DOE F 1325.8
(8-89)
EFG (07-90)

United States Government **Department of Energy**

memorandum

DATE: December 22, 2003

REPLY TO ATTN OF: Office of Pollution Prevention and Resource Conservation (EH-43):Lentzen:6-7428

SUBJECT: Comprehensive Procurement Guideline and Advisory Notice V for Procurement of Products Containing Recovered Materials

TO: Distribution

The purpose of this memorandum is (a) to inform Department of Energy (DOE) elements that the U.S. Environmental Protection Agency (EPA) issued a proposed rule on December 10, 2003 (68 *FR* 68813) regarding "Comprehensive Procurement Guideline V for Procurement of Products Containing Recovered Materials" and a notice on that same day (68 *FR* 68919) regarding "Recovered Materials Advisory Notice V," and (b) to request that DOE elements review and provide comments in response to this proposed rule and draft document.

Section 6002(e) of the Resource Conservation and Recovery Act (RCRA) requires EPA to designate items made with recovered (recycled) materials and for Federal agencies to procure items so designated. The requirement for Federal agencies to purchase designated items applies when the price of the item exceeds $10,000 or the total cost of such items purchased by the agency during the previous year was $10,000 or more.

When procuring these designated items, Federal agencies are to purchase that item made of the highest percentage of recovered materials practicable. Federal agencies do not have to procure an EPA-designated item if it will (a) not be available within a reasonable period of time, (b) not meet the performance standards set forth in the agency's specification, or (c) be unreasonably priced.

Executive Order 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition,* requires EPA to designate items in a Comprehensive Procurement Guideline, publish a Recovered Materials Advisory Notice (RMAN) that contains EPA's recommended content level for the designated item, and periodically update the information.

The EPA previously designated yard trimming compost and food waste compost as designated items. EPA is currently proposing to:

- expand its existing designation of compost to include compost made from manure or biosolids, and
- use the term "compost made from recovered organic materials" to encompass compost made from yard trimmings, food waste, manure, or biosolids.

EPA is also proposing to designate fertilizers containing recovered organic materials as an item whose procurement will help achieve the objectives of RCRA section 6002.

Please review the proposed rule and the draft RMAN (see attachment) and submit any comments you may have to Don Lentzen of my staff (e-mail: *donald.lentzen@eh.doe.gov*) by January 30, 2004. Questions concerning this rulemaking should be directed to Mr. Lenten at (202) 586- 7428.

Thomas T. Traceski
Director
Office of Pollution Prevention
and Resource Conservation

Attachment

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THRU: James J. Mangeno, Senior Advisor for Environment, Safety and Health

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Manager, Kansas City Site Office
Manager, Pantex Site Office
Manager, Livermore Site Office
Manager, Nevada Site Office
Manager, Y-12 Site Office
Manager, Savannah River Site Office
Manager, Los Alamos Site Office
Director, NNSA Service Center, Albuquerque
Deputy Administrator for Defense Programs
Deputy Administrator for Nuclear Nonproliferation
Associate Administrator for Infrastructure and Security
Associate Administrator for Management and Administration

cc: Other Organizations

Hazardous Waste Remedial Action Program, (HAZWRAP)
Center for Environmental Management Information

5. Section 180.276 is revised to read as follows:

§ 180.276 Formetanate hydrochloride; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide formetanate hydrochloride (m-[[(dimethylamino) methylene]amino]phenyl methylcarbamate hydrochloride) in or on raw agricultural commodities as follows:

Commodity	Parts per million
Apple	3.0
Grapefruit	4.0
Lemon	4.0
Lime	4.0
Nectarine	4.0
Orange, sweet	4.0
Peach	5.0
Pear	3.0
Tangerine	4.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.307 [Removed]

6. Section 180.307 is removed.

§ 180.319 [Amended]

7. Section 180.319 is amended by removing the Isopropyl m-chlorocarbanilate (CIPC) entry for spinach.

§ 180.325 [Removed]

8. Section 180.325 is removed.

9. Section 180.341 is revised to read as follows:

§ 180.341 2,4-Dinitro-6-octylphenyl crotonate and 2,6-dinitro-4-octylphenyl crotonate; tolerances for residues.

(a) *General.* Tolerances are established for combined negligible residues of a fungicide and insecticide that is a mixture of 2,4-dinitro-6-octylphenyl crotonate and 2,6-dinitro-4-octylphenyl crotonate in or on a raw agricultural commodoties as follows:

Commodity	Parts per million	Expiration/ Revocation Date
Apple	0.1	2/14/04
Grape	0.1	2/14/04

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§§ 180.344, 180.382, 180.424, 180.457,180.1012, 180.1051, and 180.1078 [Removed]

10. Sections 180.344, 180.382, 180.424, 180.457, 180.1012, 180.1051, and 180.1078 are removed.

[FR Doc. 03–30272 Filed 12–9–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 247

[RCRA–2003–0005; SWH–FRL–7594–9]

RIN 2050–AE23

Comprehensive Procurement Guideline V for Procurement of Products Containing Recovered Materials

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) today is proposing an amendment to the May 1, 1995, Comprehensive Procurement Guideline (CPG) under the Resource Conservation and Recovery Act (RCRA) and the Executive Order ''Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition.'' Specifically, EPA is proposing to revise the current compost designation to include compost made from manure or biosolids, and designate fertilizers made from recovered organic materials. EPA is also proposing to consolidate all compost designations under one item called ''compost made from recovered organic materials.''

EPA is required to designate items that are or can be made with recovered materials and to recommend practices that procuring agencies can use to procure designated items. Once EPA designates an item, any procuring agency that uses appropriated federal funds to procure that item must purchase the item containing the highest percentage of recovered materials practicable. Today's proposed action will use government purchasing power to stimulate the use of these materials in the manufacture of new products, thereby fostering markets for materials recovered from solid waste.

