

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T08–0409 to read as follows:

§ 165.T08–0409 Safety Zones; Gulf of Mexico and South Bay, Boca Chica Beach, TX

(a) *Location.* The following areas are safety zones: Safety Zone A consists of all navigable waters of the Gulf of Mexico, from the surface to bottom, encompassed by a line connecting the following points beginning at Point 1: 26°2'36" N 097°9'8" W, thence to Point 2: 26°3'0" N 097°7'10" W, thence to Point 3: 26°7'0" N 097°57'0" W, thence to Point 4: 26°6'54" N 096°55'46" W, thence following the 12NM line to United States of America/Mexico Maritime Boundary Line, thence following the United States of America/Mexico Maritime Boundary Line to Point 5: 25°57'24.2" N 097°8'49" W, thence following the coast to Point 1. Safety Zone B consists of all navigable waters of South Bay, from the surface to bottom, encompassed by a line connecting the following points beginning at Point 6: 26°2'45" N 097°11'6.3" W, thence to Point 7: 26°2'45" N 097°10'53.4" W, thence following the coastline to Point 6. These coordinates are based on World Geodetic System (WGS) 84.

(b) *Enforcement period.* This section will be subject to enforcement from 6 a.m. to noon on each day, from June 5, 2024, through June 17, 2024.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into the temporary safety zones described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port, Sector Corpus Christi (COTP) or a designated representative. They may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450.

(2) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

Dated: May 24, 2024.

Jason Gunning,

Captain, U.S. Coast Guard, Captain of the Port, Sector Corpus Christi.

[FR Doc. 2024–12330 Filed 6–5–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Part 225**

[Docket DARS–2023–0042]

RIN 0750–AL40

Defense Federal Acquisition Regulation Supplement: Limitation on the Acquisition of Certain Goods Other Than United States Goods (DFARS Case 2021–D022); Correction

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Correcting amendment.

SUMMARY: DoD is correcting final regulations that published in the **Federal Register** on May 30, 2024, to correct the prescription for a clause regarding the acquisition of certain satellite components.

DATES: Effective June 6, 2024.

FOR FURTHER INFORMATION CONTACT: Jennifer D. Johnson, telephone 703–717–8226.

SUPPLEMENTARY INFORMATION: On May 30, 2024, DoD published in the **Federal Register** at 89 FR 46811 a final rule titled “Limitation on the Acquisition of Certain Goods Other Than United States Goods”. The purpose of this correction is to reflect that the prescription at DFARS 225.7004–7, paragraph (d), should specify use of the clause at 252.225–7064, Restriction on Acquisition of Certain Satellite Components, in solicitations and contracts for the acquisition of star trackers for certain satellites.

List of Subjects in 48 CFR Part 225

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Amend section 225.7004–7 by revising paragraph (d) introductory text to read as follows:

225.7004–7 Contract clauses.

* * * * *

(d) Use the clause at 252.225–7064, Restriction on Acquisition of Certain Satellite Components, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the simplified acquisition threshold and that include the acquisition of star trackers unless—

* * * * *

[FR Doc. 2024–12401 Filed 6–5–24; 8:45 am]

BILLING CODE 6001–FR–P

GENERAL SERVICES ADMINISTRATION**48 CFR Parts 502, 538, and 552**

[GSAR Case 2022–G517; Docket No. GSA–GSAR–2023–0028; Sequence No. 1]

RIN 3090–AK60

General Services Administration Acquisition Regulation; Reduction of Single-Use Plastic Packaging

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).
ACTION: Final rule.

SUMMARY: The General Services Administration is amending the General Services Administration Acquisition Regulation to add a new provision and clause to identify single-use plastic free packaging availability for products under the Federal Supply Schedules with the goal of reducing single-use plastic waste.

DATES: Effective July 8, 2024.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Adina Torberntsson, Procurement Analyst, at gsarpolicy@gsa.gov or 720–445–0390. For information pertaining to

status or publication schedules, contact the Regulatory Secretariat Division at GSARegSec@gsa.gov or 202–501–4755. Please cite GSAR Case 2022–G517.

SUPPLEMENTARY INFORMATION:

I. Background

On December 26, 2023, the General Services Administration (GSA) published a proposed rule to the **Federal Register** at 88 FR 88856 to address single-use plastic (SUP) and packaging materials in the Federal Supply Schedule (FSS). Prior to the proposed rule being published, an Advanced Notice of Proposed Rulemaking (ANPR) was issued on July 7, 2022.¹ Feedback from environmental organizations, other federal agencies (to include federal scientists, industry associations and advocates, Congressional members, and GSA's Federal Advisory Committee) were all taken into consideration for the development of the proposed rule.

The final rule provides definitions to the GSA Acquisition Regulation (GSAR), as well as a provision and clause that will allow FSS offerors to provide to agencies single-use plastic free (SUP free) packaging.

II. Discussion and Analysis

A. Summary of Significant Changes

The final rule clarifies that an icon will be utilized in GSA's acquisition platforms to identify SUP free packaging, regardless if it is brand/product packaging or shipping packaging. A singular icon is being added to provide flexibility in identifying the offered product. The remaining text from the rule, to include the definitions, remains the same.

B. Analysis of Public Comments

In summary, 45 public comments were received for the rule during the comment period that lasted from December 26, 2023 through February 26, 2024. Commenters ranged from individuals, academia, industry, industry associations, environmental organizations, and state government offices.

