

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 247**

[FRL-5198-7]

RIN 2050-AE16

**Comprehensive Guideline for Procurement of Products Containing Recovered Materials**

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

**SUMMARY:** Today, the Environmental Protection Agency (EPA) is promulgating a final regulation designating the following 19 items that are or can be made with recovered materials: Engine coolants, structural fiberboard, laminated paperboard, carpet, floor tile, patio blocks, cement and concrete containing ground granulated blast furnace slag, traffic cones, traffic barricades, playground surfaces, running tracks, hydraulic mulch, yard trimmings compost, office recycling containers, office waste receptacles, plastic desktop accessories, toner cartridges, binders, and plastic trash bags. The CPG also consolidates the designations from EPA's five earlier procurement guidelines, which were previously codified at 40 CFR parts 248, 249, 250, 252, and 253. These five items, in addition to the 19 new items designated today, will be incorporated into a new Comprehensive Procurement Guideline codified at 40 CFR part 247.

This regulation is issued under the authority of section 6002(e) of the Resource Conservation and Recovery Act (RCRA). This action will promote recycling by using government purchasing to expand markets for recovered materials. RCRA section 6002 requires EPA to designate items that are or can be produced with recovered materials and to recommend practices for the procurement of designated items by procuring agencies. Once EPA designates an item, RCRA section 6002 requires that any procuring agency, when using appropriated Federal funds to procure that item, shall purchase it with the highest percentage of recovered materials practicable.

Executive Order 12873 sets forth procedures for EPA to follow in implementing RCRA section 6002(e). Specifically, it calls for EPA to designate section 6002 items in a Comprehensive Procurement Guideline (CPG) and to provide recommended procurement practices in a related Recovered Materials Advisory Notice (RMAN).

For the items designated in today's rule, EPA is issuing a Recovered Materials Advisory Notice (RMAN), which is published in the notice section of today's **Federal Register**. This RMAN includes EPA's consolidated recommendations to procuring agencies for meeting their section 6002 obligations with respect to the new and existing designated items. In the case of most designated items, the RMAN contains recommended minimum recovered materials content levels. For other items, an alternative approach is recommended. In addition, the RMAN revises the recommended recovered materials content levels originally contained in the building insulation guideline issued in 1988. The purpose of the recommendations contained in the RMAN is to assist procuring agencies in fulfilling their obligations under RCRA section 6002 and Executive Order 12873 to purchase designated items composed of the highest percentages of recovered materials practicable.

**EFFECTIVE DATE:** The Comprehensive Procurement Guideline is effective on May 1, 1996.

**ADDRESSES:** The public record for this rulemaking (Docket Number F-95-PRMF-FFFFF) is located at the following address: U.S. Environmental Protection Agency, RCRA Information Center (RIC), Room M2616, 401 M Street SW., Washington, DC 20460.

The RIC is open from 9 a.m. to 4 p.m. Monday through Friday, except for Federal holidays. To review docket materials, the public must make an appointment by calling (202) 260-9327. Materials may be copied for \$0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** "Comprehensive Procurement Guideline—Supporting Analyses" is the primary supporting document for the final Comprehensive Procurement Guideline. Today's **Federal Register** notice and the supporting document will be available in electronic format on the Internet System through the EPA Public Access Server at [gopher.epa.gov](http://gopher.epa.gov). For a paper copy of the **Federal Register** notice or "Comprehensive Procurement Guideline—Supporting Analyses," please contact the RCRA Hotline at 800-424-9346, or, in the Washington, DC metropolitan area, (703) 412-9810. Paper copies also are available in the RCRA Docket at the address listed in the previous section.

For general information, contact the RCRA Hotline. For technical information on individual item designations, contact the following EPA staff: Yard trimmings compost, Plastic

pipe and fittings, Geotextiles, Carpet, Floor tile and Patio blocks, Playground surfaces and Running tracks, Temporary traffic control devices—Terry Grist, (703) 308-7257; Engine coolant—Tracy Bone, (703) 308-7259; Cement and concrete containing ground granulated blast furnace slag and Hydraulic mulch—Dana Arnold, (703) 308-7279; Structural fiberboard and Laminated paperboard, Office recycling containers and Office waste receptacles, Plastic desktop accessories, Toner cartridges, Binders, and Plastic trash bags—Beverly Goldblatt, (703) 308-7278. For all other technical information, contact Beverly Goldblatt at (703) 308-7278, or Terry Grist at (703) 308-7257.

**Accessing Internet**

1. Through Gopher: Go to: [gopher.epa.gov](http://gopher.epa.gov)

From the main menu, choose "EPA Offices and Regions". Next, choose "Office of Solid Waste and Emergency Response (OSWER)". Next, choose "Office of Solid Waste". Then, choose "Non-Hazardous Waste—RCRA Subtitle D". Finally, choose "Procurement/CPG".

2. Through FTP: Go to: [ftp.epa.gov](http://ftp.epa.gov)

Login: anonymous  
Password: Your Internet Address  
Files are located in directories/pub/gopher. All OSW files are in directories beginning with "OSW".

3. Through MOSAIC: Go to: <http://www.epa.gov>

Choose the EPA Public Access Gopher. From the main (Gopher) menu, choose "EPA Offices and Regions". Next, choose "Office of Solid Waste and Emergency Response (OSWER)." Next, choose "Office of Solid Waste". Then, choose "Non-Hazardous Waste—RCRA Subtitle D". Finally, choose "Procurement/CPG".

4. Through dial-up access:

Dial 919-558-0335. Choose EPA Public Access Gopher. From the main (Gopher) menu, choose "EPA Offices and Regions". Next, choose "Office of Solid Waste and Emergency Response (OSWER)". Next, choose "Office of Solid Waste". Then, choose "Non-Hazardous Waste—RCRA Subtitle D". Finally, choose "Procurement/CPG".

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## I. Authority

This guideline is promulgated 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, as amended, 42 U.S.C. 6912(a) and 6962, and section 502 of Executive Order 12873 (58 FR 59211; October 22, 1993).

## II. Background

RCRA section 6002 and Executive Order 12873 set forth requirements for the procurement of products containing recovered materials and the issuance of procurement guidelines. The requirements of RCRA section 6002 apply to "procuring agencies," as defined in RCRA section 1004; Executive Order requirements apply only to Federal "Executive agencies," as defined in section 202 of Executive Order 12873. Under RCRA section 1004(17), a "procuring agency" means any "Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract."

## A. Purpose of the Procurement Guidelines

In RCRA, Congress acknowledged the importance of recycling in helping to manage the nation's solid waste and recognized that recycling is not merely the collection of materials, but includes the manufacture of products with these materials and the purchase of recycled content products by consumers. RCRA section 6002 established the government's buy-recycled program, which uses Federal purchasing power to stimulate the demand for products made with recovered materials. The statute does this by requiring EPA to issue guidelines to be used by government when procuring recycled products. The guidelines are used not only by Federal agencies but also by state and local agencies and their contractors. Many state and local agencies have urged EPA to designate additional items to increase markets for recovered materials. President Clinton's Executive Order 12873 further bolsters the Federal government's commitment to buy products containing recovered materials by "streamlining" the process used by EPA in fulfilling its obligation under RCRA section 6002 to designate items that are or can be made with recovered materials.

Executive Order 12873 recognizes that the nation's interest is served when the Federal government makes more efficient use of natural resources by maximizing recycling and preventing waste wherever possible. The E.O. also recognizes that the Federal government should—through cost-effective waste prevention and recycling activities—work to conserve disposal capacity, and serve as a model in this regard for private and other public institutions. 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. Use of recovered materials may reduce the generation and release of air and water pollutants often associated with manufacturing (including air emissions that contribute to the level of "greenhouse gases" and ozone depletion). Using recovered materials also reduces the environmental impacts of mining, harvesting, and other extraction of natural resources, while conserving non-renewable resources for future use. Recycling can also divert large amounts of materials from landfills. This reduces the need to expand existing or site new disposal facilities, allowing local officials to devote more attention to health, education, and safety issues.

Executive Order 12873 also points out that the use of recycled content products by the Federal government can spur private sector development of new technologies and use of such products, thereby 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 make American industry more competitive in the global economy.

Both RCRA and the E.O. recognize the interdependence between buying recycled content products and the success of recycling. For recycling to occur, industry must use recovered materials as feedstock for the manufacture of new products. Despite the environmental and economic efficiencies that can be realized by using recovered materials as feedstock, a manufacturer's primary responsibility remains to produce items that meet the demands of the consumer. The Federal government, through its purchasing decisions as a consumer, can play a key role in influencing manufacturers' decisions on products made with recovered materials. By purchasing products containing recovered materials pursuant to the guidelines established under RCRA and Executive Order 12873, the Federal government and other procuring agencies have the opportunity to increase markets for recovered materials and to contribute to an increased level of recycling in this country.