DATES: EPA will accept public comments on this proposed rule until February 9, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Send your comments by mail to: OSWER Docket Center, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0005. Follow the detailed instructions as provided in Unit I.C of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Call Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For technical information on individual item designations, contact Sue Nogas at (703) 308–0199.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

This action may potentially affect those ''procuring agencies''—a term defined in RCRA section 1004(17)—that purchase the following: composts made from manure or biosolids and fertilizers made from recovered organic materials. For purposes of RCRA section 6002, procuring agencies include the following: (1) Any federal agency; (2) any state or local agencies using appropriated federal funds for a procurement; or (3) any contractors with these agencies (with respect to work performed under the contract). The requirements of section 6002 apply to such procuring agencies only when procuring designated items where the price of the item exceeds $10,000 or the quantity of the item purchased in the previous year exceeded $10,000. Potential regulated entities for this rule are shown in Table 1.

TABLE 1.—ENTITIES POTENTIALLY SUBJECT TO SECTION 6002 REQUIREMENTS TRIGGERED BY CPG AMENDMENTS

Category	Examples of regulated entities
Federal Government	Federal departments or agencies that procure $10,000 or more of a designated item in a given year.
State Government	A state agency that uses appropriated Federal funds to procure $10,000 or more of a designated item in a given year.

TABLE 1.—ENTITIES POTENTIALLY SUBJECT TO SECTION 6002 REQUIREMENTS TRIGGERED BY CPG AMENDMENTS—Continued

Category	Examples of regulated entities
Local Government	A local agency that uses appropriated Federal funds to procure $10,000 or more of a designated item in a given year.
Contractor	A contractor working on a project funded by appropriated Federal funds that purchases $10,000 or more of a designated item in a given year.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities of which EPA is now aware that could potentially be subject to regulatory requirements triggered by this action. To determine whether your procurement practices are affected by this action, you should carefully examine the applicability criteria in 40 CFR 247.2. If you have questions regarding the applicability of this action to a particular entity, consult the individuals listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. RCRA–2003–0005. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OSWER Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270. Copies cost $.15 per page.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*, and you may make comments on this proposed rule at the Federal e-rulemaking portal, *http://www.regulations.gov.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. However, late comments may be considered if time permits.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. RCRA–2003–0005. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact

information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to rcra-docket@epa.gov, Attention Docket ID No. RCRA–2003–0005. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send your comments to: OSWER Docket, EPA Docket Center, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. RCRA–2003–0005.

3. By Hand Delivery or Courier. Deliver your comments to: EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC. Attention Docket ID No. RCRA–2003–0005. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket. Send or deliver information identified as CBI only to the following address: Document Control Officer (5305W), Office of Solid Waste, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0005. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Preamble Outline

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I. What Is the Statutory Authority for This Proposed Amendment?

EPA (''the Agency'') is proposing this amendment to the Comprehensive Procurement Guideline under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976; 42 U.S.C. 6912(a) and 6962. This proposal also implements section 502 of Executive Order 13101 (Executive Order), ''Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition'' (63 FR 49643, September 14, 1998).

II. What Is the Background for This Action?

Section 6002(e) of RCRA requires EPA to designate items that are or can be made with recovered materials and to recommend practices to help procuring agencies meet their obligations for procuring items designated under RCRA section 6002. After EPA designates an item, RCRA requires that each procuring agency, when purchasing a designated item, must purchase that item made of the highest percentage of recovered materials practicable.

Executive Order 13101 establishes the procedure EPA must follow when implementing RCRA section 6002(e). Section 502 of the Executive Order directs EPA to issue a Comprehensive Procurement Guideline (CPG) that designates items that are or can be made with recovered materials. Concurrent with the CPG, EPA must publish recommended procurement practices for purchasing designated items, including recovered material content ranges, in a related Recovered Materials Advisory Notice (RMAN). The Executive Order also directs EPA to update the CPG every 2 years and to issue RMANs periodically to reflect changing market conditions.

The first CPG (CPG I) was published on May 1, 1995 (60 FR 21370). It established eight product categories, designated 19 new items in seven of those categories, and consolidated five

earlier item designations.[1] At the same time, EPA also published a notice of availability of the first RMAN (RMAN I) (60 FR 21386). On November 13, 1997, EPA published CPG II (62 FR 60962), which designated an additional 12 items. At the same time, EPA published an RMAN II notice (62 FR 60975). Paper Products RMANs were issued on May 29, 1996 (61 FR 26985) and June 8, 1998 (63 FR 31214). On January 19, 2000, EPA published CPG III (65 FR 3070), which designated an additional 18 items. At the same time, EPA published an RMAN III notice (65 FR 3082). On August 28, 2001, EPA published a proposed CPG IV (66 FR 45256), which proposed to designate an additional 11 items. At the same time, EPA published a draft RMAN IV notice (66 FR 45297). EPA expects to promulgate the final CPG IV and publish a notice concerning the availability of RMAN IV in the near future. For more information on CPG, go to the EPA Web site at *http://www.epa.gov/cpg/*.

Today, in CPG V, EPA is proposing to revise the current compost designation to include composts made from manure or biosolids, and also designate fertilizers made from recovered organic materials.[2] [3] Both of these items fall under the Landscaping Products category of designations in the CPG.

A. What Criteria Does EPA Use for Selecting Items for Designation?

While not limiting consideration to these criteria, RCRA section 6002(e) requires EPA to consider the following when determining which items it will designate:

(1) Availability of the item;

(2) Potential impact of the procurement of the item by procuring agencies on the solid waste stream;

(3) Economic and technological feasibility of producing the item; and

(4) Other uses for the recovered materials used to produce the item.