The comments are highlighted below as they address ideas on implementation, and raise concerns about environmental impact, alternative approaches, cost, compliance and legal authority.

Implementation

Comment: Several commenters requested to phase out and/or completely eliminate plastics,

specifically focused on banning polystyrene and plastic film, from the products sold on the FSS.

Response: The scope of the rule is seeking to incentivize through marketing opportunities on the Federal Supply Schedule the reduction of single-use plastic (SUP) packaging by providing an icon to easily identify products which are SUP free for federal acquisition by highlighting those products on the Schedule; seeking to ban these products is outside the scope of this rulemaking.

Comment: A handful of commenters asked for third party verifiers as part of the rule implementation to confirm the use of SUP free packaging and provide more rule constraints.

Response: GSA did not accept this recommendation as it is outside the scope of this rulemaking. Third party verification would add regulatory burden and could discourage small businesses from participating in the FSS program.

Comment: Multiple commenters asked for phased implementation of the rule, with some specifically requesting mandatory applicability.

Response: The rule allows contracting offices to use their judgment based on the requirements of individual acquisitions when deciding to apply the clause and provision. Implementation guidance will be issued once this rule is effective and can be found at the FSS refresh,² which is located at: <https://sam.gov/opp/88193aba7dfe499ea1e48cd303dea73b/view>.

GSA is not mandating FSS offerors provide SUP free packaging; rather, it allows offerors to identify whether such packaging is available to ordering agencies. GSA is not making it mandatory to provide flexibility in solutions offered on the FSS.

Comment: One commenter asked for more restrictive language in the clause to specify the format or structure for presenting price information. The commentator stated that having a standardized format would facilitate consistency and ease of comparison for ordering activities.

Response: No change required. GSA already has a standardized format as it relates to presenting price information. The submission of price proposals is included in the Federal Supply Schedule Instructions to Offerors. Offerors follow these instructions when submitting their price proposals.

Comment: One commenter asked to include additional examples in the definitions.

Response: This recommendation will be taken into consideration in the agency's implementation instructions or frequently asked questions.

Comment: One commenter asked to include alternative packaging examples.

Response: This recommendation will be taken into consideration in the agency's implementation instructions or frequently asked questions.

Comment: Multiple commenters asked about a pilot program to address plastic waste.

Response: GSA has had an ongoing initiative³ for the past three (3) years to encourage innovation for sustainability in federal acquisition within the agency, and will continue to pursue this program in addition to this rule. While the program was not focused on plastic waste specifically, it encourages the use of innovative contracting solutions that address environmental issues.

Comment: One commenter asked to limit the definition of SUP to remove language referencing the disposal of SUP.

Response: This comment is not adopted as the proposed change to the language would reduce the impact of the rule and further confuse GSA offerors who are trying to implement the rule. The rule is not about the disposal, or recycling if a product under the right conditions could be recyclable, it is merely about reduction.

Comment: Multiple commenters asserted that the rule will diminish the efficiency of federal procurement.

Response: It is unclear what the basis is for how the rule would diminish the efficiency of federal procurement. Providing an icon for SUP free packaging will enhance procurement efficiency by providing an additional alternative, increasing visibility, and permitting the buyer to consider any price addition or savings.

Comment: One commenter asked for the meaning of the term "competent and reliable evidence."

Response: This plain language term is utilized to provide the Contracting Officer the flexibility to determine what is acceptable from a pragmatic perspective. Guidance for contracting officers is also provided in GSAR 552.238–78 Identification of Products that Have Environmental Attributes and thus is not new to environmental purchasing.

Environmental Impacts

Comment: Multiple commenters, including mass mailing submissions, provided feedback that further commitments were needed to maximize

¹ 87 FR 40476.

² This action is also referred to as the MAS refresh with MAS and FSS being used interchangeably.

³ GSA Acquisition Letter MV–21–10.

environmental impact. This messaging was echoed by multiple organizations and other commenters asking GSA to do more.

Response: The FSS program is GSA's premier contract vehicle, offering thousands of contractors the opportunity to do business with the federal government. The rule encourages industry to offer SUP free packaged products in their FSS contracts that agencies can buy. The rule is not intended to "ban" or regulate any particular item. For purposes of this rule, GSA is asking to be offered, or made available, SUP free packaging. For this reason, the comments that called for either the ban, or removal of products from the FSS are outside of the scope of this rule. The anticipated benefit of the rule is the coordination of industry and FSS ordering officials to reduce the single-use plastic waste stream. Plastic packaging accounts for 40 percent of all plastic produced.⁴ The reduction of plastic packaging waste is impactful because it is an element of multiple items offered on the FSS.

Comment: Multiple commenters recommended that GSA should follow the expert advice of its GSA Acquisition Policy Federal Advisory Committee to develop policies and a strategy with numerical goals to phase out all SUP products across GSA, including plastic bags, utensils, food ware, and beverage bottles. The commenters further requested that GSA require the use of SUP free or reusable packaging when federal agencies purchase products using GSA contracts, incentivize the products in federal agencies' purchases, and share this information publicly.

Response: GSA's Acquisition Federal Advisory Committee has made several recommendations.⁵ This rule is in line with their recommendations, specifically to address single-use plastic waste through rulemaking. GSA will continue evaluating all of the recommendations from the Committee and will be taking additional implementation actions.