EPA also strongly encourages the private sector to use these guidelines when making purchasing decisions. Private sector purchases of most designated items far exceed government purchases. By seeking products made with recovered materials, the private sector can further stimulate markets for recovered materials, reduce the generation of air and water pollutants associated with virgin material extraction and beneficiation, and, in some instances, contribute to reductions in our nation's energy usage.

## B. RCRA Section 6002

RCRA section 6002 requires EPA to designate items that are or can be made with recovered materials and to recommend practices to assist procuring agencies in purchasing the designated items. Once an item is designated by EPA, procuring agencies are required to purchase it composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of postconsumer recovered materials), taking into consideration the limitations set forth in

section 6002(c)(1) (A) through (C) (i.e., competition, price, availability, and performance). The requirement applies when the purchase price of the item exceeds \$10,000 or when the total cost of such items, or of functionally equivalent items, purchased during the preceding fiscal year was \$10,000 or more.

Within one year after EPA designates an item, RCRA section 6002(d)(2) requires that Federal agencies revise their specifications to require the use of recovered materials to the maximum extent possible without jeopardizing the intended end-use of the item. Section 6002(d)(1) further requires Federal agencies responsible for drafting or reviewing specifications to review all of their product specifications to eliminate both provisions prohibiting the use of recovered materials and requirements specifying the exclusive use of virgin materials. This revision process should have been completed by May 8, 1986.

Once EPA designates an item, responsibility for complying with RCRA section 6002 rests with the procuring agencies. As noted, after the date specified in the designation, each procuring agency must procure designated items with the highest recovered materials content practicable.

After the effective date, contracting officers must require their vendors to certify that the recovered materials content of their product meets the required content level. Furthermore, for each item designated by EPA, RCRA section 6002(i) requires each procuring agency to develop an affirmative procurement program, which sets forth the agency's policies and procedures for implementing the requirements of RCRA section 6002. The program must assure that the agency purchases items composed of recovered materials to the maximum extent practicable and that these purchases are made consistent with applicable provisions of Federal procurement law. In accordance with RCRA section 6002(i), the affirmative procurement program must contain at least four elements:

- (1) A recovered materials preference program;
- (2) An agency promotion program;
- (3) A program for requiring vendors to reasonably estimate, certify, and verify the recovered materials content of their products; and
- (4) A program to monitor and annually review the effectiveness of the affirmative procurement program.

**C. Executive Order 12873**

Executive Order 12873, entitled "Federal Acquisition, Recycling, and Waste Prevention," was signed by

President Clinton on October 20, 1993. The Order establishes a new, two-part process for EPA to use when developing and issuing the procurement guidelines for products containing recovered materials. The first part, the Comprehensive Procurement Guideline, contains EPA's designations of items that are or can be made with recovered materials. Because this is an activity requiring rulemaking, the CPG was developed using formal notice-and-comment rulemaking procedures and will be codified in the Code of Federal Regulations. Today's final CPG was developed under the procedures established in the Executive Order.

The second part, the Recovered Materials Advisory Notice, provides recommendations to procuring agencies on purchasing the items designated in the CPG. The Executive Order directs EPA to publish the RMAN in the **Federal Register** for public comment. The RMAN for items designated in today's CPG appears in the notice section of today's **Federal Register**.

A detailed description of the Executive Order provisions was included in the preamble to the proposed CPG (59 FR 18858; April 20, 1994).

**D. Other Requirements and Policies**

There are several other policies and procedures that may affect the procurement of products containing recovered materials by Federal and other government agencies. For the convenience of the reader, in Appendix I of this preamble, EPA has briefly summarized requirements and policies set forth in the Federal Acquisition Regulation, OFPP Policy Letter 92-4, and OMB Circulars A-102, A-119, and A-131.

**E. Existing Procurement Guidelines**

Between 1983 and 1989, EPA issued five guidelines for the procurement of products containing recovered materials. The guidelines issued prior to today's effort are listed in the following table:

TABLE 1.—EPA GUIDELINES FOR PROCUREMENT OF PRODUCTS CONTAINING RECOVERED MATERIALS

| Guideline                               | 40 CFR Part | Date (FR)                      |
|---|-------------|--------------------------------|
| Cement and Concrete Containing Fly Ash. | 249         | January 28, 1983 (48 FR 4230). |
| Paper and Paper Products.               | 250         | June 22, 1988 (53 FR 23546).   |

TABLE 1.—EPA GUIDELINES FOR PROCUREMENT OF PRODUCTS CONTAINING RECOVERED MATERIALS—Continued

| Guideline                    | 40 CFR Part | Date (FR)                        |
|------------------------------|-------------|----------------------------------|
| Re-Refined Lubricating Oils. | 252         | June 30, 1988 (53 FR 24699).     |
| Retread Tires ...            | 253         | November 17, 1988 (53 FR 46558). |
| Building Insulation.         | 248         | February 17, 1989 (54 FR 7327).  |

**F. Summary of Proposed Rule**

On April 20, 1994, EPA proposed a Comprehensive Procurement Guideline that, when finalized, would designate 21 items that are or can be made with recovered materials. The items were arranged into product categories as shown below:

**Vehicular Products**

Reclaimed engine coolants

**Construction Products**

Structural fiberboard  
Laminated paperboard  
Plastic pipe and fittings  
Geotextiles  
Cement/concrete containing ground granulated blast furnace slag  
Carpet  
Floor tiles  
Patio blocks

**Transportation Products**

Traffic barricades  
Traffic cones

**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  
Remanufactured toner cartridges  
Binders  
Plastic Trash Bags

In addition to proposing to designate the 21 new items, EPA (1) identified items for potential future designation, depending on the receipt of additional information; (2) identified items deemed not appropriate for designation at this time; (3) announced the Agency's intention to establish a process for the public to suggest items that could be added to future updates to the CPG; and (4) requested comment on how EPA might be able to increase public

participation in developing future updates to the CPG.

EPA also proposed to delete the outdated guidance in 40 CFR part 247, which pre-dated the 1984 amendments to the Resource Conservation and Recovery Act and to consolidate the existing five procurement guidelines and new item designations into a new part 247. The proposed new part 247 consisted of two subparts: Subpart A—General, which included the general requirements of RCRA section 6002 and definitions, and Subpart B—Item Designations (see 59 FR 18862, April 20, 1994). As explained in the preamble to the proposed CPG, EPA did not seek comment on the existing item designations for paper and paper products, re-refined lubricating oil, building insulation, cement and concrete containing fly ash, or retread tires.

The legal basis, methodology, and factual conclusions that formed the basis of the proposal were described in substantial detail in the notice of proposed rulemaking (see 59 FR 18853–18882).

Interested persons were invited to participate in the rulemaking by submitting written comments by June 20, 1994.

### III. Comment Summary and Agency's Response

EPA received submittals from over 300 commenters in response to the proposed CPG. These commenters represented various interests, including Federal agencies, State agencies, local governments, product manufacturers, product users, public interest groups, waste management companies, and members of Congress. EPA has carefully considered all of these comments. A discussion of the major comments follows.

#### A. General Comments

##### 1. Designation of Material Specific Items

*Comment:* One commenter suggested that EPA designate items in a material neutral manner. In other words, rather than designating items made of specific materials (e.g., "plastic" trash bags), EPA should simply designate the items in generic terms (e.g., trash bags).

*Response:* EPA believes that such an approach is not appropriate for all items. Under RCRA section 6002(c)(1), each procuring agency which procures "any items" designated by EPA is required to procure such items composed of the highest percentage of recovered materials practicable. As a result, if EPA designates a generic category of items, procuring agencies are

obligated to try to purchase all items within that category containing recovered materials. For example, when EPA designated "paper and paper products" or "building insulation products," procuring agencies were obligated to purchase all types of paper products or building insulation containing recovered materials, even though EPA did not provide content recommendations for all products within these categories. In other instances, where EPA is not aware that items manufactured from other types of materials are made with or could contain recovered materials, EPA has limited its designations so as not to create an unnecessary burden on agencies to try to purchase an item that is not available. When EPA learns that the generic item is being made with additional recovered materials, EPA will evaluate the new information and consider amending the item designation accordingly.

In implementing this process for the items listed in the proposed CPG, EPA sometimes had information on the availability of a particular item made with a specific recovered material (e.g., plastic), but no information on the availability of the item made from a different recovered material or any indication that it is possible to make the item with a different recovered material. In these instances, EPA concluded that it was appropriate to include the specific material in the item designation in order to provide vital information to procuring agencies as they seek to fulfill their obligations to purchase designated items composed of the highest percentage of recovered materials practicable. This information enables the agencies to focus their efforts on products that are currently available for purchase, reducing their administrative burden. EPA also included information in the proposed CPG, as well as in the draft RMAN that accompanied the proposed CPG, that advised procuring agencies that EPA is not recommending the purchase of an item made from one particular material over a similar item made from another material. For example, EPA included the following statement in the preamble discussion for plastic desktop accessories (59 FR 18879): "This designation does not preclude a procuring agency from purchasing desktop accessories manufactured from another material, such as wood. It simply requires that a procuring agency, when purchasing plastic desktop accessories, purchase these accessories made with recovered materials \* \* \*"

##### 2. Purpose, Scope, and Applicability

*Comment:* A commenter inquired about the applicability of RCRA section 6002 to designated items that are leased rather than purchased by a procuring agency.

*Response:* Section 6002 applies to "any purchase or acquisition" in excess of \$10,000 by a procuring agency. The Federal Acquisition Regulation (FAR) defines "acquisition" to include the acquiring of supplies or services (including construction) by means of a lease (48 CFR 2.101). Therefore, RCRA section 6002 and the procurement guidelines developed under its authority apply to a procuring agency's lease contracts for designated items. Under the definition of "procuring agency," lessor contractors are subject to the section 6002 requirements for work performed under the lease contract.

*Comment:* Commenters inquired when RCRA section 6002 applies to contractors.

*Response:* The requirements of RCRA section 6002 apply to contractors in the following circumstances. A contractor must comply with section 6002 with respect to work under the contract if the contractor is (1) contracting with a Federal agency or a State agency which is using appropriated Federal funds for a procurement and (2) purchasing or acquiring a designated item whose purchase price exceeds \$10,000 or the quantity of the item purchased in the previous year was \$10,000 or more.

Under both circumstances, it is immaterial for purposes of the \$10,000 threshold whether the contractor purchased or acquired the designated items as a "procuring agency" (with respect to work performed under a contract with a Federal or State agency) or in its private capacity. All the purchases of a designated item should be aggregated in order to determine whether the \$10,000 threshold for section 6002 applicability is met. However, the obligations of section 6002 are prospective. The contractor must determine whether the \$10,000 threshold is met *only* after it is a "procuring agency." That is, purchases exceeding the \$10,000 threshold in the year prior to the year in which a contractor becomes a "procuring agency" do not trigger section 6002(a) requirements. Furthermore, while the contractor is subject to section 6002 requirements once it exceeds the threshold, the RCRA requirements apply only with respect to work performed under the contract (i.e., when supplying the designated item to any State or Federal agency).

For example, in Year One, Contractor X contracts to supply \$500 of hydraulic mulch to a State agency using appropriated Federal funds to purchase the hydraulic mulch. Therefore, in Year One, Contractor X is a "procuring agency." During Year One, Contractor X also purchases hydraulic mulch for its own use and to supply the requirements of its other customers, with total purchases of hydraulic mulch exceeding \$10,000. In Year One, while Contractor X is a procuring agency, Contractor X is not subject to the section 6002 requirements for hydraulic mulch supplied to the State agency because the contract price does not exceed \$10,000. In Year Two, Contractor X is subject to section 6002 requirements for hydraulic mulch provided to the State agency for the procurement regardless of the amount of the contracted purchase, because, while a "procuring agency" in Year One, it purchased in excess of \$10,000 of hydraulic mulch.

In another example, in Year One, Contractor Y purchases \$10,000 of hydraulic mulch but none was purchased on behalf of a government agency using appropriated Federal funds. In Year One, Contractor Y is not a procuring agency. In Year Two, Contractor Y contracts to supply less than \$10,000 of hydraulic mulch to a State agency using appropriated Federal funds for the purchase. In Year Two, Contractor Y is a procuring agency, but is not subject to section 6002 requirements for its purchases of hydraulic mulch because it was not a procuring agency during the previous year when it acquired in excess of \$10,000 of hydraulic mulch.

### 3. Definitions

In the proposed CPG, EPA explained that the definitions found in the five existing guidelines would be incorporated into a new part 247 (59 FR 18863, April 20, 1994). The new part 247 would include the relevant definitions found in RCRA, the definitions of items, and definitions of terms used in the companion RMAN. EPA has concluded that it will be easier for procuring agencies to use the definitions if they are limited to those terms used in the CPG. Therefore, in the final CPG, the definitions section contains only terms used in the CPG.

### 4. Affirmative Procurement Program

*Comment:* Several commenters expressed concern with the administrative requirements associated with individual item designations. In particular, many commenters objected to the requirement that procuring agencies develop affirmative

procurement programs for all designated items, including items that they may not purchase or that they are unable to obtain with recovered materials content.

*Response:* In the proposed CPG (59 FR 18864, April 20, 1994), EPA recommended that procuring agencies develop one comprehensive affirmative procurement program with a structure that provides for the integration of new items as they are designated. EPA believes that developing a single affirmative procurement program will substantially reduce procuring agencies' administrative burdens under RCRA that result from today's item designations.

EPA also recommends that if a procuring agency does not purchase a specific designated item, it should simply include a statement in its preference program to that effect. Similarly, if a procuring agency is unable to obtain a particular item for one or more of the reasons cited in RCRA section 6002(c)(1), a similar statement should be included in the preference program along with the appropriate justification.

For example, if a state agency procures cement and concrete using appropriated Federal funds and has determined that ground granulated blast furnace slag is not available in the state due to high transportation costs, then that state agency would include the following or similar statement in its preference program:

The State currently is unable to use ground granulated blast furnace slag in cement and concrete products due to the high transportation costs of this material. Therefore, this State has concluded that, based on RCRA section 6002(c)(1)(C), it is not required to procure this material.

EPA notes that, in accordance with RCRA section 6002(i)(2)(D), it is the procuring agency's responsibility to monitor and regularly update its affirmative procurement program. Should an item that was previously unobtainable become available, then the procuring agency should modify its affirmative procurement program accordingly.

#### B. Items Proposed for Designation

No commenters opposed the designations of the following items: Structural fiberboard, laminated paperboard, patio blocks, traffic barricades, traffic cones, playground surfaces, running tracks, hydraulic mulch, plastic desktop accessories, and plastic trash bags. Therefore, today, EPA is promulgating these item designations as proposed. The following subsections discuss the significant comments

pertaining to the remaining proposed item designations.

#### 1. Engine Coolants

*Comment:* Two commenters asked that EPA clarify that the proposed designation applies only to engine coolants used in vehicles and not to other glycol-based coolants used in other types of machinery such as generator motors.

*Response:* EPA believed that inclusion of engine coolants in the Vehicular Products Category clarifies that the designation is limited to vehicular engine coolants and does not apply to other non-vehicular coolants. However, to remove any ambiguity, EPA is revising the engine coolant designation to specify that it applies to vehicles only.

*Comment:* Two commenters urged EPA to limit the designation to ethylene-glycol based engine coolants and exclude other types of engine coolants. These two commenters stated that propylene glycol is not currently being reclaimed and that, therefore, propylene glycol-based engine coolants do not meet the statutory requirements for designation. Furthermore, one commenter noted that U.S. automobile manufacturers "currently disallow the use of propylene glycol engine coolants in their products. Products which are not ethylene glycol-based fail to meet the appropriate chemical properties requirement and are therefore not qualified for use in American Automobile Manufacturers Association members' vehicles."

*Response:* EPA believes that propylene glycol-based engine coolants are not currently being recovered and processed into reclaimed engine coolants. However, EPA is unaware of any technical reason that would prevent this from occurring. RCRA directs EPA to "designate those items which are or can be produced with recovered materials and whose procurement by procuring agencies will carry out the objectives of this section (Section 6002 of RCRA)." Rather than precluding procuring agencies from purchasing propylene glycol-based engine coolants and reclaiming them, EPA concludes that it is inappropriate to limit the item designation to ethylene glycol-based engine coolants only. If propylene glycol-based engine coolants do not meet a procuring agency's performance requirements, the agency need not purchase them. Thus, EPA has decided to finalize the engine coolants designation as proposed.

## 2. Plastic Pipe and Fittings

*Comment:* While one commenter supported the proposed designation of plastic pipe and fittings, EPA received numerous comments expressing concern about the possible liability and adverse effects were there to be failures of plastic pipe containing recovered materials. These commenters stated that the American Society for Testing and Materials (ASTM) and American Association of State Highway and Transportation Officials (AASHTO) are currently reviewing their material specifications that preclude the use of recovered materials in plastic pipe and fittings for possible revision to allow the use of these materials. These commenters suggested that ASTM and other reliable specifications are necessary to ensure the quality of plastic pipe containing recovered materials, and that EPA should not designate plastic pipe containing recovered materials until such specifications are in place.

*Response:* As described in the proposed CPG, several manufacturers have conducted performance testing on pipe made with recovered materials and demonstrated that the pipe meets applicable ASTM performance specifications. However, there currently exist ASTM and other material specifications that preclude the use of recovered materials in plastic pipe and fittings. As pointed out by commenters, there is a major effort underway to review these specifications for possible revision to allow the use of recovered materials. This effort is not yet completed. Based on the comments received, EPA has become aware that many manufacturers and users of plastic pipe do not believe that adequate testing, especially field testing, has been conducted and that designation should be delayed until such testing is conducted. For this reason, EPA has determined that it is premature to designate plastic pipe and fittings, even for non-pressure applications.

Many commenters in industry and government, particularly state transportation officials, expressed a strong interest in working with EPA to overcome the barriers to using plastic pipe made of recovered materials. At least one state transportation office currently is conducting field testing of HDPE drain pipe made of recovered materials. EPA will continue to follow developments in this area and will reconsider designating plastic pipe when these barriers have been overcome. In the meantime, EPA encourages manufacturers and users of plastic pipe made with recovered

materials to keep the Agency apprised of new developments in product performance testing and revision of material specifications.

## 3. Geotextiles

*Comment:* Although many commenters supported the proposed designation of geotextiles, the majority of commenters opposed it. Those in support of the designation stated that there are non-woven geotextiles available made with postconsumer recovered polyethylene terephthalate (PET) and they are being used in a variety of applications. These commenters also stated that adequate performance testing has been conducted to justify the designation of geotextiles made with recovered materials. Commenters opposed to the proposed designation of geotextiles expressed concern that using recovered resins in geotextiles could result in catastrophic failures if used in critical applications, such as in landfills or in road construction. These commenters stated that evidence does not exist on the long-term performance of geotextiles made with recovered resin or on the chemical compatibility of geotextiles containing recovered materials when used in landfill applications. Additional commenters claimed that no manufacturers actually make geotextiles with postconsumer polypropylene, that the technology does not exist to make geotextiles with recovered polypropylene, and that high-quality postconsumer polypropylene is not available in sufficient quantities for use in making geotextiles.

*Response:* EPA has not yet been able to resolve the numerous technical issues raised during the comment period. To do so would have meant a delay in issuance of the final CPG and a delay in the date on which procuring agencies would be required to begin purchasing the 19 additional items that are being designated at this time. Thus, EPA determined that it would be best to issue the CPG for those items on which the Agency is ready to proceed and to defer a final decision on the designation of geotextiles until a future update of the CPG.

EPA will continue to track developments in this area, evaluate the issues raised by commenters, and maintain a dialog with manufacturers and users of geotextiles. EPA encourages manufacturers of geotextiles made with recovered materials to keep the Agency apprised of new products being manufactured with recovered materials, the availability of recovered polypropylene, and developments in product performance testing.

## 4. Cement and Concrete Containing Ground Granulated Blast Furnace Slag

*Comment:* Several commenters opposed the designation of ground granulated blast furnace (GGBF) slag because of its lack of availability.

*Response:* EPA has concluded that availability is not a barrier to designating GGBF slag. Data provided in comments by GGBF slag producers indicate that granulators currently are located at four steel plants, an additional five steel companies are considering the installation of granulation capacity at locations in six states, ten cement manufacturers in nine states currently grind granulated blast furnace slag, and excess capacity is available to supply granulated blast furnace slag to additional customers. Additionally, EPA's Report to Congress on special wastes from mineral processing<sup>1</sup> indicates that most U.S. primary iron producers are expected to modernize their blast furnaces and install slag granulation facilities, resulting in greater availability of granulated blast furnace slag for use in cement and concrete.

While GGBF slag currently is used primarily in Eastern states and states located just west of the Mississippi River, the product also has been used in states more remote from the nation's steel centers (e.g., Texas, Oklahoma, and Colorado), indicating that this item can be made available to states that are not proximate to steel mills. In light of the Agency's past experience with the positive effect of an item designation on markets, EPA concludes that designation of cement and concrete containing GGBF slag will encourage additional states to consider the use of GGBF slag, thereby creating expanded markets for this item.

If a procuring agency determines that cement or concrete containing GGBF slag is not available, it is not required to purchase this item. Section 6002 of RCRA provides that procuring agencies need not purchase a designated item if the item is not reasonably available within a reasonable period of time or the item is available only at an unreasonable price. The procuring agency must, however, take the affirmative step of inquiring whether the item is or can be made available.

*Comment:* The comments contained both positive and negative information about the performance of cement and concrete containing GGBF slag. Several states commented that they use GGBF

<sup>1</sup> "Report to Congress on Special Wastes from Mineral Processing," Volume II: Methods and Analyses, U.S. Environmental Protection Agency, Office of Solid Waste, July 1990, Chapter 8.

slag in cement or concrete for its positive attributes. A federal agency also cited several positive attributes of this material. The positive attribute most often cited was GGBF slag-cement's contribution to a reduction in alkali-silica reactivity. It also adds cementitious properties.

Commenters also cited negative performance factors about the use of GGBF slag, although conflicting information was provided about almost all of these factors. For example, commenters noted that concrete containing GGBF slag has a slower set time than concrete without GGBF slag. This fact could limit the time of year in which the product is used. However, considering that 70% of concrete is used in warmer months, other commenters stated that slower set time, in and of itself, is not a barrier to using this product in most projects.

*Response:* EPA's detailed response to each of these comments is contained in "Comprehensive Procurement Guideline—Supporting Analyses." In many instances, the negative attributes cited by commenters were cited as positive attributes by others. For example, slower setting times are often advantageous, especially in warm weather when 70 percent of concrete is placed. With respect to other performance criteria, other commenters provided conflicting information. For example, while some commenters cited a problem with the workability of concrete containing GGBF slag, a Federal agency commented that GGBF slag will generally improve the workability of concrete. Based on a review of the information submitted by commenters, EPA agrees with one commenter that GGBF slag is suitable for some, but not all, concrete applications and, therefore, should not be blindly substituted for Portland cement without regard for its effects on the characteristics of the concrete mix.

For the following reasons, EPA concludes that cement and concrete containing GGBF slag should be designated: (1) The use of GGBF slag in cement and concrete can provide beneficial properties to users of concrete, such as reduced alkali-silica reactions, (2) the use of GGBF slag in cement and concrete can reduce the quantities of this material requiring disposal, and (3) cement and concrete containing GGBF slag is used on a widespread basis in several states. Additionally, EPA believes that the designation of this item will encourage procuring agencies to learn more about this product, which will, in turn, increase the likelihood that they will begin to purchase it where it is available

and meets their performance requirements.

Under the exceptions in RCRA section 6002, in those instances where the use of GGBF slag will not meet a procuring agency's reasonable performance requirements, the agency is not required to purchase the product.

*Comment:* Several state agencies commented that coal fly ash is generated and used in their state. They stated that a designation of GGBF slag could result in reduced markets for coal fly ash because GGBF slag would compete with coal fly ash.

*Response:* EPA's designation of GGBF slag does not require procuring agencies to favor this item over coal fly ash. Because it is an expansion of the existing cement and concrete designation, the GGBF slag designation simply requires that procuring agencies use cement and concrete containing either coal fly ash or GGBF slag when it meets their price and performance objectives. Which type of cement or concrete a procuring agency purchases will depend on a number of factors, including the performance requirements for the construction project, product availability, competition, and product price.

#### 5. Carpet

*Comment:* Several commenters were concerned about the proposed designation of polyester carpet, stating that this item generally does not meet the performance standards for commercial applications. Commenters stated that nylon carpeting is preferred in commercial applications because of the fiber's superior performance characteristics, while polyester carpeting is mainly suited for low-wear or residential applications. Another commenter stated that nylon fibers can be made in a loop pile construction, whereas polyester fibers are typically made in a cut-pile construction which is prone to faster wear.

*Response:* EPA is aware that polyester carpeting may not perform as well as nylon carpeting in high-wear and severe-wear applications. For this reason, EPA proposed to designate polyester carpet for low- and medium-wear applications only. The designation of polyester carpet applies only in those cases where procuring agencies have determined that polyester carpet has suitable performance characteristics to meet the agencies' particular applications. Where it is determined that polyester carpet is suitable, procuring agencies should purchase polyester carpet containing recovered materials.

#### 6. Floor Tiles

*Comment:* No commenters opposed the proposed designation of floor tiles. However, commenters explained that floor tiles containing recovered materials are not typically used in certain applications, such as for standard office flooring. Commenters explained that their use has been limited to certain heavy-duty applications.

*Response:* EPA is not aware of any floor tiles containing recovered materials being used in standard office flooring applications; consistent with information submitted by commenters, their use has been limited to heavy-duty, commercial applications. For this reason, EPA is limiting the recommendations contained in the Recovered Materials Advisory Notice that accompanies today's rule to rubber and plastic floor tiles used in heavy-duty, commercial applications. If other uses, such as for standard office flooring are identified in the future, EPA will consider revising its recommendations to incorporate these applications.

#### 7. Yard Trimmings Compost

*Comment:* One commenter expressed concern about the proposed designation of yard trimmings compost because there are a lack of national standards for this item.

*Response:* The Agency does not believe that a lack of national standards will inhibit the general use of yard trimmings compost, or that national standards are a necessary prerequisite for its designation. As noted in the preamble to the proposed rule, compost can have many different applications, each of which may require compost with differing characteristics. For instance, using compost for turf establishment would typically require a mature, cured compost, while an application for landfill cover might utilize less mature compost. As explained in EPA's draft RMAN issued concurrently with the proposed CPG, the State of Maine has developed quality standards for six different types of compost ranging from topsoil (three classes), to wetlands substrate, to mulch (two classes) (see 59 FR 18906, April 20, 1994). These standards are being used by many State agencies in purchasing compost and can serve as a guide to anyone purchasing this item.

In addition to the guidance afforded by the State of Maine's quality standards, compost suppliers can assist procuring agencies in determining the type(s) of compost needed for particular applications. The agency recommends, therefore, that when purchasing yard

trimmings compost, the specific use of the compost should be described to the supplier to ensure the purchase of a product compatible with the intended use.

In the preamble to the proposed CPG, EPA also noted that the Composting Council, a diverse group of professionals engaged in promoting the beneficial use of compost, as well as a number of State agencies are developing standards and specifications for compost (see 59 FR 18878, April 20, 1994). As these standards are developed, EPA will make their availability known to procuring agencies by referencing them in a future Recovered Materials Advisory Notice.

#### 8. Office Recycling Containers and Waste Receptacles

*Comment:* One commenter questioned EPA's proposed designation of steel office recycling containers and office waste receptacles, stating that the amount of steel used to manufacture such items is inconsequential when compared to the amount of steel produced in the U.S. Another commenter stated that the designation of recycling containers and waste receptacles made from multiple materials (i.e., plastic, steel, and paper) could encourage the purchase of plastic and paper containers rather than the traditional steel containers.

*Response:* EPA encourages the use of all recovered materials in products and does not favor one material over another. If EPA did not include steel containers in its designation, procuring agencies might assume that EPA was recommending the use of plastic or paper containers only, when this is not the case. Additionally, steel containers made from recovered materials are readily available as are containers made from plastic and paper. For these reasons, the Agency believes it is appropriate to designate containers made from steel, paper, and plastic. EPA also believes that the type of containers purchased should be the sole decision of the procuring agencies and that they can best choose the product that meets their needs.

#### 9. Toner Cartridges

*Comment:* Two commenters contested EPA's designation of remanufactured toner cartridges, citing RCRA section 6002(e)(1) and Executive Order 12873 as requiring EPA to designate items made with "recovered," not "remanufactured" materials. The commenters further stated that, should EPA proceed with its designation of remanufactured toner cartridges, it should expand the designation to

include new toner cartridges made from recovered materials as well.

*Response:* EPA believes that the designation of remanufactured toner cartridges is consistent with the directives contained in RCRA section 6002 and Executive Order 12873. EPA believes that the reuse of materials in remanufacturing operations falls within the statutory definition of "recovered materials" in that these are materials "which have been recovered or diverted from solid waste, but \* \* \* not \* \* \* generated from, and commonly reused within, an original manufacturing process." Additionally, in 1988, the Agency designated retread tires as a guideline item (53 FR 46558, November 17, 1988). Retread tires are also remanufactured items.

EPA now has information that toner cartridges made with recovered materials are available for purchase. Thus, EPA agrees with the commenters that it is appropriate at this time to designate toner cartridges made with recovered materials as well as remanufactured toner cartridges. Therefore, the Agency has changed its designation from "remanufactured toner cartridges" to "toner cartridges" to include new cartridges made with recovered materials.

#### 10. Binders

*Comment:* Two commenters stated that EPA's proposed item designation for binders was incomplete because it did not mention binders made from pressboard.

*Response:* The commenters are correct. EPA inadvertently omitted reference to pressboard in the proposed CPG under the erroneous assumption that "pressboard" was included in the term "chipboard." EPA has since determined that this is not the case. For this reason, today's final item designation for binders references chipboard and pressboard, both of which are paper and paperboard products. As explained in the final Recovered Materials Advisory Notice that accompanies this final CPG, procuring agencies should rely on the guidance provided in Section II, Part A of the Recovered Materials Advisory Notice that accompanies this final CPG and in the draft Paper Products Recovered Materials Advisory Notice (60 FR 14182, March 15, 1995) when purchasing chipboard or pressboard binders.

#### C. Other Items Considered for Designation

In addition to the items proposed for designation, EPA listed and requested information on 23 items as potential

items for future designation and 4 items that the Agency believed were inappropriate for designation at this time (59 FR 18881, April 20, 1994).

EPA received comments on most of the 23 items listed as potential items for future designation. In addition, EPA received comments on pallet stretch wrap and strapping, which, at proposal, were two of the items EPA believed to be inappropriate to designate (59 FR 18812, April 20, 1994). Three commenters provided information on pallet stretch wrap and one on strapping, indicating that these two items may be suitable for designation. The information provided in the comments will be considered when the Agency evaluates items for possible designation in a future update of the CPG.

#### D. Public Participation in Future Updates to the CPG

In the proposed rule, the Agency announced it would develop procedures that would allow the public to suggest items for inclusion in future updates of the CPG and to provide information on products made from recovered materials. The proposal also solicited public comment on possible options for increasing public participation in developing updates to the CPG and RMAN. EPA did not receive any comments relating to this issue.

EPA still intends to establish such a process and will issue a future **Federal Register** notice that describes this process.

#### IV. Availability of Designated Items

EPA has developed lists of manufacturers and vendors of the items designated in today's final CPG. These lists will be updated periodically as new sources are identified and EPA becomes aware of changes in product availability. To assist procuring agencies, the lists will be made available at no charge by calling EPA's RCRA Hotline at (800) 424-9346, or, in the Washington, DC area, at (703) 412-9810. They also will be available for review in the RCRA Information Center (RIC). For additional details about the location and operating schedule of the RIC, see the "Address" section at the beginning of this **Federal Register** notice. Procuring agencies are encouraged to contact manufacturers and vendors directly to discuss their specific needs and to obtain detailed information on the availability and price of recycled content products meeting those needs.

The U.S. General Services Administration (GSA) publishes an "Environmental Products Guide," which lists items available through its

Federal Supply Service. This Guide is updated periodically as new items become available. Copies of the GSA "Environmental Products Guide" can be obtained by contacting GSA's Centralized Mailing List Service in Fort Worth, Texas at (817) 334-5215.

In addition to the information provided by EPA and GSA, there are other publicly-available sources of information about products containing recovered materials. For example, the "Official Recycled Products Guide" (RPG) was established in March 1989 to provide a broad range of information on recycled content products. Listings include product, company name, address, contact, telephone, fax, type of company (manufacturer or distributor), and minimum recycled content. Price information is not included. The RPG is available on a subscription basis from American Recycling Market, Inc., (800) 267-0707. Private corporations that have researched recycled product availability may also be willing to make this information publicly available. For instance, as part of the McRecycle USA® program, the McDonald's Corporation established a Registry Service for manufacturers and suppliers of recycled content products. The Corporation has compiled a database of registrants and makes this information available upon request. More information on the McRecycle USA® Registry Service is available by calling (800) 220-3809.

State and local recycling programs are also a potential source of information on local distributors and availability. In addition, state and local government purchasing officials that are contracting for recycled content products may have relative price information. A list of state purchasing/procurement officials has been placed in the RIC and will be updated periodically. Also included in the public docket is a list of states with recycled content products purchasing programs, current as of April 1994. Information is also available from trade associations whose members manufacture or distribute products containing recovered materials. A list of such trade associations is also included in the RIC.

## V. Economic Impact Analysis

### A. Requirements of Executive Order 12866

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 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.

The cost of the rule is below the \$100 million threshold. However, EPA believes that the rule may raise policy issues and, therefore, is considering it a significant regulatory action. To enable the Agency to evaluate the potential impact of today's action, EPA has conducted an Economic Impact Analysis (EIA), discussed below. For more information on the EIA, see "Technical Background Document for the Comprehensive Procurement Guideline."

### B. Unfunded Mandates Reform Act of 1995 and Consultation With State, Local, and Tribal Governments

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), Pub. L. 104-4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for 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 this rule does not include a Federal mandate that may result in estimated annualized costs of \$100 million or more to either State, local and tribal governments in the aggregate, or to the private sector. To the extent enforceable duties arise as a result of today's rule on State, local and tribal 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, local and tribal governments since the estimated aggregate cost of compliance for them are not expected to exceed, at the maximum, \$5.1 million annually. The cost of enforceable duties which may arise as a result of today's rule on the private sector are estimated not to exceed \$130,000 annually. Thus, today's rule is not subject to the written statement requirement in sections 202 and 205 of the Act.

The newly designated items included in the CPG may give rise to additional obligations under section 6002(i) (requiring procuring agencies to adopt an affirmative procurement program and to amend their specifications) for state and local governments and tribal authorities. As noted above, the expense associated with any additional costs is not expected to exceed, at the maximum, \$5.1 million annually. In compliance with E.O. 12875, which requires the involvement of State, local and tribal governments in the development of certain Federal regulatory actions, EPA conducted a wide outreach effort and actively sought the input of representatives of state, local and tribal governments in the process of developing the final designation. Thus, Agency personnel have met with their representatives in a number of different forums. For example, EPA staff involved in development of the CPG spoke and met with attendees at the annual meeting of the National Institute for Government Purchasing, Inc., which includes representatives of government purchasing offices. EPA representatives have met with government officials at trade association gatherings such as the National Recycling Coalition annual conference.

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, local and tribal

governments, is not expected to exceed, at the maximum, \$5.1 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 have been satisfied.

**C. Summary of Benefits**

EPA anticipates that this 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. This results in a commensurate reduction in energy use and 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 extraction processes.

Recycling can effect 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, recycling can also divert large amounts of materials from landfills, conserving increasingly valuable space for the management of materials that truly require disposal. This reduces the need to expand existing or site new disposal facilities, allowing local government officials to devote more attention to health, education, and safety issues.

By purchasing products made from recovered materials, government

agencies can increase opportunities for realizing these benefits. On a national and regional level, this 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 enterprises, reference EPA guidelines when purchasing designated items, the CPG can result in increased purchase of recycled products, locally, regionally, and nationally.

Finally, purchase and use of recycled products by government agencies can also spur 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 make American industry more competitive in the global economy.

**D. Summary of Costs**

As discussed in Section III, EPA received several comments regarding the cost estimates presented in the proposed CPG. Based on these comments and actual cost information submitted by commenting Federal agencies, EPA modified its approach to estimating costs attributable to the CPG. Details on EPA's approach for estimating costs presented in this subsection are included in "Technical Background Document for the Comprehensive Procurement Guideline." This document is included in the RCRA docket for this rulemaking.

As shown in Table 2 below, EPA estimates that the annualized costs of today's rule will range from \$10 to \$13 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 contractors to all three). These costs are annualized over a 10-year period at a three percent discount rate. Because there is considerable uncertainty regarding several of the parameters that

drive the costs, EPA conducted a sensitivity analysis to identify the range of potential costs of this rule. Thus, high-end and low-end estimates are presented along with the best estimate. The primary parameters affecting the range of cost estimates are the number of products each procuring agency is assumed to procure each year and the number of contractors that will be affected by this rule.

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

| Procuring agency        | Total annualized costs (\$1000) | Best estimate total annualized costs (\$1000) |
|-------------------------|---------------------------------|---|
| Federal agencies .....  | \$8,100–\$7,500                 | \$8,100                                       |
| States .....            | 1,600–1,000                     | 1,600   |
| Local governments ..... | 3,500–1,800                     | 2,800   |
| Contractors ....        | 130–26                          | 79  |
| Total ....              | 13,300–10,300                   | 12,600  |

RCRA section 6002(g) requires the Office of Federal Procurement Policy to report to Congress every two years on the actions taken by Federal agencies to comply with RCRA section 6002. In developing this report, OFPP requests information and data from Federal agencies regarding their affirmative procurement programs and related activities. Table 3 below presents the estimated annualized costs to Federal agencies, including (1) specification revision and affirmative procurement program modification/implementation costs, and (2) recordkeeping and reporting costs. The recordkeeping and reporting costs presented below are the likely costs that would be incurred by Federal agencies to maintain and compile information for and complete the annual OFPP information request using the existing OFPP reporting format (i.e., the format used to collect information for fiscal years 1993 and 1994).

TABLE 3.—SUMMARY OF BEST ESTIMATE ANNUALIZED COSTS OF CPG TO FEDERAL AGENCIES

| Federal agency          | Specification revision and APP costs (\$1000) | Recordkeeping and reporting costs (\$1000) | Total annualized costs (\$1000) |
|-------------------------|---|--|---------------------------------|
| Civilian Agencies ..... | \$1,100                                       | 1,600                                      | \$2,700                         |
| Defense Agencies .....  | 2,000   | 3,400                                      | 5,400                           |
| Total .....             | 3,100   | 5,000                                      | 8,100                           |

Many Federal agencies have stated that the current OFPP format is overly burdensome and costly to complete. To address these concerns, the Office of the Federal Environmental Executive has formed a workgroup which includes representatives from OFPP and several Federal agencies to examine methods of streamlining the current reporting format. Based on information and data submitted by two Federal agencies, EPA estimates that if OFPP revised the current format to request data on purchases made at and above the small purchase threshold and only anecdotal information on small purchases and bankcard acquisitions, Federal recordkeeping and reporting costs could be reduced by 75 percent.

#### E. 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. As discussed in the proposed CPG (59 FR 18859), relative prices of recycled content products compared to prices of comparable virgin products vary. In many cases, recycled content products may be less expensive than their virgin counterparts. In other cases, virgin products may have lower prices than recycled content products. However, other factors can also affect the price of virgin 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 to the procuring agency.

#### F. Regulatory Flexibility Analysis

The primary purpose of the Regulatory Flexibility Analysis is to identify if there is an adverse impact to small businesses that are directly regulated by the rule and to examine regulatory alternatives that fall within the scope of the statutory requirements that would reduce impacts to small businesses, small organizations, or small governmental jurisdictions subject to the regulation. The RCRA procurement requirements apply to procuring agencies that procure more than \$10,000 of a designated product. No exemption is included in the statute for small businesses. Therefore, EPA has decided that alternative regulatory approaches for small businesses are not appropriate for this rule.

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

EPA is unable to determine the number of small businesses that may be adversely impacted by this rule. It is possible that if a small business that currently supplies products to a procuring agency uses virgin materials only, the CPG may reduce its ability to compete for future contracts. However, the CPG will not affect existing purchase orders, nor will it preclude businesses from adapting their product lines to meet new specification or solicitation requirements for products containing recovered materials. Thus, many small businesses that market to procuring agencies have the option to adapt their product lines to meet specifications.

#### VI. Supporting Information

In addition to the documents listed in the preamble to the proposed rule (59 FR 18885-18886; April 20, 1994), EPA relied on information contained in the following documents when developing today's final Comprehensive Procurement Guideline:

- “Comprehensive Procurement Guideline—Supporting Analyses,” April 1995.
- “Technical Background Document for the Comprehensive Procurement Guideline,” April 1995.
- “Final Summary of Responses to the Proposed Comprehensive Guideline for Procurement of Products Containing Recovered Materials,” prepared for EPA by Science Applications International Corporation, Inc., March 1995.
- “Report on Research in Response to Comments on the Comprehensive Procurement Guideline,” prepared for EPA by Science Applications International Corporation, Inc., February 1995.
- “Missing the (Steel) Mark: EPA Procurement Guidelines Fail to Recognize Steel,” Bill Heenan, *The Recycling Magnet*, Fall 1994, p. 2.
- Memoranda to the record and notes from ex parte communications with industry and other representatives.

#### Appendix I—Other Procedures and Policies Affecting Procurement of Products Containing Recovered Materials

##### A. Federal Acquisition Regulation

The Federal Acquisition Regulation (FAR) (48 CFR 1) is the primary regulation used by Executive agencies in their acquisition of supplies and services. Part 23 sets forth requirements and procedures for Federal agencies to use when procuring EPA-designated items.

##### B. OFPP Policy Letter 92-4

The White House Office of Federal Procurement Policy's Policy Letter 92-4, “Procurement of Environmentally-Sound and Energy-Efficient Products and Services” (57 FR 53362), establishes Executive branch policies for the acquisition and use of environmentally-sound, energy-efficient products and services. In addition to reiterating the requirements of RCRA section 6002, the Policy Letter requires Executive agencies to (1) identify and procure products and services that, all factors taken into consideration, are environmentally-sound and energy-efficient, and (2) employ life cycle cost analysis to assist in making product and service selections.

##### C. OMB Circular A-102

On October 14, 1994, the White House Office of Management and Budget published revisions to OMB Circular A-102, “Grants and Cooperative Agreements with State and Local Governments” (59 FR 52224). Paragraph 2(h) of the circular requires State and local government recipients of Federal assistance funding to comply with RCRA section 6002.

##### D. OMB Circular A-119

OMB Circular A-119, “Federal Participation in the Development and Use of Voluntary Standards” (54 FR 57645), sets forth policy for Executive agencies to follow in working with voluntary standards bodies and in adopting and using voluntary standards. Paragraph 7(a)(4) recommends that Federal agencies give preference to adopting and using standards that “foster materials, products, systems, or practices that are environmentally-sound and energy-efficient.”

##### E. OMB Circular A-131

OMB Circular A-131, “Value Engineering” (58 FR 31056), requires Executive agencies to use value engineering as a management tool to reduce program and acquisition costs. Paragraph 8(b) requires agencies to

develop guidelines for both in-house personnel and contractors to identify programs/projects with the most potential to yield savings from the application of value engineering techniques. Paragraph 3(b)(4) further requires this guidance to ensure that the application of value engineering to construction and other projects/programs includes consideration of environmentally-sound and energy-efficient results.

#### List of Subjects

##### 40 CFR Part 247

Environmental protection, Carpet, Cement industry, Engine coolant, Floor tiles, Government procurement, Insulation, Landscaping industry, Office products, Paper and paper products industry, Park and recreation products, Patio blocks, Petroleum, Recycling, Tires, Traffic control devices.

##### 40 CFR Parts 248, 249, 250, 252, and 253

Cement industry, Government procurement, Insulation, Paper and paper products industry, Petroleum, Recycling.

Dated: April 21, 1995.

**Carol M. Browner,**  
Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations, parts 247, 248, 249, 250, 252, and 253, are amended as set forth below.

#### PARTS 248, 249, 250, 252, AND 253— [REMOVED]

1. Parts 248, 249, 250, 252, and 253 are removed.
2. Part 247 is revised to read as follows.

#### PART 247—COMPREHENSIVE PROCUREMENT GUIDELINE FOR PRODUCTS CONTAINING RECOVERED MATERIALS

##### Subpart A—General

- Sec.
- 247.1 Purpose and scope.
  - 247.2 Applicability.
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**Authority:** 42 U.S.C. 6912(a) and 6962; E.O. 12873, 58 FR 54911.

#### Subpart A—General

##### § 247.1 Purpose and scope.

(a) The purpose of this guideline is to assist procuring agencies in complying with the requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6962, and Executive Order 12873, as they apply to the procurement of the items designated in subpart B of this part.

(b) This guideline designates items that are or can be made with recovered materials and whose procurement by procuring agencies will carry out the objectives of section 6002 of RCRA. EPA's recommended practices with respect to the procurement of specific designated items are found in the companion Recovered Materials Advisory Notice(s).

(c) EPA believes that adherence to the recommendations in the Recovered Materials Advisory Notice(s) constitutes compliance with RCRA section 6002. However, procuring agencies may adopt other types of procurement programs consistent with RCRA section 6002.

##### § 247.2 Applicability.

(a)(1) This guideline applies to all procuring agencies and to all procurement actions involving items designated by EPA in this part, where the procuring agency purchases \$10,000 or more worth of one of these items during the course of a fiscal year, or where the cost of such items or of functionally equivalent items purchased during the preceding fiscal year was \$10,000 or more.

(2) This guideline applies to Federal agencies, to State and local agencies using appropriated Federal funds to procure designated items, and to persons contracting with any such agencies with respect to work performed under such contracts. Federal procuring agencies should note that the requirements of RCRA section 6002 apply to them whether or not appropriated Federal funds are used for procurement of designated items.

(3) The \$10,000 threshold applies to procuring agencies as a whole rather than to agency subgroups such as regional offices or subagencies of a larger department or agency.

(b) The term "procurement actions" includes:

(1) Purchases made directly by a procuring agency and purchases made directly by any person (e.g., a contractor) in support of work being performed for a procuring agency, and

(2) Any purchases of designated items made "indirectly" by a procuring agency, as in the case of procurements resulting from grants, loans, funds, and similar forms of disbursements of monies.

(c)(1) This guideline does not apply to purchases of designated items which are unrelated to or incidental to Federal funding, i.e., not the direct result of a contract or agreement with, or a grant, loan, or funds disbursement to, a procuring agency.

(2) This guideline also does not apply to purchases made by private party recipients (e.g., individuals, non-profit organizations) of Federal funds pursuant to grants, loans, cooperative agreements, and other funds disbursements.

##### § 247.3 Definitions.

As used in this procurement guideline and the related Recovered Materials Advisory Notice(s):

*Act* or *RCRA* means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C 6901 *et seq*;

*Blanket insulation* means relatively flat and flexible insulation in coherent sheet form, furnished in units of substantial area. Batt insulation is included in this term;

*Board insulation* means semi-rigid insulation preformed into rectangular units having a degree of suppleness, particularly related to their geometrical dimensions;

*Building insulation* means a material, primarily designed to resist heat flow, which is installed between the conditioned volume of a building and adjacent unconditioned volumes or the outside. This term includes but is not limited to insulation products such as blanket, board, spray-in-place, and loose-fill that are used as ceiling, floor, foundation, and wall insulation;

*Cellulose fiber loose-fill* means a basic material of recycled wood-based cellulosic fiber made from selected paper, paperboard stock, or ground wood stock, excluding contaminated materials which may reasonably be expected to be retained in the finished product, with suitable chemicals introduced to provide properties such as flame resistance, processing and handling characteristics. The basic cellulosic material may be processed into a form suitable for installation by pneumatic or pouring methods;

*Engine lubricating oils* means petroleum-based oils used for reducing friction in engine parts;

*Federal agency* means any department, agency, or other instrumentality of the Federal government; any independent agency or

establishment of the Federal government including any government corporation; and the Government Printing Office;

*Fiberglass insulation* means insulation which is composed principally of glass fibers, with or without binders;

*Foam-in-place insulation* is rigid cellular foam produced by catalyzed chemical reactions that hardens at the site of the work. The term includes spray-applied and injected applications such as spray-in-place foam and pour-in-place;

*Gear oils* means petroleum-based oils used for lubricating machinery gears;

*Hydraulic fluids* means petroleum-based hydraulic fluids;

*Hydraulic mulch* means a mulch that is a cellulose-based (paper or wood) protective covering that is mixed with water and applied through mechanical spraying in order to aid the germination of seeds and to prevent soil erosion;

*Hydroseeding* means the process of spraying seeds mixed with water through a mechanical sprayer (hydroseeder). Hydraulic mulch, fertilizer, a tacking agent, or a wetting agent can also be added to the water/seed mix for enhanced performance;

*Laminated paperboard* means board made from one or more plies of kraft paper bonded together, with or without facers, that is used for decorative, structural, or insulating purposes;

*Loose-fill insulation* means insulation in granular, nodular, fibrous, powdery, or similar form, designed to be installed by pouring, blowing or hand placement;

*Mineral fiber insulation* means insulation (rock wool or fiberglass) which is composed principally of fibers manufactured from rock, slag or glass, with or without binders;

*Paper* means one of two broad subdivisions of paper products, the other being paperboard. Paper is generally lighter in basis weight, thinner, and more flexible than paperboard. Sheets 0.012 inch or less in thickness are generally classified as paper. Its primary uses are for printing, writing, wrapping, and sanitary purposes. However, in this guideline, the term paper is also used as a generic term that includes both paper and paperboard.

*Paper product* means any item manufactured from paper or paperboard. The term paper product is used in this guideline to distinguish such items as boxes, doilies, and paper towels from printing and writing papers.

*Perlite composite board* means insulation board composed of expanded perlite and fibers formed into rigid, flat, rectangular units with a suitable sizing

material incorporated in the product. It may have on one or both surfaces a facing or coating to prevent excessive hot bitumen strike-in during roofing installation;

*Person* means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, Federal agency, State, municipality, commission, political subdivision of a State, or any interstate body;

*Phenolic insulation* means insulation made with phenolic plastics which are plastics based on resins made by the condensation of phenols, such as phenol or cresol, with aldehydes;

*Polyisocyanurate insulation* means insulation produced principally by the polymerization of polymeric polyisocyanates, usually in the presence of polyhydroxyl compounds with the addition of cell stabilizers, blowing agents, and appropriate catalyst to produce a polyisocyanurate chemical structure;

*Polystyrene insulation* means an organic foam composed principally of polymerized styrene resin processed to form a homogenous rigid mass of cells;

*Polyurethane insulation* means insulation composed principally of the catalyzed reaction product of polyisocyanates and polyhydroxyl compounds, processed usually with a blowing agent to form a rigid foam having a predominantly closed cell structure;

*Postconsumer material* means a material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item.

*Postconsumer material* is a part of the broader category of *recovered materials*.

*Postconsumer recovered paper* means:

(1) Paper, paperboard and fibrous wastes from retail stores, office buildings, homes and so forth, after they have passed through their end-usage as a consumer item including: Used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards and used cordage; and

(2) All paper, paperboard and fibrous wastes that enter and are collected from municipal solid waste;

*Practicable* means capable of being used consistent with: Performance in accordance with applicable specifications, availability at a reasonable price, availability within a reasonable period of time, and maintenance of a satisfactory level of competition;

*Procurement item* means any device, good, substance, material, product, or other item, whether real or personal

property, which is the subject of any purchase, barter, or other exchange made to procure such item;

*Procuring agency* means any Federal agency, or any State agency or agency of a political subdivision of a State, which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract;

*Purchasing* means the act of and the function of responsibility for the acquisition of equipment, materials, supplies, and services, including: Buying, determining the need, selecting the supplier, arriving at a fair and reasonable price and terms and conditions, preparing the contract or purchase order, and follow-up;

*Recovered materials* means waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process;

*Recovered materials*, for purposes of purchasing paper and paper products, means waste material and byproducts that have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. In the case of paper and paper products, the term *recovered materials* includes:

(1) Postconsumer materials such as—

(i) Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: Used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and

(ii) All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and

(2) Manufacturing, forest residues, and other wastes such as—

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel in smaller rolls of rough sheets) including: Envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Finished paper and paperboard from obsolete inventories of paper and

paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;

(iii) Fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;

(iv) Wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and

(v) Fibers recovered from waste water which otherwise would enter the waste stream.

*Re-refined oils* means used oils from which the physical and chemical contaminants acquired through previous use have been removed through a refining process;

*Retread tire* means a worn automobile, truck, or other motor vehicle tire whose tread has been replaced;

*Rock wool insulation* means insulation which is composed principally from fibers manufactured from slag or natural rock, with or without binders;

*Specification* means a description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met. In general, specifications are in the form of written commercial designations, industry standards, and other descriptive references;

*Spray-in-place insulation* means insulation material that is sprayed onto a surface or into cavities and includes cellulose fiber spray-on as well as plastic rigid foam products;

*Spray-in-place foam* is rigid cellular polyurethane or polyisocyanurate foam produced by catalyzed chemical reactions that hardens at the site of the work. The term includes spray-applied and injected applications;

*State* means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;

*Structural fiberboard* means a fibrous-felted, homogenous panel made from lignocellulosic fibers (usually wood, cane, or paper) and having a density of less than 31 lbs/ft<sup>3</sup> but more than 10 lbs/ft<sup>3</sup>. It is characterized by an integral bond which is produced by interfelting of the fibers, but which has not been consolidated under heat or pressure as a separate stage of manufacture;

*Tire* means the following types of tires: Passenger car tires, light- and heavy-duty truck tires, high-speed industrial tires, bus tires, and special

service tires (including military, agricultural, off-the-road, and slow-speed industrial);

#### § 247.4 Contracting officer requirements.

Within one year after the effective date of each item designation, contracting officers shall require that vendors:

(a) Certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements, and

(b) Estimate the percentage of total material utilized for the performance of the contract which is recovered materials.

#### § 247.5 Specifications.

(a) RCRA section 6002(d)(1) required Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies to revise their specifications by May 8, 1986, to eliminate any exclusion of recovered materials and any requirement that items be manufactured from virgin materials.

(b) RCRA section 6002(d)(2) requires that within one year after the publication date of each item designation by the EPA, each procuring agency must assure that its specifications for these items require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of these items.

#### § 247.6 Affirmative procurement programs.

RCRA section 6002(i) provides that each procuring agency which purchases items designated by EPA must establish an affirmative procurement program, containing the four elements listed below, for procuring such items containing recovered materials to the maximum extent practicable:

(a) Preference program for purchasing the designated items;

(b) Promotion program;

(c) Procedures for obtaining estimates and certifications of recovered materials content and for verifying the estimates and certifications; and

(d) Annual review and monitoring of the effectiveness of the program.

#### § 247.7 Effective date.

Within one year after the date of publication of any item designation, procuring agencies which purchase that designated item must comply with the following requirements of RCRA: affirmative procurement of the designated item (6002(c)(1) and (i)),

specifications revision (6002(d)(2)), vendor certification and estimation of recovered materials content of the item (6002(c)(3) and (i)(2)(C)), and verification of vendor estimates and certifications (6002(i)(2)(C)).

### Subpart B—Item Designations

#### § 247.10 Paper and paper products.

Paper and paper products, excluding building and construction paper grades.

#### § 247.11 Vehicular products.

(a) Lubricating oils containing re-refined oil, including engine lubricating oils, hydraulic fluids, and gear oils, excluding marine and aviation oils.

(b) Tires, excluding airplane tires.

(c) Reclaimed engine coolants, excluding coolants used in non-vehicular applications.

#### § 247.12 Construction products.

(a) Building insulation products, including the following items:

(1) Loose-fill insulation, including but not limited to cellulose fiber, mineral fibers (fiberglass and rock wool), vermiculite, and perlite;

(2) Blanket and batt insulation, including but not limited to mineral fibers (fiberglass and rock wool);

(3) Board (sheathing, roof decking, wall panel) insulation, including but not limited to structural fiberboard and laminated paperboard products, perlite composite board, polyurethane, polyisocyanurate, polystyrene, phenolics, and composites; and

(4) Spray-in-place insulation, including but not limited to foam-in-place polyurethane and polyisocyanurate, and spray-on cellulose.

(b) Structural fiberboard and laminated paperboard products for applications other than building insulation, including building board, sheathing, shingle backer, sound deadening board, roof insulating board, insulating wallboard, acoustical and non-acoustical ceiling tile, acoustical and non-acoustical lay-in panels, floor underlayments, and roof overlay (coverboard).

(c) Cement and concrete, including concrete products such as pipe and block, containing coal fly ash or ground granulated blast furnace (GGBF) slag.

(d) Carpet made of polyester fiber for use in low- and medium-wear applications.

(e) Floor tiles and patio blocks containing recovered rubber or plastic.

#### § 247.13 Transportation products.

Traffic barricades and traffic cones used in controlling or restricting vehicular traffic.

**§ 247.14 Park and recreation products.**

Playground surfaces and running tracks containing recovered rubber or plastic.

**§ 247.15 Landscaping products.**

(a) Hydraulic mulch products containing recovered paper or recovered wood used for hydroseeding and as an over-spray for straw mulch in landscaping, erosion control, and soil reclamation.

(b) Compost made from yard trimmings, leaves, and/or grass clippings for use in landscaping, seeding of grass or other plants on roadsides and embankments, as a nutritious mulch under trees and shrubs, and in erosion control and soil reclamation.

**§ 247.16 Non-paper office products.**

(a) Office recycling containers and office waste receptacles.

(b) Plastic desktop accessories.

(c) Toner cartridges.

(d) Binders.

(e) Plastic trash bags.

**§ 247.17 Miscellaneous products.**

**[Reserved]**

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