EPA consulted with Federal procurement and requirement officials to identify other criteria to consider when selecting items for designation. Based on these discussions, the Agency concluded that the factors set forth in RCRA section 6002(c) should also be considered in its selection decisions. This provision requires each procuring agency that procures an item designated by EPA to procure the item composed of the highest percentage of recovered materials practicable, while maintaining a satisfactory level of competition. A procuring agency, however, may decide not to procure an EPA-designated item containing recovered materials if it determines: (1) The item is not available within a reasonable period of time, (2) the item fails to meet the performance standards set forth in the Agency's specification, or (3) the item is available only at an unreasonable price.

EPA recognized that the above criteria limit the conditions under which procuring agencies must purchase EPA-designated items with recovered materials content, and, thereby, could limit the potential impact of an individual item designation on the demand for that recovered content item in the U.S. economy. (The limitations of RCRA section 6002(c) also effectively describe the circumstances in which a designated item is ''available'' for purposes of the statute.) For these reasons, EPA is also taking into account the limitations cited in RCRA section 6002(c) in its selection of items for designation in today's proposed CPG V. Thus, the Agency considers the following criteria in selecting items for designation: (1) use of materials found in solid waste; (2) economic and technological feasibility and performance; (3) impact of government procurement, availability and competition; and (4) other uses for recovered materials. These criteria are discussed in detail in Section II of the document entitled, ''Background Document for Proposed CPG V and Draft RMAN V.'' A copy of this document is included in the RCRA public docket for this rule.

EPA has adopted two approaches in its designation of items that are made with recovered materials. For some items, such as paper and paper products, the Agency designates broad categories of items and provides information in the related RMAN as to their appropriate applications or uses. For other items, such as plastic trash bags, EPA designates specific items, and, in some instances, includes in the designation the specific types of recovered materials or applications to which the designation applies. The Agency explained these approaches to designating items in the preamble to CPG I (60 FR 21373, May 1, 1995).

The Agency has learned that some procuring agencies may erroneously believe that the designation of a broad category of items in a CPG requires them (1) to procure all items included in such category with recovered materials content and (2) to establish an affirmative procurement program for the entire category of items, even where specific items within the category may not meet current performance standards. This is not required under RCRA as implemented through the CPGs and RMANs. RCRA section 6002 does not require a procuring agency to purchase recovered-content items that are not available or that do not meet a procuring agency's specifications or reasonable performance standards for the contemplated use. Further, section 6002 does not require a procuring agency to purchase such items if the item with recovered materials content is only available at an unreasonable price or the purchase of such item is inconsistent with maintaining a reasonable level of competition. However, EPA stresses that, when procuring any product for which a recovered materials alternative is available that meets the procuring agency's performance needs, the procuring agency should seek to purchase the product made with the highest percentage of recovered materials practicable.

The items proposed for designation today have all been evaluated with respect to EPA's criteria. Details of these evaluations are discussed in the ''Background Document for Proposed CPG V and RMAN V. Section IV of this preamble provides a summary of EPA's rationale for designating these items.

B. How Can I Comment on EPA's Proposed Rule?

EPA requests comments and information throughout this preamble. In general, the Agency is requesting comments on: (1) the items selected for designation and (2) the accuracy of the information presented in the discussions of the basis of the item designations. Requests for specific comments and information are included in the narrative discussions for each of the designated items, which follow in Section IV.

EPA also is requesting comments on the draft RMAN V published in the notice section of today's **Federal Register**. It includes procurement methods for each of the items EPA is proposing to designate today.

[1] Between 1983 and 1989, EPA issued five guidelines for the procurement of products containing recovered materials, which were previously codified at 40 CFR parts 248, 249, 250, 252, and 253. These products include cement and concrete containing fly ash, paper and paper products, re-refined lubricating oils, retread tires, and building insulation.

[2] A number of parties have asked EPA to consider the following items for future CPG designations: asphalt, electronics, industrial ceramics, offset guardrail blocks, roofing sealants and refuse-derived fuel, EPA will consider these for future designation.

[3] This regulatory proposal is an important component of EPA's recently announced ''Resource Conservation Challenge,'' which is designed to encourage and provide new incentives for increased reuse and recycling of materials (for further information on this initiative, see *www.epa.gov/epaoswer/osw/conserve/index.htm.)*

C. Where Can I Find Additional Information on This Proposed Rule?

For additional background information, including information on RCRA requirements, Executive Order directives, and the criteria and methodology for selecting the proposed designated items, please consult ''Background Document for Proposed CPG V and Draft RMAN V.'' Information on obtaining this background document is provided in Section VII, Supporting Information and Accessing Internet.

III. What Are the Definitions of Terms EPA Used in Today's Proposed Rule?

Today, in § 247.3, EPA is proposing to revise the previous definition of compost from CPG III (65 FR 3070) and add the term, and a definition for, ''organic fertilizer.'' Specifically, EPA is proposing to define compost as ''* * * a thermophilic converted product with high humus content. Compost can be used as a soil amendment and can also be used to prevent or remediate pollutants in soil, air, and storm water run-off,'' and define organic fertilizer as ''* * * a single or blended substance, made from organic matter, such as plant and animal by-products, manure-based/biosolid products, and rock and mineral powders, that contains one or more recognized plant nutrient(s) and is used primarily for its plant nutrient content and is designed for use or claimed to have value in promoting plant growth.'' These new definitions are based on common industry and United States Department of Agriculture (USDA) definitions. EPA specifically requests comments on each of these definitions.

