September 6, 2022

Via Electronic Transmission

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Office of Governmentwide Policy
United States General Services Administration
1800 F Street NW
Washington, DC 20405

Re: Comments on Advance Notice of Proposed Rulemaking on Reducing Single-Use Plastics

Docket GSA-GSAR-2022-0014

Dear Mr. Koses,

The Attorneys General of the District of Columbia, the Commonwealth of Massachusetts, California, Connecticut, Delaware, Illinois, Maryland, Minnesota, Oregon, Vermont, Washington, and the City of New York (collectively "the States") appreciate this opportunity to comment on the General Services Administration's ("GSA") advance notice of proposed rulemaking ("ANPR") concerning reduced procurement of single-use plastics. The GSA defines single-use plastics as "plastic materials that are used and then immediately disposed of once the item is delivered."[1] GSA's proposal includes plastics products used in packaging and shipping required for the delivery of products under GSA contracts, as well as items included on those contracts.[2]

The States support GSA's action to explore pathways to limit the federal government's procurement of single-use plastics. We agree with GSA's recognition that single-use plastics are a "significant contributor to the global plastic pollution concern" – a problem that harms the States and our residents.[3] Thus, we urge GSA to exercise its authority and revise its regulations to reduce, and eventually eliminate, the procurement and acquisition of single-use plastic products, with limited exceptions for health and safety.

We submit the following comments for GSA's consideration as the agency proceeds with future rulemaking to reduce single-use plastics in government purchases.[4]

[1] *General Services Administration Acquisition Regulation (GSAR); Single-Use Plastics and Packaging*, 87 Fed. Reg. 40,476, 40,476 (July 7, 2022).
[2] *Id.*
[3] *Id.*
[4] Where these comments specifically address the issues enumerated in the ANPR, we have so noted in the section heading.

I. Introduction

Since the 1970s, the global rate of plastics production has exceeded the production rate of any other material.[5] If production trends continue, global production of plastics is forecasted to reach 1,100 million tons by 2050.[6] About half of all plastics produced are designed to be used a single time and then discarded.[7] Plastic packaging is particularly problematic as it comprises 42 percent of all plastics produced and has the shortest lifespan.[8] Of the seven billion tons of plastic waste generated globally thus far, less than 10 percent has been recycled.[9] In the United States, the plastics recycling rate is estimated to be between 5 and 6 percent.[10] And the coronavirus pandemic exacerbated this growing crisis by increasing demand for plastic products while stalling progress on recycling systems.[11]

Plastic waste persists in our environment for centuries, polluting our waterways and oceans.[12] Plastics harm human health and the environment at every stage of their lifecycle – from the greenhouse gases ("GHG") and air toxins emitted during production to the microplastic byproducts of disposal of plastics that find their way into our food and water resources.[13] Pollution from plastics is also an environmental justice issue. Industrial facilities producing plastics are disproportionately located near communities of color and low-income communities, also known as frontline or fence line communities.[14] The oil refineries and ethane cracking facilities that transform fossil fuels into plastic feedstocks release hazardous toxic chemicals into the air and water, polluting frontline communities and creating a range of health problems for community members.[15]

Overall, the United States' response to the plastics pollution crisis has been inadequate. While many nations worldwide have established (or are poised to establish) limits on single-use

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[5] United Nations Environment Program ("UNEP"), *Our planet is choking on plastic*, https://www.unep.org/interactive/beat-plastic-pollution/ (last visited Aug. 29, 2022) [hereinafter "UNEP Beat Plastic Pollution"].
[6] *Id.*
[7] *Id.*
[8] *See* Roland Geyer, Jenna R. Jambeck & Kara Lavender Law, *Production, Use and Fate of All Plastics Ever Made*, 3(7) SCI. ADVANCES 1 (2017); World Econ. Forum (WEF), Indus. Agenda, *The New Plastics Economy: Rethinking the future of plastics*, 12 (2016).
[9] UNEP Beat Plastic Pollution, *supra* note 5.
[10] The Last Beach Cleanup & Beyond Plastics, *REPORT: The Real Truth About the U.S. Plastics Recycling Rate* (May 4, 2022), https://static1.squarespace.com/static/5eda91260bbb7e7a4bf528d8/t/62b2238152acae761414d698/1655841666913/. The-Real-Truth-about-the-US-Plastic-Recycling-Rate-2021-Facts-and-Figures-_5-4-22.pdf [hereinafter "The Real Truth about the U.S. Plastics Recycling Rate"].
[11] Brock, J., *The Plastic Pandemic*, REUTERS (Oct. 5, 2020), https://www.reuters.com/investigates/special-report/health-coronavirus-plastic-recycling/.
[12] UNEP Beat Plastic Pollution, *supra* note 5.
[13] Ctr. for Int'l Env'tl Law, *Plastic & Health: The Hidden Costs of a Plastic Planet* (Feb. 2019), *available at* https://www.ciel.org/plasticandhealth/ [hereinafter "CIEL, *Plastic & Health*"].
[14] *Id.*; *see also* "Toxic Tours: USA", https://www.toxictours.org/ (last visited Aug. 15, 2022) (providing multimedia storytelling and a platform for community voices impacts by fossil fuel and plastics industries in their backyard); Kendall Dix, et al, *Federal Court Rules Formosa Plastics is Liable for Plastic Pollution in Texas*, Ctr. for Biological Diversity (June 28, 2019), https://www.biologicaldiversity.org/w/news/press-releases/formosa-plastics-liable-for-texas-plastic-pollution-2019-06-28/.
[15] CIEL, *Plastic & Health*, *supra* note 13.

plastic products through bans or fees, the United States has deferred such measures to state and local governments, creating a lack of uniformity across jurisdictions.[16] As a result, although state and municipal efforts have reduced consumption of single-use plastics locally, we continue to face a range of harms caused by the widespread use of such plastics across the Nation, including health and other harms related to GHG and toxic air emissions from plastics production and incineration, plastics waste management costs, and lost ecosystem services and clean-up activity costs from ongoing plastics pollution.[17]

Policy changes to the federal government's procurement process are an important first step that can significantly reduce consumption of single-use plastics nationwide and pave the way for further analogous state action.[18] Indeed, GSA recognizes that, as the largest consumer of supplies and services in the world, the federal government can "create demand and encourage private investment" in environmentally conscious products.[19] This, in turn, creates changes in market culture that can lay the foundation needed to initiate and expand similar policies at state and local levels.[20] Other federal agencies have already made concerted efforts to reduce the consumption of single-use plastics. For example, in June 2022, the U.S. Department of the Interior ("DOI") committed to phase out the sale of single-use plastics on public lands, including national parks and wildlife refuges, by 2032.[21] GSA should follow suit to reduce and eventually eliminate procurement of single-use plastic products across all federal agencies.

These comments proceed as follows. In Part II, we provide a summary of the States' interests in a GSA rule that will reduce and eventually eliminate single-use plastics. In Part III, we discuss GSA's authority to limit federal procurement of single-use plastics. In Part IV, we make recommendations for GSA's consideration, including procuring sustainable alternative products, applying a life cycle approach when assessing which products to eliminate, and establishing a target date of 2032 or earlier for phasing out procurement of single-use plastics and packaging.

