



December 8, 2022

Class Determination CD-2023-06

GENERAL SERVICES ADMINISTRATION
APPLICABLE TO ALL GSA CONTRACTING ACTIVITIES

This written justification is in accordance with the procedures described at FAR 23.405(b)(2), in the format of Federal Acquisition Regulation (FAR) subpart 1.7.

Nature and/or description of the action being approved

There is a national shortage of recycled content paper, as documented in the findings below. Paper is an "EPA-designated item" as defined at FAR [23.401](#), since it is included in EPA's CPG with minimum recovered material requirements (see [listing](#)). While the FAR 23.403 clearly states that procurement of products containing recovered materials is within the authority and discretion of the contracting officer, this memorandum is to further document the rationale for having to procure virgin paper at this time until recycled paper is available. To meet the agency's needs, and customer agency's needs, the procedures described in FAR 23.405(b)(2) are being followed for a class exemption for recycled content paper and other paper-based products.

Regulatory Basis

The basis for this exception determination is one or more of the following:

- Per the policy FAR [23.404](#)(b), agency affirmative procurement programs must require that 100 percent of purchases of EPA-designated items contain recovered material, unless the item cannot be acquired--
 - Competitively within a reasonable time frame;
 - Meeting reasonable performance standards; or
 - At a reasonable price.
- Per the procedures at FAR [23.405](#)(b), once an item has been designated by EPA, agencies shall purchase conforming products unless one of the above exemptions applies, in which case the contracting officer must place a written justification in the contract file.
 - GSA's affirmative procurement program is implemented in GSAM subpart 523.1. GSAM [523.105](#)(a) outlines the three exemptions to complying with

EPA's minimum recovered content requirements and requires the contracting officer to document within the contract file the exception being used and to provide the supporting rationale.

FINDINGS

1. On October 6, 2022, **Resolute** Forest Products' recycled bleached kraft pulp mill warehouse in Menominee, Michigan, which it leases from KK Integrated Logistics, was the site of a large and destructive fire. Additionally, a storage warehouse leased by Johnson Controls caught fire as well. The mill warehouse stored recovered paper bales to be used to manufacture recycled bleach kraft pulp.
2. The Menominee Fire Department has stated that the fire officially is out at Resolute in Michigan. However, the impact to GSA and our federal customers is that there will be no recycled white 30%, 50%, 100% copy paper for the U.S. market until the summer of 2023 or perhaps longer. The fire took out the recovered content pulp needed to make the 30% content paper and it is going to take time to recover.
3. Boise Paper, Domtar Paper Mill and Sylvamo Paper are the primary paper mills servicing the Federal Government. GSA has not been given any timeline by Resolute regarding if and when they will begin production again. The building burned for 16 days, there were over 40 fire departments involved and the Governor declared a state of emergency.
4. On October 24, 2022, GSA received a letter from Domtar Paper that due to a major fire event in the facility of their key recycled fiber supplier, Domtar's ability to manufacture post-consumer waste recycled products had been severely impacted. The letter provides notice of a "Force Majeure" (Act of God) event and an order moratorium on recycled products. Unfortunately, the duration of this Force Majeure event and order moratorium is currently unknown.
5. On November 16, 2022, GSA received a letter from Sylvamo Paper informing us that the recent fire at their key supplier's recycled fiber facility will affect their ability to manufacture post-consumer waste recycled products. They stated that an assessment of their current finished inventory and existing post-consumer waste recycled products supply at each mill indicates they could start seeing impacts as early as December. Timing will vary by manufacturing mill and grade.
6. On November 17, 2022, GSA spoke to wholesaler S.P. Richards, which stated that the domestic paper producers are focusing their efforts on meeting virgin copy paper supply demand so recycled paper has taken somewhat of a back seat. Additionally, the available supply of usable recycled fiber has been heavily impacted by increased remote working which is not as effective at recovering used paper to be recycled. S.P. Richards will be announcing very soon that their Nature Saver recycled papers are being discontinued as their supplier is no longer able to supply them. S.P. Richards still has recycled paper, but it will continue to get more difficult to continue supplying it towards the end of the calendar year. S.P. Richards indicated that they do, however, have other non-recycled papers available for purchase. The paper industry as a whole has all of the paper mills under allocations and is only getting what

they can based on sales history.

7. On November 18, 2022, GSA had a telephone call with Domtar Paper Mill and was told there is no timeline expected for recycled fiber to be available again. They are referring to it as a “Force Majeure” - act of God, with no idea how long the recycled paper order moratorium will be in effect. At present, Domtar stated they have no supply issues with virgin paper. Additionally, Domtar was not aware of any impact to any other paper items such as envelopes and does not believe that this will be impacted by the recycled paper issue.

8. At present, supplies of recycled paper are estimated to run out in December 2022 and production will not come back on-line until the summer of 2023. The immediate need is to obtain an exception to the 30% or more recovered content requirement. In other words, GSA can still get TAA compliant copy paper; however, GSA cannot get copy paper with 30% or more recovered content. GSA will need to buy virgin paper for some period of time.

9. GSA has two large acquisition programs that supply recycled content paper. This includes the Multiple Award Schedules and GSA Global Supply.

- a. Section 7.3.7 in GSA’s OS4 Business Rules that applies to those schedule contracts are attached below. Items shall comply with the sustainable purchasing requirements set forth in FAR Part 23. Reference FAR Subpart 23.1. Sustainable Acquisition Policy and 23.7 Contracting for Environmentally Preferable Products and Services. In accordance with GSA’s business practices, all copier and reprographic paper shall be at least 30% post consumer content paper and all other paper office products shall meet the CPG recovered content standards.
- b. GSA Global Supply is committed to helping its customers achieve sustainability goals. More than a decade ago, we stopped offering virgin copier paper and offered only products with recycled content. In accordance with Executive Order 13514, we are continuing to strengthen our environmental product choices, when available

11. [FAR 11.303. Special requirements for paper](#), has two exceptions listed when “at least 30 percent post consumer fiber is not reasonably available.” These include paper with “no less than 20 percent post consumer fiber,” and “Paper, other than printing and writing paper, with the maximum practicable percentage of postconsumer fiber that is reasonably available at a reasonable price and that meets reasonable performance requirements.” (FAR 11.303(b)(2)). A message was sent to our industry partners on November 18, 2022 acknowledging the urgent shortage of recycled paper due to a recent, devastating fire at a paper mill. GSA is documenting an exemption to the current recycled content requirement in order to purchase non-recycled paper. In order to prepare for this significant change for our schedules program, we are requesting industry partners to prepare and submit modifications, as applicable, in order to temporarily add non-recycled copy paper to their MAS schedule contracts. The COs will not be able to approve the mods until this exemption is documented in accordance with FAR 23.405(b)(2).

12. Having learned from previous historical events, such as Hurricane Katrina, GSA is taking this step to make sufficient resources available. The needs of all levels of government both U.S. and worldwide have increased greatly for critical supply items such as paper, and paper based

products.

DETERMINATION

1. Nationally there is no recycled content paper available due to the aforementioned fire. To support both the agency and our customer agencies, GSA has determined that the sale of virgin copier paper is required.

2. This determination applies to GSA contracts (and the orders placed against GSA contracts); GSA procedures do not require agencies using the GSA contracts under this determination to make a separate non-availability determination. The exception permits the sale of virgin copier paper through all GSA channels including federal supply schedules, global supply, 4PL stores, and other GSA contract vehicles.

3. GSA reserves the right to amend this exception determination based on changing conditions or in response to additional information. For example, this determination may be narrowed (e.g. ending it early, and/or narrowing the applicable supply items), or may be broadened (e.g., extending the ending date and/or broadening the supply items). Amendments to this exception determination will be done as an addendum to this determination.

3. Conditions of the Exception Determination.

a. Time period for authority to use this determination: From the date this determination is signed through July 1, 2023^[2].

b. Federal Supply Classes covered by this determination: See Attachment 1.

c. Purchase dollar values to which this applies: All, at any dollar value. COs shall upload all products awarded under this authority using the [OPC Virgin Copier Paper Oversight Form](#). This form shall be used to track modifications and products awarded under this authority and to ensure prompt removal of virgin copier paper when recycled paper, compliant with EPA's CPG, becomes available.

4. Head of Contracting Activity (HCA) Responsibilities.

The Head of Contracting Activities (HCAs) in the Federal Acquisition Service Regions 2, and General Supplies and Services (GSS) provided fact-specific and researched information to support non-availability determinations for recycled copier paper. The HCA is responsible to sign any follow up documentation on this matter. Only items included in Attachment 1, added under the authority of the HCAs, are eligible to be added, temporarily, to FSS Contracts. This must be documented in writing by the HCA.

Paper and paper-based products are determined essential for GSA and our customer agencies, and are not available to meet the recycled content requirements due to the interruption to the supply chain.

The HCA for FAS Region 2, and General Supplies and Services (GSS) should stay updated on the status of paper and paper based product availability and keep both the contracting officers and the Senior Procurement Executive advised as to the status of the shortage and when recycled content paper and paper products become available.

5. Contracting Officer Responsibilities.

- a. The contracting officers shall utilize their business acumen and authority to address the procurement of paper and paper based products during this time where there is a national shortage. When modifying the aforementioned Multiple Award Schedule Contracts to add non-compliant products, utilize the [OPC Virgin Copier Paper Oversight Form](#).

Contracting Officers shall include the following advisory in Block 14 of the SF 30 to expedite removal of the products:

- *Document the contract file to reference this determination.*
- *Notify the contractor that the addition of non-CPG products is temporary and a 30 day notice to remove the non-CPG compliant products have been provided in this modification. The Government has the unilateral right to remove non-compliant products from GSA Advantage!.*
- *The date of removal is one calendar day after the end date of the exception authority as outlined in Class Determination CD-2023-06. Orders shall be for as short of duration as is feasible to ensure an adequate supply is obtained.*

Only items included in Attachment 1, added under the authority of the HCAs, are eligible to be added, temporarily, to FSS Contracts. Due to the very short duration of this authority, it will be more effective to modify existing schedule contracts than to award new ones.

Product addition modifications shall include language making clear that the item is on contract only through July 1, 2023, unless this non-availability determination is extended.

Orders placed against FSS contracts shall be for as short a period as feasible to ensure that an adequate supply of items is obtained, and must comply with the Conditions of the Exception Determination paragraph above.

- b. Non-Federal Supply Schedules. Any contract awarded, or contract modification issued, using this exception determination authority must be signed no later than June 30, 2023. Any such contracts, orders, or other agreements shall be for as short of a duration as feasible to ensure an adequate supply is obtained.^[3]

6. Pricing.

This determination is making no changes to pricing policies. Contracting Officers may rely on agreed upon price discounts or markups established in underlying contracts to quickly

modify contracts to authorize items covered by this determination.

The procurement priorities at FAR part 8 continue to apply (e.g. mandatory sources such as the AbilityOne Procurement List). Any lack of availability of AbilityOne products will be addressed separately.

EFFECTIVE DATE

This Determination is effective on the date of signature. The authority to use the exception determination is effective during the dates listed in the "Conditions of the Exception Determination" paragraph above.

SUBMITTED BY:

Lisa E. Ellis

LISA E. ELLIS, DIRECTOR, SUPPLY CHAIN & ACQUISITION SUPPORT DIVISION
(QSAC)

APPROVED BY:

Jeff Lau

JEFF LAU, HEAD CONTRACTING ACTIVITY REGION 2

DocuSigned by:
Jeffrey A. Koses 12/9/2022
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JEFFREY KOSES

SENIOR PROCUREMENT EXECUTIVE

Attachments:

Attachment 1: List of Applicable Federal Supply Classes

Attachment 2: [OS4 Business Rules](#)

Attachment 3: [OS4 Business Rules \[PDF - 136 KB\]](#)

Attachment 4: From Global Supply:

<https://www.gsa.gov/buy-through-us/purchasing-programs/requisition-programs/gsa-global-supply/sustainable-solutions-from-gsa-global-supply>

ATTACHMENT 1 - List of Applicable Federal Supply Classes

The "Class Determination and Finding applies to the following Federal Supply Classes (FSCs):

<u>FSC</u>	<u>General Products Purchased</u>	<u>Determination Applicability Begin Date</u>	<u>Determination Applicability End Date</u>
	Recycled Copier Paper		07/01/23