IV. Landscaping Products

A. Compost Made From Manure or Biosolids

The information obtained by EPA demonstrates that compost made from manure or biosolids is commercially available. Therefore, today in § 247.15(b), EPA proposes to revise the current compost designation to include compost made from manure or biosolids as an item whose procurement will carry out the objectives of section 6002 of RCRA. Furthermore, in order to simplify the designation of compost and make it easier for procuring agencies to track and report their purchases of compost, the Agency is also proposing to amend the previous designations of yard trimmings compost and food waste compost and consolidate them with the designation of compost made from manure or biosolids into one item called ''compost made from recovered organic materials.'' EPA believes that these four organic materials (*i.e.*, yard waste, food waste, manure, and biosolids) are the most commonly used in commercially available compost. EPA is also aware that other organic materials could be used in compost, but these are generally mixed with one or more of the aforementioned materials. For this reason, EPA is proposing to use the general term ''organic materials'' in its compost designation, rather than limit the designation to specific types of organic materials.

1. Background

Compost has a variety of uses and improves soil quality and productivity as well as preventing and controlling erosion. Mixed organic materials, such as animal manure, yard trimmings, food waste, and biosolids, must go through a controlled heat process before they can be used as high quality, biologically stable, and mature compost. The U.S. Composting Council defines compost as the stabilized and sanitized product of composting; compost is largely decomposed material and is in the process of humification (curing). Compost has little resemblance in physical form to the original material from which it was made. Compost is a soil amendment, to improve soils. Compost is not a complete fertilizer unless amended, although composts contain fertilizer properties, *e.g.*, nitrogen, phosphorus, and potassium, that must be included in calculations for fertilizer application.

2. Rationale for Designation

EPA has concluded that composts made from recovered organic materials meet the statutory criteria for designation. A final designation would require that a procuring agency, when purchasing compost, purchase compost containing recovered organic materials, such as yard trimmings, food waste, animal manure, and biosolids, when the compost meets applicable specifications and performance requirements.

a. Use of materials in solid waste. Using manure and biosolids compost has great potential to make beneficial use of a large amount of the animal manure and biosolids produced in the United States. In addition, because other materials may serve as bulking agents in manure and biosolids compost, designation of this item may increase the level of recovered material diverted from the solid waste stream further. The recovered materials used as bulking agents include sawdust, extruded rice husks, straw, leaves, wood chips, corn stalks, and ground tree and shrub trimmings.

In the United States, beef cattle generate 27 million tons of manure solids annually and dairy cattle in confinement produce approximately 21 million tons of solids annually. Swine produce about 16 million tons of solid waste annually.

EPA estimates that the 16,000 public owned treatment works in the United States generate approximately 7 million tons of sewage sludge annually. Until 1992, millions of tons of biosolids were dumped into the Atlantic Ocean. This practice, however, was made illegal as a result of public concern over ocean pollution. About 60 percent of all sewage sludge is treated to generate biosolids that are beneficially used as a fertilizer on farmland. Of the remainder, 17 percent ends up buried in a landfill; 20 percent is incinerated; and about 3 percent is used as landfill or mine reclamation cover.

b. Technically proven uses. Compost can be used in a variety of applications including:

- Soil enrichment: agriculture (soil conditioning, fertilizer amendment, erosion control, development of marginal lands, mulch, rooting medium, sod production); silviculture; horticulture.
- Pollution remediation (treatment of contaminated soils and reclamation of mining waste).

In addition to the primary benefits achieved from using compost in these ways, these applications have the added benefit of preventing pollution by reducing the amount of chemicals normally used and reducing nonpoint source pollution and VOC emissions associated with those chemicals.

It should also be noted that, if improperly managed, animal manures generated by beef feedlot and dairy operations can and have created significant environmental problems, including human health issues caused by contamination of surface water and groundwater. Using animal manures as a raw material for compost, as opposed to applying it directly to the land or stockpiling it, can alleviate many of these problems, while providing an important agricultural service.

EPA and USDA finalized a rule that requires Concentrated Animal Feeding Operations (CAFOs) to obtain permits, submit annual reports, and develop and follow plans for handling manure and wastewater (68 FR 7176, February 12, 2003). In EPA's view, this rule may encourage feeding operations to compost their manure as an agricultural or landscaping product. This will not only benefit the environment, but more of this compost will be available for purchase and use.

In addition, EPA issued regulations in 1993 that limit the pollutants and

pathogens in biosolids, entitled ''The Standards for the Use or Disposal of Sewage Sludge,'' otherwise known as ''the Part 503 Biosolids Rule.'' (40 CFR part 503) If biosolids are included as part of the compost, the processing and product are subject to the Part 503 Biosolids Rule. Furthermore, if the finished compost product meets 40 CFR part 503 Biosolids Rule Class A specifications for the highest level of pathogen and vector control (as described in section 2.3.1 of part 503) and specific metals limits, the compost product can be widely used, like any other fertilizer or soil-conditioning product.

Most States have their own regulations governing composting facilities and the marketing of compost products. The U.S. Composting Council (USCC) has developed protocols, called ''Test Methods for the Examination of Composting and Compost (TMECC),'' which are standardized methods for the composting industry to test and evaluate compost and verify the physical, chemical, and biological characteristics of composting source materials and compost products. The TMECC also includes material testing guidelines to ensure product safety and market claims. USCC's Seal of Testing Assurance program includes standards for testing procedures of composted materials for nutrients, moisture, salt content, and chemicals.

The U.S. Department of Transportation's (U.S. DOT) Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects 1996 specifies mature compost for use as a roadside improvement material.