Alternative Approaches

Comment: Several commenters asked for the withdrawal of the rule, and instead requested a mandatory ban of SUP products from the FSS, in addition to a FAR change.

⁴ Fast Facts About Plastic Pollution, National Geographic, see <https://www.nationalgeographic.com/science/article/plastics-facts-infographics-ocean-pollution#:~:text=40%20percent%20of%20plastic%20produced,just%20once%20and%20then%20discarded.>

⁵ GSA Acquisition Policy Federal Advisory Recommendation Reports.

Response: This comment is not adopted. Requiring a mandatory ban on single use plastic products is outside of the scope of the rule.

Comment: Multiple commenters included comments to encourage life cycle cost analysis versus limitation of SUP. Comments also included information on the recycling of plastics, to include chemical recycling.

Response: The rule incentivizes suppliers to package goods without SUP packaging. Buyers of commercial products through GSA Advantage![®] or through the FSS are not likely to use life cycle cost analysis. This rule is not scoped to address waste management.

Costs

In the comments received, cost was addressed not numerically, but in the overarching concept of efficiency as it relates to the market.

Comment: A commenter asked GSA to recognize reusable packaging as an alternative to SUP free packaging.

Response: No change required. The definition of SUP free includes reusable packaging that is typically refilled or otherwise reused by the producer. To be clear, packaging that may be reusable, but is not typically reused, would not be considered here as it is outside the scope of the rule.

Comment: A commenter asserted that there would be extra costs for the production, transportation, and disposal as a result of the rule.

Response: The rule is voluntary and provides additional opportunity for Federal Supply Schedule contractors to promote their products that have SUP free packaging.

Comment: A commenter provided a statement of support for the rule having a voluntary incentive based approach. This comment includes a request to clarify whether the icon is plural or singular.

Response: Noted. The final rule is revised to clarify one icon is anticipated.

Compliance

Comment: One commenter questioned if the "SUP free" term, under the guidance provided by the Federal Trade Commission (FTC), would be determined to be a claim of general environmental benefit, and in turn would require verifiable substantiation of the claim such as life cycle data.

Response: No. The FTC Green Guides⁶ and ISO 18601:2013 are referenced in developing the definition.

⁶ https://www.ftc.gov/sites/default/files/documents/federal_register_notices/guides-use-environmental-marketing-claims-green-guides/greenguidesfrn.pdf.

GSA is not requiring sustainable packaging, which would require some sort of an assessment as to contents. Instead the agency is asking for the absence of something, in this case single-use plastic, from packaging. The result will be an icon in GSA Advantage![®], not a new ecolabel on the material itself. While the FTC Green Guides are referenced in developing the definition, the FTC process to evaluate environmental marketing claims is a separate process.

Authority

Comment: One commenter questioned GSA's authority to ban SUP, drawing parallel to GSA's 2020 promulgated regulations that barred the federal government from buying goods or services from any company that uses products from Huawei Technologies and several other Chinese companies.

Response: This rule is not a ban. The law and regulations underlying the products that utilized Huawei Technologies differs from this rule, and was instituted by the FAR Council, of which GSA is one member. GSA has authority to govern the Federal Supply Schedule program under Title 41 of the United States Code (41 U.S.C. 152(3)), including this voluntary SUP free packaging policy.

Comment: One commenter questioned GSA's authority to issue plastic waste regulations, asking if the scope of authority for GSA to issue this rule is exceeded as the rule focuses less on effective and efficient government procurement and more on green policies.

Response: GSA is authorized to issue regulations, including the GSAR, to manage the relationship between GSA and our contractors in accordance with 40 U.S.C. 121. GSA is further authorized to issue the rule in accordance with 41 U.S.C. 152(3), which provides GSA the authority to manage the Multiple Award Schedules Program, also referred to as the FSS Program. GSA is further empowered to issue the rule in accordance with 40 U.S.C. 501-502 which provides GSA authorization for procurements for executive agencies and other entities, including the FSS Program. This rule will enhance the effectiveness and efficiency of Government contracts through providing an icon identifying when SUP free packaging is being used in a procurement. The FSS Program is made up of multiple contracts in which GSA asks the contractors to "offer" different commercial supplies and services to the Government. In turn the intent of this rule is to encourage these contractors to offer SUP free packaging. This rule is

not a ban, it is merely providing an opportunity for GSA industry partners to offer SUP free packaging and to make that offering visible.

Comment: Multiple commenters asked that GSA specifically ban biobased plastics, and provide a change to the FAR.

Response: GSA declines to adopt this comment. This comment is outside of the scope of this rule. Biobased plastic products fall under the BioPreferred program which is administered by the United States Department of Agriculture (USDA) and is anchored by the Farm Bill.⁷ In addition, this comment is outside the scope of GSA's independent regulatory authority. A FAR change would require approval of the entire FAR Council (*i.e.*, DOD, NASA and GSA).

III. Expected Impact of the Rule

There were no public comments received that are specific to the economic impact statement of the rule. As such, the analysis remains the same as before. This analysis includes both the cost and benefit impacts to both the public and GSA. The analysis includes identifying relevant products, developing a distinguishable icon, and developing internal guidance to help contracting activities learn how to apply searching for the icon to procure the environmentally preferable products.

The rule is specific to GSA's FSS program, with the intent of significantly reducing the single-use plastic waste stream. When voluntarily pursued, this action will reduce the Government's waste generation, and potentially save industry partners money by having them reduce unnecessary packaging as described in some of the high-profile case studies mentioned in section I.D. of the Proposed Rule document "Industry Practices and Consumer Trends". It is expected that by reducing the packaging's overall bulk, industry will be better positioned to ship their items efficiently and effectively. Reducing excessive packaging has proven effective in increasing the amount of goods that can be loaded for transportation and is therefore helpful in the distribution of products.

General Compliance Requirements

The rule will enable GSA to incentivize contractors to voluntarily provide SUP free packaging information through GSA's online system. The estimated cost per contractor is \$2,087. The calculations as to how GSA got to this estimate are further described later in section Summary of Public Costs.

The SUP free packaging identification provision allows FSS contractors to identify products that are either packaged and/or shipped without single-use plastic packaging. The rule also includes a clause for the contractor that allows for either a price premium or discount for SUP-free packaging when such a premium or discount is consistent with their commercial practice.

Benefits

This rule is intended to benefit GSA and customer agencies by reducing the single-use plastic waste stream.

The Federal Government is the world's single largest purchaser of goods and services, spending over \$694 billion⁸ in contracts in Fiscal Year 2022 alone. Public procurement can drive innovation and be a catalyst for adoption of new norms and global standards. Since the FSS is the premiere entry point for commercial contractors to sell products (and services and solutions) to the Federal Government, the goal is to encourage the adoption of a new procurement norm to reduce single-use, unrecyclable, difficult to recycle, or frequently littered products plastic waste. Practices introduced or highlighted for the FSS can easily be adopted into other Government contracts.

Overall, the rule is intended to benefit the public by encouraging positive behaviors in reducing waste, and reducing product costs by building in efficiencies. The rule is an initial step to continue to work with industry partners in addressing the intersection of waste materials and logistical efficiency in providing better packaging. This is an important first step in working with our suppliers in developing sustainable solutions together to meet mutual future goals.

Estimated Public Costs

The following is a summary of the estimated cost impacts to the public in addressing this new requirement to reduce single-use plastic packaging. These costs are incurred one-time upfront and are not recurring to participating contractors.

1. Regulatory Familiarization

Regulatory familiarization includes the amount of time and effort it takes a company to become familiar with the requirements of the rule. The identification provision and availability clause speak to the behaviors that GSA

wants to see industry adopt when doing business under GSA contracts. The time to read over and digest the information provided in this rule is negligible. The provision is similar to other self-identifying provisions utilized in Government acquisition.

For this reason, the regulations require more of a familiarization in learning how to register in the electronic tool described during their contract's refresh; the assumption is 1 hour of time. GSA calculated the time based on the agency's subject matter expertise. We utilized the total number of Federal Supply Schedule contracts. The individual cost per each FSS contractor would be \$89.96 for one hour of time at a GS-12 Step 5 rate.⁹ The upper bound total cost for regulatory familiarization if all FSS contractors were to participate would equal \$1,259,440.¹⁰

2. SUP Free Packaging Identification

The costs to comply with the SUP free packaging identification provision includes time for the offeror to analyze their product catalog, identify existing SUP free offerings, identify potential new (SUP) packaging offerings, and complete the provision questions.

The anticipated average time, based on GSA's knowledge of the FSS program, to analyze the existing product catalog is 1 hour. This assertion is applied, since no industry feedback on this calculation or other time calculations were received. The anticipated average time to identify existing and potential new SUP free packaging offerings is 1 hour. The anticipated time to answer the provision is 0.1 hours. The individual cost per each FSS contractor would thus be \$188.92 for 2.1 hours of time at a GS-12 Step 5 rate. The upper bound total cost for SUP free packaging identification if all FSS contractors were to participate would equal \$2,644,824.

3. SUP Free Packaging Availability

The costs to comply with the SUP free Packaging Availability clause includes time for the offeror to research and determine price premiums or discounts for SUP free offerings and submit the information.

The anticipated average time to research and determine the applicable pricings is 20 hours. The anticipated

⁹ OPM Pay Table 2024 Rates Rest of United States. We assume this work is done by an employee equivalent to the GS-12 step 5 level. The hourly wage at this level is \$44.98 which we adjust upward by 100% to \$89.96 to account for fringe benefit and overhead costs.

¹⁰ The formula to calculate this cost is 14,000 contracts multiplied by the per contractor cost of \$89.96.

⁸ A Snapshot of Government-Wide Contracting for FY, April 15, 2023, <https://www.gao.gov/blog/snapshot-government-wide-contracting-fy-2022>.

⁷ 2002 Farm Bill.

time to complete the submission is 0.1 hours. The individual cost per each FSS contractor would thus be \$1,808.20 for 20.1 hours at a GS-12 Step 5 rate. The upper bound total cost for complying with the SUP free Packaging Availability clause if all FSS contractors were to participate would equal \$25,314,744.

4. Anticipated Market Shifts

As described in the proposed rule¹¹ there is a strong indication that a reduction in single-use plastic improves the marketability of a company and positively displays a company's values. As explained in the proposed rule, multiple states have adopted policies to address plastic pollution, and consumer trends are favoring a reduction in SUP. As the fifth largest economy in the world by GDP, California's legislation is a great indicator that the market can react to a reduction in single-use plastic packaging. Multiple states have followed suit with similar legislative actions to reduce single-use plastic packaging, including Connecticut, Delaware, Hawaii, Maine, New York, Oregon, and Vermont.¹² With the market trending in this direction, accepting this change may assist GSA FSS contractors in their overall marketing efforts within the private sector as well.

Given the volume of purchases made through the FSS every year by federal, state, local, tribal governments, and other eligible buyers for commercial products, services, and other solutions, this rule is likely to effect supply and demand shifts in plastics markets.

The importance of this rule being voluntary is it allows the FSS contractors, who are predominantly small businesses, an opportunity to consider how to implement these market changes. By focusing on packaging, it is an important first step to address plastic in one area of their supply chain. The rule encourages operational decisions to reduce plastic waste, and ultimately will influence the market by reducing offerings that contain single-use plastic packaging waste.

Federal agencies and FSS-eligible buyers are seeking to eliminate their plastic waste, so those agencies will be ones to seek out this icon in helping them accomplish their goals. The rule will support the market shift by using

the new SUP free icon as an important discriminator when buyers are making purchasing decisions. FSS contractors who adopt this policy change will become more marketable than their peers who decline this voluntary measure. The resulting competitive disadvantage to contractors that initially choose not to adopt this rule's policy will likely incentivize these firms to reconsider adoption. This rule could also create positive spillovers as non-FSS contracting firms adopt similar policies to compete with FSS contractors in non-FSS markets.

5. Summary of Public Costs

The estimated overall cost per contractor who chooses to participate is \$2,087.¹³ The upper bound total estimated public cost of compliance with this rule, if all FSS contractors adopted this voluntary action, would be \$29,219,008.¹⁴ We assume as a lower bound that 25 percent of FSS contractors will adopt this voluntary action, in which case the lower bound total estimated public cost would be one quarter of the upper bound, or \$7,304,752.

Once recorded, there is no anticipated additional cost during subsequent years of performance unless the offeror is providing additional SUP free packaging options. However, this cost would be absorbed with the cost the contractor would experience any time that they modified their FSS price list, which they would do regardless if the rule was issued. The anticipated time for this action is so minimal there would not be additional calculated cost associated with it.

With the FSS contractors' identification of SUP free packaging being voluntary, the indirect benefits to adopting this change far outweigh the costs. FSS contractors who voluntarily comply will have a competitive advantage by being able to market themselves utilizing the new SUP free packaging icon on GSA Advantage![®]. The intent is for the market to then shift to more SUP-free packaged products to reduce the SUP waste stream. FSS contractors are able to invest in this change which may provide greater visibility on GSA's electronic tools to Federal agencies and FSS-eligible buyers. With the market trending in this

direction, accepting this change may assist GSA FSS contractors in their overall marketing efforts within the private sector as well.

GSA Costs

1. Update to GSA e-Tools

GSA reviewed various electronic tools that could support this rule. The agency plans to utilize existing online tools such as GSA Advantage![®] which has the benefit of keeping costs low by utilizing IT infrastructure that already exists, and the added benefit of industry partners knowing how to utilize the system. During public comment, no alternative GSA tools that would be more beneficial to utilize were identified.

Capitalizing on the user interface knowledge, for both the GSA and industry, is pivotal in being able to implement the rule quickly.

The estimated hours to update the existing systems is 800 hours (assuming 5 employees working full time on this project for 4 weeks) at a GS-12, step 5¹⁵ equivalent rate. The total for this effort would equal \$71,968 (800 × \$89.96), which is a fixed cost for the Government regardless of the number of FSS contractor participants.

2. Workforce Familiarization

GSA contracting officers will need to become familiar with the new policy at GSAR 502, 538, and 552. The GSA contracting officers will need to review these changes, interpret them, and apply them as prescribed.

GSA contracting officers are required to remain current on policies for procurement, such as changes to the GSAR. Review of such policy changes are considered a part of the normal duties of contracting personnel. As such, this analysis does not quantify the time and effort for contracting officers to become familiar with the rule. It is acknowledged that there is time and effort involved for the acquisition workforce to become familiar with the rule or the tools available and to assist contractors with compliance, though those potential burden hours and costs are minimal.

3. SUP Free Packaging Material Costs

As a voluntary measure, GSA assumes that price premiums and discounts for SUP free packaging will average out to zero additional cost. This assumption was not disputed during public comments.

¹¹ 88 FR 88856 see section *Industry Practices and Consumer Trends*.

¹² <https://www.ncsl.org/environment-and-natural-resources/state-plastic-bag-legislation#:~:text=Eight%20states%E2%80%9494California%2C%20Connecticut%2C,banned%20single%2Duse%20plastic%20bags.>

¹³ This overall per contractor cost is the sum of the regulatory familiarization cost of \$89.96, the SUP Free Packaging Identification cost of \$188.93, and the availability clause compliance cost of \$1,808.30.

¹⁴ This total cost is the sum of the regulatory familiarization cost of \$1,259,440, the SUP Free Packaging Identification cost of \$2,644,824, and the availability clause compliance cost of \$25,314,744.

¹⁵ 2023 Rest of US, 12 Step 9 × 2.0 fringe = \$89.96; the rate is adjusted upward by 100% to adjust for overhead and benefits.

4. Summary of GSA Costs

The total estimated GSA cost of implementation of this rule would be \$71,968¹⁶ regardless of the number of industry participants.

5. Summary of Overall Costs

The overall total cost, including both Public and Government costs, is outlined in the table below. Public costs are presented as a range to reflect uncertainty around voluntary

participation. We calculate the upper bound of public costs by assuming all FSS contractors participate, and we calculate the lower bound of public costs by assuming only 25 percent of FSS contractors participate.

Action	Number of hours	Rate per hour	Cost per participant	Number of participants	Total costs
Public Costs (Maximum) .....	.....	.....	\$2,087	14,000	\$29,219,008
Regulatory Familiarization	1	89.96	89.96	14,000	1,259,440
SUP Free Packaging Identification	2.1	89.96	188.92	14,000	2,644,824
SUP Free Packaging Availability	20.1	89.96	1,808.20	14,000	25,314,744
Public Costs (Minimum) .....	.....	.....	2,087	3,500	7,304,752
Regulatory Familiarization	1	89.96	89.96	3,500	314,860
SUP Free Packaging Identification	2.1	89.96	188.92	3,500	661,206
SUP Free Packaging Availability	20.1	89.96	1,808.20	3,500	6,328,686
Government Costs (Fixed) .....	.....	.....	89.86	5	71,968
System Updates	800	89.86	89.86	5	71,968
Total Rule Maximum .....	.....	.....	.....	.....	29,290,976
Total Rule Minimum .....	.....	.....	.....	.....	7,376,720

Alternatives Considered

When researching how to address this rule, several solutions were considered. After publishing the ANPR, it was determined that a rule that focused on reduction is preferable to alternatives such as recycling or mandatory elimination of plastic packaging.

GSA’s mission is unrelated to environmental regulated programs such as recycling. Additionally, the recycling programs that GSA utilizes vary and are governed at local, municipal levels where the agency’s offices are located.

Further, a rule seeking a mandatory elimination of plastic packaging may not be a feasible solution depending on what is being procured. For some supplies, such as healthcare products, plastic packaging can be a beneficial material. This rule is not seeking plastic elimination as users of FSS may have a need for a product packaged with single use plastic, so a broad elimination may not be beneficial.

While there are identified alternatives, described above as recycling or elimination, to reach a sustainable outcome regarding packaging, GSA is aware of the potential impact of issuing a broad rule without providing space for industry to pivot. Given the different types of products that GSA procures, a rule asking for changes to packaging that provides flexibility is the best method to keep costs down, while reaching a sustainable solution.

IV. Executive Order 12866, 13563 and 14094

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. E.O. 14094 Modernizing Regulatory Review¹⁷ supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563.

OIRA has determined this rule to be a significant regulatory action. As a significant rule, this action is subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

OIRA has determined that this rule is not a major rule under 5 U.S.C. 804(2). Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a “major rule” may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The General Services Administration will submit a report containing this rule and other required information to the U.S. Senate, the U.S.

House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

VI. Regulatory Flexibility Act

GSA does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule change allows for many different solutions to the offeror as to how to propose a solution that considers transitioning from plastic packaging to SUP free packaging.

GSA has prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

The rule will apply to large and small businesses. For purposes of this assessment, information generated from the FAS Schedule Sales Query Plus (SSQ+) has been used as the basis for estimating the number of contractors that may be involved. There are approximately 14,000 FSS contractors, of which over 12,000 (85 percent) were small business entities. There were no comments received that would indicate that the rule places small businesses at a disadvantage, if anything there were comments indicating that the rule benefits small businesses ability to promote themselves on the Schedule.

The rule includes a provision for offerors to self-identify if they include single-use plastic (SUP) free packaging. The manner in which the offeror is answered, is then visible in a GSA electronic tool, which is provided by the agency. There are no fees associated with the identification tool, and the provision consists of two questions.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

¹⁶ GS–12 Step 5 at \$89.96 per hour × 800 hours = \$71,968.

¹⁷ <https://www.federalregister.gov/documents/2023/04/11/2023-07760/modernizing-regulatory-review>.

There are no known alternatives to this rule which would accomplish the stated objectives. Rule alternatives that could meet similar objectives are not advantageous to either the GSA or industry due to excessive cost and burden. An alternative would be to mandate specific types of packaging. Depending on the industry, there may be unintended cost consequences for a total change in packaging (for example transitioning from plastic to glass, the unintended cost might be due to transportation of a heavier product). For this reason the rule provides flexibility to industry to offer the Government solutions on reducing waste.

The Regulatory Secretariat will be submitting a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the Regulatory Secretariat Division.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 3501) does apply because the rule contains information collection requirements. The existing Office of Management and Budget (OMB) Control Number 3090-0303 titled "Federal Supply Schedule Solicitation Information" will be updated to reflect the information to be collected through GSAR 552.238-118 and GSAR 552.238-119.

A. Public Reporting Burden

Public reporting burden specific to this rule and the revision to collection of information previously approved is voluntary and includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

GSAR 552.238-118

The annual reporting burden is estimated as follows, based on all FSS contract holders. This is if all 14,000 contractors participate providing a response within the first year, with the time estimate based on time needed to submit the response to the provision:

- Respondents:* 14,000.
- Responses per Respondent:* 1.
- Total Responses:* 14,000.
- Hours per Response:* 2.
- Total Burden Hours:* 28,000.

GSAR 552.238-119

The annual reporting burden is estimated as follows:

- Respondents:* 14,000.
- Responses per Respondent:* 1.
- Total Responses:* 14,000.
- Hours per Response:* 2.
- Total Burden Hours:* 28,000.

Requesters may obtain a copy of the information collection documents from

the GSA Regulatory Secretariat Division, by calling 202-501-4755 or emailing *GSARegSec@gsa.gov*. Please cite "Information Collection 3090-0303", in all correspondence.

List of Subjects in 48 CFR Parts 502, 538 and 552

Government procurement.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.

Therefore, GSA amends 48 CFR parts 502, 538, and 552 as set forth below:

- 1. The authority citation for 48 CFR parts 502, 538, and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 502—DEFINITIONS OF WORDS AND TERMS

- 2. Amend section 502.101 by adding in alphabetical order the definitions of "Packaging", "Plastic", "Single use plastic (SUP)", and "Single-use plastic (SUP) free packaging" to read as follows:

502.101 Definitions.

* * * * *

Packaging means the material used to protect an item. Packaging includes, but is not limited to: brand packaging, grouped packaging, shipping packaging, ancillary packaging, and redundant packaging.

(1) Brand packaging, sales packaging or primary packaging means packaging intended to provide the user or consumer with the individual unit of the product, such as plastic casing.

(2) Grouped packaging or secondary packaging means packaging intended to bundle, sell in bulk, brand, or market/display products.

(3) Shipping packaging means packaging that serves as protection for the goods to ensure safe transport to the end customer, including:

(4) Ancillary packaging or transport packaging or tertiary packaging means packaging intended to secure the product, such as packing peanuts, wrapping materials, or molded materials. Ancillary packaging (or all shipping packaging) is typically outside of brand packaging.

(5) Redundant packaging or unnecessary packaging means packaging that does not add any measurable protection to the supply being shipped, such as multiple layers of bubble wrap to an already durable product that is encased in a cardboard box. An example of this is a home testing kit with all plastic components already packaged in

a cardboard box with cardboard inserts to absorb shock, that is then shipped in multiple layers of bubble wrap. In this example the bubble wrap is the redundant single-use plastic packaging.

Plastic means a synthetic or semisynthetic material chemically synthesized by the polymerization of organic substances that can be shaped into various rigid and flexible forms, and includes coatings and adhesives. "Plastic" excludes natural rubber or naturally occurring polymers such as proteins or starches.

Single-use plastic (SUP) packaging means any plastic used for the containment, protection, handling, delivery, or presentation of goods by a producer for a consumer with the intent of being used once and then discarded, recycled or disposed of immediately after its contents have been used or unpackaged, and typically not refilled or otherwise reused by the producer. Packaging includes, but is not limited to brand packaging, grouped packaging, shipping packaging, ancillary packaging, and redundant packaging.

Single-use plastic (SUP) free packaging means Single-use plastic (SUP) free packaging means product or shipping containment materials free of single-use plastic. Other attributes of single-use plastic free packaging may include the following: use of minimal materials, will be reused multiple times, or produces less emissions compared to traditional manufacturing or distribution. These additional attributes alone do not qualify as SUP free. Examples may include, but are not limited, to corrugated cardboard, paper products, and paper backed tape.

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

- 3. Amend section 538.273 by—
- a. Adding paragraph (a)(4);
- b. Adding paragraph (d)(40); and
- c. Removing from paragraph (e) the word "clause".

The additions read as follows:

538.273 FSS solicitation provisions and contract clauses.

* * * * *

(a) * * *

(4) 552.238-118, Single-use Plastic Free Packaging Identification.

* * * * *

(d) * * *

(40) 552.238-119, Single-use Plastic Free Packaging Availability.

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 4. Amend section 552.238–88 by—
- a. Revising the date of the clause; and
- b. Adding paragraph (c).

The revision and addition read as follows:

552.238–88 GSA Advantage![®].

* * * * *

GSA Advantage![®] (Jul 2024)

* * * * *

(c) *Single use plastic (SUP) free packaging icon.* Contractors are encouraged to utilize the GSA Advantage![®] single-use plastic (SUP) free packaging icon when applicable (see 552.238–118). The offeror may include in their price list if the contractor is providing SUP-free packaging (either for shipping or as part of the product packaging) at either a price premium or discount (see 552.238–119).

(End of clause)

- 5. Add section 552.238–118 and 552.238–119 to read as follows:

552.238–118 Single-use Plastic (SUP) Free Packaging Identification.

As prescribed in, 538.273(a) insert the following provision:

Single-Use Plastic Free Packaging Identification (July 2024)

(a) *Single-use plastic free packing promotions.* Ordering activities may focus their GSA Advantage![®] search on the designated icon and price to meet climate objectives. Contractors who want to be considered must include SUP free packaging as defined in 502.101.

(b) *Procedures.* Offerors may complete the information in paragraph (c) of this provision when the resulting contract includes supplies or products.

(1) *SUP free brand packaging.* Schedule contractors may incorporate this information as part of their Schedule price list once the products that utilize SUP free brand packaging are incorporated under their Schedule contract, prior to competing for an order for the identified product.

(2) *SUP free shipping packaging.* If the offeror is a reseller who is unable to address the brand packaging, but would like to pursue the icon for SUP free shipping packaging, they may identify this availability.

(c) *Optional identification submission.* In order to be considered for the designated icon noted in paragraph (d) of this provision, the offeror must provide the following information.

(1) *SUP free brand packaging.* The offeror identifies that some or all supplies delivered under a contract resulting from this solicitation ____ will use SUP free brand packaging. SUP free brand packaging where applicable should be included in the offer's price list.

(2) *SUP free shipping packaging.*

(i) The offeror identifies that some or all the supplies to be delivered under a contract

resulting from this solicitation ____ will use only SUP free shipping packaging. SUP free shipping packaging where applicable should be included in the offer's price list.

(ii) If the offeror responded "will" in paragraph (c)(2)(i) of this provision, the offeror identifies that the SUP free shipping packaging ____ does need to be requested by the ordering official.

(d) *Identification standards.* SUP free packaging icon for the types identified in paragraph (c) of this provision, will be available on GSA Advantage![®], as applicable.

(e) *Verification of SUP free packaging.* An offeror, in identifying an item with SUP free packaging, must possess evidence or rely on a reasonable basis to substantiate the claim. The Government will accept an offeror's claim of SUP free packaging on the basis of possession of competent and reliable evidence. For any test, analysis, research, study, or other evidence to be "competent and reliable," it must have been conducted and evaluated in an objective manner, using procedures generally accepted in the profession to yield accurate and reliable results.

(End of provision)

552.238–119 Single-use Plastic (SUP) Free Packaging Availability.

As prescribed in 538.273(d), insert the following clause:

Single-Use Plastic (SUP) Free Packaging Availability (July 2024)

(a) Definitions. As used in this clause—
Single-use plastic (SUP) packaging means any plastic used for the containment, protection, handling, delivery, or presentation of goods by a producer for a consumer with the intent of being used once and then discarded, recycled or disposed of immediately after its contents have been used or unpackage, and typically not refilled or otherwise reused by the producer. Packaging includes, but is not limited to brand packaging, grouped packaging, shipping packaging, ancillary packaging, and redundant packaging.

Single-use plastic (SUP) free packaging means product or shipping containment materials free of single-use plastic. Other attributes of single-use plastic free packaging may include the following: use of minimal materials, will be reused multiple times, or produces less emissions compared to traditional manufacturing or distribution. These additional attributes alone do not qualify as SUP free. Examples may include, but are not limited, to corrugated cardboard, paper products, and paper backed tape.

(b) *General.* The Contractor, in connection with this contract, is encouraged to—

(1) Evaluate their products for redundant or unnecessary packaging that can be eliminated without affecting quality.

(2) Package all products for shipment according to the Government's instructions or, if there are no instructions, in a manner sufficient to ensure that the products are delivered in undamaged condition with as little plastic waste material as possible.

(3) Limit the use of plastic packaging materials that have a high likelihood of not

being reused or recycled, as appropriate (e.g., plastic casing or wrapping).

(4) Adopt SUP free packaging to the maximum extent practicable, as appropriate.

(c) *Procedures.*

(1) *Price premiums and discounts.* For any single-use plastic (SUP) free packaging identified per 552.238–118, Single-use Plastic (SUP) Free Packaging Identification, the Contractor may include in the submitted price list (see the Schedule, also referred to as MAS, solicitation instructions for submitting price list SUP free packaging). The submitted FSS contract price list may include a separate means of displaying information regarding product packaging. If the Contractor is providing SUP free packaging at either a price premium or discount, this should be clearly identified in the submitted price list.

(2) *Submission requirements.* As additional SUP free packaging becomes available, the Contractor is encouraged to notify GSA of these changes, and is responsible for keeping all electronic catalog data current.

(3) *Identification of SUP free packaging.* For easy identification of SUP free packaging, once available, GSA will use a SUP free packaging icon in GSA Advantage![®].

(i) Offerors who provide SUP free packaging and want to benefit from the GSA Advantage![®] SUP free packaging icon must provide the information required in 552.238–118, Single-use Plastic (SUP) Free Packaging Identification.

(ii) The Contractor is encouraged to place the GSA logo and GSA Advantage![®] SUP free packaging icon on their website and FSS price list for applicable supplies, see <https://www.gsa.gov/logos>. If the Contractor elects to use the GSA logo or icon, the website must clearly distinguish between those items awarded on the GSA contract and any other items offered by the Contractor on an open market basis.

(d) Reliability. Accuracy of information and computation of prices for this clause is the responsibility of the Contractor. In addition to the other remedies available in the contract, the remedies may include, but are not limited to, the following:

(1) If SUP free packaging is provided at a higher rate but different packaging is received, the Government may pursue corrective action.

(2) If SUP free packaging is utilized, but the product received is damaged, the Contractor shall replace the item, refund the item, or the Government may pursue corrective action.

(3) Inclusion of incorrect information in the price list regarding SUP free packaging may cause the Contractor to correct and resubmit the price list.

(4) Failure to correct applicable information for this clause, may constitute sufficient cause for termination, pursuant to FAR 52.212–4, Contract Terms and Condition-Commercial Products and Commercial Services, or remedies as provided by law.

(End of clause)

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