



Environmental Guidance Regulatory Bulletin

Office of Environmental Policy and Assistance · RCRA/CERCLA Division (EH-413)

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Comprehensive Guideline for Procurement of Products Containing Recovered Materials

Effective Date: May 1, 1996

Introduction:

In Section 6002 of the Resource Conservation and Recovery Act (RCRA) Congress acknowledges the importance of recycling by mandating that government agencies increase their purchases of products containing recovered materials (i.e., waste materials and by-products that have been recovered or diverted from solid waste, not including materials and by-products generated from and commonly reused within an original manufacturing process). To further that mandate, RCRA specifies that the Environmental Protection Agency (EPA) develop and issue procurement guidelines that designate specific items that are or can be made with recovered materials, and recommend practices with respect to the procurement of recovered materials and items containing such materials. Procuring agencies (Federal, State, and agencies of political subdivisions of States that use appropriated Federal funds) and their contractors are required to buy designated items with the highest recovered material content practicable.

In fulfillment of this mandate, EPA previously codified at 40 CFR Parts 248, 249, 250, 252, and 253, five designated products or product categories that are or can be made with recovered materials. Executive Order 12873, "Federal Acquisition, Recycling, and Waste Prevention," signed on

October 20, 1993, prescribed an expedited, two-part process for EPA to follow when designating items that are or can be made with recovered material. This Regulatory Bulletin describes the first Comprehensive Procurement Guideline (CPG) (with 19 newly designated items) and Recovered Materials Advisory Notices (RMANs) (with recommendations for purchasing the items) developed by EPA using this new process.

Statutory Authority:

Section 6002 (e) of RCRA requires that EPA designate items that are or can be made with recovered materials and recommend practices to assist procuring agencies in purchasing the designated items. On April 20, 1994, at 59 FR 18858, EPA proposed a CPG that contained EPA's designations of 21 new items that are or can be made with recovered materials.

DOE commented on this proposed rule by way of a letter dated June 20, 1994 (See Office of Environmental Guidance Memorandum: *Consolidated Departmental Response to "Comprehensive Guideline for Procurement of Products Containing Recovered Materials" proposed rulemaking and "Recovered Material Advisory Notice" draft document*, July 21, 1994). On May 1, 1995, at 60 FR 21370, the EPA promulgated a final rule that designated 19 items that are or can be made with recovered materials. This final CPG also consolidates the designations from EPA's five previous procurement guidelines into a newly codified CPG at 40 CFR 247. In addition, the RMAN, a companion document that provides recommendations (including suggested recovered material content) to procuring agencies on purchasing the items designated in the CPG, for all 24 items was also published in the Notices section of the May 1 Federal Register at 60

FR 21386. With this action, EPA promulgated the first rule and notice governing the purchase of products containing recovered materials using the two-part process specified in Executive Order 12873.

Background:

Other provisions of Section 6002 provide that procuring agencies using Federal funds are to purchase EPA-designated items composed of the highest percentage of recovered materials practicable, taking into consideration competition, price, availability, and performance [Section 6002(c)(1)(A) through (C)]. This requirement applies if the purchase price of the item exceeds \$10,000 or when the total cost of such items purchased by the procuring agency during the preceding fiscal year was \$10,000 or more. Other RCRA sections mandate the revision of specifications to require the use of recovered materials and the elimination of specifications requiring the exclusive use of virgin materials [Section 6002(d)], and the development of an affirmative procurement program [RCRA Section 6002 (i)] that sets forth each agency's policies and procedures for implementing the requirements of RCRA 6002.

Executive Order 12873, signed on October 20, 1993, (58 FR 54911, Oct. 22, 1993) was enacted to streamline the process of complying with RCRA Section 6002. This Executive Order provides several measures to assure that the Federal Government maximizes the use of recycled material through an affirmative procurement program. Overseen by a newly created Federal Environmental Executive and Agency Environmental Executives, affirmative procurement programs are required at all Federal Agencies for all designated EPA guideline items that they purchase. EPA was charged with instituting a new process for designating these items in accordance with RCRA Section 6002(e). The new process requires that 1) EPA issue a CPG (requiring a formal notice and comment in the Federal Register and codification in the Code of Federal Regulations) containing designated items that are or can be made with recovered materials,

and 2) concurrent with the issuance of the CPG, publish for public comment in the Federal Register an RMAN that presents the range of recovered material content levels within which the designated recycled items are currently available. These levels are to be updated periodically, after publication for comment, to reflect changes in market conditions.

Prior to this Order, EPA combined item designations and purchasing recommendations into one Federal Register notice and codified both the CPG and RMAN in the Code of Federal Regulations. Using the two-step process specified in the Executive Order, designations (the CPG) are codified, but recommendations (the RMAN), though concurrently published in the Federal Register, are treated as guidance.

Provisions of the New Rule:

The final rule completely reorganizes EPA's previous RCRA Section 6002 regulations. Between 1983 and 1989, EPA issued five guidelines for the procurement of products containing recovered materials. The guidelines covered 1) cement and concrete containing flyash, 2) paper and paper products, 3) re-refined lubricating oils, 4) retread tires, and 5) building insulation. In addition, guidance was promulgated at 40 CFR 247 prior to the 1984 RCRA Amendments.

The final rule deletes the existing Part 247 guidance; deletes Parts 248, 249, 250, 252, and 253; and consolidates the five procurement guidelines and 19 new item designations into a new Part 247. New 40 CFR 247 is organized into two Subparts: Subpart A - General, which includes definitions and general requirements of RCRA, Section 6002; and Subpart B - Item Designations, which includes the 24 items organized into related groupings as illustrated in the table on page 3.

The May 1, 1995 RMAN includes general recommendations regarding the review and revision of product specifications, the administration of affirmative procurement programs, and specific recommendations for the procurement of each designated item, including EPA's recommended minimum content standards.

CATEGORIES AND DESIGNATED ITEMS

Paper and Paper Products*

Vehicular Products

- Engine Coolants
- Re-refined Lubricating Oils*
- Retread Tires*

Construction Products

- Structural Fiberboard
- Laminated Paperboard
- Carpet
- Floor Tiles
- Patio Blocks
- Building Insulation Products*
- Cement and Concrete Containing
 - Coal Fly Ash*
 - Ground Granulated Blast Furnace Slag

Transportation Products

- Traffic Cones
- Traffic Barricades

Park and Recreation Products

- Playground Surfaces
- Running Tracks

Landscaping Products

- Hydraulic Mulch
- Yard Trimmings Compost

Non-paper Office Products

- Office Recycling Containers
- Office Waste Receptacles
- Plastic Desktop Accessories
- Toner Cartridges
- Binders
- Plastic Trash Bags

**Consolidated from previously issued guidelines*

On March 15, 1995, EPA published a notice of availability of a draft Paper Products RMAN. When final, the recommendations in the Paper Products RMAN will replace the recommendations found in the May 1, 1995, RMAN.

To assist procuring agencies in obtaining recycled designated items, EPA has also published availability lists. These lists are not endorsements

by EPA, but rather a source of potential suppliers for users to consider. A copy of the availability lists can be obtained by calling the RCRA Hotline: (703) 412-9810 for the Washington/Metro area, and (800) 424-9346 for all other areas.

Impact of the Rule on DOE Operations:

By May 1, 1996, the 19 designated items in the subject Federal Register notice must be added to the five items already listed in the DOE Affirmative Procurement Program. The requirements of that program, such as promotion of the preference program or vendor certification, will be applicable to any of the additional designated items purchased after May 1, 1996. DOE guidance regarding the Affirmative Procurement Program will be revised in 1996 to incorporate the changes discussed in this Regulatory Bulletin.

The Department of Energy Acquisition Regulation was amended on September 13, 1995 (48 CFR Parts 923 and 970) to provide for the acquisition and use of environmentally preferable products and services. The amendment includes a policy on the use of recovered/recycled materials and a contract clause for managing and operating contracts on the acquisition and use of environmentally preferable products and services.

As with the previous five designated items, procuring agencies will be required to report annually on the procurement of all recycled and non-recycled designated items. Executive Order 12873 requires that 100% of an agency's purchases of designated items contain recovered materials unless price, competition, availability and performance criteria cannot be met. Written justification is required if non-recycled designated items are purchased.

Please direct questions about the RCRA Comprehensive Guideline for Procurement of Products Containing Recovered Materials to:

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