Pursuant to recently passed legislation, USDA will be issuing guidelines on biobased products which could include composts made from plant or animal byproducts. Any specifications issued under the USDA guidelines which may be germane to the CPG designation and RMAN recommendations may be referenced by EPA in the future.

c. Impact of government procurement. A Presidential memorandum entitled ''Environmentally and Economically Beneficial Practices on Federal Landscaped Ground'' was signed on April 26, 1994 encourages agencies to develop practical and cost-effective landscaping methods that preserve and enhance the local environment. This memorandum requires the use of mulch and compost by Federal agencies and in Federally funded projects.

Government agencies typically use compost and fertilizers for numerous applications, including landscaping, agriculture, bioremediation, roadside maintenance, and erosion control. Although EPA does not know the exact amounts of these materials used by agencies, it believes it is significant, and that composts made from manure or biosolids could be used in many of these applications.

d. Other Uses for Recovered Materials. In selecting items for consideration, EPA also considers the following: (1) The possibility of one recovered material displacing another recovered material as feedstock, thereby resulting in no net reduction in materials requiring disposal; (2) the diversion of recovered materials from one product to another, possibly creating shortages in feedstocks for one or both products; and (3) the ability of manufacturers to obtain recovered materials in sufficient quantities to produce the item under consideration.

While other uses for recovered materials are a consideration, they are not a determining factor when selecting items for designation, because EPA believes an item designation would have the positive effect of expanding markets for all recovered materials used to manufacture the designated item.

B. Fertilizers Made From Recovered Organic Materials

The information obtained by EPA demonstrates that fertilizers containing recovered organic materials are commercially available. Therefore, today in § 247.15(f), EPA proposes to designate fertilizers containing recovered organic materials as an item whose procurement will carry out the objectives of section 6002 of RCRA.

1. Background

In order to compensate for the limited supply of vital nutrients and to provide the plant with the necessary environment to fully mature, fertilizers are often added to soil. The most essential nutrients—nitrogen, phosphorus, and potassium—are often expressed as the N–P–K ratio following the name of a fertilizer (*e.g.*, 10–10–10).

Many sources of organic matter are available for the production of organic fertilizers, including plant and animal by-products, manure-based/biosolid products, and rock and mineral powders.

Organic fertilizers can be used to replace traditional chemical fertilizers in various applications, such as agriculture and crop production, landscaping, horticulture, parks and other recreational facilities, on school campuses, and for golf course and turf maintenance.

2. Rationale for Designation

EPA has concluded that fertilizers containing recovered organic materials meet the statutory criteria for selecting items for designation. A final designation would require that a procuring agency, when purchasing fertilizers, procure those that contain recovered organic materials when they meet applicable specifications and performance requirements.

a. Use of materials in solid waste. Organic fertilizers can contain up to 100 percent recovered materials and can have a mixture of various plant, animal, and mineral content depending on the desired use and the manufacturer. The use of organic fertilizers can help reduce the amount of agricultural by-products, manufacturing and processing waste, and other materials that would otherwise have to be disposed, stockpiled, or treated. These organic materials may be combined with other waste materials, such as saw dust or wood shavings, as is the case with poultry fertilizer. The amount of these wastes diverted from the waste stream varies depending on the materials used and the size of the farm or agricultural activity that supplies the materials.

b. Technically proven uses. Organic fertilizers have the potential to provide various benefits:

- Improve physical soil properties, either directly or by activating living organisms in the soil.
- Provide better soil structure as a result of soil loosening and crumb stabilization.
- Increase water-holding capacity and soil aeration.
- Enhance uptake and utilization of plant nutrients, which leads to increased pathogen resistance and hardiness.
- Slow the leaching of nutrients from soil, resulting in extended availability through the growing season.

As noted above, and pursuant to recently passed legislation, USDA will be issuing guidelines on biobased products which could include fertilizers made from plant or animal matter. Any specifications issued under the USDA guidelines which may be germane to the CPG designation and RMAN recommendations may be referenced by EPA in the future.

The Organic Materials Review Institute (OMRI) has developed lists of materials allowed and prohibited for use in the production, processing, and handling of organically grown products. Samples from these lists can be found at *http://www.omri.org.* It also should be noted that organic fertilizers being made or sold should comply with all

applicable Federal, State, and local regulations. Many states have their own guidelines and regulations for fertilizer production and use. For example, a state may prohibit the use of organic fertilizer made with biosolids on agricultural food crops.

In addition, as mentioned above, biosolids can be used in the production of organic fertilizer and must meet the requirements specified in EPA's part 503 Biosolids Rule before they can be beneficially used. The 40 CFR part 503 Biosolids Rule land application requirements ensure that any biosolids that are land applied contain pathogens and metals that are below specified levels to protect the health of humans, animals, and plants.

In proposing to designate fertilizers made from recovered organic materials, EPA is not placing any limitations on the organic materials, but rather is relying on Federal, State, and local regulations and guidance, as well as existing industry standards. EPA is requesting comment on whether it should place any limitations on the recovered organic materials contained in the fertilizers that the Agency today is proposing to designate, and on what those limitations should be.

c. Impact of government procurement. Government agencies purchase, or use appropriated funds to purchase, fertilizers. Although most government agencies would likely purchase fertilizers indirectly via a contracted landscaping service, it is nevertheless clear that agencies have a demand for fertilizers, for applications such as landscaping, golf course and turf maintenance, and as an amendment for grass, bushes, and trees in parks and recreational facilities. According to one procurement official, even though fertilizers are generally part of contracted services, agencies are at liberty to specify a particular type of nutrient analysis for any type of fertilizer (organic or synthetic) they would like to use.

EPA does not have specific data on the amount of fertilizers procured by government agencies, although EPA believes that the quantities are substantial. Thus, the agency believes these items are procured in sufficient quantities to support the designation of these items.

d. Other Uses for Recovered Materials. In selecting items for consideration, EPA also considers the following: (1) The possibility of one recovered material displacing another recovered material as feedstock, thereby resulting in no net reduction in materials requiring disposal; (2) the diversion of recovered materials from one product to another, possibly creating shortages in feedstocks for one or both products; and (3) the ability of manufacturers to obtain recovered materials in sufficient quantities to produce the item under consideration.

While other uses for recovered materials are a consideration, they are not a determining factor when selecting items for designation, because EPA believes an item designation would have the positive effect of expanding markets for all recovered materials used to manufacture the designated item.

V. Where Can Agencies Get More Information on the Availability of EPA-Designated Items?

EPA has identified a number of manufacturers and vendors of the items proposed for designation in today's rule. Once the item designations in today's proposal become final, a list of these companies will be placed in the OSWER Docket for this action and will be added to EPA's CPG Supplier Database, which is accessible from the CPG Web site *http://www.epa.gov/cpg.* This database will be updated periodically as new sources of designated items are identified and product information changes. Procuring agencies should contact the manufacturers and vendors directly to discuss their specific needs and to obtain detailed information on the availability and price of recycled products meeting those needs.

Other information may be available from GSA, DLA, state and local recycling offices, private corporations, and trade associations. Refer to Appendix II of the document, ''Background Document for Proposed CPG V and Draft RMAN V,'' located in the OSWER Docket, for more detailed information on these sources of information.

VI. Administrative Assessments

A. Executive Order 12866: Regulatory Planning and Review

Executive Order 12866 requires agencies to determine whether a regulatory action is ''significant.'' The Order defines a ''significant'' regulatory action as one that is likely to result in a proposed rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. EPA estimates that the costs associated with today's proposed rule are well below the $100 million threshold. EPA has prepared an Economic Impact Analysis (EIA) to evaluate the potential impact of today's action. The results of the EIA are discussed below. More information on the estimated economic impact of today's proposed rule is included in the Economic Impact Analysis for this proposed rule, a copy of which is in the OSWER docket.

1. Summary of Costs

As shown in Table 2 below, EPA estimates that the annualized costs of today's proposed rule will range from $1.2 to $2.3 million, with costs being spread across all procuring agencies (*i.e.*, Federal agencies, State and local agencies that use appropriated Federal funds to procure designated items, and government contractors). These costs are annualized over a 10-year period at a three percent discount rate. Details of the costs associated with today's proposed rule are provided in the Economic Impact Analysis for this proposed rule.

TABLE 2.—SUMMARY OF ANNUALIZED COSTS OF PROPOSED CPG V AMENDMENTS TO ALL PROCURING AGENCIES

Procuring agency	Total annualized costs ($1000)	Best estimate total annualized costs ($1000)
Federal Agencies	$577–$1,153	$1,153
States	207–413	413
Local Governments	361–722	722
Contractors	10–20	20
Total	1,154–2,308	2,308

As a result of today's proposed rule, procuring agencies will be required to take certain actions pursuant to RCRA section 6002, including rule review and implementation; estimation, certification, and verification of designated item procurement; and for Federal agencies, reporting and recordkeeping. The costs shown in Table 2 represent the estimated annualized costs associated with these activities. Table 2 also includes estimates for Federal agencies that will incur costs for specification revisions and affirmative procurement program modification. More details of the costs associated with today's proposed rule are included in the Economic Impact Analysis.

There may be both positive and negative impacts to individual businesses, including small businesses. EPA anticipates that today's proposed rule will provide additional opportunities for recycling businesses to begin supplying recovered materials to manufacturers and products made from recovered materials to procuring agencies. In addition, other businesses, including small businesses, that do not directly contract with procuring agencies may be affected positively by the increased demand for recovered materials. These include businesses involved in materials recovery programs and materials recycling. Municipalities that run recycling programs are also expected to benefit from increased demand for certain materials collected in recycling programs.

EPA is unable to determine the number of businesses, including small businesses, that may be adversely impacted by today's proposed rule. For example, if a business currently supplies products to a procuring agency and those products are made only out of virgin materials, the amendments to the CPG may reduce that company's ability to compete for future contracts. However, the amendments to the CPG will not affect existing purchase orders, nor will it preclude businesses from adapting their product lines to meet new specifications or solicitation requirements for products containing recovered materials. Thus, many businesses, including small businesses, that market to procuring agencies have the option to adapt their product lines to meet specifications.

2. Product Cost

Another potential cost of today's action is the possible price differential between an item made with recovered materials and an equivalent item manufactured using virgin materials. The relative prices of recycled content products compared to prices of comparable virgin products vary. In many cases, recycled content products are less expensive than similar virgin products. In other cases, virgin products have lower prices than recycled content products. Many factors can affect the price of various products. For example, temporary fluctuations in the overall economy can create oversupplies of virgin products, leading to a decrease in prices for these items. Under RCRA section 6002(c), procuring agencies are not required to purchase a product containing recovered materials if it is only available at an unreasonable price. However, the decision to pay more or less for such a product is left up to the procuring agency.

3. Summary of Benefits

EPA anticipates that today's proposed rule will result in increased opportunities for recycling and waste prevention. Waste prevention can reduce the nation's reliance on natural resources by reducing the amount of materials used in making products. Using less raw materials results in a commensurate reduction in energy use and a reduction in the generation and release of air and water pollutants associated with manufacturing. Additionally, waste prevention leads to a reduction in the environmental impacts of mining, harvesting, and other raw material extraction processes.

Recycling can affect the more efficient use of natural resources. For many products, the use of recovered materials in manufacturing can result in significantly lower energy and material input costs than when virgin raw materials are used; reduce the generation and release of air and water pollutants often associated with manufacturing; and reduce the environmental impacts of mining, harvesting, and other extraction of natural resources. In addition to conserving non-renewable resources and reducing the environmental impacts associated with resource extraction and processing, recycling can also divert large amounts of materials from landfills, thus reducing waste disposal costs and conserving increasingly valuable space for the management of materials that truly require disposal.

By purchasing products made from recovered materials, government agencies can increase opportunities for all of these benefits. On a national and regional level, today's proposed rule can result in expanding and strengthening markets for materials diverted or recovered through public and private collection programs. Also, since many state and local governments, as well as private companies, reference EPA guidelines when purchasing designated items, this rule can result in increased purchase of recycled products, locally, regionally, and nationally and provide opportunities for businesses involved in recycling activities.

B. Paperwork Reduction Act

This proposed rule contains no new information collection requirements. Therefore, this rule is not subject to the Paperwork Reduction Act.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts on small entities of today's rule, small entity is defined as: (1) A small business as defined by RFA default definitions for small business (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

EPA evaluated the potential costs of its proposed designations to determine whether its actions would have a significant impact on a substantial number of small entities. In the case of small entities that are small governmental jurisdictions, EPA has concluded that the proposal, if promulgated, will not have a significant economic impact. EPA concluded that no small government with a population of less than 50,000 is likely to incur costs associated with the designation of the 2 items because it is improbable that such jurisdictions will purchase more than $10,000 of any designated item. Consequently, RCRA section 6002 would not apply to their purchases of designated items. Moreover, there is no evidence that complying with the requirements of RCRA section 6002 would impose significant additional costs on the small governmental entity to comply in the event that a small governmental jurisdiction purchased more than $10,000 worth of a designated item. This is the case because in many instances, items with recovered materials content may be less expensive than items produced from virgin material.

Furthermore, EPA similarly concluded that the economic impact on small entities that are small businesses would not be significant. Any costs to small businesses that are ''procuring agencies'' (and subject to RCRA section 6002) are likely to be insubstantial. RCRA section 6002 applies to a contractor with a Federal agency (or a state or local agency that is a procuring agency under section 6002) when the contractor is purchasing a designated item, is using Federal money to do so, and exceeds the $10,000 threshold. There is an exception for purchases that are ''incidental to'' the purposes of the contract, *i.e.*, not the direct result of the funds disbursement. For example, a courier service contractor is not required to purchase re-refined oil and retread tires for its fleets because purchases of these items are incidental to the purpose of the contract. Therefore, as a practical matter, there would be very limited circumstances when a contractor's status as a ''procuring agency'' for section 6002 purposes would impose additional costs on the contractor. Thus, for example, if a state or Federal agency is contracting with a supplier to obtain a designated item, then the cost of the designated item (any associated costs of meeting section 6002 requirements) to the supplier presumably will be fully recovered in the contract price. Any costs to small businesses that are ''procuring agencies'' (and subject to section 6002) are likely to be insubstantial. Even if a small business is required to purchase other items with recovered materials content, such items may be less expensive than items with virgin content.

After considering the economic impacts of today's proposed rule on small entities, EPA certifies that the proposal, if promulgated, would not have a significant economic impact on a substantial number of small entities.

This proposal, therefore, does not require a regulatory flexibility analysis. The basis for EPA's conclusions that today's proposed rule, if adopted, will not have a significant impact on a substantial number of small entities is described in greater detail in the EIA for the proposed rule.

While not a factor relevant to determining whether the proposed rule will have a significant impact for RFA purposes, EPA has concluded that the effect of today's proposed rule would be to provide positive opportunities to businesses engaged in recycling and the manufacture of recycled products. Purchase and use of recycled products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies. Technological innovation associated with the use of recovered materials can translate into economic growth and increased industry competitiveness worldwide, thereby, creating opportunities for small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202, EPA generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with Federal mandates that may result in estimated costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act, EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that today's proposed rule does not include a Federal mandate that may result in estimated annualized costs of $100 million or more to either State or local or tribal governments in the aggregate, or to the private sector. To the extent enforceable duties arise as a result of this proposed rule on State and local governments, they are exempt from inclusion as Federal intergovernmental mandates if such duties are conditions of Federal assistance. Even if they are not conditions of Federal assistance, such enforceable duties do not result in a significant regulatory action being imposed upon State and local governments since the estimated aggregate cost of compliance for them are not expected to exceed, at the maximum, $1.1 million annually. The cost of enforceable duties that may arise as a result of today's proposed rule on the private sector are estimated not to exceed $20,000 annually. Thus, the proposed rule is not subject to the written statement requirement in sections 202 and 205 of the Act.

The designated items included in the proposed CPG V may give rise to additional obligations under section 6002(i) (requiring procuring agencies to adopt affirmative procurement programs and to amend their specifications) for state and local governments. As noted above, the expense associated with any additional costs is not expected to exceed, at the maximum, $1.1 million annually. In compliance with Executive Order 12875 entitled Enhancing the Intergovernmental Partnership, 58 FR

58093 (October 28, 1993), which requires the involvement of state and local governments in the development of certain Federal regulatory actions, EPA conducts a wide outreach effort and actively seeks the input of representatives of state and local governments in the process of developing its guidelines.

When EPA proposes to designate items in a CPG, information about the proposal is distributed to governmental organizations so that they can inform their members about the proposals and solicit their comments. These organizations include the U.S. Conference of Mayors, the National Association of Counties, the National Association of Towns and Townships, the National Association of State Purchasing Officials, and the American Association of State Highway and Transportation Officials. EPA also provides information to potentially affected entities through relevant recycling, solid waste, environmental, and industry publications. In addition, EPA's regional offices sponsor and participate in regional and state meetings at which information about proposed and final designations of items in a CPG is presented. Finally, EPA has sponsored buy-recycled education and outreach activities by organizations such as the U.S. Conference of Mayors, the Northeast Recycling Council, Environmental Defense, Keep America Beautiful, and the California Local Government Commission, whose target audience includes small governmental entities.

The requirements do not significantly affect small governments, because they are subject to the same requirements as other entities whose duties result from today's rule. As discussed above, the expense associated with any additional costs to state and local governments is not expected to exceed, at the maximum, $1.1 million annually. The requirements do not uniquely affect small governments because they have the same ability to purchase these designated items as other entities whose duties result from today's rule. Additionally, use of designated items affects small governments in the same manner as other such entities. Thus, any applicable requirements of section 203 of the Act have been satisfied.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule will not impose substantial costs on states and localities. A final rule would require procuring agencies to perform certain activities pursuant to RCRA section 6002, including rule review and implementation, and for Federal agencies, reporting and record keeping. As noted above, EPA estimates that the total annualized costs of today's proposed rule will range from $1.2–$2.3 million. EPA's estimate reflects the costs of the rule for all procuring agencies (*i.e.,* Federal agencies, State and local agencies that use appropriated Federal funds to procure designated items, and government contractors), not just states and localities. Thus, the costs to states and localities alone will be even lower and not substantial. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13175, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13175 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13175 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. The proposed rule does not impose any mandate on tribal governments or impose any duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13175 do not apply to this proposal.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, entitled ''Protection of Children From Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that EPA determines is (1) ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets the Executive Order 13045 as encompassing only those regulatory actions that are risk based or health based, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not involve decisions regarding environmental health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (''NTTAA''), Pub. L. No. 104–113, Section 12(d)(15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent

with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule does not establish technical standards. Therefore, the Agency has not conducted a search to identify potentially applicable test methods from voluntary consensus standard bodies. As part of this rulemaking effort, EPA has developed guidance for procuring agencies to use in complying with section 6002's obligation to purchase items with recovered materials content to the maximum extent practicable. These recommendations include reference to any known industry standards and, as previously noted, are published today in the companion RMAN for the designated items. In developing these recommendations, EPA did consider current voluntary consensus standards on recovered materials content.

VII. Supporting Information and Accessing Internet

The index of supporting materials for today's proposed CPG V is available in the OSWER Docket and on the Internet. The address and telephone number of the OSWER Docket are provided in the **SUPPLEMENTARY INFORMATION** section above. To access information on the Internet, go to the EPA Dockets Web site at *http://www.epa.gov/edocket/.* The index and the following supporting materials are available in the OSWER Docket and on the Internet:

''Background Document for Proposed CPG V and Draft RMAN V,'' U.S. EPA, Office of Solid Waste and Emergency Response, March 2003.

''Economic Impact Analysis for Proposed Comprehensive Procurement Guideline V,'' U.S. EPA, Office of Solid Waste and Emergency Response, March 2003.

Copies of the following supporting materials are available for viewing at the OSWER Docket only:

''Recovered Materials Product Research for the Comprehensive Procurement Guideline V,'' Draft Report, December 2002.

List of Subjects in 40 CFR Part 247

Environmental protection, Government procurement, Recycling.

Dated: November 25, 2003.

Michael O. Leavitt,

Administrator.

For the reasons discussed in the preamble, EPA proposes to amend 40 CFR part 247 as follows:

PART 247—COMPREHENSIVE PROCUREMENT GUIDELINE FOR PRODUCTS CONTAINING RECOVERED MATERIALS

1. The authority citation for part 247 continues to read as follows:

Authority: 42 U.S.C. 6912(a) and 6962; E.O. 13101, 63 FR 49643, 3 CFR, 1998 Comp., P. 210.

2. Amend § 247.3 by revising the definition of ''Compost'' and by adding in alphabetical order a new definition for ''Organic fertilizer'' to read as follows:

§ 247.3 Definitions.

* * * * *

Compost is a thermophilic converted product with high humus content. Compost can be used as a soil amendment and can also be used to prevent or remediate pollutants in soil, air, and storm water run-off.

* * * * *

Organic fertilizer is a single or blended substance, made from organic matter such as plant and animal by-products, manure-based/biosolid products, and rock and mineral powders, that contains one or more recognized plant nutrient(s) and is used primarily for its plant nutrient content and is designed for use or claimed to have value in promoting plant growth.

* * * * *

3. In § 247.15, revise paragraph (b) and add paragraph (f) to read as follows:

§ 247.15 Landscaping products.

* * * * *

(b) Compost made from recovered organic materials.

* * * * *

(f) Fertilizers made from recovered organic materials.

* * * * *

[FR Doc. 03–30266 Filed 12–9–03; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[ET Docket No. 03–201; FCC 03–223]

Modification of the Commission's Rules for Unlicensed Devices and Equipment Approval

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to review and update certain rules contained in the Commission's rules. We take these actions as part of our ongoing process of updating our rules to promote more efficient sharing of spectrum used by unlicensed devices and remove unnecessary regulations that inhibit such sharing.

DATES: Comments must be filed on or before January 9, 2004, and reply comments must be filed on or before January 26, 2004.

FOR FURTHER INFORMATION CONTACT: Neal McNeil, Office of Engineering and Technology, (202) 418–2408, TTY (202) 418–2989, e-mail: *Neal.McNeil@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* ET Docket No. 03–201, FCC 03–223, adopted September 10, 2003, and released September 17, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* Alternate formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 9, 2004, and reply comments on or before January 26, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed.