

GSA Acquisition Policy Federal Advisory Committee (GAP FAC) Policy & Practice Subcommittee Meeting

August 3, 2023

The GSA Acquisition Policy Federal Advisory Policy & Practice Subcommittee convened for a public meeting at 3:00 PM on August 3, 2023, virtually via Zoom, with Luke Bassis, Co-Chair, presiding.

In accordance with FACA, as amended, 5 U.S.C. App 2, the meeting was open to the public from 3:00 P.M. to 5:00 P.M. EST.

Committee Members Present:

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| Luke Bassis, Co-Chair | <i>Port Authority of New York and New Jersey</i> |
| Richard Beutel | <i>George Mason University</i> |
| Leslie Cordes | <i>Ceres</i> |
| Mark Hayden | <i>State of New Mexico</i> |
| Anish Tilak | <i>Rocky Mountain Institute</i> |
| David Waggoner | <i>Institute of Scrap Recycling Industries</i> |
| Kimberly Wise White | <i>American Chemistry Council</i> |

Absent: Nicole Darnall, Antonio Doss, Amlan Mukherjee, Jennie Romer, Steven Schooner, Stacy Smedley, Nigel Stephens

Guest Speakers & Presenters:

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| John Reeder | <i>Vice President, Federal Affairs, Environmental Working Group</i> |
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GSA Staff Present:

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| Stephanie Hardison | <i>Deputy Designated Federal Officer</i> |
| David Cochennic | <i>GAP FAC Support Team</i> |
| Skylar Holloway | <i>GAP FAC Support Team</i> |
| Annabelle Thompson | <i>Closed Captioner</i> |
| Nicole Pancino | <i>ASL Interpreters</i> |
| Daniel Swart | <i>ASL Interpreters</i> |

CALL TO ORDER

Stephanie Hardison, Deputy Designated Federal Officer, opened the public meeting by welcoming the group before reminding the public that there will be time for comments and statements at the end of the meeting. She then performed a roll call to confirm attendance and a quorum. After the quorum was met, she turned the meeting over to Co-Chair Luke Bassis.

Introductory Remarks

Co-Chair Luke Bassis welcomed the committee before reviewing the agenda and introducing speaker John Reeder who will be presenting to the subcommittee on PFAS and the new rule proposed.

Guest Speaker

John Reeder works with the Environmental Working Group (EWG). One of the principal aims is to show that PFAS is different from other sustainability objectives.

PFAS is a class of chemicals that have been in commerce for decades which can be found in many products. The regulatory system has failed to address keeping PFAS out of many common products. Due to this, it can now be found in the blood of nearly all Americans. The European Union (EU) is now considering a restriction proposal on PFAS. The EWG has also done studies that PFAS is widespread in livestock and other animals. The EPA has a detailed list of health effects due to all levels of exposure to PFAS.

The Biden Administration recognized this with a government wide plan to combat PFAS pollution in October 2021 that listed over 100 action items at EPA and the DoD. Other agencies also have action items within this. Since then, EPA proposed a listing of two PFAS hazardous substances which triggered other regulatory authorities to control the substance. In March, EPA proposed to establish drinking water standards. Those who sell you water will be required to meet a stringent standard for PFAS if this standard is finalized. They are aiming to set these standards at the lowest level that PFAS can be detected. DoD was required by Congress to restrict the purchase of PFAS containing products for two of the most widely used PFAS's known as PFOA and PFOS.

The Biden Harrison campaign had an environmental justice plan where they have four specific pledges to PFAS.

- Designating PFAS as a hazardous substance.
- Setting limits on PFAS in drinking water.
- Accelerate research on PFAS.
- Prioritizing substitutes through procurement.

There is still uncertainty around whether prioritizing substitutes through procurement will be accomplished and when.

Along with Executive Order 14057, the White House released a Fact Sheet and a memorandum addressing avoiding procurements of items containing PFAS .

There is a new rule recently published that instructs agencies to achieve a 95% sustainable procurement while continuing to ensure products meet statutory purchasing requirements and prioritizing multi attribute products. An issue that needs to be reconciled in sustainable procurement are working with statutory requirement that GSA and other government agencies have, including giving preference to bio-based products

identified by the US Department of Agriculture, EnergyStar program, the significant alternative for ozone depleting substances identified by EPA, and a requirement to use a certain percentage of recovered materials. These are good, but they complicate achieving sustainable procurement. For example, something could be bio-based, but that doesn't mean it's free from toxins such as PFAS. This issue has been raised with USDA and they would like to work around this.

There are a few issues with the new rule. The government has the burden of identifying the products that will be sustainable and meet a certain standard. GSA has the burden of providing tools and training resources to thousands of different procurement officials. There are also cost considerations, buy American requirements, and other issues around procurement.

There was a proposal to GSA to ask companies that want to sell to the government to share with the government if their products are PFAS free. This was recommended for the government multiple award schedule (MAS) which is known as the GS schedule. The GS schedule should only include PFAS free products. PFAS free products aren't available for every product the government needs to be used, but there are safer alternatives. The question is, why not put those safer alternative products on the website so the work is already done for the government official? After putting it on the GSA schedule, work through the Federal Acquisition Regulations (FAR) to incorporate the same affirmation for companies for any government contract.

The reason this works for PFAS is because added PFAS is a binary concept. Another reason it's doable is because safer alternatives are available that companies are marketing. It is also self-implementing. GSA schedule purchases comply with Executive Order 14507 for one third of government purchase transactions. Lastly, this works because it's already being done.

If you want to be on the GSA schedule for products where there are safer alternatives, you sign a statement that gets you a government wide contract to have your contract listed on the GSA MAS.

Some states are setting restrictions to steer the government away from PFAS. Many states are ahead of the federal government in this effort. The American Sustainable Business Network which represents thousands of businesses supports a legislative proposal on PFAS.

In summary, the proposal is the following:

- Phase out MAS contracts for products that contain intentionally added PFAS.
- Incorporate sustainability into FAR.
- Expand tracking and improve reporting.
- Make sustainable procurement a top tier GSA goal.

It would be good to recommend the GSA make sustainable procurement a top tier goal.

Questions

Q: Leslie Cordes – The recent appropriation bill on both the house and Senate for the DoD no longer allows climate to be a consideration for purchasing agreements. Is PFAS tied in with this?

A: John Reeder – I don't think so. In past appropriations we've had PFAS restrictions added. There are cuts to the cleanup program at DoD which is a concern.

Q: Leslie Cordes – Are there peril efforts being conducted at the state and local level to deal with procurement? In particular with schools?

A: John Reeder – I don't know any that are specific to schools. We are concerned about schools, but it's hard from a federal level since that would come from states and districts. We don't have a good handle on if schools are avoiding this.

Q: David Wagger – What is your view on intentionally added? Does it matter what the definition of PFAS is? What is the worst type of molecules, and should we prioritize the worst ones over the ones that are benign?

A: John Reeder – In the proposed legislation, we went through what is intentionally added. There's so much PFAS in the environment that it's hard to buy something that is completely free of PFAS. We are trying to go after products that are safer. There are essential use products where people will argue a product is critical because it saves lives. We aren't going after those products on the MAS.

The proposed legislation has the same definition of PFAS and it's broad due to the different amount of PFAS out there.

Q: Rich Beutel – From an oversight perspective, self-certification has an inconsistent implementation and is often abused. How would you ensure proper oversight? Without proper oversight, many private sector companies will cheat.

A: John Reeder – There are systems to look at Buy American and other audits and reviews of procurement practices within agencies in the competitive bid process. I suggest doing a spot check where there is the possibility of an audit.

Q: Rich Beutel – Are you confident that the specific and necessary expertise in terms of workforce is resident in government to do meaningful audits?

A: John Reeder – The expertise is there. I'm not sure if it's in the GSA auditing function, but it wouldn't be that hard.

Q: Stephanie Hardison – Has there been a contamination level or standards set to what the maximum or minimum level should be?

A: John Reeder – The science is still coming along on that. EPA is currently proposing a certain concentration in water. There currently aren't any other products and we are a long way from having a standard on that.

Q: Stephanie Hardison – Are there predominant areas that may have more contamination than other areas? Are we not buying from those areas? Have those types of things been considered when addressing this issue?

A: John Reeder – In some areas, people have more exposure since it's in the water. In a study, it showed that in some parts of the country, it's more in the water, fish, wildlife, and blood due to being in an area where the manufacturing of PFAS is taking place. You can't connect that directly to products.

Q: David Wagger – You spoke about picking a product with the most attributes that are desirable. How do you weigh them?

A: John Reeder – Putting a framework in place is a good place to start.

PFAS Task Group Report and Discussion

Work has begun on this recommendation. There has been research to see what has been going on in the world of PFAS in terms of regulations. The task group will look to have a discussion with the larger group on the material.

Tech Tolls Task Group Report and Discussion

Work has begun on this recommendation.

Administrative Business

The subcommittee will continue to digest materials and conduct their task group meetings to create a new recommendation. They will hear from more speakers who can give insight to the group.

Public Engagement

The subcommittee opened the conversation up to the public, but there were no comments.


Closing Remarks

Luke Bassis turned the meeting over to Stephanie Haridson.

Adjournment

Stephanie Hardison adjourned the meeting at 5:00 P.M. EST.

I hereby certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.

DocuSigned by:

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2/15/2024

Luke Bassis

Co-Chairperson

GAP FAC Policy & Practice Subcommittee

Former Chair, Steven Schooner was succeeded by Luke Bassis on September 28, 2023.