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[16] Hannah Seo, *The US is a plastic mismanagement leader*, GREENBIZ (Nov. 5, 2021), https://www.greenbiz.com/article/us-plastic-mismanagement-leader; Sarah Gibbens, *See the complicated landscape of plastic bans in the U.S.*, NAT'L GEO. (Aug. 15, 2019), https://www.nationalgeographic.com/environment/article/map-shows-the-complicated-landscape-of-plastic-bans.

[17] Dalberg Advisors, *Plastics: The cost to society, environment and the economy*, WWF, 12-23 (2021), *available at* https://europe.nxtbook.com/nxteu/wwfintl/tcops/index.php#/p/1.

[18] Alison Watson, et al., *Addressing Single-Use Plastic Productions Pollution Using a Life Cycle Approach*, UNITED NATIONS ENV'TL PROG., 22 (2021), https://sdg.iisd.org/news/unep-report-spotlights-best-alternatives-to-single-use-plastic-products/ [hereinafter "UNEP 2021"]; *Priority Plastic Actions for President Biden's First Year*, PlasticFreePresident, https://www.plasticfreepresident.org/ (last visited Aug. 19, 2022); *Public Procurement*, PLASTIC SMART CITIES, https://plasticsmartcities.org/products/public-procurement (last visited Aug. 19, 2022)

[19] Gen. Servs. Admin., GSA Order, ADM 2800.12B, Change 138, 1 (Oct. 22, 2021), https://acquisition-staging.gsa.gov/sites/default/files/archives/loose_leaf/GSAM_Latest_Change_Order_1382021528_0.pdf. (referencing Executive Orders 13390, 14008, and 14030 which all describe utilizing federal procurement as a means to move the market towards sustainability).

[20] *See id.*

[21] Dep't of the Interior ("DOI"), Order No. 3407, *Department-Wide Approach to Reducing Plastic Pollution* (June 8, 2022), https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3407.pdf.

II. The States Will Benefit Substantially from GSA Action to Reduce Single-Use Plastics.

The States have a strong interest in the GSA's implementation of federal procurement rules reducing and eliminating single-use plastic products. This regulatory change will benefit state and local economies, environments, and quality of life by directly reducing plastics pollution within our borders and by spurring the development of innovative alternatives to single-use plastics for use by public and private entities and residents.

A. Pollution from single-use plastics is harming states and municipalities across the United States.

Pollution from plastics is a serious problem for states and local governments. Only five to six percent of plastic waste is recycled in the United States[22] and, on average, every American uses and throws away 110 pounds of single-use plastics annually.[23] At present, states and local governments are spending millions of dollars to clean up and dispose of waste in their jurisdictions – including single-use plastics. For example, in Pennsylvania, the Department of Transportation spends over $13 million each year cleaning up roadside litter, mostly made up of plastics.[24] In California, cities and towns are collectively spending about half a billion dollars each year to combat and clean up litter and trash – most of which is plastics.[25] Further, even when plastics are properly disposed of through the solid waste system, the costs are high – in Massachusetts, single-use plastics make up 11 percent of the state's municipal solid waste by weight, contributing an estimated $44 million to annual disposal costs state-wide.[26] In Washington, costs attributable to residential and commercial management of plastic packaging through recycling and disposal total approximately $165 million per year.[27]

In addition to collection and disposal costs, plastic waste also has localized negative impacts on wildlife habitats, quality of life, and recreational opportunities.[28] Aquatic environments, where improperly discarded plastics often end up, have been particularly hard hit.[29] As a result, many states and localities are engaged in substantial efforts to clean up plastics

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[22] The Real Truth about the U.S. Plastics Recycling Rate, *supra* note 10.
[23] Minderoo Foundation, *The Plastic Waste Makers Index* 42 (2021), https://cdn.minderoo.org/content/uploads/2021/05/27094234/20211105-Plastic-Waste-Makers-Index.pdf.
[24] Faran Savitz, *Microplastics in Pennsylvania*, PENN ENVIRONMENT RESEARCH & POLICY CTR., 1 (Mar. 2021).
[25] Stickel, Barbara H., et al., *Waste in our Water: The Annual Cost to California Communities of Reducing Litter that Pollutes Our Waterways*, NRDC (Aug. 2013), https://www.nrdc.org/sites/default/files/oce_13082701a.pdf.
[26] This single-use plastics disposal cost was calculated based on 2019 data, the most recent available, as follows: 4.3 million tons of municipal solid waste disposed of annually, Mass. Dep't Env't Prot. ("MassDEP"), *2019 Solid Waste Data Update*, tabl.4 (Oct. 2020), https://www.mass.gov/doc/2019-solid-waste-data-update/download, 11.5 percent of that waste made up by single-use plastics, and a conservative annual disposal tip fee of $90 per ton. J. Fischer, Deputy Div. Dir., Solid Waste, MassDEP, personal communication Aug. 23, 2022.
[27]Cascadia Consulting Group, *Plastics Packaging In Washington: Assessing Use, Disposal, and Management,* 25 (Sept. 11, 2020), *available at* https://apps.ecology.wa.gov/publications/documents/2007024.pdf
[28] U.S. Env'tl Protection Agency, *Impacts of Mismanaged Trash*, https://19january2021snapshot.epa.gov/trash-free-waters/impacts-mismanaged-trash_.html (last visited Aug. 5, 2022).
[29] Kumar, et al., *Impacts of Plastic Pollution on Ecosystem Services, Sustainable Development Goals, and Need to Focus on Circular Economy and Policy Interventions*, 13(17) SUSTAINABILITY 9963 (2021)*, available at* https://doi.org/10.3390/su13179963.

from waterbodies in their jurisdictions. For example, many of the single-use plastic products purchased in the District of Columbia (the "District") end up in the Anacostia River, clogging its tributaries, harming wildlife habitats, and eventually contaminating food and water supplies with microplastics.[30] As a result, the District and several Maryland counties have spent millions of dollars to retrieve and remove plastic trash from the river.[31] And since 2016, the District's Department of Energy & Environment has spent over $800,000 on trash traps set to clean up the Anacostia River.[32] Surveying the trash collected through that program revealed that plastic bottles make up 65 percent of the waste collected.[33] Similarly, in Pennsylvania, in a single year, the Philadelphia Water Department removed 44 tons of trash from the Schuylkill and Delaware rivers and found that 56 percent of the waste collected was plastics.[34] In addition, a survey to examine the presence of microplastics in waterways across Pennsylvania found that of the 53 study sites tested, 100 percent (all 53 sites) contained one or more types of microplastics.[35]

In California, plastic food packaging has been found in dead seabirds' stomachs in San Diego and Monterey since the 1970s.[36] California wildlife continues to die from plastic ingestion[37] and entanglement.[38] Twenty-five percent of California's commercial fish supply is contaminated with anthropogenic debris, 80 percent of which is microplastics.[39] Dirty beaches and marine debris also impact the state's economy and recreational activity in California. A federal study found that Orange County residents avoided going to littered beaches and spent

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[30] David Alpert, *Get plastic bags out of the Anacostia*, GREATER GREATER WASHINGTON (Feb. 12, 2009), https://ggwash.org/view/1206/get-plastic-bags-out-of-the-anacostia.

[31] Dep't of Energy & Env't, *Bag Law – Annual Summary Reports* (July 21, 2022), https://doee.dc.gov/node/1059142; *see, e.g.*, *Montgomery County Joins Trash Trapping Effort to Keep Litter Out of Waterways*, DCIST (Apr. 19, 2020), https://dcist.com/story/22/04/19/anacostia-watershed-gets-new-montgomery-county-trash-trap/ ("Montgomery County Department of Environmental Quality provided the $200,000 grant that paid for the trap, including installation and two years of maintenance.").

[32] Dep't of Energy & Env't, *Bag Law – Annual Summary Reports* (July 21, 2022), https://doee.dc.gov/node/1059142 (setting forth each year's Fiscal Year Anacostia River Clean Up and Protection Fund Summary Report).

[33] Ari Eisenstadt, *Take Action: Tell DC Mayor Bowser to Get Plastic Bottles Out of Our Water*, ANS Conversation (June 4, 2021), https://conservationblog.anshome.org/blog/take-action-tell-dc-mayor-bowser-to-get-plastic-bottles-out-of-our-water/?utm_source=rss&utm_medium=rss&utm_campaign=take-action-tell-dc-mayor-bowser-to-get-plastic-bottles-out-of-our-water.

[34] Savitz, *supra* note 24.

[35] *Id.* at 6-10.

[36] Donald Baltz, et al., *Evidence from seabirds of plastic particle pollution off central California*, Moss Landing Marine Laboratories (1976); see also Robert Day, et al., *Ingestion of plastic pollutants by marine birds*, NOAA (Nov. 1984).

[37] Hannah Nevins, et al., *Seabirds as indicators of plastic pollution in the North Pacific*, Paper for Plastic Debris Rivers to the Sea Conference (2005); Lauren Roman, et al., *A quantitative analysis linking seabird mortality and marine debris ingestion*, Scientific Reports (Mar. 1, 2019).

[38] 3 Erica L. Donnelly-Greenan, et al., Moss Landing Marine Laboratories*, Entangled seabird and marine mammal reports from citizen science surveys from coastal California (1997–2017)*, 149 Marine Pollution Bulletin (Aug. 28, 2019) (study in central CA from 1997-2017 finding seabirds entangled in CA primarily from fishing lines; mostly in Monterey Bay NMS).

[39] Chelsea Rochman, et al., Anthropogenic debris in seafood-Plastic debris and fibers from textiles in fish and bivalves sold for human consumption, Scientific Reports (Sep. 24, 2015). 5 California Coastal Commission, California Coastal Cleanup Day History, https://www.coastal.ca.gov/publiced/ccd/history.html (last accessed on Apr. 22, 2021).

millions of dollars annually driving to cleaner beaches.[40] The study concluded that reducing marine debris by 25 percent would save $32 million over 3 months.[41]

In addition to the harm that discarded plastics wreaks on local environments and natural resources, plastics production undermines state and municipal efforts to reduce GHG pollution and address the climate crisis.[42] From fossil fuel extraction and transport to refining and manufacture of plastics, as well as the management of plastic waste and cleanup activities, GHGs are released at every stage of the plastics life cycle.[43] The National Park Service estimates that by preventing the use of up to 2 million water bottles annually at national parks between 2011 and 2016, it prevented the emission of up to 141 metric tons of carbon dioxide, equivalent to the emissions associated with the annual energy use of up to 15 homes.[44]

Moreover, plastics production facilities and the incineration of plastics emit a range of toxic air pollutants that pose a serious threat to the human health, especially for those frontline communities located close to these sites.[45] For example, in Louisiana, a massive plastics plant proposed by Formosa Plastics Group is set to be located in an area known as "Cancer Alley."[46] This region holds more than 150 petrochemical plants and its community members – predominantly low-income and Black residents – bear a high risk of cancer and other negative health impacts.[47] The Formosa plant would double the toxic air pollution in this already highly polluted region.[48] In Pennsylvania, Shell's new plastic plant will substantially contribute to air pollution in the region and emit significant amounts of toxic chemicals in close proximity to nearby communities.[49]

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[40] National Oceanic & Atmospheric Administration*, Assessing the Economic Benefits of Reductions in Marine Debris-A Pilot Study of Beach Recreation in Orange County, California* (Jun. 15, 2014); see also 15. B.H. Stickel, et al., *The Cost to West Coast Communities of Dealing with Trash, Reducing Marine Debris*, Prepared by Kier Associates for U.S. Environmental Protection Agency (Sep. 2012) (west coast spends $520 million per year to clean up pollution on coast).

[41] *Id.*

[42] CIEL, *Plastic & Health*, *supra* note 13 (estimating that, in 2019 alone, plastic production and incineration would add 850 million metric tons of GHGs to the atmosphere which is equal to the pollution from 189 new 500-megawatt coal plants).

[43] *Id.*

[44] National Park Service (NPS), *Disposable Plastic Water Bottle Recycling and Reduction,* Program Evaluation Report 8 & tabl.2 (May 2017), https://www.nps.gov/aboutus/foia/upload/Disposable-Plastic-Water-Bottle-Evaluation-Report_5_11_17.pdf.

[45] *Plastic and Human Health: A Lifecycle Approach to Plastic Pollution*, Ctr. for Int'l Envtl., https://www.ciel.org/project-update/plastic-and-human-health-a-lifecycle-approach-to-plastic-pollution/ (last visited Aug. 10, 2022).

[46] *Proposed Plastics Plant Would Increase Emissions by Half, Contradict Net Zero Goals*, EARTHWORKS (June 9, 2022), https://earthworks.org/releases/proposed-plastics-plant-would-increase-emissions-by-half-contradict-net-zero-goals/.

[47] Halle Parker, *'Cancer Alley' groups want to know how new industry impacts health. This bill could require it,* WWNO (June 22, 2022), https://www.wwno.org/coastal-desk/2022-06-22/cancer-alley-groups-want-to-know-how-new-industry-impacts-health-this-bill-could-require-it.

[48] *Proposed Plastics Plant Would Increase Emissions by Half, Contradict Net Zero Goals*, EARTHWORKS (June 9, 2022), https://earthworks.org/releases/proposed-plastics-plant-would-increase-emissions-by-half-contradict-net-zero-goals/.

[49] *Id.* at 20; Emily Holden, *Will a push for plastics turn Appalachia into next 'Cancer Alley'?* THE GUARDIAN (Oct. 11, 2019), https://www.theguardian.com/environment/2019/oct/11/plastics-appalachia-next-cancer-alley-fracking-public-health-ethane.

B. States and local governments have taken a leading role in reducing consumption of single-use plastics.

In the face of federal inaction, *see* Part I above, states and municipalities have increasingly taken steps within their own borders to reduce the consumption of single-use plastics. For example, many states and municipalities have implemented bans and/or imposed fees on the use of plastic bags,[50] although there is significant variation in the types of bags covered by each ban.[51] Currently, at least ten states have fully banned single-use plastic bags: California, Connecticut, Delaware, Hawaii, Maine, New Jersey, New York, Oregon, Vermont, and Washington.[52] On a broader scale, several states – California, Colorado, Maine, and Oregon – have passed extended producer responsibility ("EPR") laws aimed at holding producers responsible for managing plastic packaging waste.[53] As with state and local plastic bag restrictions, each of these state EPR laws vary in the types of material that is covered, the requirements that they place on producers, and their target dates and goals.[54]

[50] *State Plastic Bag Legislation*, Nat'l Conference of State Legislatures (Feb. 8, 2021), https://www.ncsl.org/research/environment-and-natural-resources/plastic-bag-legislation.aspx?msclkid=c4e16dc3a9fe11ec84710e722f6f2e9f.

[51] Some of the bag bans have been broad while others have allowed for exemptions based on the size of the retailer, bag thickness, or recycled content. *Id.* (discussing that California bans single-use plastic bags at large retail stores, Hawaii prohibits non-biodegradable plastic bags as well as paper bags containing less than 40 percent recycled material, and New York allows exceptions to its ban for bags distributed at delis as well as newspaper bags, trash bags, and garment bags, among others); Staley Prom, *Closing Thicker Plastic Reusable Bag Loopholes*, Surfrider Foundation (Dec. 17, 2015), https://www.surfrider.org/coastal-blog/entry/closing-plastic-reusable-bag-loopholes (noting that many ordinances define "reusable bag" such that if it's plastic, to be at least 2.25 mils thick and stores are undermining the intent of bag bags by providing shoppers with these thicker, "reusable" plastic film bags for free).

[52] *See State Plastic Bag Legislation*, Nat'l Conference of State Legislatures (Feb. 8, 2021); Jennie Romer, *Round-Up of Statewide Bag Laws and Preemption*, SURFRIDER FOUND. (Feb. 24, 2021) (noting that Hawaii does not have a statewide plastic bag law, but each county within the state has banned plastic bags); N.J.S.A. 13:1e-99.127 through -99.134.

[53] *States Continue Efforts to Hold Producers Responsible for Plastic Pollution*, Nat'l Caucus of Envtl. Legislators (Feb. 4, 2022), https://www.ncelenviro.org/articles/states-continue-efforts-to-hold-producers-responsible-for-plastic-pollution/. Successful EPR programs incentivize producers to design their paper and packaging products to be recyclable to produce significant cost and resource savings in the manufacture or remanufacture of products. *See* Jamie Tucker et al., *The Last Straw? Recent Actions and Outlook for Single-Use Plastics*, 2020 PRINDBRFF 0064 (Mar. 26, 2020).

[54] *Id. See also* R.C.W. 70A.520-70A.530 (2022) (setting forth Washington State's Plastics Packaging Evaluation and Assessment law which, although not an EPR law, provides that producers of plastic packaging should consider the design and management of their packaging in a manner that includes minimal environmental impact).

Further, several states, including California,[55] Massachusetts,[56] New York,[57] and Oregon,[58] are using their procurement processes to encourage agencies to purchase alternatives to single-use plastics. Similarly, under a 2019 executive order, New York City agencies must replace purchases of unnecessary single-use plastic food ware with reusable, compostable, or recyclable alternatives.[59]

The variation among state and municipal plastics regulations has created a mixed set of mandates and policies scattered across the country.[60] And while individual bag bans, for instance, can be effective at a local level,[61] the lack of uniformity is likely inhibiting private sector development of innovative alternatives to single-use plastics.[62] As discussed next, strong federal leadership, including through restrictions on the use of such plastics by federal agencies, is needed to address the nationwide problem of single-use plastics pollution.

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[55] *See* Sustainable Packaging for the State of California Act of 2018 (SB 1335) (prohibiting food service facilities located in state-owned facilities from using food service packaging unless the type of packaging is reusable, recyclable, or compostable); Executive Order N-19-19(3)(b) (requiring the Department of General Services to "[d]evelop and implement sustainable purchasing policies across state agencies that prioritize the purchase of environmentally preferable goods such as more sustainable food and recycled materials, consistent with state climate policies."); California Dep. Gen. Servs., *Protect California's Climate: Buyer's Guide for Strategic Planning and Sustainable Purchasing within State Procurement,* https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/EPP-NewsWire-January-2 (providing guidance to state agencies that encourages and promotes the procurement of "environmentally preferable products.").

[56] *See* Massachusetts Operational Servs. Div., *Contract User Guide for GRO40: Foodservice Supplies and Equipment, Institutional Commercial Grade Large and Small Statewide Contract* (updated June 6, 2022), https://www.mass.gov/doc/gro40/download.

[57] *See* N.Y. Off. Gen. Servs., *Approved EO 4 Specification: Food Service Containers and Wrappers* (intended to encourage the purchase and use of reusable food service containers and establishing a hierarchy of environmentally desirable attributes ranging from reusable to compostable to recyclable to containing postconsumer recycled content), https://ogs.ny.gov/system/files/documents/2022/04/food-service-containers-spec_4-27-22.pdf; N.Y. Off. Gen. Servs., *Approved EO 4 Specification: Single Use Food Service Utensils* (providing a preference for reusable utensils where practicable, followed by compostable, and then biodegradable utensils), https://ogs.ny.gov/greenny/single-use-food-service-utensils.

[58] *See* OAR125-246-324(1) (requiring the Oregon Department of Administrative Services to "include a provision in all food service Contracts…requiring the use of recyclable or biodegradable food service products when such products are readily available).

[59] Aisha Al-Muslim, *New York City Agencies to End Reliance on Single-Use Plastic* (Apr. 11, 2019), https://www.wsj.com/articles/new-york-city-agencies-to-end-reliance-of-single-use-plastic-11555006324.

[60] Seo (2021), *supra* note 16.

[61] For example, following a ban in San Jose, California, there was a 60 percent reduction in creek and river pollution by plastic bags, as well as a 59 percent reduction in residential plastic waste. *See* Michael Thomas, *Reducing Waste with Reusable Bag Ordinances and Plastic Bag Bans in the Bay Area: An Impact Analysis*, San Jose State University ScholarWorks (Spring 2015), https://scholarworks.sjsu.edu/cgi/viewcontent.cgi?article=1412&context=etd_projects.

[62] *See e.g.*, Kirsi-Maria Halonen, *Is Public Procurement Fit for Reaching Sustainability Goals? A Law and Economics Approach*, 28 MAASTRICHT J. OF EUROP. & COMP. L. 535, 552, 553 (2021) (in the context of green public procurement, consistency among standards is necessary to encourage investment in environmentally friendly products); Wang, et al. *Reducing plastic waste through legislative interventions in the United States: Development, obstacles, potentials, and challenges*, 2 SUSTAINABLE HORIZONS 100013 (2022).

C. Increased federal purchases of sustainable alternatives to single-use plastics will reduce consumption of and pollution from those plastics in states and municipalities.

The federal government is the largest consumer of goods and services in the world,[63] and likely the largest consumer of single-use plastics in the United States. As "America's Buyer," GSA serves as the primary acquisition and procurement arm of the federal government[64] and plays an important role in determining the types of products purchased by, and for, the federal government. Accordingly, GSA can affect a significant reduction in single-use plastics consumption at a national scale, benefiting states and municipalities in several ways.

First, GSA action to reduce the number of single-use plastic products federal agencies purchase will reduce the number of single-use plastics those agencies import into state and local jurisdictions and the financial and environmental harms from discarding those plastics. This is particularly true for the District, which is home to over 50 federal government buildings managed by GSA.[65] Reducing and eliminating plastic waste in these federal buildings will help address the District's plastic waste crisis: currently, the District produces 1.13 million tons of solid waste each year,[66] but has a 2023 projected plastics recycling rate of only 6.5 percent.[67] Sustainable federal procurement policies can help reduce the percentage of that 1.13 million tons that is attributable to single-use plastic products.

