

DATES: *Effective Date:* September 2, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie Duarte, Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4225, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Laura Auletta, GSA Acquisition Policy Division, at (202) 208-7279. Please cite GSAR case 2002-G506.

SUPPLEMENTARY INFORMATION:

A. Background

GSAR 538.273(a)(3) is revised to reflect the new clause title for GSAR clause 552.238-72, "Identification of Products that have Environmental Attributes." The clause has been revised to update environmental definitions and to reflect language consistent with the FAR and with Executive Orders 13101 and 13123. GSA published a proposed rule, Identification of Energy-Efficient Office Equipment and Supplies Containing Recovered Materials or Other Environmental Attributes, in the *Federal Register* at 65 FR 44508, July 18, 2000. One respondent submitted comments in response to the proposed rule. GSA considered the comments in developing the final rule by revising the clause 552.238-72 to make editorial changes for consistency and clarification with respect to the definition of "energy-efficient product." The clause was also revised to clarify the requirement to identify products designated by the Environmental Protection Agency (EPA) in their Comprehensive Procurement Guidelines (CPGs) that meet EPA purchasing recommendations for recovered and post-consumer material content. These specifically designated products should be identified separate from the umbrella category of products containing recovered materials. The rule includes information on attaching icons to product offerings in *GSA Advantage!* to indicate specific environmental attributes.

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not 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.* These environmental attributes are salient characteristics of the products offered and, therefore, are well known to vendors who market to Government customers required or encouraged to purchase products with specific environmental attributes. Therefore, the identification of such attributes in the offer and other marketing materials such as brochures, catalogs, websites, and *GSA Advantage!* does not constitute a significant economic impact.

D. Paperwork Reduction Act

The revised clause at 552.238-72, Identification of Products that have Environmental Attributes, contains an information collection requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). However, the revisions to the clause made by this rule do not affect the information collection requirement approved previously by the Office of Management and Budget (OMB) and assigned OMB Control Number 3090-0262.

List of Subjects in 48 CFR Parts 538 and 552

Government procurement.

Dated: August 26, 2003.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

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

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

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

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

■ 2. Amend section 538.273 by revising paragraph (a)(3) to read as follows:

538.273 Contract clauses.

(a) * * *

(3) 552.238-72, Identification of Products that have Environmental Attributes.

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PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 552.212-72 by revising the date of the clause; and in paragraph (b) by revising entry 552.238-72 to read as follows:

552.212-72 Contract terms and conditions required to implement statutes or Executive Orders applicable to GSA acquisition of commercial items.

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Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items (Sept 2003)

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(b) * * *

552.238-72 Identification of Products that have Environmental Attributes
■ 4. Revise section 552.238-72 to read as follows:

552.238-72 Identification of products that have environmental attributes.

As prescribed in 538.273(a)(3), insert the following clause:

Identification of Products That Have Environmental Attributes (Sept. 2003)

(a) Several laws, Executive orders, and Agency directives require Federal buyers to purchase products that are less harmful to the environment, when they are life cycle cost-effective (*see* FAR Subpart 23.7). The U.S. General Services Administration (GSA) requires contractors to highlight environmental products under Federal Supply Service schedule contracts in various communications media (*e.g.*, publications and electronic formats).

(b) *Definitions.* As used in this clause—
Energy-efficient product means a product that—

(1) Meets Department of Energy and Environmental Protection Agency criteria for use of the ENERGY STAR® trademark label; or

(2) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

GSA Advantage! is an on-line shopping mall and ordering system that provides customers with access to products and services under GSA contracts.

Other environmental attributes refers to product characteristics that provide environmental benefits, excluding recovered materials and energy and water efficiency. Several examples of these characteristics are biodegradable, recyclable, reduced pollutants, ozone safe, and low volatile organic compounds (VOCs).

Post-consumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Post-consumer material is part of the broader category of "recovered material." The Environmental Protection Agency (EPA) has developed a list of EPA-designated products in their Comprehensive Procurement Guidelines (CPGs) to provide Federal agencies with purchasing recommendations on specific products in a Recovered Materials Advisory Notice (RMAN). The RMAN contains recommended recovered and post-consumer material content levels for the specific products designated by EPA (40 CFR part 247 and <http://www.epa.gov/cpg/>).