% recovered material content of certain industrial by-products.

(End of clause)

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 7, 10, 11, 15, 23, 36, 42, and 52**

[FAC 90-27, FAR Case 92-54, Item II]

RIN 9000-AG40

Federal Acquisition Regulation; Environmentally Preferable Products

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

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule amending the Federal Acquisition Regulation (FAR) to incorporate policies for the acquisition

of environmentally preferable and energy-efficient products and services. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Effective Date: May 31, 1995.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 31, 1995. To be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90-27, FAR case 92-54 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT:

Mr. Ralph DeStefano at (202) 501-1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-27, FAR case 92-54.

SUPPLEMENTARY INFORMATION:**A. Background**

This interim rule implements the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901, *et seq.*); Executive Order 12873, Federal Acquisition, Recycling, and Waste Prevention (58 FR 54911, October 22, 1993); and Office of Federal Procurement Policy (OFPP) Policy Letter 92-4, Procurement of Environmentally-Sound and Energy-Efficient Products and Services (57 FR 53362, November 9, 1992).

The rule amends FAR Parts 7, 10, 11, 15, 23, 36, 42, and 52 to clearly reflect the Government's preference for the acquisition of environmentally-sound and energy-efficient products and services and to establish an affirmative procurement program favoring items containing the maximum practicable content of recovered materials. Definitions of "new" and "other than new" are added at 10.001, in the clauses at 52.210-5 and 52.210-7, and in the provision at 52.210-6. A new provision and clause are added at 52.223-8 and 52.223-9 requiring offerors and contractors to provide information regarding the percentage of recovered materials in certain items proposed for use and actually used in contract performance. A new clause is added at 52.223-10 requiring contractors operating Government-owned or leased facilities to establish cost-effective waste reduction programs.

B. Regulatory Flexibility Act

This interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule establishes a preference for the acquisition of environmentally-sound and energy-efficient products and services and requires that contracts for certain items specify minimum percentages of recovered material content. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *se seq.* (FAC 90-27, FAR Case 92-54), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply because the interim rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning environmentally sound products was submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request were invited through a **Federal Register** notice published at 59 FR 60357, November 23, 1994.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because Executive Order 12873 required implementation and incorporation of its policies into the FAR by April 18, 1994. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 7, 10, 11, 15, 23, 36, 42, and 52

Government procurement.

Dated: May 24, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 7, 10, 11, 15, 23, 36, 42, and 52 are amended as set forth below:

1. The authority citation for 48 CFR part 7, 10, 11, 15, 23, 36, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 7—ACQUISITION PLANNING

2. Section 7.102 is revised to read as follows:

7.102 Policy.

Agencies shall perform acquisition planning and conduct market surveys for all acquisitions. This planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. The purpose of this planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner.

3. Section 7.103 is amended by redesignating paragraphs (a) through (l) as (b) through (m) and adding new paragraphs (a) and (n) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(a) Promoting and providing for full and open competition (see part 6) or, when full and open competition is not required in accordance with part 6, for obtaining competition to the maximum extent practicable, with due regard to the nature of the supplies and services to be acquired (41 U.S.C. 253a(a)(1)).

* * * * *

(n) Ensuring that agency planners specify needs and develop plans, drawings, work statements, specifications, or other product descriptions promoting the use of environmentally preferable and energy-efficient products and services (e.g., promoting energy conservation and the use of recovered material content and the elimination or reduction of ozone-depleting substances usage), and that these are considered in the evaluation and award of contracts, as appropriate (see part 23).

4. Section 7.105 is amended by revising paragraph (b)(15); and in paragraph (b)(17) by removing the words "energy conservation measures". The revised text reads as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(15) *Environmental and energy conservation objectives.* Discuss all

applicable environmental and energy conservation objectives associated with the acquisition (see part 23), the applicability of an environmental assessment or environmental impact statement (see 40 CFR part 1502), the proposed resolution of environmental issues, and any environmentally-related requirements to be included in solicitations and contracts.

* * * * *

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

5. Section 10.001 is amended by adding, in alphabetical order, the following definitions:

10.001 Definitions.

* * * * *

Material, as used in this part, includes, but is not limited to, raw material, parts, items, components, and end products.