Second, given the size of the federal government's purchasing power, its shift from single-use plastics will expand the market for sustainable single-use plastics alternatives, encourage innovation, and drive the development of a greater variety of high-performing alternatives than individual state and municipal actions could accomplish.[68] Further, GSA's action is likely to spur the development of certification programs for alternatives like recycled content, compostability, and recyclability, which will assist in evaluating compliance with federal as well as state and local procurement policies.[69] These developments will ultimately benefit state and local procurement programs seeking to purchase sustainable alternatives.

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[63] U.S. Env'tl Prot. Agency, *Buying Green for Federal Purchasers*, https://www.epa.gov/greenerproducts/selling-greener-products-and-services-federal-government#:~:text=Additional%20market%20research-,Overview,%E2%80%9Cgreener%E2%80%9D%20products%20and%20services. (last visited on Aug. 30, 2022) (stating that the federal government spends more than $650 billion on goods and services each year)

[64] ANPR, *supra* note 1 at 40476.

[65] U.S. G.S.A., *DC Federal Buildings*, https://www.gsa.gov/about-us/regions/welcome-to-the-national-capital-region-11/buildings-and-facilities/dc-federal-building (last visited Aug. 19, 2022)

[66] MSW Consultants, *Desktop Waste Characterization Study*, Dep't of Public Works (Mar. 2021), https://zerowaste.dc.gov/sites/default/files/dc/sites/zerowaste/Desktop%20WCS%20Final%20Report%203-10-21.pdf.

[67] Sierra Club Washington D.C., *Zero Waste*, https://www.sierraclub.org/dc/zero-waste (citing DPW, MSW Consultants, *Desktop Waste Characterization Study* (Mar. 2021)) (last visited Aug. 3, 2022).

[68] *See* Bastian Krieger & Vera Zippererb, *Does green public procurement trigger environmental innovations?*, 51(6) RESEARCH POL'Y 104516, 1 (2022) (large-scale public procurement promotes innovation by assuring critical market size allowing for early economy of scale and fast amortization of investment); *id.* at 14 (finding that green procurement awards significantly increased the probability of environmental product innovations by small and medium German firms); Halonen (2021) *supra* note 62 at 448, 553 (significant purchasing power and clear targets required to drive development of sustainable alternatives).

[69] *Cf.* Halonen (2021) *supra* note 62 at 545 (describing the challenges associated with enforcement of sustainable procurement policies, including lack of expertise and administrative burdens).

Third, some proportion of the enormous numbers of individuals who visit federal buildings and/or interact with federal agencies every day, whether as employees, contractors, or members of the public, are likely to be introduced to single-use plastic alternatives that they would not otherwise have encountered.[70] GSA procurement requirements thus have the potential to create spillover demand for such products among private individuals and entities.[71] That potential is demonstrated by the National Park Service's 2011 to 2016 bottle ban which included a visitor education component and offered reusable water bottles for sale to the millions of annual visitors to the participating 23 parks.[72]

III. GSA Has the Authority to Limit Federal Purchases of Single-Use Plastics.

Under 40 U.S.C. § 501, GSA is authorized to prescribe policies and methods that govern the acquisition and supply of goods for federal agencies, including policies and methods that reduce and ultimately eliminate federal purchases of single-use plastics.[73] The guidelines and requirements that describe the types of products and services that can be purchased by executive agencies are found in the Federal Acquisition Regulations ("FAR")[74] and the General Services Acquisition Regulation ("GSAR").[75]

Federal agencies are mandated to purchase sustainable products and services under FAR Part 23, which currently requires that agencies weigh environmental impact when they undertake acquisition and procurement planning.[76] Ninety-five percent of all new contracts require products and services that meet sustainability goals such as "environmentally preferable products" and products "made with recovered material."[77] The goals of the FAR include

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[70] GSA thus also has an opportunity to educate its contractors, agencies, and the public as it phases out federal procurement of single-use plastics and it should consider including provisions to support that goal. For instance, DOI's recent order phasing out the use of single-use plastics requires its bureaus and offices to include in their sustainable procurement plans "opportunities to shift public behavior to reduce single-use plastic products, such as installing additional water fountains and reusable water bottle filling stations." DOI, Order No. 3407 at § 5(b)(6) *supra* note 21.

[71] *See* Qi Wang, et al., *Green public procurement as a promoter for green consumption: From the perspective of individual's knowledge*, 3 CLEANER & RESPONSIBLE CONSUMPTION 1000035, 2, 6-7 (2021) (finding that green procurement policies improved consumers' views of the value and effectiveness of green products); Timothy Simcoe & Michael W. Toffel, *Government green procurement spillovers: Evidence from municipal building policies in California*, 68(3) JOURNAL OF ENV'T ECON. & MGMT. 411, 412, 428 (2014) (finding that local government green-building procurement rules stimulated private-sector adoption of green building standards).

[72] *See e.g.*, NPS, *Grand Canyon NP* (annual visitor statistics, showing 4-5 million visitors to Grand Canyon National Park between 2011 and 2016), https://irma.nps.gov/STATS/SSRSReports/Park%20Specific%20Reports/Annual%20Park%20Recreation%20Visitation%20(1904%20-%20Last%20Calendar%20Year)?Park=GRCA (last visited Aug. 29, 2022); NPS (May 2017), *supra* note 44 at 2-3 (describing educational component of bottle ban), 5, tabl.1 (showing participating parks including the Grand Canyon).

[73] 40 U.S.C. § 501(b); 48 CFR § 41.103.

[74] Codified in Parts 1 through 53 of Title 48 of the Code of Federal Regulations which generally governs acquisitions of goods and services by executive branch agencies.

[75] GSAR 501.101 (2022) ("contains agency acquisition policies and practices, contract clauses, solicitation provisions, and forms that control the relationship between GSA and contractors and prospective contractors").

[76] FAR 7.105(b)(17).

[77] *Id. See also* FAR 23.103(a) ("Federal agencies shall 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

"maximiz[ing] the utilization of environmentally preferable products" and "fulfill[ing] public policy objectives."[78] The GSAR contains additional agency acquisition policies and practices that implement and supplement the FAR.[79] For instance, when considering sustainable acquisition of products, the GSAR sets forth that it is the policy of GSA to consider "supporting environmental objectives such as waste reduction, source reduction. . .or maximum practicable recovered material content" as well as "waste reduction techniques."[80]

Further, President Biden recognized the federal government's position and power to spur environmental change in Executive Order 14057 ("Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability"). Executive Order 14057 instructs each agency to reduce waste and pollution, to advance pollution prevention, support markets for recycled products, and promote a circular economy.[81] A circular economy creates a "closed loop" system which focuses on eliminating consumption and waste by increasing the longevity of a product or material.[82] Regarding sustainable acquisition and procurement, agencies are encouraged to "establish agency-specific guidance to reduce or other address single-use plastics in acquisition plans."[83] Executive Order 14057 specifically states that "[a]gencies shall. . .incentivize markets for sustainable products and services by prioritizing products that can be reused, refurbished, or recycled" and, among other things, directs federal agencies, including GSA, to purchase products made of recycled material.[84]

The current federal procurement regulations and Executive Order 14057 thus authorize GSA to develop rules that will shift federal procurement toward a sustainable and circular economy. Reducing and eventually eliminating the procurement of single-use plastic products by federal agencies will advance those mandates and directives, including by focusing the market on innovative reusable, compostable, and recyclable products and, in turn, creating a demand for such sustainable alternatives, as discussed above in Part II.C. Despite the existing authority and regulations aimed at guiding the federal government to purchase sustainably, however, presently there are no GSA-based requirements for agencies to reduce or eliminate single-use plastics procurement. As next described, GSA should exercise its authority to do so swiftly.

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that products are-…(3) Biobased; (4) Environmentally preferable (e.g., EPEAT®-registered, or non-toxic or less toxic alternatives);…; or (6) Made with recovered materials.").

[78] FAR 23.702, 1.102.

[79] *See* GSAR 523.101 (stating that "FAR part 23 requires GSA to purchase sustainable products and services); GSAR 501.101; *see* U.S. Gen. Servs. Admin., Acquisition Policy, "Acquisition Regulations" (last reviewed June 1, 2022), https://www.gsa.gov/policy-regulations/policy/acquisition-policy/acquisition-regulations. Neither the FAR nor the GSAR prohibit single-use plastic products, except for a prohibition on procuring non-degradable plastic ring carriers. *See* FAR 23.703(8).

[80] GSAR 511.002.

[81] Exec. Order No. 14,057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, 86 Fed. Reg. 70935 (Dec. 8, 2021).

[82] Nicola Ledsham, *Creating a Circular Economy for Plastics*, THE SUSTAINABILITY INSTITUTE: ERM GROUP, https://www.sustainability.com/thinking/creating-a-circular-economy-for-plastics/#:~:text=A%20circular%20economy%20is%20restorative,leakage%20into%20the%20natural%20environment (last visited Aug. 4, 2022)

[83] White House Council on Env'tl Quality, Implementing Instructions for Executive Order 14057, at 50 (Aug. 2022), *available at* https://www.sustainability.gov/pdfs/EO_14057_Implementing_Instructions.pdf.

[84] Exec. Order No. 14,057 ("Agencies shall . . . purchase products that contain recycled content").

IV. GSA Should Prioritize the Purchase of Sustainable Alternatives and an Aggressive Timeline to Phase Out Single-Use Plastics.

As discussed further below, in developing rules to reduce and eventually eliminate the federal government's purchase of single-use plastics packaging and products, the States urge GSA to prioritize sustainable alternative products using a life cycle assessment approach and to implement an aggressive timeline to phase out unnecessary single-use plastics. Additionally, GSA should consider actions taken by other cities and countries as models for potential future GSA procurement rules.

A. GSA should replace procurement of single-use plastic products with sustainable alternatives using a life cycle assessment approach, with limited health and safety exceptions.

In advancing a phaseout of procurement of single-use plastics, GSA should ensure that the replacement products provide net environmental benefit without compromising health and safety. To that end, when drafting regulations to replace the procurement of single-use plastic products, GSA should consider (1) replacing single-use plastics with sustainable, reusable alternatives, (2) evaluating procurement decisions based on a life cycle assessment of the product's environmental impacts, and (3) maintaining procurement of certain single-use plastics that are necessary for health and safety reasons.

1. GSA should consider replacing single-use plastics with sustainable alternatives.

Currently, GSA purchases a vast amount of single-use plastic products.[85] For instance, a search for "plastic bottles" on GSA's website returns over 160,000 different plastic bottle options available for purchase.[86] Yet, there are a range of alternative and environmentally friendly products that are available and could be purchased instead of these single-use bottles, including reusable or recyclable bottles made of glass, aluminum, and stainless steel. By eliminating procurement of single-use plastic bottles, GSA can incentivize the use of such alternatives and encourage agencies to install bottle refilling stations, which will in turn encourage use of reusable bottles. Together, these readily available products could eliminate the need for millions of single-use plastic bottles. Likewise, bags made of paper, reusable cloth, or even thick reusable plastic alternatives can replace single-use plastic bags. Similar alternatives exist that can replace single-use plastics, such as polystyrene foam, which are typically used for packaging and shipping.[87]

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[85] Search results on GSA's website produced over 2 million products that matched the search term for "plastic." *See* GSA Advantage, https://www.gsaadvantage.gov/advantage/ws/main/start_page?store=ADVANTAGE (last visited Aug. 5, 2022).

[86] *Id.* It should be noted that some of these plastic bottle products could be purchased for health and safety reasons, and therefore, would be exempt under a prohibition on procurement of single-use plastic products.

[87] *See* Andrew Krosofsky, *What Are the Best Sustainable Packaging Materials?* GREENMATTERS (Apr. 14, 2022), https://www.greenmatters.com/p/sustainable-packaging-materials (discussing alternatives to single-use plastic packaging such as recycled paper, cornstarch packing peanuts, mushroom, and seaweed packaging); United Nations Env't Prog., *Single-use plastic take-away food packaging and its alternatives – Recommendations from Life Cycle*

Further, as an overarching consideration, we encourage GSA, where feasible, to prioritize waste prevention, i.e., use of reusable products, ahead of recycling. Research shows that waste prevention has the potential for large environmental benefits because it typically reduces environmental impacts over all stages of the life cycle of materials: resource extraction, manufacturing, transportation and end-of-life management, such as recycling or disposal.[88]

An increasing number of compostable alternatives can replace single-use plastics. We recommend that GSA promotes compostable alternatives cautiously, however, for three reasons.[89] First, in developing its procurement rules related to such alternatives, GSA should ensure the genuine compostability of the products to be procured since some products on the market are falsely labeled as "compostable."[90] Second, GSA should keep in mind that composting facilities capable of handling compostable packaging and other products are not uniformly available across the United States,[91] and thus there is a risk that such products will be discarded as trash or end up as contaminants at recycling facilities. Whether such products are environmentally preferable alternatives to single-use-plastic products may therefore be dependent in part on the availability of composting infrastructure. This has been the case in Massachusetts, which developed a statewide contract for the purchase of compostable or biodegradable service ware[92] contemporaneously with the implementation of a statewide organic-waste disposal ban[93] that increased composting capacity and reduced the cost of composting such service ware. Third, some compostable packaging may have higher environmental impacts throughout its life cycle impacts than plastic packaging.[94] So, the advisability of using compostable packaging depends in part on what *kind* of compostable packaging is used.

Assessments (2020), https://www.lifecycleinitiative.org/wp-content/uploads/2020/12/SUPP-Take-Away-food-containers-15.12.20.pdf.

[88] *See* Ali, H. & Ali, N., *Waste prevention and life cycle assessment in municipal solid waste management towards sustainable environment*, 6(1) ADV. NATURAL & APPLIED SCI. 85-93 (2012). *See also Waste Prevention and Reuse*, OREGON.GOV (last visited on Sept. 5, 2022), https://www.oregon.gov/deq/mm/Pages/Waste-Prevention-and-Reuse.aspx#:~:text=Waste%20prevention%20has%20the%20potential,such%20as%20recycling%20or%20disposal).

[89] For the same reasons discussed in this paragraph, GSA should exercise the same caution when evaluating alternative products made of made of "biodegradable," "dissolvable," or "plant-based" material.

[90] *See* CalRecycle, *Degradable Plastic and Fiber Product Labeling Requirements: Biobased and Degradable Plastics* (2022), https://calrecycle.ca.gov/plastics/degradables/labeling/ (discussing California's "s]trict laws regulating the marketing and labeling of degradable plastic products sold in California, including those claimed to be "compostable" or "biodegradable."); Millar, S. & Walker, J, *23 California DAs Obtain $1.5 Million Settlement for Deceptive Biodegradable Claims*, 8 NAT'L LAW REV. 221 (2018).

[91] *See* GreenBlue, *Composting Facilities in the United States* (interactive map and charts), https://greenblue.org/work/compostingmaps/ (last visited Aug. 14, 2022).

[92] *See* Massachusetts Operational Servs. Div. (2022) *supra* note 56.

[93] *See* 310 Code Mass. Regs. 19.017(3) (tabl.19.017(3)) (banning incineration, transfer, or disposal of commercial organic waste); Mass. Dep't Env't Prot., *Commercial Food Material Disposal Ban*, https://www.mass.gov/guides/commercial-food-material-disposal-ban#-about-the-disposal-ban- (last visited Aug. 12, 2022).

[94] Monica F. Harnoto*, A Comparative Life Cycle Assessment of Compostable and Reusable Takeout Clamshells at the University of California, Berkeley*, ENVTL. SCI. (2013) (finding that, based on a life cycle assessment, reusable plastic clamshells were more sustainable than compostable clamshells); Oregon Department of Environmental Quality, https://www.oregon.gov/deq/mm/production/Pages/Materials-Attributes.aspx (finding that compostable packaging sometimes has higher life cycle impacts than plastic packaging).

Replacing single-use plastics with sustainable alternatives will also create small business opportunities. Many suppliers of sustainable and eco-conscious products are small businesses, which hold a sales advantage by selling a specialized and innovative product.[95] Changing the types of products purchased by the federal government can thus open the door to the federal market place for such businesses.[96] In addition, because small businesses are more often owned by women and by people of color, groups who have historically been under-represented in federal procurement, purchasing focused on sustainable alternatives to single-use plastics can advance social equity.[97]

In sum, a range of alternatives exist to replace the use of single-use plastics in federal procurement, however, GSA will need to make a robust assessment of those replacement products to determine which truly represent more sustainable options. As discussed, next, employing life cycle analysis when evaluating such products is essential to that assessment.

2. GSA should use a life cycle assessment approach to evaluate single-use plastics and their alternatives.

GSA should apply a life cycle assessment approach to determining which alternative products – such as those that are compostable, biodegradable, recyclable, or made of recycled material – should replace single-use plastic products. A life cycle assessment "evaluat[es] the inputs, outputs and potential environmental impacts of a product system throughout its life cycle."[98] A life cycle assessment approach thus reflects not only the costs of creating and distributing single-use plastics and alternative products, but also the cost of disposing of such products, which can include, among other things, the release of toxic chemicals via incineration and improper disposal.[99]

Using this approach would help GSA identify potential trade-offs and prevent burden-shifting between environmental harms as it transitions from purchasing single-use plastic products toward more sustainable alternatives.[100] For example, to repel water and oil, compostable food containers often contain perfluoroalkyl and polyfluoroalkyl substances ("PFAS"), some of which are linked to serious human health harms.[101] Certain PFAS have been reported at higher levels in facilities that compost such containers,[102] and in Massachusetts a

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[95] Cynthia Vallina, *How US government procurement can lead the clean economy,* GREENBIZ (Feb. 2, 2021), https://www.greenbiz.com/article/how-us-government-procurement-can-lead-clean-economy.
[96] *Id.*
[97] *See* Addisu Lashitew, *Small Business Green Recovery Fund to power US Climate Transition*, BROOKINGS (Mar. 1, 2021), https://www.brookings.edu/research/small-business-green-recovery-fund-to-power-us-climate-transition/ (noting that 28 and 33 percent of small business are owned by minorities and women, respectively); The White House, Issue Brief, *The Benefits of Increased Equity in Federal Contracting*, fig.2 (showing share of demographic makeup of federal procurement relative to overall share of U.S. firms) (Dec. 1, 2021).
[98] UNEP 2021, *supra* note 18.
[99] *Id.*
[100] *Id.*
[101] Carolyn Wilke, *Chemicals in biodegradable food containers can leach into compost*, SCIENCE NEWS (July 6, 2019), https://www.sciencenews.org/article/pfas-chemicals-biodegradable-food-containers-compost#:~:text=Long%2Dlasting%20PFAS%20compounds%20could,and%20build%20up%20in%20compost.
[102] *Id.*

composting facility has recently been found to have contaminated local wells with PFAS.[103] In addition, the fact that a product is single-use, regardless of its composition, requires consideration.[104] Trading one single-use disposable product for another single-use disposable product made of different material may only create other problems.[105] Opting for the reusable alternative will likely have the best environmental benefits.[106]

There is a growing consensus that life cycle assessments should be utilized in identifying single-use plastics alternatives. The United Nations Environment Program recently published a report on single-use plastic products and provided recommendations for alternatives, based on life cycle assessment studies including the impacts and energy used to produce each product as well as the number of times a product can be used.[107] Similarly, the Government of Canada has been developing policies to limit single-use plastic products using a circular economy and life cycle approach.[108] In doing so, Canada is considering the entire life cycle of the product (production, use, and end-of-life) as well as a comparative screening assessment including impacts on global warming, water consumption, primary energy consumption, and land-use.[109] Using this approach, Canada has been able to identify and prioritize six single-use plastic products for prohibition or restrictions.[110] GSA should similarly adopt a life cycle assessment approach as the basis for its evaluation of which replacements for single-use plastic products will provide the greatest environmental benefits.

3. *GSA should provide health and safety exceptions for certain single-use plastics until viable alternatives are available.* [ANPR III.8]

Although GSA should eventually eliminate all procurement of single-use plastic products, certain single-use plastic products are essential for health and safety reasons.[111] Accordingly, in developing its restrictions on single-use plastic products, GSA should prioritize eliminating unnecessary single-use plastic products – those whose plastic composition is not

[103] David Able, *When organic is toxic: How a composting facility likely spread massive amounts of 'forever chemicals' across one town in Massachusetts*, BOSTON GLOBE (July 6, 2022), https://www.bostonglobe.com/2022/07/06/science/when-organic-is-toxic-how-composting-facility-likely-spread-massive-amounts-forever-chemicals-across-one-town-massachusetts/?event=event12
[104] UNEP 2021, *supra* note 18.
[105] *Id. See also* Oregon Department of Environmental Quality research finding that compostable packaging sometimes has higher life cycle impacts than plastic packaging. https://www.oregon.gov/deq/mm/production/Pages/Materials-Attributes.aspx.
[106] UNEP 2021, *supra* note 18.
[107] *Id.*
[108] *See id.* at 27-28; *see also* UNEP Power Point, *Addressing Single-Use Plastic Products Pollution using a Life Cycle Approach* (Oct. 27, 2020), https://www.lifecycleinitiative.org/wp-content/uploads/2020/10/Final-Webinar-SUPP-Series-B-Webinar-2-27-October.pdf [hereinafter "Canada's UNEP Power Point"]; Canadian Council of Ministers of the Env't, Strategy on Zero Plastic Waste (2018).
[109] *See* UNEP 2021, *supra* note 18, at 27-28; *see also* Canada's UNEP Power Point, *supra* note 108; Canadian Council of Ministers of the Env't, Strategy on Zero Plastic Waste (2018).
[110] UNEP 2021, *supra* note 18, at 27-28; Canada's UNEP Power Point, *supra* note 108.
[111] North, E. & Halden, R., *Plastics and Environmental Health: The Road Ahead*, 28(1) REV. ENV. HEALTH 1-8 (2013).

necessary for health and safety reasons.[112] Moreover, until there are safe, viable alternatives to certain single-use plastic products designed for health and safety uses, GSA should provide explicit health and safety exemptions, such as for disability accommodations, disaster recovery, medical use, and personal protective equipment including masks, gloves, and goggles, so individuals or agencies that need to access these single-use plastic products for health and safety reasons can do so.

B. GSA should establish a goal to ban procurement of single-use plastics entirely by 2032, or sooner, with aggressive, yet achievable, intermediary benchmarks. [ANPR III.7]

GSA should set a realistic but aggressive deadline for phasing out the procurement of single-use plastic products. Phasing out these products will hasten the economic, environmental, and health benefits of a nationwide reduction in plastics, protect frontline communities and reduce plastics pollution.[113] An expeditious timeline will also pave the way for swift complementary actions to reduce single-use plastics at the state and local levels.

An expeditious timeline mirrors DOI's planned phase-out approach to procurement of single-use plastics and packaging. Specifically, a phase-out target date of 2032 or earlier would be aligned with the DOI's Order 3407, which aims to phase out single-use plastic products on DOI-managed lands by 2032.[114] In addition, although in a different context, California's Plastic Pollution Prevention and Packaging Producer Responsibility Act requires that all "covered material" – including single-use packaging – sold in the state must be recyclable or compostable by 2032.[115] GSA should follow a similarly expeditious schedule in implementing its phase out of these harmful products.

In addition, GSA should set interim targets to meet as it works towards its phase-out deadline. For example, GSA could require that at least 50 percent of products purchased be reusable, recyclable, or compostable by 2025 and that 70 percent of products purchased be reusable, recyclable, or compostable by 2028. These kinds of interim targets will help GSA ease the transition, realize incremental benefits associated with interim reductions, and ensure a complete elimination of unnecessary single-use plastic products and packaging from federal procurement by 2032 or earlier.

Further, GSA should prioritize transparency and accountability through at least annual or more frequent reporting of which products have been or will be phased out, the products that have replaced them, and the life cycle assessments and other analysis supporting those changes. This information will help states and localities develop their own laws and policies for phasing

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[112] *See* Fisheries & Oceans Canada, Policy to Restrict the Procurement and Use of Single Use Plastic, https://buyandsell.gc.ca/cds/public/2019/05/23/cb8b98099e6784feec4484ae9ca21ef6/policy_procurement_single_use_plastic.pdf (enacted in 2019).

[113] *See supra* Part I.

[114] DOI, Order No. 3407, *supra* note 21.

[115] *See* Off. of Gov. Gavin Newsom, *Governor Newsom Signs Legislation Cutting Harmful Plastic Pollution to Protect Communities, Oceans and Animals* (June 30, 2022), https://www.gov.ca.gov/2022/06/30/governor-newsom-signs-legislation-cutting-harmful-plastic-pollution-to-protect-communities-oceans-and-animals/. The law also sets forth interim targets to help meet this goal. *Id.*

out single-use plastics procurement and help ensure that other jurisdictions are able to phase out single-use plastics on a similarly aggressive timeline to that of the federal government.

C. GSA should look to examples from other nations and localities in creating policies to phase out federal procurement of single-use plastic products.

Other governments and agencies world-wide are starting to implement similar regulations that restrict procurement of single-use plastic products and can serve as a model for GSA regulations. In Canada, for example, agencies acting in response to the Government's "Greening Government Strategy" to transition to a circular economy within federal operations have implemented "green procurement" requirements based on life cycle assessment principles to phase out unnecessary single-use plastic products.[116] For example, Canada's Coast Guard and its Fisheries and Oceans agency have strengthened their procurement requirements to promote purchasing goods that are reusable, recyclable, compostable, or contain recycled plastic content, with the goal of diverting at least 75 percent of plastic waste from their operations by 2030.[117] Hamburg, Germany, introduced rules that ban municipal use of plastic coffee capsules and single-use bottles and utensils, and introduced reusable cups to several public institutions, including its public administration and policy academy. Doing so eliminated the use of up to 675,000 single-use cups annually.[118] Oslo, Norway, is also reducing the unnecessary use of plastics in municipal agencies by supporting products that contribute to a circular economy.[119]

In the United States, some private entities and public universities have implemented policies to reduce single-use plastics. For example, University of California ("UC") and California State University campuses have begun phasing out single-use plastics. [120] The different UC campuses are free to decide how to comply with the new policy, but all have the same goal of eliminating all unnecessary plastics by 2030.[121] In addition, Virginia universities have committed to reducing single-use plastics. Under its Sustainability Plan, the University of Virginia is no longer purchasing, distributing, or selling certain single-use plastic products.[122] William & Mary has developed an "Alternatives to Single-Use Plastics" Sustainability Ambassador project to help find sustainable options for disposable plastic products at the university.[123] In short, GSA should survey and, where appropriate, replicate the many ambitious phase-out policies adopted elsewhere.

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[116] Gov't of Canada, Treasury Board of Canada Secretariat, *Greening Government Strategy: A Government of Canada Directive* (2020), https://www.canada.ca/en/treasury-board-secretariat/services/innovation/greening-government/strategy.html#toc2.
[117] *See* Fisheries & Oceans Canada, Policy to Restrict the Procurement and Use of Single Use Plastic, https://buyandsell.gc.ca/cds/public/2019/05/23/cb8b98099e6784feec4484ae9ca21ef6/policy_procurement_single_use_plastic.pdf (enacted in 2019).
[118] *Id.*
[119] *Public Procurement*, PLASTIC SMART CITIES, *supra* note 18.
[120] Nikita Cardozo, *University of California Begins to Phase Out Single-Use Plastics*, THE GUARDIAN: UCS (Jan. 10, 2021), https://ucsdguardian.org/2021/01/10/university-of-california-begins-to-phase-out-single-use-plastics/.
[121] *Id*.
[122] *Reducing Single-Use Plastics*, UVA Sustainability, https://sustainability.virginia.edu/UVASingleUsePlasticReductionStrategy (last visited Aug. 19, 2022).
[123] Virginia Dep't of Envtl. Quality, Fact Sheet, *EO 77: Cessation of Use* (June 2021), https://www.deq.virginia.gov/home/showpublisheddocument/9656/637605736580330000.

V. Conclusion

To date, the federal government has failed to meaningfully address the global plastics pollution crisis. This is of significant concern to the undersigned States because the United States is the world's "top generator of plastic waste," exceeding all European nations combined, and our recycling processes remain "grossly insufficient" to manage our plastic waste.[124] Federal inaction on this issue is negatively impacting the States by polluting our air and water and costing us millions of dollars to collect and dispose of plastic waste. The federal government could and should address these serious harms by prioritizing the use of alternatives made of materials that are sustainable and reusable. We support GSA's development of rules to reduce and eventually eliminate procurement of single-use plastics as an important first step toward solving the Nation's plastics pollution problem.

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[124] The Nat'l Academies of Sciences, Engineering, & Medicine, *Reckoning with the U.S. Role in Global Ocean Plastic Waste*, THE NATIONAL ACADEMIES PRESS (2022), *available at* https://doi.org/10.17226/26132.

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