

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 1, 2, 4, 5, 7, 9, 10, 11, 12, 13, 15, 18, 23, 26, 36, 37, 39, 42, and 52

[FAR Case 2022–006, Docket No. 2022–0006, Sequence No. 1]

RIN 9000–AO43

**Federal Acquisition Regulation:
Sustainable Procurement**

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

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend 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: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before October 2, 2023, to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2022–006 to the Federal eRulemaking portal at <https://www.regulations.gov> by searching for “FAR Case 2022–006”. Select the link “Comment Now” that corresponds with “FAR Case 2022–006”. Follow the instructions provided on the “Comment Now” screen. Please include your name, company name (if any), and “FAR Case 2022–006” on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite “FAR Case 2022–006” in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at <https://www.regulations.gov/faq>). To confirm receipt of your comment(s), please

check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Hawes, Procurement Analyst, at 202–255–9194 or by email at 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> cannot be used, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAR Case 2022–006.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD, GSA, and NASA are proposing to amend the FAR to restructure and update FAR part 23 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. 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, incentivize markets for sustainable products and services, purchase sustainable products and services in accordance with relevant statutory requirements, and, to the maximum extent practicable, purchase sustainable products and services 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. The relevant purchasing requirements established by statute, as indicated in that memorandum, are for the following types of products:

- Products containing recovered material identified by EPA’s Comprehensive Procurement Guideline Program;
- Biobased products in categories designated by the Department of Agriculture (USDA);

- Energy efficient products certified by ENERGY STAR® and energy and water efficient products designated by the Department of Energy Federal Energy Management Program (DOE–FEMP); and

- Products made with or containing acceptable alternatives to ozone-depleting substances listed by EPA’s Significant New Alternatives Policy (SNAP) program.

These statutory purchasing programs are currently implemented in FAR part 23, especially in subparts 23.2, 23.4, and 23.8.

The required EPA programs, as listed in Memorandum M–22–06, that identify sustainable products and services include: WaterSense®; Safer Choice; SmartWay Transport partners and SmartWay products; and EPA Recommendations of Specifications, Standards, and Ecolabels for Federal Purchasing. The requirement to procure these types of environmentally preferable products and services are currently implemented at FAR subpart 23.7. Paragraph (b)(1) of FAR section 23.703 directs agencies to employ acquisition strategies that maximize the utilization of environmentally preferable products and services (based on EPA-issued guidance). This subpart also currently includes the requirement to procure environmentally preferable products and Electronic Product Environmental Assessment Tool (EPEAT®)-registered products, which are examples of EPA Recommendations of Specifications, Standards, and Ecolabels for Federal Purchasing.

In August 2022, CEQ issued Implementing Instructions for E.O. 14057. Section 4.6 of the instructions reiterates the requirement to first ensure compliance with statutory purchasing programs and then ensure procurement of products and services identified by the required EPA programs in all contract actions and purchases. It also directed 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. The instructions also delineate when it is considered not practicable to procure sustainable products and services and provide a listing of helpful resources for identifying and understanding 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. The instructions also provide 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).

II. Discussion and Analysis

In addition to implementing the requirements in E.O. 14057 and the associated implementing instructions, DoD, GSA, and NASA are using this opportunity to restructure and streamline FAR part 23. As discussed in section II.A. of this preamble, under this effort, FAR part 23 is proposed to be amended to accomplish the following:

- Dedicate FAR part 23 to environmental matters.
- Consolidate purchasing programs requirements.
- Consolidate requirements related to hazardous and radioactive material.
- Consolidate Federal facility requirements.

DoD, GSA, and NASA are proposing to implement the requirements of E.O. 14057, Memorandum M-22-06, and the CEQ E.O. 14057 implementing instructions related to sustainable products and services by consolidating them at FAR subpart 23.1 (see discussion in section II.B. of this preamble). This revised subpart will address both statutory and EPA purchasing programs, except for SmartWay Program requirements, which will be considered under a separate FAR rulemaking. The subpart includes the proposed policy and procedures for purchasing and prioritizing sustainable products and services, to include requirements for agency programs, exceptions, exemptions, and a new omnibus contract clause.

DoD, GSA, and NASA are also proposing additional updates to requirements related to acquisition planning, special requirements for paper, waste reduction, construction and architect-engineer contracts, and information technology contracts to implement E.O. 14057 and the related CEQ implementing instructions. Several of these proposed changes update requirements established under an interim rule published under FAR Case 2010-001 (see 76 FR 31395, May 31, 2011) to align with current requirements under E.O. 14057. Any final rule resulting from this proposed rule will finalize the interim rule.

A. FAR Part 23 Restructuring

1. Dedicate FAR Part 23 to the Environment, Sustainable Acquisition, and Material Safety

In order to dedicate part 23 to environmental matters, sustainable acquisition, and material safety, DoD, GSA, and NASA are proposing to transfer the following two subparts to FAR part 26, Other Socioeconomic Programs:

- FAR subpart 23.5, Drug-Free Workplace.
- FAR subpart 23.11, Encouraging Contractor Policies to Ban Text Messaging While Driving.

This proposed rule does not propose any changes to the content of subpart 23.5 or 23.11, except to renumber the sections to 26.5 and 26.6, respectively, and to move the clause prescription section for Drug-Free Workplace to the end of its subpart. The associated clauses at FAR 52.223-6, Drug-Free Workplace, and 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving, are also proposed to be renumbered as FAR clause 52.226-XX and 52.226-YY, respectively, to associate these clauses with FAR part 26. Conforming changes are proposed throughout the FAR to update cross-references.

2. Consolidate Purchasing Program Requirements

DoD, GSA, and NASA are proposing to consolidate purchasing program requirements into a single subpart at FAR 23.1, to be titled "Sustainable Products and Services." This subpart will include overarching policy and procedures to implement E.O. 14057 requirements for purchasing sustainable products and services (see discussion in section II.B. of this preamble) and will include two new sections to outline existing statutory purchasing programs and required EPA purchasing programs (FAR sections 23.107 and 23.108, respectively). Existing content related to statutory purchasing programs in the following FAR subparts is proposed to be transferred to and streamlined in the new section at FAR 23.107, titled "Statutory purchasing programs":

- FAR subpart 23.2, Energy and Water Efficiency and Renewable Energy.
- FAR subpart 23.4, Recovered Materials and Biobased Products.
- FAR subpart 23.8, Ozone-Depleting Substances and Greenhouse Gases.

The prescriptions for the following provisions and clauses associated with these subparts are transferred to FAR 23.109 organized under headings associated with the particular statutory purchasing programs:

- FAR provision 52.223-4, Recovered Material Certification.
- FAR clause 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-designated Items.
- FAR provision 52.223-1, Biobased Product Certification.
- FAR clause 52.223-2, Reporting of Biobased Products Under Service and Construction Contracts.
- FAR clause 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons.
- FAR clause 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners.
- FAR clause 52.223-20, Aerosols.
- FAR clause 52.223-21, Foams.

Changes to the content of these provisions and clauses, which implement various statutory certification and reporting requirements, are discussed under section II.B.6. of this preamble. The prescriptions for the clauses at FAR 52.223-15, Energy Efficiency in Energy-Consuming Products, and FAR 52.223-17, Affirmative Procurement of EPA-designated Items in Service and Construction Contracts, are not transferred to 23.109; these clauses are proposed to be removed and reserved (also addressed in section II.B.6. of this preamble).

The requirement to procure environmentally preferable products and EPEAT®-registered products currently implemented at FAR subpart 23.7 is proposed to be removed and replaced by the requirement to procure products and services that meet EPA Recommendations of Specifications, Standards, and Ecolabels in the new section at FAR 23.108-3. As discussed in section II.B.6. of this preamble, since EPEAT is one of EPA's recommendations, the following clauses associated with EPEAT and any alternates to these clauses are proposed to be removed and reserved:

- FAR 52.223-13, Acquisition of EPEAT®-Registered Imaging Equipment.
- FAR 52.223-14, Acquisition of EPEAT®-Registered Televisions.
- FAR 52.223-16, Acquisition of EPEAT®-Registered Personal Computer Products.

As a result of this consolidation, FAR subpart 23.2 will be dedicated to energy savings performance contracts, FAR subpart 23.4 will be repurposed to address Federal facility requirements (see discussion in section II.A.4 of this preamble), FAR subpart 23.7 will be removed, and FAR subpart 23.8 will be dedicated to greenhouse gas emissions. There are no proposed changes to the remaining content in FAR subpart 23.2

related to energy savings performance contracts or subpart 23.8 related to greenhouse gas emissions disclosures, except to renumber the sections and paragraphs. Conforming changes are proposed throughout the FAR to update cross-references.

3. Consolidate Hazardous and Radioactive Material Requirements

To further streamline FAR part 23, DoD, GSA, and NASA are proposing to consolidate the content of the following subparts in FAR subpart 23.3 under the new title “Hazardous Material Identification, Material Safety Data, and Notice of Radioactive Materials”:

- FAR subpart 23.3, Hazardous Material Identification and Material Safety Data.
- FAR subpart 23.6, Notice of Radioactive Material.

This proposed rule does not include any proposed changes to the content of subpart 23.3 or 23.6, except to renumber the sections and paragraphs. Note, however, that DoD, GSA, and NASA

have proposed changes to the greenhouse gas emissions disclosure requirements in subpart 23.8 under a separate proposed rule (see FAR case 2021–015, Disclosure of Greenhouse Gas Emissions and Climate-related Financial Risk, published 87 FR 68312, November 14, 2022). Conforming changes are proposed throughout the FAR to update cross-references.

4. Consolidate Federal Facility Requirements

DoD, GSA, and NASA are proposing to consolidate the following content related to Federal facilities in FAR subpart 23.4:

- FAR subpart 23.10, Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements.
- FAR subpart 23.9, Contractor Compliance with Environmental Management Systems.
- FAR section 23.705 prescription for the clause at FAR 52.223–10, Waste Reduction Program.

Proposed changes to these subparts and associated clauses are described in

section II.C.2. of this preamble. Conforming changes are proposed throughout the FAR to update cross-references.

5. Derivation and Distribution Tables

Derivation and distribution tables are provided below to illustrate at the subpart level where content is derived from and where content will be distributed to as a result of this proposed rule. A presentation illustrating the overarching changes at the part/subpart level and more detailed tables illustrating changes at the section/paragraph level are provided as supplemental documents to this proposed rule. To access the presentation and tables, go to <https://www.regulations.gov>, search for “FAR Case 2022–006,” click “Open Docket,” and view “Supporting Documents”.

The following derivation table illustrates where the contents in the proposed subparts in FAR parts 23 and 26 are derived from:

DERIVATION TABLE

Proposed FAR subpart	Old FAR subpart
23.1 Sustainable Products and Services	23.1 Sustainable Acquisition Policy. 23.2 Energy and Water Efficiency and Renewable Energy (Content related to energy-efficient products only). 23.4 Use of Recovered Materials and Biobased Products.
23.2 Energy Savings Performance Contracts	23.8 Ozone-Depleting Substances and Greenhouse Gases (Content related to ozone-depleting substances only). 23.2 Energy and Water Efficiency and Renewable Energy (Content related to energy-savings performance contracts only).
23.3 Hazardous Material Identification, Material Safety Data, and Notice of Radioactive Materials.	23.3 Hazardous Material Identification and Material Safety Data.
23.4 Pollution Prevention, Environmental Management Systems, and Waste Reduction.	23.6 Notice of Radioactive Material.
23.8 Greenhouse Gas Emissions	23.9 Contractor Compliance with Environmental Management Systems.
26.5 Drug-Free Workplace	23.10 Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements.
26.6 Encouraging Contractor Policies to Ban Text Messaging While Driving.	23.8 Ozone-Depleting Substances and Greenhouse Gases (Content related to greenhouse gas emission disclosures only). 23.5 Drug-Free Workplace. 23.11 Encouraging Contractor Policies to Ban Text Messaging While Driving.

The following distribution table illustrates where the current FAR part

23 subparts are distributed under this proposed rule:

DISTRIBUTION TABLE

Old FAR subpart	New FAR subpart or section
23.1 Sustainable Acquisition Policy	23.1 Sustainable Products and Services.
23.2 Energy and Water Efficiency and Renewable Energy.	23.107–3 Energy-consuming products.
23.3 Hazardous Material Identification and Material Safety Data.	23.2 Energy Savings Performance Contracts.
23.4 Use of Recovered Materials and Biobased Products.	23.3 Hazardous Material Identification, Material Safety Data, and Notice of Radioactive Materials.
23.5 Drug-Free Workplace	23.107–1 Products containing recovered materials. 23.107–2 Biobased products.
23.6 Notice of Radioactive Material	26.5 Drug-Free Workplace. 23.3 Hazardous Material Identification, Material Safety Data, and Notice of Radioactive Materials.

DISTRIBUTION TABLE—Continued

Old FAR subpart	New FAR subpart or section
23.7 Contracting for Environmentally Preferable Products and Services.	23.108–3 Products and services that are subject to EPA Recommendations of Specifications, Standards, and Ecolabels.
23.8 Ozone-Depleting Substances and Greenhouse Gases.	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.
23.9 Contractor Compliance with Environmental Management Systems.	23.8 Greenhouse Gas Emissions.
23.10 Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements.	23.4 Pollution Prevention, Environmental Management Systems, and Waste Reduction.
23.11 Encouraging Contractor Policies to Ban Text Messaging While Driving.	23.4 Pollution Prevention, Environmental Management Systems, and Waste Reduction.
	26.6 Encouraging Contractor Policies to Ban Text Messaging While Driving.

B. Sustainable Products and Services

The following is a summary of the proposed changes to FAR subpart 23.1, to be titled “Sustainable Products and Services,” to implement requirements for purchasing sustainable products and services in E.O. 14057, Memorandum M–22–06, and the CEQ implementing instructions.

1. Definitions

A definition of “sustainable products and services” is proposed in FAR 2.101 and is applicable wherever the term is used in the FAR. The term is defined as products and services that are subject to and meet statutory purchasing program requirements or other EPA purchasing program requirements. For the statutory purchasing programs, the definition references the following types of products and includes a reference to the source statute, the lead agency implementing regulations, and the program website:

- Products containing recovered material designated by the U.S. Environmental Protection Agency (EPA) under the Comprehensive Procurement Guidelines.

- Energy efficient products that are ENERGY STAR® certified or Federal Energy Management Program (FEMP)-designated products.

- Biobased products meeting the USDA content requirements under the BioPreferred® program.

- Acceptable chemicals, products, and manufacturing processes listed under EPA’s SNAP program, which ensures a safe and smooth transition away from substances that contribute to the depletion of stratospheric ozone.

The definition identifies the following required EPA purchasing programs and provides the link to each associated program website:

- WaterSense® labeled (water efficient) products and services.

- Safer Choice-certified products (products that contain safer chemical ingredients).

- Products and services that meet or exceed EPA Recommendations of Specifications, Standards, and Ecolabels.

As a result of the proposed changes described in section II.A. of this preamble, most of the definitions associated with the existing statutory purchasing programs are consolidated in FAR section 23.101, since these terms will only be used in FAR subpart 23.1. This includes the definitions of “EPA-designated item,” “global-warming potential,” “high global warming potential,” “hydrofluorocarbons,” and “ozone-depleting substances.” The definition of the term “USDA-designated item” is also transferred, but the term itself is changed to “USDA-designated product category” to better align with USDA program requirements.

The definitions of “biobased product” and “recovered material” in FAR 2.101 are also relevant to this revised subpart, but will remain in FAR part 2 since these terms are used throughout the FAR. Changes are proposed to the definition of “biobased product” to implement section 9002 of the Agricultural Act of 2014 (Pub. L. 113–79) and section 9001 of the Agriculture Improvement Act of 2018 (Pub. L. 115–334), which revised the definition of “biobased product” (see 7 U.S.C. 8101) for the purposes of the biobased procurement program. Changes are also proposed to the definition of “recovered material” to remove a pointer to an alternative definition applicable to FAR subpart 11.3 (see discussion in section II.C.1. of this preamble) and to add the statutory citation for the definition.

In addition, this rule proposes moving the definition of “United States” from FAR section 23.001 to FAR section 23.101. This change will make the definition applicable only in FAR subpart 23.1 where the statutory requirements for purchasing sustainable products and services are being consolidated. The definition is revised to cite Memorandum M–22–06 as the

source of the definition and to clarify the definition is for the term when it is used in a geographical sense. Paragraph (9) of the definition of “United States” in FAR section 2.101 (the definition that is applicable throughout the FAR, except as specified) will also be revised to point to FAR section 23.101 as the source for the definition that is applicable to FAR subpart 23.1.

The existing definition of “contract action” currently in FAR section 23.101 remains. This definition, however, is revised to align with Memorandum M–22–06 by removing reference to any non-FAR based agreements. The list of excluded actions that are not subject to the FAR is not necessary, since definitions in the FAR are only applicable to actions that are subject to the FAR.

2. Scope and Authorities

Per FAR 23.100, Scope, the proposed subpart provides policies and procedures for the procurement of sustainable products and services. The requirements of FAR subpart 23.1 are applicable to all contract actions, including those using FAR 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. FAR section 23.102 is revised to cite E.O. 14057, Memorandum M–22–06, and the CEQ implementing instructions, as well as the authorities for the existing statutory purchasing programs to be consolidated at FAR section 23.107.

3. Policy

FAR 23.103(a) outlines the policy that agencies shall procure sustainable products and services to the maximum extent practicable. Procuring sustainable products and services will be considered practicable, unless an agency cannot: (1) competitively acquire a product or service within a reasonable

performance schedule; (2) acquire a product or service that meets reasonable performance requirements; or (3) acquire a product or service at a reasonable price. For ENERGY STAR® or FEMP-designated products, a price is reasonable if it is cost-effective over the life of the product taking energy cost savings into account. This standard maintains existing exceptions to the statutory mandates to purchase certain energy-efficient products, biobased products, and products containing recovered material. This rule proposes to apply this standard of what is “practicable” to the other categories of sustainable products and services.

FAR 23.103(b) establishes requirements for prioritizing sustainable products and services. Specifically, when procuring sustainable products and services, agencies shall ensure compliance with all applicable statutory purchasing programs (consolidated in FAR section 23.107) and prioritize multi-attribute sustainable products and services, *i.e.*, that meet the requirements of both a statutory purchasing program and a required EPA purchasing program. The prioritization also notes that contracting officers are not required to procure products and services that meet the required EPA purchasing programs (see programs listed in section 23.108 of subpart 23.1) when doing so would conflict with statutes, Executive orders, or regulations that impose domestic manufacturing and content requirements.

Finally, this proposed rule will revise the description of required products under contract actions for services that will be subject to the new policy; FAR 23.103(c) will describe such products as those that are: (1) delivered to the Government during performance; (2) 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; or (3) furnished by the contractor for use by the Government, including use at Government-owned contractor-operated facilities. Paragraph (c)(2) reflects a change from the existing description of products acquired by the contractor for use in performing services at a Federally controlled facility to ensure products used in service contracts that are a direct cost to the Government are sustainable products. In addition, this description clarifies that products provided by the contractor during performance at Government-owned contractor-operated facilities are expected to be sustainable products. These changes are necessary to ensure that the Government procures

sustainable products and services to the maximum extent practicable pursuant to E.O. 14057, Memorandum M–22–06, and the CEQ implementing instructions.

4. Procedures

General procedures to carry out the new policy are provided at FAR 23.104. Procuring sustainable products and services is generally considered practicable, but the contracting officer may consider a procurement not practicable based on a written justification from the requirements official. At FAR section 23.105, the rule will also continue to provide for certain exceptions, such as for weapon systems and contracts performed outside of the United States, unless the agency head determines that such application is in the interest of the United States, and other existing exceptions provided by statute. The proposed exemptions at FAR 23.106 are revised to align with the exemption authority provided in section 602 of E.O. 14057 to allow agency heads to exempt certain activities and acquisitions. The exemptions also allow the Director of National Intelligence to exempt certain intelligence activities. Some agency head exemptions require written notification to the Chair of the CEQ. Finally, a proposed exemption is included at FAR 23.106 where an agency head 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. In such circumstances, the agency head determination serves as the written justification, and the contracting officer is encouraged, but not required to procure sustainable products and services.

When there is a written justification that it is not practicable to procure sustainable products or services or an exception or exemption applies, and only some of the potential sustainable products and services are covered by the justification, exception, or exemption, the contracting officer must ensure that the solicitation and contract identify any sustainable products or services that are not subject to the requirements of FAR subpart 23.1 and the associated clause at FAR 52.223–XX, Sustainable Products and Services.

5. Purchasing Program Requirements

The specific requirements and resources associated with the purchasing programs will be consolidated in sections 23.107 and 23.108. FAR sections 23.107–1 through

23.107–4 will address the existing requirements for the four statutory purchasing programs for: products containing recovered materials; biobased products; energy-consuming and water-consuming products; and products that contain, use, or are manufactured with ozone-depleting substances and products that contain or use high global warming potential hydrofluorocarbons. Within these sections are summaries of the overarching programs, references to statutory authority and lead agency implementing regulations, agency program requirements, any special procedures for contracting officers, and web addresses for primary program resources and information. FAR sections 23.108–1 through 23.108–3 will address the required EPA purchasing programs: water efficient products; chemically-intensive products; and products and services that are subject to EPA Recommendations of Specifications, Standards, and Ecolabels. Each section describes the EPA program and provides web addresses for access to additional information about and resources for the programs.

6. Provisions and Clauses

FAR 23.109(a) prescribes a new clause at FAR 52.223–XX, Sustainable Products and Services, for use in all solicitations and contracts unless there is a written justification that it is not practicable to procure sustainable products and services, or an authorized exception or exemption applies, and the scope of the justification, exception, or exemption covers all potential sustainable products and services under a contract.

This clause directs contractors to deliver and furnish sustainable products and services for Government use, including use at Government-owned contractor-operated facilities; incorporate sustainable products and services into the construction of a public building or public works; and furnish sustainable products and services for contractor use in performing services under the contract, where the cost of the products is a direct cost to the contract (versus costs that are normally applied to a contractor’s general and administrative expenses or indirect costs). However, the contractor is not required to provide sustainable products or services where the contracting officer has identified in the solicitation that a certain product or service is not subject to the clause. The clause provides direction to the contractor on how to prioritize statutory and multi-attribute sustainable products and services and refers the contractor to

the Green Procurement Compilation (available at <https://sftool.gov/greenprocurement>) as a resource that can be reviewed for a comprehensive list of sustainable products and services and other related sustainability guidance.

As discussed in section III. of this preamble, this new omnibus clause is included in the clause at FAR 52.212–5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services, and the clause at FAR 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services). In the clause at FAR 52.212–5, the contracting officer will check the box next to FAR clause 52.223–XX to show that it applies to acquisition of commercial products and commercial services; this will be the case unless there is a written justification, exception, or exemption that covers all potential sustainable products and services in an acquisition. For simplified acquisitions, a new paragraph proposed at FAR 13.302–5 directs the contracting officer to remove FAR clause 52.223–XX from the clause at FAR 52.213–4 when there is a written justification, exception, or exemption that covers all potential sustainable products and services in an acquisition.

As mentioned in section II.A.2. of this preamble, several of the existing prescriptions for the provisions and clauses associated with statutory purchasing programs are transferred to FAR section 23.109:

- Paragraph (b) of this section provides the existing prescriptions for the provision at FAR 52.223–4 and the clause at FAR 52.223–9 associated with EPA-designated items.
- Paragraph (c) of this section provides the existing prescriptions for the provision at FAR 52.223–1 and the clause at FAR 52.223–2 related to biobased products in USDA-designated product categories.
- Paragraph (d) of this section, provides the existing prescriptions for the clauses at FAR 52.223–11, 52.223–12, 52.223–20, and 52.223–21 related to products containing ozone-depleting substances and hydrofluorocarbons.

Except for FAR provision 52.223–1, there are no proposed changes to the existing prescriptions for these provisions and clauses, except to relocate content to the new consolidated section. The prescription for FAR 52.223–1, Biobased Product Certification, is revised to highlight an existing categorical exception for certain biobased products (see FAR 23.105(d)). Based on this exception, certification is

not required for a solicitation that includes 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.

There are no substantive changes proposed to the content of provision FAR 52.223–1, except to update the statutory references. Changes are proposed to the clause at FAR 52.223–2, to include a title change, the addition of defined terms, and removal of purchasing language that is now covered by the omnibus clause at FAR 52.223–XX. As a result, this clause will focus on the existing reporting requirements for biobased products in USDA-designated products, which are unchanged as a result of this proposed rule.

Changes are also proposed in FAR clauses 52.223–11 and 52.223–12 to remove the requirements to track and report annually in the System for Award Management the amount of hydrofluorocarbon contained in, added to, or taken out of equipment or appliances under a contract. While the underlying requirement for alternatives to higher global warming potential hydrofluorocarbons remains in the FAR, the Government is looking towards other greenhouse gas management and tracking efforts.

While there is no change to the prescription for Alternate I of FAR clause 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items, this alternate is proposed for removal from the list of annual representations and certifications at FAR 4.1202 and in the provision at FAR 52.204–8, Annual Representations and Certifications. The alternate requires a contractor employee to certify that (1) they are an officer or employee responsible for the performance of the contract and (2) that the percentage of recovered material content for EPA-designated items met the applicable contract specifications or other contractual requirements. This certification should occur at the end of contract performance, not at the entity level.

The clauses at FAR 52.223–15, Energy Efficiency in Energy-Consuming Products, and FAR 52.223–17, Affirmative Procurement of EPA-designated Items in Service and Construction Contracts, are proposed to be removed and reserved. These clauses direct contractors to provide in the performance of the contract energy efficient products or products containing recovered material content that are EPA-designated items. Both

clauses are considered subsumed by the new omnibus clause at FAR 52.223–XX, which directs contractors to provide sustainable products and services in the performance of the contract, including ENERGY STAR® products, FEMP-designated products, and products containing recovered material designated by the EPA.

As mentioned in section II.A.2 of this preamble, all of the clauses associated with EPEAT® requirements and their associated prescription in FAR subpart 23.7 are proposed to be removed and reserved. These clauses are also no longer necessary, since the requirement to procure products and services that meet EPA Recommendations of Specifications, Standards, and Ecolabels is addressed in the new omnibus clause at FAR 52.223–XX. As discussed in section II.A.2. of this preamble, EPEAT® is one of EPA's Recommendations of Specifications, Standards, and Ecolabels.

7. Cross-References

This proposed rule will also update cross-references throughout the FAR to the requirements now consolidated in FAR subpart 23.1. Specifically, the listings of various purchasing programs in the following FAR sections are proposed to be replaced with a cross-reference to requirements related to the procurement of sustainable products and services (as defined in 2.101) in accordance with FAR subpart 23.1:

- FAR 7.103(p)(1) regarding acquisition planning requirements.
- FAR 11.002(d)(1) and (2) regarding describing agency needs.
- FAR 13.201(f) regarding acquisition at or below the micro-purchase threshold.
- FAR 42.302(a)(68)(ii) regarding contract administration requirements.

In addition, a revision is proposed at FAR 37.102(i) to change the cross-reference from FAR part 23 to FAR subpart 23.1. A revision is also proposed at FAR 39.101(a)(1)(ii) to refer to FAR subpart 23.1 instead of just EPEAT® standards in reference to acquiring information technology.

C. Other Changes

1. Special Requirements for Paper

The special requirements for paper in FAR subpart 4.3 and FAR section 11.303 are proposed for removal. This subpart and section implemented requirements from E.O. 13423, Strengthening Federal Environmental, Energy, and Transportation Management, and E.O. 13514, Federal Leadership in Environmental, Energy, and Economic Performance, both of which are revoked.

FAR subpart 4.3 promotes the use of electronic commerce and directs agencies to require contractors to print or copy double-sided on at least 30 percent postconsumer fiber paper, whenever practicable, for paper documents related to an acquisition to be submitted to the Government. The clause at FAR 52.204–4, Printed or Copied Double-Sided on Postconsumer Fiber Content Paper, requires printing or copying single-sided on at least 30 percent postconsumer fiber paper. Also, section 11.303 establishes additional content standards for paper. These special requirements for paper are no longer necessary, given that electronic commerce is 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 the EPA Comprehensive Procurement Guidelines.

2. Federal Facility Requirements

As discussed in section II.A.4. of this preamble, this proposed rule seeks to consolidate requirements related to Federal facilities in a single subpart. The following is a summary of the proposed changes to the content of the subpart.

a. Pollution Prevention and Right-to-Know Laws

The existing requirements currently in FAR subpart 23.10 and the clause at FAR 52.223–5, Pollution Prevention and Right-to-Know Information, are based on statute. This rule proposes to transfer the contents of the subpart and the prescription for the clause to FAR subpart 23.4. Alternates I and II to this clause, however, are being removed, since the alternates implement content from revoked Executive orders. This proposed rule does not make any changes to the remaining existing content, except to renumber the sections and paragraphs and turn the content currently at FAR 23.1002 into a definition of “Federal facility.” Conforming changes are proposed throughout the FAR to update cross-references.

b. Environmental Management Systems

This rule proposes to transfer existing requirements in FAR subpart 23.9 related to contractor compliance with an agency environmental management systems (EMS) to FAR subpart 23.4. This rule proposes changes to the policy to clarify that section 23.404 and the clause at FAR 52.223–19, Compliance

with Environmental Management Systems, apply if an agency uses an EMS and contractor activities affect aspects of the agency’s environmental management. This proposed change aligns with E.O. 14057 and the CEQ implementing instructions, which give agencies discretion to use an EMS to achieve the goals in E.O. 14057. Conforming changes are proposed throughout the FAR to update cross-references.

c. Waste Reduction Programs

This rule proposes to update FAR clause 52.223–10, Waste Reduction Program, to replace the reference to section 3(e) of E.O. 13423 with a reference to section 207 of E.O. 14057. This FAR clause is prescribed for use in all 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; it requires the contractor to maintain a program to promote cost-effective waste reduction in all operations and facilities covered by a contract. The new E.O. and CEQ implementing instructions provide direction to agencies on pollution prevention and reducing waste, therefore this clause is retained; however, the prescription is transferred to FAR subpart 23.4 where facility-related requirements have been consolidated.

3. Construction and Architect-Engineer Contracts

This rule proposes to update agency requirements for construction and architect-engineer contracts at FAR 36.104(b)(1). Currently, agencies must ensure that all new construction, major renovation, or repair and alteration of Federal buildings complies with the Guiding Principles for Federal Leadership in High-Performance and Sustainable Buildings. This proposed rule will update this paragraph to align with the directive in the CEQ implementing instructions that 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 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); and that 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. FAR 36.104(b)(2) is also proposed to be removed and the goals in FAR 36.104(b)(5) are updated to require agencies to divert at least 50 percent of non-hazardous construction and demolition materials and debris.

4. Content Proposed for Removal

This rule proposes to remove the terms “renewable energy” and “renewable energy technology” from FAR section 2.101. As a result of the streamlining described in this proposed rule to direct agencies to procure sustainable products and services, including energy and water efficient products, the terms are no longer used in FAR parts 7, 11, or 23.

The term “water consumption intensity” is currently used at FAR 23.202 to describe broad agency policies from prior E.O.s to reducing potable water consumption intensity; while this objective is still relevant, such requirements are already implemented in the CEQ Guiding Principles for Sustainable Federal Buildings and associated instructions (Guiding Principles). As discussed in section II.C.3. of this preamble, FAR 36.104 directs agencies to ensure that all new construction, major renovation, or repair and alteration of Federal buildings complies with the Guiding Principles.

Similarly, the direction at FAR 23.202(b)(2) and (3) for agencies to use and manage water through water-efficient means, including storm water management in accordance with section 438 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17094), are covered in the CEQ Guiding Principles and, thus, proposed for removal.

Finally, the agency policy objectives described at FAR 23.703 are proposed for removal, since these objectives are covered by the streamlined procedures proposed under this rule. FAR 23.002 includes an overarching policy statement for the streamlined FAR part. In addition, the statement at FAR 23.703 regarding the statutory requirement to procure plastic ring carriers that are degradable (7 U.S.C. 8102(c)(1)) is proposed for removal, since the EPA implementing regulations at 40 CFR part 238 are directed at manufacturers and importers of plastic ring carriers. The implementing regulations also provide information on an approved consensus standard for plastic ring carriers, which may be incorporated into design

documents or scopes of work, as appropriate.

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 proposed at FAR 52.223–XX, 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 will be 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 proposed for removal under this FAR case 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 proposed for removal, 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.

This rule does not include any proposed 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 proposed rulemaking 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 rulemaking, 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 these rules would still be applicable. As an illustrative but not exhaustive example, were a court to stay or invalidate the proposed changes to 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

Currently, FAR part 23 addresses various policy initiatives, ranging from requirements related to procuring sustainable products and services and other energy and environmental matters to requirements for a drug-free workplace and encouraging contractors to ban texting while driving. The FAR part has been revised to provide a cohesive message on the important role of sustainable acquisition and to provide clear policy and directions for the contracting and contractor communities. The proposed changes to restructure FAR part 23 will establish a clear and simplified framework for the Government to communicate requirements related to environmental matters and sustainable acquisition.

The proposed transfer of non-environmental matters to FAR part 26 is the first step to focus the messaging in FAR part 23 on the environment and sustainable acquisition. Then, within FAR part 23, existing content on similar topics, such as purchasing requirements, hazardous and radioactive material requirements, and Federal facility requirements, will be consolidated into single subparts to ensure that the contracting workforce is able to easily access and understand related policies and procedures. Finally, content based on revoked Executive orders, such as double-sided copying and printing requirements in FAR clause 52.204–4 and the alternates to FAR clause 52.223–5, is proposed for removal (see sections II.C.1. and II.C.2.a of this preamble). In addition, the contractors will no longer be required to comply with the annual hydrofluorocarbon reporting

requirements contained in FAR clauses 52.223–11 and 52.223–12, which are proposed for removal (see discussion in section II.B.6. of this preamble).

B. Sustainable Products and Services

This proposed rule will not only consolidate content in FAR subpart 23.1, but also streamline and standardize the policy and procedures for purchasing sustainable products and services, which will help agencies and industry better understand and comply with the purchasing program requirements already implemented in the FAR. In accordance with direction provided under E.O. 14057, this rule proposes to require agencies to purchase sustainable products and services to the maximum extent practicable. This requirement is not new. Agencies are already required to ensure that the overwhelming majority of their contract actions meet the various purchasing program requirements. For example:

- FAR subpart 23.1 currently requires Federal agencies to advance sustainable acquisition by ensuring that 95 percent of new contract actions for the supply of products and for the acquisition of services (including construction) require that the products are energy-efficient (ENERGY STAR® or Federal Energy Management Program (FEMP)-designated); water-efficient; biobased; environmentally preferable, or non-toxic or less toxic alternatives); non-ozone depleting; or made with recovered materials.
- The existing statutory purchasing program requirements described in the proposed rule for consolidation in FAR section 23.107 are currently implemented in FAR subparts 23.2, 23.4, and 23.8.
- The requirement to procure products and services that meet other EPA purchasing programs described in proposed FAR section 23.108 clarifies the existing requirement at FAR 23.703(b)(1) for agencies to maximize the use of environmentally preferable products and services (based on EPA-issued guidance).
- While this proposed rule introduces the WaterSense® label by name, FAR subpart 23.7 already directs agencies to maximize environmentally preferable products and services based on EPA-issued guidance and to promote water conservation, which would include EPA's WaterSense® program. In addition, FAR subpart 23.2 currently directs agencies to procure DOE FEMP-designated products, which include water-consuming products with the WaterSense® label, and the CEQ Guiding Principles directed for use at

FAR 36.104 also address requirements for WaterSense® products.

- While the Safer Choice ecolabel is not currently referenced by name in the FAR, FAR subpart 23.7 directs agencies to give preference to the procurement of acceptable alternative chemicals and products that reduce overall risks to human health. Safer Choice is also a well-known ecolabel for products that contain safer chemicals, a label that many public institutions, private companies, and individuals seek out regardless of a directive to avoid exposure to toxic chemicals.

Under this proposed rule, agencies will be required to continue ensuring that products and services meet statutory purchasing program requirements and to prioritize multi-attribute products and services, which are products and services that meet more than one statutory purchasing program and one or more required EPA purchasing programs. What is practicable is defined in a uniform manner for all purchasing programs and aligns with existing statutory basis for not procuring energy-efficient products, biobased products, and products containing recovered material. In addition, the existing exceptions (such as those for acquisitions performed outside the United States, weapon systems, space systems, etc.) are maintained in this proposed rule. The proposed exemptions are also generally maintained, though an additional exemption for response to national emergencies is also provided.

Finally, this proposed rule seeks to establish a standard way for agencies to communicate the requirements for sustainable products and services to contractors via a new proposed contract clause at FAR 52.223-XX, Sustainable Products and Services. This new clause will enable agencies to communicate requirements for sustainable products and services in a uniform manner and to better enforce the requirement to procure sustainable products and services as a standard term and condition of a contract. In addition to making clear that agencies expect to have sustainable products and services delivered in performance of the contract, the proposed rule introduces a requirement that contracting officers to identify in the solicitation and contract any products and services that are subject to an exception or exemption per a written justification from the requiring activity. While contracting officers already work with requiring activities to document when they are not able to meet the existing statutory purchasing requirements, this proposed rule will ensure that this information is

clearly communicated to offerors and contractors.

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 existing purchasing requirements proposed for consolidation in FAR subpart 23.1. However, contractors will need to become familiar with the new omnibus clause at FAR 52.223-XX where they will find all applicable purchasing program requirements in one place. 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 proposed for removal 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.

As stated, the policy for agencies to procure sustainable products and services is not new with the majority of these requirements being in place since 2011 though agencies have had some discretion in how to implement. This proposed rule will help the Government ensure it is meeting its goal to procure sustainable products and services to the maximum extent practicable in order to reduce emissions, save natural resources, and protect individuals, communities, and the environment. Contractors that do not currently prioritize or propose sustainable products and services when developing offers in response to Government contracts 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. While this additional burden is acknowledged, it is not possible to quantify the potential burden for such activities or to estimate the number of entities potentially impacted by this change in means of policy communication and enforcement.

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 the majority of acquisitions are conducted electronically. Contractors will 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 and 13563 direct agencies to assess all 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 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, Regulatory Planning and Review, dated September 30, 1993.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA expect this proposed rule when final 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. 601-612. An Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

E.O. 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, 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 the OMB, CEQ, and CPO Memorandum M-22-06 and the CEQ Implementing Instructions for E.O. 14057, agencies are required to purchase, to the maximum extent practicable and after meeting statutory mandates, sustainable products and services identified or recommended by EPA.

DoD, GSA, and NASA are proposing to amend the FAR to restructure and update FAR part 23 to focus on current environmental and sustainability matters and to implement the requirements in E.O. 14057 and associated implementing instructions for agencies to procure sustainable products and services to the maximum extent practicable. Promulgation of the FAR is authorized by 40

U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

This proposed rule seeks to streamline FAR part 23 by dedicating the part to environmental matters, consolidating purchasing program requirements in FAR subpart 23.1, dedicating FAR subpart 23.2 to energy savings performance contracts, consolidating hazardous and radioactive material requirements in FAR subpart 23.3, consolidating Federal facility requirements in FAR subpart 23.4, and dedicating FAR subpart 23.8 to requirements associated with greenhouse gas emissions.

This rule proposes to implement the E.O. 14057 requirements for sustainable products and services in FAR subpart 23.1. As a result of this rule, the requirement for Federal agencies to ensure that 95 percent of new contract actions are for sustainable products and services is replaced with the requirement for agencies to procure sustainable products and services to the maximum extent practicable. In prioritizing sustainable products and services, agencies shall ensure they are meeting existing statutory mandates and prioritize multi-attribute products and services, which are those that meet both statutory and other required EPA purchasing program requirements.

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.

Small businesses who do business with the Federal Government should be familiar with the existing statutory purchasing program requirements currently at FAR subparts 23.2, 23.4, and 23.8, as well as the requirement for agencies to procure environmentally preferable products, including EPEAT®-registered electronic products, in FAR subpart 23.7. Small businesses will need to become familiar with the new omnibus clause at FAR 52.223-XX, Sustainable Products and Services, which streamlines the purchasing program requirements in an omnibus clause. Small businesses will need to validate and ensure that they are providing products and services that fall into the following categories, unless the contracting officer has specified that certain sustainable products or services are not subject to the clause:

- 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>).
- Energy 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> and <https://www.energystar.gov/products?s=mega>).
- Biobased products meeting the content requirement of the U.S. Department of Agriculture (USDA) under the BioPreferred® program (see <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>).

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

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

- Products and services that meet EPA Recommendations of Specifications, Standards, and Ecolabels, demonstrated through third party certification (see <https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing>).

In addition to the resources identified for each purchasing program above, small businesses may also consult the Green Procurement Compilation available at <https://sftool.gov/greenprocurement>, which provides a comprehensive list of required sustainable products and services and other related sustainability guidance.

Finally, several existing reporting requirements are being removed. Small businesses will 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. Reporting requirements associated with agency EMSs in the alternates to FAR clause 52.223-5, Pollution Prevention and Right-to-Know Information, are also removed, though small businesses would still be required to comply with any agency specific requirements for EMS.

This proposed rule does not duplicate, overlap, or conflict with other Federal rules. This proposed rule will continue to implement the following lead agency regulations on the statutory purchasing program requirements:

- EPA regulations on a Comprehensive Procurement Guideline for Products Containing Recovered Materials (40 CFR part 247).

- Department of Energy regulations on Agency Procurement of Energy Efficient Products (10 CFR part 436, subpart C).

- USDA regulations on Guidelines for Designating Biobased Products for Federal Procurement (7 CFR part 3201).

- EPA regulations on the Protection of Stratospheric Ozone; Significant New Alternatives Policy Program (40 CFR part 82, subpart G).

This rule does not include any proposed changes to the current greenhouse gas disclosure requirements at FAR 23.8 and the provision at FAR 52.223-22, except to renumber the section and paragraph numbers. DoD, GSA, and NASA have proposed changes to these requirements under a separate proposed rule (see FAR case 2021-015, Disclosure of Greenhouse Gas Emissions and Climate-related Financial

Risk, published at 87 FR 68312, November 14, 2022).

There are no significant alternatives to the proposed rule that would accomplish the stated objectives to ensure that agencies procure sustainable products and services to the maximum extent practicable.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2022-006), in correspondence.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501-3521) applies because the proposed rule contains information collection requirements. The rule proposes to renumber FAR clause 52.223-6 to 52.226-XX and transfer its information collection requirements from OMB Control Number 9000-0107 to the new OMB Control Number 9000-0XXX for FAR part 26. The rule also proposes to remove the information collection requirements associated with coverage of EMS and facility compliance audits under FAR clause 52.223-5, and the requirement for contractors to report certain information related to hydrofluorocarbon content under FAR clauses 52.223-11 and 52.223-12. Accordingly, the Regulatory Secretariat Division has submitted to OMB a request for approval of a revision to “OMB Control Number 9000-0107, Federal Acquisition Regulation Part 23 Requirements” and approval of “OMB Control Number 9000-0XXX, Federal Acquisition Regulation Part 26 Requirements.”

A. Public Reporting 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 9000–0XXX, Federal Acquisition Regulation Part 26 Requirements

The annual reporting burden is estimated as follows:

- Respondents: 228.
Total Annual Responses: 228.
Total Burden Hours: 114.

2. OMB Control Number 9000–0107, Federal Acquisition Regulation Part 23 Requirements

The annual reporting burden is estimated as follows:

- Respondents: 34,527.
Total Annual Responses: 160,600.
Total Burden Hours: 706,089.

B. Request for Comments Regarding Paperwork Burden

Submit comments on these collections of information no later than October 2, 2023 through https://www.regulations.gov and follow the instructions on the site. All items submitted must cite "OMB Control Number 9000–0XXX, Federal Acquisition Regulation Part 26 Requirements," or "OMB Control Number 9000–0107, Federal Acquisition Regulation Part 23 Requirements," as applicable. Comments received generally will be posted without change to https://www.regulations.gov, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check https://www.regulations.gov, approximately two to three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. For both sets of information collections, public comments are particularly invited on:

- The necessity of this collection of information for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility;
The accuracy of the estimate of the burden of this collection of information;
Ways to enhance the quality, utility, and clarity of the information to be collected; and
Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Requesters may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat Division by calling 202–501–4755 or emailing GSARegSec@gsa.gov. Please cite OMB Control Number 9000–

0107, Federal Acquisition Regulation Part 23 Requirements, or OMB Control Number 9000–0XXX, Federal Acquisition Regulation Part 26 Requirements, in all correspondence.

List of Subjects in 48 CFR Parts 1, 2, 4, 5, 7, 9, 10, 11, 12, 13, 15, 18, 23, 26, 36, 37, 39, 42, and 52

Government procurement.

William F. Clark, Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 1, 2, 4, 5, 7, 9, 10, 11, 12, 13, 15, 18, 23, 26, 36, 37, 39, 42, and 52 as set forth below:

- 1. The authority citation for 48 CFR parts 1, 2, 4, 5, 7, 9, 10, 11, 12, 13, 15, 18, 23, 26, 36, 37, 39, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

- 2. In section 1.106, amend the table by—
a. Removing the entry for "23.602";
b. Revising the entry for "52.223–2";
c. Removing the entry for "52.223–4";
d. Revising the entry for "52.223–5";
e. Removing the entry for "52.223–6(b)(5)";
f. Revising the entries for "52.223–9", "52.223–11", "52.223–12", and "52.223–22"; and
g. Adding in numerical order an entry for "52.226–XX".

The revisions and addition read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

Table with 5 columns: FAR segment, OMB control No., and asterisks. Rows include 52.223–2, 52.223–5, 52.223–9, 52.223–11, 52.223–12, 52.223–22, and 52.226–XX.

PART 2—DEFINITIONS OF WORDS AND TERMS

- 3. Amend section 2.101, in paragraph (b)(2) by—
a. Revising the definition "Biobased product";
b. In the definition of "Conviction", removing "23.5" and "23.503" and adding "26.5" and "26.503" in their places, respectively;
c. In the definition of "Energy-savings performance contract":
i. Removing "Energy-savings performance contract" and adding "Energy savings performance contract" in its place; and
ii. Revising paragraph (3);
d. Revising the definition of "Environmentally preferable";
e. Removing the definitions of "Global warming potential" and "High global warming potential 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 alphabetical order the definition "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 addition read as follows:

2.101 Definitions.

* * * * *
(b) * * *
(2) * * *

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) (7 CFR 3201.2).

Energy savings performance contract
* * *

(3) Guarantee future energy and cost savings to the Government (42 U.S.C. 8287) (10 CFR 436.31).

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, 10 U.S.C. Chapter 223 Note).

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).

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) (40 CFR part 247) (<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) (10 CFR part 436, subpart C) (<https://www.energy.gov/eere/femp/search-energy-efficient-products>) (<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) (7 CFR part 3201) (<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. 76711) (40 CFR part 82, subpart G) (<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>).

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

(iii) Products and services that meet EPA Recommendations of Specifications, Standards, and Ecolabels (<https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing>).

* * * * *

United States * * *

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

* * * * *

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) “products, and high-performance” and adding “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.

* * * * *

(c) * * *

(1) 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).

* * * * *

PART 7—ACQUISITION PLANNING

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

7.103 Agency-head responsibilities.

* * * * *

(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; 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.

* * * * *

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

7.105 Contents of written acquisition plans.

* * * * *

(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);

(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).

* * * * *

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. Removing from paragraph (b)(1)(ii)(A) “52.223–6” and adding “52.226–XX” in its place; and
 ■ b. Removing from paragraph (b)(1)(ii)(B) “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. Removing from paragraph (a)(4)(i) “52.223-6” and adding “52.226-XX” in its place; and
■ b. Removing from 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;

* * * * *

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.

* * * * *

(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—

* * * * *

(3) The Green Procurement Compilation (GPC) available at 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.

* * * * *

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-XX” 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.

■ 26. Amend section 13.302-5 by adding paragraph (d)(5) to read as follows:

13.302-5 Clauses.

* * * * *

- (d) * * *

(5) The contracting officer shall delete 52.223-XX, Sustainable Products and Services, from the clause at 52.213-4 and mark the paragraph as reserved when—

(i)(A) There is a written justification in accordance with 23.104(a) that it is not practicable to procure sustainable products and services;

(B) An exception under 23.105 applies; or

(C) An exemption under 23.106 applies; and

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

PART 15—CONTRACTING BY NEGOTIATION

15.603 [Amended]

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

PART 18—EMERGENCY ACQUISITIONS

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

18.202 Defense or recovery from certain events.

* * * * *

(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

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

■ 30. 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.

■ 31. 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 “United States”.

The addition reads as follows:

23.001 Definitions.

* * * * *

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

* * * * *

■ 32. Revise section 23.002 to read as follows:

23.002 Policy.

In accordance with section 208(a) of 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.

■ 33. Revise subpart 23.1 to read as follows:

Subpart 23.1—Sustainable Products and Services

Sec.

- 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); 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).

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, with supplemental tables of alternatives available at <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 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); and

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

23.102 Authorities.

(a) Section 208 of 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, 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.

(2) 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)). Life-cycle cost savings tools are available at <https://www.energystar.gov/buildings/save-energy-commercial-buildings/ways-save/energy-efficient-products> and <https://www.nrel.gov/analysis/tech-lcoe.html>.

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

(1) Ensure compliance with all 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, 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 during performance;

(2) 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); or

(3) Furnished by the contractor for use by the Government, including use at Government-owned contractor-operated facilities.

23.104 General procedures.

(a) *Maximum extent practicable.* If the requiring activity submits a written justification addressing the reasons described in 23.103(a), 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.* The contracting officer shall ensure the solicitation and contract identify any products and services that are not subject to the requirements of this subpart and the clause at 52.223–XX, 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, unless 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 all 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 both meet 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 all 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).

(4) Procure products and services that meet required EPA purchasing programs (see paragraph (2) of the definition of “sustainable products and services” in 2.101) unless doing so would conflict with statute, Executive order, or regulation that impose domestic manufacturing and content requirements, such as the Buy American statute (41 U.S.C. chapter 83; see part 25) and the Berry Amendment (10 U.S.C. 4862).

(d) *Resource.* The Green Procurement Compilation (GPC) available at <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 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) and for alternatives for ozone depleting substances per 23.107–4 (see 23.109(d)) (42 U.S.C. 76711), unless a written justification exists as described at 23.104(a) (42 U.S.C. 6962(c)(1) and 7 U.S.C. 8102(a)(1)(B)).

(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)).

(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)).

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).

(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, as implemented at 40 CFR 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://](https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#products)

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, as implemented at 7 CFR part 3201.

(2) The Energy Policy Act of 2005, Public Law 109–58.

(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—

- (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>.

(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)).

(2) National Energy Conservation Policy Act (42 U.S.C. 8253, 8259b, and 8262g).

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

(4) 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>, 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>.

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

(3) For information on low standby power products at <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, *et seq.*).

(2) Section 706 of Division D, title VII of the Omnibus Appropriations Act, 2009 (Pub. L. 111–8).

(3) EPA regulations, Protection of Stratospheric Ozone (40 CFR part 82).

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

(c) *Agency programs*. 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;

(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; and 40 CFR 82.84(a)(2) through (5);

(ii) Substitute acceptable alternatives to ozone-depleting substances, as identified under 42 U.S.C. 7671k, to the maximum extent practicable, as provided in 40 CFR 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); 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> for the list of alternatives found at 40 CFR 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>.

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>.

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>.

23.109 Solicitation provisions and contract clauses.

(a) *General*. Insert the clause at 52.223–XX, 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> or 7 CFR 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

(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.

■ 34. Revise subpart 23.2 to read as follows:

Subpart 23.2—Energy Savings Performance Contracts

Sec.

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).

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) 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, 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; 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>.

■ 35. 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

■ 36. Revise 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.

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

23.302 Hazardous material identification and notice of material safety data.

* * * * *

23.303 [Redesignated as 23.304]

■ 38. Redesignate section 23.303 as section 23.304.

■ 39. 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.

■ 40. 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.

■ 41. Revise subpart 23.4 to read as follows:

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

Sec.

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—

(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 (EPCRA).

(b) Pollution Prevention Act of 1990, 42 U.S.C. 13101–13109 (PPA).

(c) 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 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, 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]

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

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.
 ■ 45. Revise subpart 23.8 to read as follows:

Subpart 23.8—Greenhouse Gas Emissions

- Sec.
- 23.800 Scope of subpart.
- 23.801 Policy.
- 23.802 Solicitation provision.

Subpart 23.8—Greenhouse Gas Emissions

23.800 Scope of subpart.

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

23.801 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.

23.802 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 23.9 [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) “position” and adding “position” 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–XX” 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–XX” in their places, 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–YY” 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 “Modernization project” in alphabetical order.

The revision and addition read as follows:

36.001 Definitions.

* * * * *

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.

* * * * *

(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); 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.

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

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 60. Amend section 42.302 by—
■ a. Removing from paragraph (a)(66) “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 subpart 23.1. 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.

* * * * *

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;
■ c. Removing paragraph (c)(2)(vi); and
■ d. Redesignating paragraphs (c)(2)(vii) and (viii) as paragraphs (c)(2)(vi) and (vii).

The revisions read as follows:

52.204–8 Annual Representations and Certifications.

* * * * *

Annual Representations and Certifications (DATE)

* * * * *

(c)(1) * * *

(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.

* * * * *

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 paragraphs (b)(39) and (40);
■ b. Removing paragraphs (b)(41) through (45);
■ c. Redesignating paragraphs (b)(46) and (47) as paragraphs (b)(41) and (42);
■ d. Revising newly redesignated paragraphs (b)(41) and (42) and adding paragraph (b)(43);
■ e. Redesignating paragraphs (b)(48) through (55) as paragraphs (b)(44) through (51);
■ f. Adding a new paragraph (b)(52); and
■ g. Redesignating paragraphs (b)(56) through (64) as paragraphs (b)(53) through (61).

The revisions and additions read as follows:

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

* * * * *

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

* * * * *

(b) * * *

— (39) 52.223–11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (DATE) (42 U.S.C. 7671, *et seq.*).
— (40) 52.223–12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (DATE) (42 U.S.C. 7671, *et seq.*).
— (41) 52.223–20, Aerosols (JUN 2016) (42 U.S.C. 7671, *et seq.*).
— (42) 52.223–21, Foams (JUN 2016) (42 U.S.C. 7671, *et seq.*).
— (43) 52.223–XX, Sustainable Products and Services (DATE) (E.O. 14057, 7 U.S.C. 8102, 42 U.S.C. 6962, 42 U.S.C. 8259b, and 42 U.S.C. 76711).

* * * * *

— (52) 52.226–YY, Encouraging Contractor Policies to Ban Text Messaging While Driving (DATE) (E.O. 13513).

* * * * *

■ 65. Amend section 52.213–4 by—
■ a. Revising the date of the clause;
■ b. Redesignating paragraphs (a)(1)(viii) through (xi) as paragraphs (a)(1)(ix) through (xii) and adding a new paragraph (a)(1)(viii);
■ c. Revising paragraphs (b)(1)(xi) through (xiii);
■ d. Removing paragraph (b)(1)(xiv);
■ e. Redesignating paragraphs (b)(1)(xv) through (xxi) as paragraphs (b)(1)(xiv) through (xx); and
■ f. Revising newly redesignated paragraphs (b)(1)(xiv) and (xv).

The revisions and addition read as follows:

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

* * * * *

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

(a) * * *

(1) * * *

(viii) 52.223–XX, Sustainable Products and Services (DATE) (E.O. 14057, 7 U.S.C. 8102, 42 U.S.C. 6962, 42 U.S.C. 8259b, and 42 U.S.C. 7671).

* * * * *

(b) * * *

(1) * * *

(xi) 52.223–5, Pollution Prevention and Right-to-Know Information (MAY 2011) (42 U.S.C. 11001–11050 and 13101–13109) (Applies to services performed on Federal facilities).

(xii) 52.223–11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (DATE) (42 U.S.C. 7671, *et seq.*) (Applies to contracts for products as prescribed at FAR 23.109(d)(1)).

(xiii) 52.223–12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (DATE) (42 U.S.C. 7671, *et seq.*) (Applies to maintenance, service, repair, or disposal of refrigeration equipment and air conditioners).

(xiv) 52.223–20, Aerosols (DATE) (42 U.S.C. 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).

(xv) 52.223–21, Foams (DATE) (42 U.S.C. 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.

* * * * *

■ 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 (DATE)

As required by the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8101(4)) and the Energy Policy Act of 2005 (7 U.S.C. 8102(a)(2)(F)), 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) 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 (DATE)

(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) (7 CFR 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); and

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

(b) The Contractor shall report to <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 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:

* * * * *

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 (DATE)

* * * * *

52.223–6 [Redesignated as 52.226–XX]

■ 71. Redesignate section 52.223–6 as section 52.226–XX.

■ 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.

* * * * *

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) “3(e) of Executive Order 13423” and adding “207 of 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 (DATE)

* * * * *

■ 75. Amend section 52.223–11 by—

■ a. Revising the introductory text and the date of the clause;

■ b. Removing paragraph (c); and

■ c. Redesignating paragraph (d) as paragraph (c).

The revisions read as follows:

52.223–11 Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons.

As prescribed in 23.109(d)(1), insert the following clause:

Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (DATE)

* * * * *

■ 76. Amend section 52.223–12 by—

■ a. Revising the introductory text, the date of the clause, and paragraph (c)(4);

■ b. Removing paragraph (d); and

■ c. Redesignating paragraph (e) as paragraph (d).

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 (DATE)

* * * * *

(c) * * *

(4) Using reclaimed hydrofluorocarbons to service and repair refrigeration and air conditioning equipment, where feasible.

* * * * *

52.223–13 through 52.223–17 [Removed and Reserved]

■ 76. Remove and reserve sections 52.223–13 through 52.223–17.

52.223–18 [Redesignated as 52.226–YY]

■ 77. Redesignate section 52.223–18 as section 52.226–YY.

52.223–19 [Amended]

■ 78. Amend section 52.223–19 in the introductory text by removing “23.903” and adding “23.406(b)” in its place.

52.223–20 [Amended]

■ 79. Amend section 52.223–20 in the introductory text by removing “23.804(a)(3)” and adding “23.109(d)(3)” in its place.

52.223–21 [Amended]

■ 80. Amend section 52.223–21 in the introductory text by removing “23.804(a)(4)” and adding “23.109(d)(4)” in its place.

52.223–22 [Amended]

■ 81. Amend section 52.223–22 in the introductory text by removing “23.804(b)” and adding “23.802” in its place.

■ 82. Add section 52.223–XX to read as follows:

52.223–XX Sustainable Products and Services.

As prescribed in 23.109(a), insert the following clause:

Sustainable Products and Services (DATE)

(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) (7 CFR 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).

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) (40 CFR part 247) (<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) (10 CFR part 436, subpart C) (<https://www.energy.gov/eere/femp/search-energy-efficient-products>) and (<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) (7 CFR part 3201) (<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. 76711) (40 CFR part 82, subpart G) (<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>).

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

(iii) Product and services that meet EPA Recommendations of Specifications, Standards, and Ecolabels (<https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing>).

(b) *Requirements.*

(1) Except as provided in paragraph (b)(2) of this clause, in the performance of this contract, the Contractor shall—

(i) Deliver and furnish sustainable products and services for Government use, including use at Government-owned contractor-operated facilities;

(ii) Incorporate sustainable products and services into the construction of a public building or public works; and

(iii) 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).

(2) The contract will identify any products or services that are not subject to this clause.

(3) Sustainable products and services must meet the applicable standards, specifications,

or other program requirements at time of quote or offer submission.

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

(1) Provide products and services that meet all applicable statutory purchasing program requirements. 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, procure the EPA-designated item.

(2) 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.

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

(4) Procure products and services that meet required EPA purchasing programs (see paragraph (2) of the definition of “sustainable products and services” in paragraph (a) of this clause) unless doing so would conflict with statute, Executive order, or regulation that impose domestic manufacturing and content requirements, such as the Buy American statute (41 U.S.C. chapter 83; see FAR part 25) and the Berry Amendment (10 U.S.C. 4862).

(d) *Resource.* The Green Procurement Compilation (GPC) available at <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)

■ 83. Amend newly redesignated section 52.226–XX 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–XX Drug-Free Workplace.

As prescribed in 26.506, insert the following clause:

Drug-Free Workplace (DATE)

* * * * *

■ 84. Amend newly redesignated section 52.226–YY by revising the introductory text and the date of the clause to read as follows:

52.226–YY 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 (DATE)

* * * * *

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