New, as used in this part, means previously unused or composed of previously unused materials and may include unused residual inventory or unused former Government surplus property.

Other than new, as used in this part, includes, but is not limited to, recycled, recovered, remanufactured, used, and reconditioned.

* * * * *

Reconditioned, as used in this part, means restored to an earlier normal operating condition by readjustments and replacement of parts.

Remanufactured, as used in this part, means factory rebuilt to new equipment performance specification and unused subsequent to rebuilding.

* * * * *

6. Section 10.002 is amended by redesignating paragraph (e) as (f) and adding a new (e) to read as follows:

10.002 Policy.

* * * * *

(e) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*), as amended, and Executive Order 12873, dated October 20, 1993, establish requirements for the procurement of products containing recovered materials, and environmentally preferable and energy-efficient products and services. Requiring activities shall prepare plans, drawings, specifications, standards (including voluntary standards), and purchase descriptions that consider the requirements set forth in part 23.

* * * * *

7. Section 10.004 is amended in paragraph (a)(1) by adding a sentence at

the end of the paragraph to read as follows:

10.004 Selecting specifications or descriptions for use.

(a)(1) * * * Agencies should prepared product descriptions to achieve maximum practicable use of recovered material and other materials that are environmentally preferable (see subparts 23.4 and 23.7).

* * * * *

8. Section 10.010 is revised to read as follows:

10.010 Acquiring other than new material, former Government surplus property, and residual inventory.

(a) Agencies shall allow offers of other than new material, former Government surplus property, or residual inventory unless it is determined that such materials are unacceptable. When only new material is acceptable, the solicitation shall clearly identify the material that must be new. Offerors providing other than new material shall be required to comply with the clause at 52.210-5, New Material, the provisions at 52.210-6, Listing of Other Than New Material, Residual Inventory, and Former Government Surplus Property, and the clause at 52.210-7, Other Than New Material, Residual Inventory, and Former Government Surplus Property, as appropriate.

(b) Agencies shall specify products, including packaging, that contain the highest practicable percentage of recovered and environmentally preferable materials, and where applicable, postconsumer material, consistent with performance requirements, availability, price reasonableness, and cost-effectiveness.

(c) Contracting officers shall consider the following when determining whether other than new materials, former Government surplus property, or residual inventory are acceptable:

(1) Safety of persons or property.

(2) Specification and performance requirements.

(3) Price reasonableness.

(4) Total cost to the Government (including maintenance, inspection, testing, and useful life).

(d) When a contract calls for material to be furnished at cost, the allowable charge for former Government surplus property shall not exceed the cost at which the contractor acquired the property.

9. Section 10.011 is amended by revising paragraphs (f)(1) and (g)(1) to read as follows:

10.011 Solicitation provisions and contract clauses.

* * * * *

(f)(1) The contracting officer shall insert the provision at 52.210-6, Listing of Other Than New Material, Residual Inventory, and Former Government Surplus Property, in solicitations containing the clause at 52.210-5.

(g)(1) The contracting officer shall insert the clause at 52.210-7, Other Than New Material, Residual Inventory, and Former Government Surplus Property, in contracts containing the clause at 52.210-5.

PART 11—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

10. Section 11.004 is amended by revising paragraph (b); and by redesignating paragraphs (c)(2) through (c)(6) as (c)(4) through (c)(8) and adding new paragraphs (c)(2) and (c)(3) to read as follows:

11.004 Market research and analysis.

(b) *Requirements.* Agencies shall conduct market research and analysis as needed to—

- (1) Ensure full and open competition;
- (2) Ensure maximum practicable use of recovered materials (see subpart 23.4);
- (3) Promote energy conservation and efficiency; and
- (4) Meet the Government's needs in a cost-effective manner.

(2) The availability of the same or similar products that contain recovered materials.

(3) The availability of the same or similar products that are energy-efficient.

PART 15—CONTRACTING BY NEGOTIATION

11. Section 15.601 is amended by adding, in alphabetical order, the definition "source reduction" to read as follows:

15.601 Definition.

Source reduction, as used in this subpart, means any practice which (a) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, treatment, or disposal; and (b) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

12. Section 15.605 is amended by adding paragraph (b)(1)(iv) to read as follows:

15.605 Evaluation factors.

(iv) Environmental objectives, such as promoting waste reduction, source reduction, energy efficiency, and maximum practicable recovered material content (see part 23), shall also be considered in every source selection, when appropriate.

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

13. Section 23.201 is revised to read as follows:

23.201 Authorities.

(a) Energy Policy and Conservation Act (42 U.S.C. 6361(a)(1)) and Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901, *et seq.*).

(b) National Energy Conservation Policy Act (42 U.S.C. 8253 and 8262g).

(c) Executive Order 11912, April 13, 1976.

(d) Executive Order 12759, Sections 3, 9, and 10, April 17, 1991.

(e) Executive Order 12902, March 8, 1994.

14. Section 23.203 is revised to read as follows:

23.203 Policy.

Agencies shall consider energy-efficiency in the procurement of products and services. Energy conservation and efficiency data shall be considered along with estimated cost and other relevant factors in the preparation of plans, drawings, specifications, and other product descriptions.

15. Subpart 23.4 is revised to read as follows:

Subpart 23.4—Use of Recovered Materials

- Sec.
- 23.400 Scope of subpart.
- 23.401 Authorities.
- 23.402 Definitions.
- 23.403 Policy.
- 23.404 Procedures.
- 23.405 Solicitation provisions and contract clause.

Subpart 23.4—Use of Recovered Materials

23.400 Scope of subpart.

This subpart prescribes policies and procedures for acquisition of:

(a) Environmental Protection Agency (EPA) designated items for which

agencies must develop and implement affirmative procurement programs pursuant to 42 U.S.C. 6901, *et seq.*, and E. O. 12873;

(b) Agency designated items specifying recovered material; and

(c) Other products when preference is given to offers of products containing recovered material.

23.401 Authorities.

(a) The statutory basis for this program is the Resource Conservation and Recovery Act of 1976 (RCRA), as amended (Solid Waste Disposal Act, 42 U.S.C. 6901, *et seq.*). With limited exceptions, the statute requires agencies responsible for drafting or reviewing specifications to ensure that they:

- (1) Do not exclude the use of recovered materials,
- (2) Do not require the items to be manufactured from virgin materials, and
- (3) Do require, for EPA designated items, the use of recovered materials to the maximum extent practicable without jeopardizing the intended end use of the item.

The statute further requires agencies to develop and implement affirmative procurement programs for EPA designated items within one year after EPA's designation.

(b) The statute also requires the EPA to prepare guidelines on the availability, sources, and potential uses of recovered materials and associated items, including solid waste management services.

(c) Executive Order 12873, dated October 20, 1993, requires that the Federal Government assume leadership in making more efficient use of natural resources through the acquisition of items made with recovered materials and work to increase and expand markets for recovered materials through greater Federal Government preference and demand for such items. Executive Order 12873 also provides direction for agency development and implementation of affirmative procurement programs.

23.402 Definitions.

EPA designated item means an item that is or can be made with recovered materials and is listed by EPA in a procurement guideline (40 CFR, chapter 1, subchapter I).

Postconsumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material."

Recovered material means waste materials and by-products which have

been recovered or diverted from solid waste including postconsumer material, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

23.403 Policy.

The Government's policy is to acquire, in a cost-effective manner, items composed of the highest percentage of recovered materials practicable consistent with maintaining a satisfactory level of competition without adversely affecting performance requirements or exposing suppliers' employees to undue hazards from the recovered materials.

23.404 Procedures.

(a) *Applicability.* These procedures apply to all agency acquisitions where the agency requires minimum percentages of recovered materials. For EPA designated items, these procedures apply

(1) When the price of the item exceeds \$10,000 or

(2) When the aggregate amount paid for items, or for functionally equivalent items, in the preceding fiscal year was \$10,000 or more.

(b) *EPA designated items.* (1) EPA has designated items that are or can be made with recovered materials in 40 CFR chapter 1, subchapter I.

(2) For EPA designated items, agencies shall establish an affirmative procurement program. The responsibilities for preparation, implementation and monitoring of affirmative procurement programs shall be shared between technical or requirements personnel and procurement personnel. As a minimum, such programs shall include—

(i) A recovered materials preference program;

(ii) An agency promotion program;

(iii) A program for requiring reasonable estimates, certification, and verification of recovered material used in the performance of contracts; and

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

(3) Acquisition of EPA designated items which do not meet the EPA or agency minimum recovered material standards shall be approved by an official designated by the agency head based on a written determination that the items—

(i) Are not available within a reasonable period of time;

(ii) Are available only at unreasonable prices;

(iii) Are not available from a sufficient number of sources to maintain a satisfactory level of competition; or

(iv) Based on technical verification, fail to meet performance standards in the specifications. Technical or requirements personnel shall provide a written determination when this determination is used partially or totally as a basis for an exemption. This determination shall be made on the basis of National Institute of Standards and Technology guidelines in any case in which the material is covered by these guidelines.

(4) Annual contractor certifications required by the clause at 52.223-9 shall be consolidated and reported in accordance with agency procedures.

(c) *Agency designated items.* Agency designated items specifying recovered material content shall be acquired pursuant to agency procedures.

23.405 Solicitation provisions and contract clause.

(a) The contracting officer shall insert the provision at 52.223-4, Recovered Material Certification, in solicitations requiring the use of recovered materials.

(b)(1) The contracting officer shall insert the provision at 52.223-8, Estimate of Percentage of Recovered Material for Designated Items to be Used in the Performance of the Contract, in solicitations containing a requirement for an EPA designated item.

(2) The contracting officer shall use Alternate I of the provision at 52.223-8 in solicitations that do not require EPA designated items, but do require agency designated items requiring recovered materials.

(3) The contracting officer shall use Alternate II of the provision at 52.223-8 in solicitations containing a requirement for both EPA designated and agency designated items.

(c) When the basic provision or Alternate II at 52.223-8 is used, the contracting officer shall also insert the clause at 52.223-9, Certification of Percentage of Recovered Material Content for EPA Designated Items Used in Performance of the Contract.

16. Subpart 23.7 is added to read as follows:

Subpart 23.7—Contracting for Environmentally Preferable and Energy-Efficient Products and Services

Sec.

23.701 Applicability.

23.702 Authorities.

23.703 Definitions.

23.704 Policy.

23.705 Application to Government-owned or leased facilities.

23.706 Contract clause.

23.701 Applicability.

This subpart prescribes policies for obtaining environmentally preferable

and energy-efficient products and services.

23.702 Authorities.

(a) Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901, *et seq.*).

(b) National Energy Conservation Policy Act (42 U.S.C. 8262g).

(c) Pollution Prevention Act of 1990 (42 U.S.C. 13101, *et seq.*).

(d) Executive Order 12873, October 20, 1993.

(e) Executive Order 12856, August 3, 1993.

(f) Executive Order 12902, March 8, 1994.

23.703 Definitions.

Environmentally preferable means products or services that have a lesser negative effect on human health or the environment when compared with competing products or services that serve the same purpose. This comparison should use principles recommended in guidance issued by EPA (see Executive Order 12873, Section 503), and may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

Recycling means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form or raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

Waste prevention also known as "source reduction" means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they become municipal solid waste. Waste prevention also refers to the reuse of products or materials.

Waste reduction means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

23.704 Policy.

(a) Agencies shall implement cost-effective contracting preference programs favoring the acquisition of environmentally preferable and energy-efficient products and services.

(b) The following environmental objectives shall be addressed through the acquisition process:

(1) Obtaining products and services considered to be environmentally preferable (based on EPA-issued guidance) and energy-efficient.

(2) Eliminating or reducing the generation of hazardous waste and the need for special material processing (including special handling, storage, treatment, and disposal).

(3) Promoting the use of nonhazardous and recovered materials.

(4) Realizing life-cycle cost savings.

(5) Promoting cost effective waste reduction when creating plans, drawings, specifications, standards, and other product descriptions authorizing material substitutions, extensions of shelf-life, and process improvements; and

(6) Otherwise employing acquisition strategies that affirmatively implement the objectives in paragraph (b) of this section.

23.705 Application to Government-owned or leased facilities.

Pursuant to Executive Order 12873, Section 701, every new contract for contractor operation of a Government-owned or leased facility shall require contractor programs to promote and implement cost-effective waste reduction in performing the contract. In addition, where economically feasible, existing contracts for contractor operation of Government-owned or leased facilities should be modified to provide for cost-effective waste reduction in contract performance.

23.706 Contract clause.

The contracting officer shall insert the clause at 52.223-10, Waste Reduction Program, in all solicitations and contracts for contractor operation of Government-owned or leased facilities.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

17. and 18. Section 36.601-3 is amended by redesignating paragraphs (a) through (c) as (b) through (d) and adding a new paragraph (a) to read as follows:

36.601-3 Applicable contracting procedures.

(a) Prior to announcing a requirement for architect-engineering services for the design of a facility, the contracting officer shall ask the technical official responsible for the facility being designed to specifically identify any areas where recovered materials cannot be used in the facility construction. In those areas where recovered materials may be used, the architect-engineer shall specify use of the maximum practicable amount of recovered materials in the construction design specifications consistent with 10.010(b).

* * * * *

19. Section 36.602-1 is amended by redesignating paragraph (a)(6) as (a)(7) and adding a new (a)(6) to read as follows:

36.602-1 Selection criteria.

(a) * * *

(6) Demonstrated success in prescribing the use of recovered materials and achieving waste reduction and energy efficiency in facility design.

* * * * *

20. Section 36.602-3 is amended by revising paragraph (c) to read as follows:

36.602-3 Evaluation board functions.

* * * * *

(c) Hold discussions with at least three of the most highly qualified firms regarding concepts, the relative utility of alternative methods, and feasible ways to prescribe the use of recovered materials and achieve waste reduction and energy-efficiency in facility design (see part 23).

* * * * *

PART 42—CONTRACT ADMINISTRATION

21. Section 42.302 is amended by adding paragraph (a)(68) to read as follows:

42.302 Contract administration functions.

(a) * * *

(68) Monitor the contractor's compliance with the requirements of environmental laws including the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901, *et seq.*) and other environmental requirements as specified in the contract (see part 23). Responsibilities of the contracting officer shall include—

(i) Verification of contractor compliance with specifications requiring the use of environmentally preferable and energy-efficient materials and the use of materials or delivery of end items with the specified recovered material content. This shall occur as part of the quality assurance procedures set forth in part 46.

(ii) As required in the contract, ensuring that the contractor complies with the reporting requirements relating to recovered material content utilized in contract performance.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

22. Sections 52.210-5, 52.210-6, and 52.210-7 are revised to read as follows:

52.210-5 New Material.

As prescribed in 10.011(e), insert the following clause:

NEW MATERIALS (MAY 1995)

(a) *Definitions.*

Material, as used in this clause, includes, but is not limited to, raw material, parts, items, components, and end products.

New, as used in this clause, means previously unused or composed of previously unused materials and may include unused residual inventory or unused former Government surplus property.

Other than new, as used in this clause, includes, but is not limited to, recycled, recovered, remanufactured, used, and reconditioned.

(b) Unless this contract specifies otherwise, the Contractor represents that the supplies, including any residual inventory and former Government surplus property identified under the Other Than New Material, Residual Inventory, and Former Government Surplus Property clause of this contract, are new and are not of such age or so deteriorated as to impair their usefulness or safety.

(c) If the Contractor believes that furnishing other than new material will be in the Government's interest, the Contractor shall so notify the Contracting Officer in writing and request authority to use such material. The Contractor's notice shall include the reasons for the request along with a proposal for any consideration due the Government if the Contracting Officer authorizes the use of other than new material.

(End of clause)

52.210-6 Listing of Other Than New Material, Residual Inventory, and Former Government Surplus Property.

As prescribed in 10.011(f), insert the following provision:

LISTING OF OTHER THAN NEW MATERIAL, RESIDUAL INVENTORY, AND FORMER GOVERNMENT SURPLUS PROPERTY (MAY 1995)

(a) *Definitions.*

Material, as used in this provision, includes, but is not limited to, raw material, parts, items, components, and end products.

New, as used in this provision, means previously unused or composed of previously unused materials and may include unused residual inventory or unused former Government surplus property.

Other than new, as used in this provision, includes, but is not limited to, recycled, recovered, remanufactured, used, and reconditioned.

(b) If the offeror proposes to furnish other than new material, residual inventory resulting from terminated Government contracts, or former Government surplus property, the offeror shall provide the following information as an attachment to the offer:

- (1) A complete description of the materials.
- (2) Quantity.
- (3) Name of Government agency from which acquired.

(4) Date of acquisition, if applicable.

No other than new material, residual inventory or former Government surplus property other than that listed on the attachment shall be furnished under the

resulting contract unless authorized in writing by the Contracting Officer.

(c) All material to be furnished under the resultant contract must comply with the terms and specifications contained in the contract.

(End of provision)

52.210-7 Other Than New Material, Residual Inventory, and Former Government Surplus Property.

As prescribed in 10.011(g), insert the following clause:

OTHER THAN NEW MATERIAL, RESIDUAL INVENTORY, AND FORMER GOVERNMENT SURPLUS PROPERTY (MAY 1995)

(a) *Definitions.*

Material, as used in this clause, includes, but is not limited to, raw material, parts, items, components, and end products.

New, as used in this clause, means previously unused or composed of previously unused materials and may include unused residual inventory or unused former Government surplus property.

Other than new, as used in this clause, includes, but is not limited to, recycled, recovered, remanufactured, used, and reconditioned.

(b) The Contractor shall not furnish any other than new material, residual inventory resulting from terminated Government contracts, or former Government surplus property, unless such materials were listed in the applicable attachment to the offer and approved by the Contracting Officer or unless otherwise authorized in writing by the Contracting Officer.

(c) All materials furnished under this contract shall comply with the terms and specifications contained in the contract.
(End of clause)

23. Section 52.223-4 is revised to read as follows:

52.223-4 Recovered Material Certification.

As prescribed in 23.405(a), insert the following provision:

RECOVERED MATERIAL CERTIFICATION (MAY 1995)

The offeror certifies, by signing this offer, that recovered materials, as defined in FAR 23.402, will be used as required by the applicable purchase descriptions.

(End of provision)

24. Sections 52.223-8 through 52.223-10 are added to read as follows:

52.223-8 Estimate of Percentage of Recovered Material for Designated Items To be Used in the Performance of the Contract.

As prescribed in 23.405(b)(1), insert the following provision:

ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL FOR DESIGNATED ITEMS TO BE USED IN THE PERFORMANCE OF THE CONTRACT (MAY 1995)

(a) By signing this offer, the offeror estimates that the total percentage(s) of recovered material for EPA Designated Items (see 40 CFR, Chapter 1, Subchapter I) to be

used in the products and services to be provided under the terms and specifications set forth in this solicitation shall be as follows:

Item	Estimated percentage of recovered material*
_____	_____
_____	_____

* In addition, for paper products, include the percentage of postconsumer material.

(b) Prospective offerors are cautioned that the Government will conclude that the percentage(s) of recovered materials to be used in products and services to be provided under any resulting contract shall be "0%" if the estimate(s) requested in this solicitation provision are left blank.

(c) Prospective offerors are further cautioned that estimated percentage(s) of recovered materials to be used in products and services to be provided under any resulting contract that are less than the requirements set forth in this solicitation may render a prospective offeror's offer nonresponsive.
(End of provision)

Alternate I (MAY 1955). As prescribed in 23.405(b)(2), used the basic provision and replace the words "EPA Designated Items" with "Agency Designated Items" in paragraph (a) of the basic provision.

Alternate II (MAY 1995). As prescribed in 23.405(b)(3), substitute the following paragraph (a) for paragraph (a) of the basic provision:

(a) By signing this offer, the offeror—
(1) Estimates that the total percentage(s) of recovered material for EPA Designated Items to be used in the products and services to be provided under the terms and specifications set forth in this solicitation shall be as follows:

Item	Estimated percentage of recovered material*
_____	_____
_____	_____

* In addition, for paper products, include the percentage of postconsumer material.

(2) Estimates that the total percentage(s) of recovered material for Agency Designated Items to be used in the products and services to be provided under the terms and specifications set forth in this solicitation shall be as follows:

Item	Percentage of recovered material content utilized*	Total dollar amount of item used
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

* In addition, for paper products, include the percentage of postconsumer material content utilized.

52.223-9 Certification of Percentage of Recovered Material Content for EPA Designated Items Used in Performance of the Contract.

As prescribed in 23.405(c), insert the following clause:

CERTIFICATION OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA DESIGNATED ITEMS USED IN PERFORMANCE OF THE CONTRACT (MAY 1995)

(a) As required under Section 6962 of the Solid Waste Disposal Act, an officer or employee of the Contractor shall execute the following certification annually as required in paragraph (b) of this clause:

CERTIFICATION

I, _____ (name of certifier), am an officer or employee responsible for the performance of this contract and hereby certify that the following minimum recovered material content for EPA Designated Items was actually used in the performance of this contract during the preceding Government fiscal year (October 1-September 30, _____):

Item	Percentage of recovered material content utilized*	Total dollar amount of item used
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

* In addition, for paper products, include the percentage of postconsumer material content utilized.

Signature of the Officer or Employee

Typed Name of the Officer or Employee

Title

Name of Company, Firm, or Organization

Date

(End of certification)

(b) The Contractor shall submit this certification annually to _____* by November 1, for the previous Government fiscal year (October 1 through September 30).

*To be completed in accordance with agency procedures.
(End of clause)

52.223-10 Waste Reduction Program.

As prescribed in 23.706, insert the following clause:

WASTE REDUCTION PROGRAM (MAY 1995)

(a) *Definition. Waste reduction*, as used in this clause, means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(b) Consistent with the requirements of Section 701 of Executive Order 12873, the Contractor shall establish a program to promote cost-effective waste reduction in all

operations and facilities covered by this contract. Any such program shall comply with applicable Federal, state, and local requirements.

(End of clause)

[FR Doc. 95-13256 Filed 5-30-95; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 23 and 52

[FAC 90-27, FAR Case 93-307, Item III]

RIN 9000-AG42

Federal Acquisition Regulation; Ozone Executive Order

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

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule which amends the Federal Acquisition Regulation (FAR) to provide policy for the acquisition of items that contain, use, or are manufactured with ozone-depleting substances. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: *Effective Date:* May 31, 1995.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 31, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90-27, FAR case 93-307 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501-1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-27, FAR case 93-307.

SUPPLEMENTARY INFORMATION:

A. Background

The Environmental Protection Agency (EPA) promulgated 40 CFR Part 82, Subpart D (rule) to satisfy EPA's obligation under Section 613, Title VI of the Clean Air Act Amendments of 1990. The EPA rule requires each department, agency, and instrumentality of the United States to conform its procurement regulations to the policies and requirements of Title VI of the Clean Air Act and to maximize the substitution of safe alternatives for ozone-depleting substances as identified under Section 612 of the Act. The EPA rule also requires each department, agency, and instrumentality of the United States to certify to OMB, within twelve months of the final publication of the rule, that its procurement regulations have been modified in accordance with the rule. The EPA rule complements Executive Order 12843, Procurement Requirements and Policies for Federal Agencies for Ozone-Depleting Substances (58 FR 21881, April 23, 1993). Both the Executive Order and the EPA rule require that new contracts provide that any acquired products containing or manufactured with class I or class II ozone-depleting substances, or containers of class I or class II ozone-depleting substances, be labeled in accordance with Section 611 of the 1990 amendments to the Clean Air Act.

This interim FAR rule implements the requirements of Executive Order 12843 and 40 CFR Part 82. The rule contains two clauses; one clause requires contractors to label products containing ozone-depleting substances, and the other clause requires contractors to comply with Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to the contract. 42 U.S.C. 7671g addresses a national recycling and emission reduction program, and 42 U.S.C. 7671h addresses servicing of motor vehicle air conditioners.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the Clean Air Act requirements are already applicable to companies in industries supplying goods and services made with or containing ozone-depleting substances. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart

will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-27, FAR Case 93-307), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this rule implements Executive Order 12843, which required FAR revisions by October 18, 1993, and 42 CFR Part 82, which required agency acquisition regulation revisions by October 24, 1994. Further, 42 CFR 82.84 states that, for agencies subject to the FAR (48 CFR Chapter 1), amendment of the FAR consistent with 42 CFR 82.84 shall satisfy, for those agencies, the requirement of 42 CFR 82.84 to revise agency acquisition regulations. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of a final rule.

List of Subjects in 48 CFR Parts 23 and 52

Government procurement.

Dated: May 24, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR Parts 23 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 23 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

2. Subpart 23.8 is added to read as follows: