

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 247

[SWH-FRL-5628-4]

RIN 2050-AE23

Comprehensive Guideline for Procurement of Products Containing Recovered Materials

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency today is proposing an amendment to the May 1, 1995 Comprehensive Procurement Guideline (CPG). EPA is designating 13 new items that are or can be made with recovered materials. These items include shower and restroom dividers; latex paint; parking stops; channelizers; delineators; flexible delineators; snow fencing; garden and soaker hoses; lawn and garden edging; printer ribbons; ink jet cartridges; plastic envelopes; and pallets. In addition, this action clarifies EPA's previous designation of floor tiles, structural fiberboard, and laminated paperboard as items that can be made with recovered materials.

The CPG implements a section of the Resource Conservation and Recovery Act (RCRA). This section 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 requires any procuring agency using appropriated Federal funds to procure that item to purchase it with the highest percentage of recovered materials practicable. Today's proposed action will foster markets for materials recovered from solid waste by using government purchasing power to stimulate the use of these materials in the manufacture of new products.

Today's proposed amendment also includes the procurement limitations set forth in RCRA on competition, price, availability, and performance. These limitations describe the circumstances in which procurement of designated items is not required. They were inadvertently omitted from the May 1, 1995 CPG.

DATES: EPA will accept public comments on this proposed rule until February 5, 1997.

ADDRESSES: To comment on this proposal, please send an original and two copies of comments to: RCRA Information Center (5305W), U.S.

Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Please place the docket number F-96-CP2P-FFFFF on your comments.

If any information is confidential, it should be identified as such. An original and two copies of Confidential Business Information (CBI) must be submitted under separate cover to: Document Control Officer (5305W), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Documents related to today's proposal are available for viewing at the RCRA Information Center (RIC), located at: U.S. Environmental Protection Agency, 1235 Jefferson Davis Highway, Ground Floor, Crystal Gateway One, Arlington, VA 22202. The RIC is open from 9 a.m. to 4 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call (703) 603-9230 for appointments. Copies cost \$.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424-9346 or, in the Washington, D.C. area at (703) 412-9810. For technical information on individual item designations, contact the following EPA staff: Construction, landscaping, transportation, and park and recreation products—Terry Grist, (703) 308-7257; Non-paper office products—Janice Johnson, (703) 308-7280; Vehicular and miscellaneous products—Sue Nogas, (703) 308-7251; Paper and paper products—Dana Arnold, (703) 308-7279. For all other technical information, contact Terry Grist at (703) 308-7257.

SUPPLEMENTARY INFORMATION:

Regulated Entities

This action may potentially affect those procuring agencies that purchase the following: shower and restroom dividers, latex paint, floor tiles, structural fiberboard, laminated paperboard, parking stops, temporary traffic control devices, snow fencing, garden and soaker hose, lawn and garden edging, printer ribbons, ink jet cartridges, plastic envelopes, or pallets. For purposes of RCRA section 6002, procuring agencies include the following: (1) Any Federal agency; (2) any State or local agencies using appropriated Federal funds for a procurement; or (3) any contractors with these agencies (with respect to work performed under the contract). The requirements of section 6002 apply to such procuring agencies only when procuring designated items where the price of the item exceeds \$10,000 or the

quantity of the item purchased in the previous year exceeded \$10,000. Potential regulated entities for this rule are shown in Table 1.

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

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

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

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 - 1. Background
 - 2. Rationale for Designation
 - B. Ink Jet Cartridges
 - 1. Background
 - 2. Rationale for Designation
 - C. Plastic Envelopes
 - 1. Background
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- XIII. Economic Impact Analysis
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 - 1. Summary of Costs
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 - 3. Summary of Benefits
 - B. Unfunded Mandates Reform Act of 1995 and Consultation with State, Local, and Tribal Governments
 - C. Impacted Entities
 - D. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act
- XIV. Supporting Information and Accessing Internet

I. Authority

This guideline is proposed 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, Federal Acquisition, Recycling, and Waste Prevention" (58 FR 54911, October 22, 1993).

II. Background

Section 6002(e) of the Resource Conservation and Recovery Act of 1976 (RCRA or the Act) requires EPA to designate items that are or can be made with recovered materials and to recommend practices to assist procuring agencies in meeting their obligations with respect to designated items under RCRA section 6002. After EPA designates an item, RCRA requires that

each procuring agency, when purchasing a designated item, must purchase that item composed of the highest percentage of recovered materials practicable.

Executive Order 12873 (Executive Order) establishes the procedure for EPA to follow in implementing RCRA section 6002(e). Section 502 of the Executive Order directs EPA to issue a Comprehensive Procurement Guideline (CPG) that designates items that are or can be made with recovered materials. Concurrent with the CPG, EPA must publish its recommended procurement practices for purchasing designated items, including recovered materials content levels, in a related Recovered Materials Advisory Notice (RMAN). The Executive Order also directs EPA to update the CPG annually and to issue RMANs periodically to reflect changing market conditions. The CPG was published on May 1, 1995 (60 FR 21370). It established eight product categories, designated 19 new items, and consolidated five earlier item designations.

Today, EPA is clarifying the previous designations for floor tiles, structural fiberboard, and laminated paperboard, and is also proposing to designate 13 additional items. The items proposed for designation are listed below under their associated product category.

Construction Products

- Floor tiles (clarification)
- Structural Fiberboard and Laminated Paperboard (clarification)
- Shower and restroom dividers
- Latex paint

Transportation Products

- Parking stops
- Channelizers
- Delineators

Park and Recreation Products

- Snow fencing

Landscaping Products

- Garden and soaker hoses
- Lawn and garden edging

Non-Paper Office Products

- Printer ribbons
- Ink jet cartridges
- Plastic envelopes

Miscellaneous

- Pallets

A. Criteria for Selecting Items for Designation

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

- (1) Availability of the item;
- (2) Potential impact of the procurement of the item by procuring agencies on the solid waste stream;
- (3) Economic and technological feasibility of producing the item; and

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

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

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

EPA has adopted two approaches in its designation of items that are made with recovered materials. For some items, such as floor tiles, the Agency designated broad categories of items and provided information in the RMAN as to their appropriate applications or uses. For other items, such as plastic trash bags, EPA designated specific items, and, in some instances, included in the designation the specific types of recovered materials or applications to which the designation applies. The

Agency explained these approaches to designating items in the preamble to the CPG (60 FR 21373, May 1, 1995).

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, April 20, 1994): 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. * * *

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

factors are equal, the procuring agency should seek to purchase the product made with highest percentage of recovered materials practicable.

The items proposed for designation today have all been evaluated with respect to the EPA's criteria. Details of these evaluations are discussed in Sections VI-XI of the "Supporting Analyses" background document. Sections VI-XI of this action provide a summary of EPA's rationale for designating these items.

B. Request for Comments

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

EPA also is requesting comment on the draft RMAN. The RMAN can be found in the notice section of today's Federal Register. It recommends recovered materials content levels and procurement methods for each of the items EPA proposes to designate today.

C. Additional Information

For additional background information, including information on RCRA requirements, Executive Order directives, the criteria and methodology for selecting the proposed designated items, and a list of other items considered for designation, please consult "Comprehensive Procurement Guideline (CPG) II—Supporting Analyses." Information on obtaining this background document is provided in the section XIV, Supporting Information and Internet Access.

III. Procurement Limitations of RCRA Section 6002

In the May 1, 1995 CPG, the Agency amended 40 CFR 247.2 to include the RCRA provisions on the applicability of the guidelines to procuring agencies. (See 60 FR 21381.) In that amendment, EPA inadvertently failed to include the statutory limitations set forth in section 6002(c)(1) (A) through (C). These provisions authorize a procuring agency to decide not to purchase EPA designated items with recovered materials based on the following determinations:

1. The agency is unable to secure a satisfactory level of competition;
2. The item is not reasonably available within a reasonable period of time;

3. The item fails to meet the reasonable performance standards set forth in the agency's specification; and

4. The item is available only at an unreasonable price.

Today, in § 247.2(d), EPA is proposing to add the procurement limitations set forth in RCRA section 6002(c)(1) (A) through (C) which were inadvertently omitted in the May 1, 1995 CPG.

IV. Clarification of Floor Tiles, Structural Fiberboard and Laminated Paperboard Designations

In the May 1, 1995 CPG, EPA designated floor tiles, structural fiberboard, and laminated paperboard and, in the RMAN, provided recommendations, including recovered materials content levels for these items. Since that publication, EPA has learned that there may be some confusion on the part of procuring agencies as to their obligation to purchase these items for specific applications. In fact, the Agency received inquiries regarding the requirements to purchase floor tile and structural fiberboard for use as acoustical ceiling tile. Based on these inquiries, the Agency concluded that it should clarify the obligations of procuring agencies with respect to these items. The Agency soon will publish an action further clarifying these issues.

A. Floor Tiles

In the CPG, EPA designated 19 items that are, or can be, produced with recovered materials content, including floor tiles and patio blocks containing recovered rubber or plastic (40 CFR 247.12(e)). The Agency designated these items as broad categories of items, encompassing many different applications. In the RMAN, however, the Agency recommended that procuring agencies purchase floor tiles with specified minimum recovered rubber or plastic content for "heavy duty/commercial type" applications only. EPA limited the recommended applications to heavy-duty/commercial-type uses because, at the time the CPG was issued, the Agency was not aware of any manufacturers that made floor tile with recovered materials for standard office flooring. However, at least two manufacturers were reportedly considering using recovered materials in standard office flooring and one manufacturer indicated that these products would be available in 1995, the year the CPG was issued. This information suggested to the Agency that floor tiles could be made with recovered materials for standard office flooring. Therefore, the Agency elected to broadly designate floor tiles and limit its initial recommendations to heavy-

duty/commercial type uses. The Agency has no information that standard office floor tiles are currently commercially available containing recovered materials.

In the original CPG and RMAN, EPA used the term "heavy-duty, commercial-type uses" because there were no published industry-wide definitions to describe the applications to which the recovered materials requirements of the CPG should be applied. In the supporting analysis for the RMAN, EPA explained what it meant by "heavy-duty, commercial-type applications." There, the Agency described, in general terms, a number of commercial and industrial settings where the use of such tiles with recovered materials content would be appropriate. These would include entrances in airports and stores, furniture showrooms, skating rinks and fitness centers. EPA has learned that this discussion may have caused some confusion. Some procuring agencies may have confused EPA's description of the areas where, given special circumstances, such tiles might be appropriate, with an EPA recommendation that such tile should always be used in such settings. This was not the Agency's intention. Therefore, the Agency is today clarifying its recommendation that the use of these tiles would be appropriate for specialty purpose uses at such locations (e.g., raised, open-web tiles for drainage on school kitchen flooring). Such specialty purpose uses involve limited flooring areas where grease, tar, snow, ice, wetness or similar substances or conditions are likely to be present. Thus, EPA is not, at this time, recommending floor tile made with recovered materials for standard office or more general purpose uses.

B. Structural Fiberboard and Laminated Paperboard

In the CPG, EPA designated structural fiberboard and laminated paperboard products for applications other than building insulation (40 CFR 247.12(b)). EPA further included acoustical and non-acoustical ceiling tiles and lay-in panels in its list of applications to which the designation applies. Since the CPG was issued, one manufacturer of mineral fiber ceiling products has expressed concern over the scope of the structural fiberboard and laminated paperboard designations, particularly as they apply to acoustical and non-acoustical ceiling tiles and lay-in panels. EPA wants to clarify that the specific applications included in the structural fiberboard and laminated paperboard designation, i.e., 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), apply to the purchase of cellulosic fiber structural fiberboard and laminated paperboard products only. The listed applications, and therefore the designation, do not apply to products made from other similar or competing materials. In other words, if a procuring agency is purchasing a cellulosic fiberboard acoustical ceiling tile, then the agency should purchase the ceiling tile made with recovered materials. However, if the agency prefers to purchase a ceiling tile made with mineral fiber rather than fiberboard, it is free to do so. In the latter instance, there is no requirement to purchase a cellulosic fiberboard ceiling tile.

V. Definitions

Today, in § 247.3, EPA is proposing to add definitions for the following new item-specific terms: channelizers, delineators, flexible delineators, garden hoses, ink jet cartridges, latex paint, lawn edging, pallets, parking stops, printer ribbons, restroom dividers, shower dividers, snow fencing, and soaker hoses. These definitions are based on industry definitions, including ASTM or other standard specifications, or represent descriptions of the scope of items being designated. EPA specifically requests comment on each of these definitions.

For several items being proposed for designation, EPA recommends in the RMAN, two-part content levels—a postconsumer recovered content component and a total recovered materials component. In these instances, EPA found that both types of materials were being used to manufacture a product. Recommending only postconsumer content levels would fail to acknowledge the contribution to solid waste management made by manufacturers using other manufacturers' byproducts as feedstock.

Because the item designations in today's action use the terms "postconsumer materials" and "recovered materials," the definitions for these terms are repeated in this action as a reference for the convenience of the reader. These definitions were part of the May 1, 1995 CPG and can be found at 40 CFR 247.3. The Agency is not proposing to change these definitions and will not consider any comments submitted on these terms.

Postconsumer materials means a material or finished product that has served its intended end use and has been diverted or

recovered from waste destined for disposal, having completed its life as a consumer item. Postconsumer material is part of the broader category of recovered materials.

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.

VI. Construction Products

A. Shower and Restroom Dividers

Based on the information obtained by EPA, shower and restroom dividers containing recovered materials are currently made using steel or various recovered plastics. Today, in § 247.12(f), EPA proposes to designate shower and restroom dividers containing recovered plastic or steel as items whose procurement will carry out the objectives of section 6002 of RCRA. A final designation would not preclude a procuring agency from purchasing shower and restroom dividers manufactured from another material, such as wood. It simply requires that a procuring agency, when purchasing shower and restroom dividers made from plastic or steel, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

1. Background

Shower and restroom dividers are used to create privacy by separating individual shower, toilet, and urinal compartments in commercial and institutional facilities. They are made from various plastics, steel, or wood.

2. Rationale for Designation

As discussed in Appendix V of the CPG II "Supporting Analysis" document, plastic and steel represent a significant component of the solid waste stream. Shower and restroom dividers are available made from steel or postconsumer and other recovered plastics, including high density polyethylene (HDPE), low density polyethylene (LDPE), and polypropylene (PP). EPA is not aware of shower and restroom dividers made from recovered wood and requests information in this regard.

EPA identified nine manufacturers of plastic dividers containing recovered materials and 21 manufacturers of dividers containing recovered steel. EPA did not identify any national or Federal specifications that preclude the use of recovered materials in shower or restroom dividers. Federal agencies, including the U.S. Army Corps of Engineers, and State and local

governments procure shower and restroom dividers. For a more detailed discussion of the criteria used to propose this item for designation, see the "Comprehensive Procurement Guideline (CPG) II—Supporting Analyses" document located in the public docket for this action.

B. Latex Paint

Based on the information obtained by EPA, latex paint is available containing recovered and postconsumer latex paint. Today, in § 247.12(g), EPA proposes to designate latex paint containing recovered materials as an item whose procurement will carry out the objectives of section 6002 of RCRA.

1. Background

Latex paint is water-based paint widely used for interior and exterior architectural applications for residential and commercial buildings, as well as on vehicles, equipment, and for other special purposes. However, the Agency has limited information on paint used for non-architectural applications and requests further information. Latex paint is available containing postconsumer recovered paint from household hazardous waste (HHW) programs and paint-only or curbside collection programs. Latex paint can also be made from non-postconsumer recovered paint, which includes paint that is mis-tinted, out-of-date, or otherwise not sold to a consumer, which is returned by a distributor, retailer, or contractor to the manufacturer or to a paint recycler.

"Paint recyclers" use postconsumer and other recovered latex paint to produce two different end products. Paint reprocessing produces a latex paint with consistent characteristics that are comparable to equivalent grade virgin latex paint. This paint is suitable for exterior and interior architectural applications. Paint consolidation, which involves blending postconsumer paint, results in a 100 percent postconsumer content mixture with characteristics that vary significantly from batch to batch. Consolidated paint, typically given away by the recycler, is generally suitable only for limited exterior applications such as covering graffiti.

2. Rationale for Designation

As discussed in Appendix V of the CPG II "Supporting Analysis" document, latex paint represents a significant component of the solid waste stream. Latex paint is available made from postconsumer and other recovered latex paint.

EPA identified seven manufacturers of reprocessed latex paint and consolidated latex paint. EPA did not

identify any national or Federal specifications that preclude the use of recovered materials in latex paint, although there are specifications that establish limits for metals (including mercury and lead), cyanide, volatile and semi-volatile compounds, and polychlorinated biphenyls. According to the General Services Administration (GSA), over 69 military bases and other Federal purchasers as well as 28 private or local government agencies have purchased reprocessed latex paint through GSA. The Department of Navy's Chief of Naval Operations office issued a message encouraging the use of "recycled" latex paint for facilities maintenance. The U.S. Coast Guard also reports favorable results with "recycled" latex paint. For a more detailed discussion of the reasons for proposing the item for designation, see the "Comprehensive Procurement Guideline (CPG) II—Supporting Analyses" document located in the public docket for this action.

VII. Transportation Products

A. Parking Stops

Based on the information obtained by EPA, parking stops are available containing postconsumer and other recovered plastic and/or rubber. Some manufacturers use wood chips, sawdust, or fiberglass in combination with plastic or rubber to make composite parking stops. In addition, parking stops may be made from cement and concrete containing coal fly ash or ground granulated blast furnace (GGBF) slag. These stops are typically made from concrete which is left over from construction-related projects. Today, in § 247.13(b), EPA proposes to designate parking stops made from concrete or containing recovered plastic and/or rubber as items whose procurement will carry out the objectives of section 6002 of RCRA. A final designation would not preclude a procuring agency from purchasing parking stops manufactured from another material. It simply requires that a procuring agency, when purchasing parking stops made from plastic, rubber, or concrete, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

1. Background

Parking stops are barriers used to mark parking spaces and to keep parked vehicles from rolling beyond a designated parking area. Parking stops may be made from concrete, wood, rubber, or plastic.

2. Rationale for Designation

As discussed in Appendix V of the CPG II "Supporting Analysis" document, rubber, plastic, coal fly ash, and GGBF slag all represent significant components of the solid waste stream. Parking stops are available made with postconsumer and other recovered plastics and rubber. Postconsumer sources include milk jugs, water bottles, and other containers, mixed plastic, and rubber (from used tires). Although EPA did not obtain specific information on parking stops made from cement and concrete containing coal fly ash or GGBF slag, the agency believes that, since cement and concrete can be made with GGBF, it is technically feasible to include these recovered materials in cement and concrete parking stops. EPA is not aware of parking stops made with recovered wood and requests information on whether they are commercially available.

EPA identified 57 manufacturers and vendors of parking stops containing postconsumer and other recovered materials. EPA is unaware of any national or Federal specifications or standards that preclude the use of recovered materials in parking stops. The U.S. National Park Service, various military bases, and State departments of transportation and park authorities purchase parking stops. For a more detailed discussion of the criteria used to propose this item for designation, see the "Comprehensive Procurement Guideline (CPG) II—Supporting Analyses" document located in the public docket for this action.

B. Temporary Traffic Control Devices

EPA designated traffic cones and traffic barricades in the original CPG (60 FR 21383, May 1, 1995). Based on the information obtained by EPA, additional temporary traffic control devices are available containing postconsumer and other recovered plastic, rubber, and steel. Today, in § 247.13(c) through (e), EPA is proposing to designate channelizers, delineators, and flexible delineators containing recovered plastic, rubber, or steel as items whose procurement will carry out the objectives of section 6002 of RCRA. A final designation of these items would not preclude a procuring agency from purchasing these temporary traffic control devices manufactured from another material. It simply requires that a procuring agency, when purchasing these devices made from plastic, rubber, or steel, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

1. Background

Temporary traffic control devices are used to divert, channel, or restrict traffic flow. They include channelizers, delineators, and flexible delineators. Channelizers are barrels or drums that can be positioned to direct traffic through detours. Delineators are highly visible pavement markers that can be positioned to direct traffic or define boundaries. Flexible delineators bend if struck by a vehicle to prevent damage to the vehicle or the delineator.

2. Rationale for Designation

As discussed in Appendix V of the CPG II "Supporting Analysis" document, plastic, rubber and steel are significant components of the solid waste stream. Channelizers, delineators, and flexible delineators are available made with recovered plastic, rubber and steel.

EPA identified three manufacturers of channelizers, eight manufacturers of delineators and three manufacturers of flexible delineators containing postconsumer and other recovered materials. The Federal Highway Administration (FHWA) publishes the "Manual on Uniform Traffic Control Devices," which contains specifications used by most States for the size, shape, mounting, and placement of traffic control devices. The FHWA specifications do not preclude the use of recovered materials in these devices. The States of North Carolina and Florida have specifications that require the use of recovered materials in their flexible delineators. The Veterans Administration and Federal Emergency Management Agency purchase temporary traffic control devices, and EPA believes that virtually every State department of transportation also purchases the items. For a more detailed discussion of the criteria used to propose these items for designation, see the "Comprehensive Procurement Guideline (CPG) II—Supporting Analyses" document located in the public docket for this action.

VIII. Park and Recreation Products

A. Snow Fencing

Based on the information obtained by EPA, snow fencing is available containing recovered plastic. Today, in § 247.14(b), EPA proposes to designate snow fencing containing recovered plastic as an item whose procurement will carry out the objectives of section 6002 of RCRA. A final designation of this items would not preclude a procuring agency from purchasing snow fencing manufactured from another material, such as wood. It simply

requires that a procuring agency, when purchasing snow fencing made from plastic, purchase this item made with recovered materials when this item meets applicable specifications and performance requirements.

1. Background

Snow fencing is constructed from plastic in an open-weave pattern or from wooden slats held together with wire strands. It is used to control drifting snow, to delineate construction areas, and to protect sand dunes.

2. Rationale for Designation

As discussed in Appendix V of the CPG II "Supporting Analysis" document, plastic represents a significant component of the solid waste stream. Snow fencing is available made with postconsumer and other recovered HDPE plastic from milk jugs, water bottles, and other containers. EPA is not aware of snow fencing made from recovered wood and requests information on whether it is now commercially available.

EPA identified three manufacturers of snow fencing containing recovered and postconsumer HDPE. According to information obtained by EPA, there are no national or Federal specifications that preclude the use of recovered materials in the manufacture of snow fencing. Federal agencies, such as the National Park Service and the Army Corps of Engineers, and State agencies purchase snow fencing. According to at least two State agencies, recovered-content snow fencing met the performance requirements for the applications in which it was used. For a more detailed discussion of the criteria used to propose this item for designation, see the "Comprehensive Procurement Guideline (CPG) II—Supporting Analyses" document located in the public docket for this action.

IX. Landscaping Products

A. Garden and Soaker Hoses

Based on the information obtained by EPA, garden and soaker hoses are available containing recovered plastic or rubber. Today, in § 247.15(c), EPA proposes to designate garden and soaker hoses containing recovered plastic or rubber as items whose procurement will carry out the objectives of section 6002 of RCRA. A final designation of these items would not preclude a procuring agency from purchasing garden and soaker hoses manufactured from another material. It simply requires that a procuring agency, when purchasing garden and soaker hoses made from plastic or rubber, purchase this item

made with recovered materials when these items meet applicable specifications and performance requirements.

1. Background

A garden hose is flexible tubing used to conduct water to a specific location. It is usually made from PVC plastic or rubber. A soaker hose is perforated flexible tubing used to deliver gentle irrigation to plants and is typically made of rubber.

2. Rationale for Designation

As discussed in Appendix V of the CPG II "Supporting Analysis" document, rubber and plastic represent a significant component of the solid waste stream. Garden and soaker hoses are available made with postconsumer and other recovered PVC plastic or rubber.

EPA identified five manufacturers of postconsumer- and other recovered-content landscaping hoses; two that only produce garden hoses, one that only produces soaker hoses, and two that produce both. All five companies use PVC plastic and/or rubber to manufacture their products. There is an American Society for Testing and Materials (ASTM) specification for garden hose that addresses physical and performance characteristics, but does not preclude the use of recovered materials. Green Seal, an independent standards organization, specifies the use of 50 percent postconsumer rubber in garden hose and 65 percent postconsumer rubber in soaker hose. The U.S. Department of Defense, National Park Service, and State agencies purchase garden and soaker hoses. For a more detailed discussion of the criteria used to propose this item for designation, see the "Comprehensive Procurement Guideline (CPG) II—Supporting Analyses" document located in the public docket for this action.

B. Lawn and Garden Edging

Based on the information obtained by EPA, lawn and garden edging is available containing recovered plastics or rubber. Today, in § 247.15(d), EPA proposes to designate lawn and garden edging containing recovered plastic or rubber as items whose procurement will carry out the objectives of section 6002 of RCRA. A final designation of these items would not preclude a procuring agency from purchasing lawn and garden edging manufactured from another material, such as wood. It simply requires that a procuring agency, when purchasing lawn and garden edging made from plastic or rubber, purchase these items made with

recovered materials when these items meet applicable specifications and performance requirements.

1. Background

Lawn and garden edging is used as a barrier between lawns and landscaped areas or garden beds to prevent grass, roots, or weeds from spreading to the landscaped areas. It is manufactured from postconsumer and other recovered HDPE, mixed plastics, and/or rubber.

2. Rationale for Designation

As discussed in Appendix V of the CPG II "Supporting Analysis" document, rubber and plastics represent a significant component of the solid waste stream. Lawn and garden edging is available made with postconsumer and other recovered plastics. Postconsumer sources of materials used in lawn and garden edging include milk jugs, water bottles, and other containers, various mixed plastic resins, and rubber (from tires). Edging may also be manufactured using wood; however, EPA is not aware of any lawn and garden edging made from recovered wood and requests information on whether these items are commercially available.

EPA identified seven manufacturers of lawn and garden edging containing postconsumer and other recovered materials. According to information obtained by EPA, there are no national or Federal specifications that preclude the use of recovered materials in the manufacture of lawn and garden edging. Although EPA was unable to obtain any information on the purchase of lawn and garden edging by government agencies, EPA is aware that lawn and garden edging is procured by such agencies as the National Park Service and State and local parks and recreation offices. For a more detailed discussion of the criteria used to propose this item for designation, see the "Comprehensive Procurement Guideline (CPG) II—Supporting Analyses" document located in the public docket for this action.

X. Non-Paper Office Products

A. Printer Ribbons

Based on the information obtained by EPA, printer ribbons used in impact printers can be remanufactured by reinking the ribbon or reloading the printer ribbon cartridge with new ribbon. Today, in § 247.16(f), EPA proposes to designate printer ribbons as an item whose procurement will carry out the objectives of section 6002 of RCRA.

1. Background

Printer ribbons are used in dot matrix and other types of impact printers used in homes, offices, and retail stores across the United States. The ribbons are housed in an outer plastic casing (cartridge), which contains the ribbon and internal gears.

2. Rationale for Designation

As discussed in Appendix V of the CPG II "Supporting Analysis" document, plastic represents a significant component of the solid waste stream. The plastic contained in printer ribbon cartridges can be diverted from the waste stream if the printer ribbon is reinked or the cartridge is reloaded with new ribbon.

EPA identified 18 companies that service printer ribbons for reuse. Seven of the companies reink ribbons and five reload the cartridges with new ribbon; EPA was unable to obtain information from the remaining six companies. The U.S. Postal Service Processing and Distribution Center in Portland, Maine, EPA Region 6, and the States of Alabama and Florida have used remanufactured printer ribbons successfully. For a more detailed discussion of the criteria used to propose this item for designation, see the "Comprehensive Procurement Guideline (CPG) II—Supporting Analyses" document located in the public docket for this action.

B. Ink Jet Cartridges

Based on the information obtained by EPA, ink jet ribbon cartridges for ink jet printers and facsimile machines can be remanufactured by refilling the cartridge with ink. Today, in § 247.16(g), EPA proposes to designate ink jet cartridges as an item whose procurement will carry out the objectives of section 6002 of RCRA.

1. Background

Ink jet cartridges are plastic cases containing ink, a pump, filter, nozzle, and internal circuitry. They are used in ink jet printers and in some types of facsimile machines and plotters.

2. Rationale for Designation

As discussed in Appendix V of the CPG II "Supporting Analysis" document, plastic represents a significant component of the solid waste stream. The plastic contained in ink jet cartridges can be diverted from the waste stream if the cartridge is refilled with new ink.

EPA identified 24 companies that refill ink jet cartridges for customers nationwide. In addition to remanufacturers, do-it-yourself kits are

available for customers to refill their own ink jet cartridges. EPA Region 6, the U.S. Army Corps of Engineers, the City of Tucson, and the States of Colorado and Florida have used refilled ink jet cartridges. For a more detailed discussion of the criteria used to propose this item for designation, see the "Comprehensive Procurement Guideline (CPG) II—Supporting Analyses" document located in the public docket for this action.

C. Plastic Envelopes

Based on the information obtained by EPA, plastic envelopes are available containing recovered plastics. Today, in § 247.16(h), EPA proposes to designate plastic envelopes containing recovered materials as an item whose procurement will carry out the objectives of section 6002 of RCRA. A final designation of this item would not preclude a procuring agency from purchasing envelopes manufactured from paper products, but would simply require that a procuring agency, when purchasing plastic envelopes, purchase them made with recovered materials when these items meet applicable specifications and performance requirements. When purchasing envelopes made from paper, procuring agencies should consult the Paper Products RMAN which was issued in the Federal Register on May 29, 1996 at 61 FR 26985.

1. Background

Plastic envelopes are manufactured from a trademarked spunbonded olefin or from tri-extruded polyolefins or polyethylenes. They are used most commonly by the express mail, insurance, bank, legal, medical, and international mail industries in heavy-duty, security-related, and other specialized mailing applications.

2. Rationale for Designation

As discussed in Appendix V of the CPG II "Supporting Analysis" document, plastic represents a significant component of the solid waste stream. Plastic envelopes are available made with postconsumer and other recovered plastics. Postconsumer sources include milk jugs, water bottles, and other containers.

EPA identified three manufacturers of plastic envelopes containing postconsumer and other recovered LDPE or HDPE. According to information obtained by EPA, there are no national or Federal specifications that preclude the use of recovered materials in the manufacture of plastic envelopes. Plastic envelopes are purchased or used by most government agencies, although the U.S. Navy

requests that they not be used to transport materials to ships because they complicate onboard disposal practices. For a more detailed discussion of the criteria used to propose this item for designation, see the "Comprehensive Procurement Guideline (CPG) II—Supporting Analyses" document located in the public docket for this action.

XI. Miscellaneous Products

A. Pallets

Based on the information obtained by EPA, cargo and freight pallets are available containing recovered wood, plastic, or paperboard. Today, in § 247.17(a), EPA proposes to designate pallets containing recovered wood, plastic, or paperboard as an item whose procurement will carry out the objectives of section 6002 of RCRA. A final designation of this item would not preclude a procuring agency from purchasing pallets manufactured from another material. It simply requires that a procuring agency, when purchasing pallets made from plastic, wood, or paperboard, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

1. Background

Pallets are portable platforms for storing or moving cargo or freight. They can be manufactured from wood, plastic, or corrugated paperboard.

2. Rationale for Designation

As discussed in Appendix V of the CPG II "Supporting Analysis" document, wood, plastic, and corrugated paperboard represent significant components of the solid waste stream. Pallets are available manufactured from postconsumer and other recovered wood, plastic or old corrugated containers.

EPA obtained information from eight manufacturers of recovered and postconsumer wood pallets, 19 manufacturers of recovered and postconsumer plastic pallets, and two manufacturers of recovered and postconsumer corrugated pallets. EPA identified one specification for pallets, developed by the Grocery Manufacturers of America; it does not preclude the use of recovered materials in pallets. Army Logistics is developing a performance-based pallet specification that may limit the use of remanufactured pallets to specific applications. The Defense Logistics Agency procures millions of pallets of varying sizes each year. For a more detailed discussion of the criteria used

to propose this item for designation, see the "Comprehensive Procurement Guideline (CPG) II—Supporting Analyses" document located in the public docket for this action.

XII. Designated Item Availability

EPA has identified a number of manufacturers and vendors of the items proposed for designation in today's rule. Once the item designations in today's proposal become final, these lists will be placed in the RCRA docket for this action and updated periodically as new sources are identified and product information changes. Procuring agencies should contact the manufacturers/vendors directly to discuss their specific needs and to obtain detailed information on the availability and price of recycled products meeting those needs.

Other information is available from the General Services Administration (GSA), the Defense Logistics Agency (DLA), State and local recycling offices, private corporations, and trade associations. Refer to Section X of the document, "Comprehensive Procurement Guideline (CPG) II—Supporting Analyses," located in the RCRA public docket, for more detailed information on these sources of information.

XIII. 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.

EPA estimates that the costs associated with this proposed rule is well below the \$100 million threshold. To enable the Agency to evaluate the potential impact of today's action, EPA has prepared an Economic Impact

Analysis (EIA), as discussed below. For more information on the estimated economic impact of this proposed rule, see the "Economic Impact Analysis for the Comprehensive Procurement Guideline (CPG) II," located in the RCRA public docket for the proposed rule.

1. Summary of Costs

As shown in Table 2 below, EPA estimates that the annualized costs of today's rule will range from \$4.7 to \$8.7 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 sensitivity analyses to identify the range of potential costs of today's rule. Thus, high-end and low-end estimates are presented along with the best estimate. The primary parameter affecting the range of cost estimates is the number of products each procuring agency is assumed to procure each year. Details of the costs associated with this proposed rule are provided in the Economic Impact Analysis for this rule, located in the RCRA public docket.

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

| Procuring agency | Total annualized costs (\$1000) | Best estimate, total annualized costs (\$1000) |
|-------------------------|---------------------------------|--|
| Federal Agencies | \$5,400–\$2,900 | \$5,400 |
| States | 970–530 | 970 |
| Local Governments | 2,300–1,260 | 1,700 |
| Contractors | 79–26 | 54 |
| Total | 8,700–4,700 | 8,100 |

As a result of today's proposed rule, procuring agencies will be required to perform certain activities pursuant to RCRA section 6002. The costs shown in Table 2, represent the estimated annualized costs associated with these activities, which include: rule review and implementation; estimation, certification, and verification of designated item procurement; and for Federal agencies, reporting and recordkeeping. Table 2 also includes estimates for Federal agency's that will incur costs for specification revisions

and affirmative procurement program modification. More details of the costs associated with today's rule are included in the aforementioned Economic Impact Analysis.

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

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

2. Product Cost

Another potential cost of today's action is the possible price differential between an item made with recovered materials and an equivalent item manufactured using virgin materials. As discussed in Appendices I and IV of the "Supporting Analyses," relative prices of recycled content products compared to prices of comparable virgin products vary. In many cases, recycled content products are less expensive than their virgin counterparts. In other cases, virgin products have lower prices than recycled content products. Many factors can affect the price of various products. For example, temporary fluctuations in the overall economy can create oversupplies of virgin products, leading to a decrease in prices for these items. Under RCRA section 6002(c), procuring agencies are not required to purchase a

product containing recovered materials if it is only available at an unreasonable price. However, the decision to pay more or less for such a product is left to the procuring agency.

3. 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. Less raw materials use results in a commensurate reduction in energy use and a reduction in the generation and release of air and water pollutants associated with manufacturing. Additionally, waste prevention leads to a reduction in the environmental impacts of mining, harvesting, and other 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, the proposed rule can result in expanding and strengthening markets for materials diverted or recovered through public and private collection programs. Also, since many State and local governments, as well as private companies, reference EPA guidelines when purchasing designated items, this rule can result in increased purchase of recycled products, locally, regionally, and nationally and provide opportunities for businesses engaged in recycling activities.

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), P.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 proposed rule does not include a Federal mandate that may result in estimated annualized costs of \$100 million or more to either State or local governments in the aggregate, or to the private sector. To the extent enforceable duties arise as a result of this proposed rule on State and local governments, they are exempt from inclusion as Federal intergovernmental mandates if such duties are conditions of Federal assistance. Even if they are not conditions of Federal assistance, such enforceable duties do not result in a significant regulatory action being imposed upon State and local governments since the estimated aggregate cost of compliance for them are not expected to exceed, at the maximum, \$3.3 million annually. The cost of enforceable duties which may arise as a result of today's proposed rule on the private sector are estimated not to exceed \$79,000 annually. Thus, the proposed 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 affirmative procurement program and to amend their specifications) for state and local governments. As noted above, the expense associated with any additional costs is not expected to exceed, at the maximum, \$3.3 million annually. In compliance with E.O. 12875, which requires the involvement of State and local governments in the development of certain Federal regulatory actions, EPA conducted a wide outreach effort and actively sought the input of representatives of state and local governments in the process of developing its guidelines.

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

The requirements do not significantly affect small governments because they are subject to the same requirements as other entities whose duties result from today's rule. As discussed above, the expense associated with any additional costs to State and local governments, is not expected to exceed, at the maximum, \$3.3 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. Impacted Entities

RCRA section 6002 applies to procuring agencies that use at least a portion of Federal funds to procure over \$10,000 worth of a designated product in a given year. EPA estimates that this rule would apply to 35 Federal agencies, all 56 states and territories and 1,900 local governments. EPA calculated the number of local entities that would be impacted based on information regarding the amount of Federal funds that are dispersed to specific counties. In addition, EPA assumed that between 100 and 1,000 contractors may be affected. A description of this information is provided in the Economic Impact Analysis for today's rule.

D. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), provides that, whenever an agency proposes a rule under 5 U.S.C. 553, the agency must prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The purpose of the RFA is to establish procedures that ensure that Federal agencies solicit and consider alternatives to rules so as to minimize their burdensome impact on small entities. The Act is designed to encourage agencies to tailor their rules to the size and nature of those to be regulated whenever this is consistent with the underlying statute authorizing the rule.

However, the RFA does not require a regulatory flexibility analysis if the head of an agency certifies the rule will not have significant economic impact on a substantial number of small entities. 5 U.S.C. 604 & 605. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. Pursuant to 5 U.S.C. 605(b), therefore, I certify that today's proposed rule will not, if promulgated, have a significant adverse impact on a substantial number of small entities.

In the case of small entities which are small governmental jurisdictions, EPA has concluded that the proposal, if promulgated, will not have a significant economic impact. EPA concluded that

no small government with a population of less than 50,000 is likely to incur costs associated with the designation of the 13 items because it is improbable that such jurisdictions will purchase more than \$10,000 of any designated item. Consequently, section 6002 would not apply to their purchases of designated items. Moreover, there is no evidence that complying with the requirements of section 6002 would impose significant additional costs on the small governmental entity to comply in the event that a small governmental jurisdiction purchased more than \$10,000 worth of a designated item. This is the case because in many instances items with recovered materials content may be less expensive than items produced from virgin material.

Furthermore, EPA similarly concluded that the economic impact on small businesses would not be significant. Any costs to small businesses that are "procuring agencies" (and subject to section 6002) are likely to be insubstantial. To the extent there are increased costs, such costs are directly associated with compliance with a contract with a Federal agency for a designated procurement items and should be recovered in the contract price for the item. Further, any subsidiary costs associated with a small business's status as a "procuring agency" would not be substantial. Even if a small business is required to purchase other items with recovered materials content, it is unclear that such items will necessarily be more expensive than items with virgin content.

The basis for EPA's conclusions that the proposal, if adopted, will not have a significant impact on a substantial number of small entities is described in greater detail in the "Economic Impact Analysis" for the proposed rule which is located in the RCRA public docket.

1. Small Businesses

The CPG applies to small businesses that are "procuring agencies." The potential economic impact of the CPG on small businesses that are "procuring agencies" is minimal. RCRA section 6002 applies to the contractor with a Federal agency (or a state or local agency that is a procuring agency under Section 6002) when the contractor is purchasing a designated item, is using Federal money to do so, and exceeds the \$10,000 threshold. There is an exception for purchases that are "incidental to" the purposes of the contract, i.e., not the direct result of the funds disbursement. Therefore, for example, a courier service contractor is

not required to purchase re-refined oil and retread tires for its fleets because purchases of these items are incidental to the purpose of the contract. Therefore, as a practical matter, there would be very limited circumstances when a contractor's status as a "procuring agency" for section 6002 purposes would impose additional costs on the contractor. Thus, for example, if the State or Federal agency is contracting with a supplier to obtain a designated item, then the cost of the designated item (and any associated costs of meeting section 6002 requirements) to the supplier presumably will be fully recovered in the contract price.

Based on the above, EPA has determined that the effect of today's proposed rule on small entities would be minimal.

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

XIV. Supporting Information and Accessing Internet

The index of supporting materials for the proposed rule is available in the RIC and on the Internet. The address and telephone number of the RIC are provided in ADDRESSES above. The following supporting materials are available on the Internet:

"Comprehensive Procurement Guideline (CPG) II—Supporting Analyses," U.S. EPA, Office of Solid Waste and Emergency Response, August 1, 1996.

"Recovered Materials Advisory Notice (RMAN) II—Supporting Analyses," U.S. EPA, Office of Solid Waste and Emergency Response, August 1, 1996.

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

"Recovered Materials Product Research for the Comprehensive Procurement Guideline II," prepared for U.S. EPA by Eastern Research Group, July 24, 1996.

"Research on Items for Designation in the Comprehensive Procurement Guideline," December 19, 1995.

"Summary of Information Submitted in Response to EPA's Request for Information on the Designation of Items for the CPG," prepared for U.S. EPA by Eastern Research Group, April 12, 1996.

Follow these instructions to access the information electronically:

Gopher: gopher.epa.gov
WWW: http://www.epa.gov
Dial-up: 919 558-0335

The materials can be accessed off the main EPA Gopher menu, in the directory EPA Offices and Regions/Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA)/[Non-Hazardous Waste—RCRA Subtitle D/Procurement/CPG].

FTP: ftp.epa.gov

Login: anonymous

Password: your Internet address

Files are located in /pub/gopher/OSWRCRA.

List of Subjects in 40 CFR Part 247

Environmental protection, Channelizers, Delineators, Flexible delineators, Floor tile, Garden and soaker hose, Government procurement, Ink jet cartridge, Laminated paperboard, Landscaping industry, Latex paint, Lawn and garden edging, Office products, Pallets, Park and recreation products, Parking stops, Printer ribbon, Recycling, Shower and restroom dividers, Snow fencing, Structural fiberboard, Temporary traffic control devices.

Dated: November 1, 1996.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, EPA proposes to amend 40 CFR Part 247 as follows:

PART 247—COMPREHENSIVE PROCUREMENT GUIDELINE FOR PRODUCTS CONTAINING RECOVERED MATERIALS

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

Authority: 42 U.S.C. 6912(a) and 6962; E.O. 12873, 58 FR 54911.

2. In § 247.2, paragraph (d) is added to read as follows:

§ 247.2 Applicability.

(d) RCRA section 6002(c)(1) requires procuring agencies to procure designated items composed of the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of

competition, considering such guidelines. Procuring agencies may decide not to procure such items if they are not reasonably available in a reasonable period of time; fail to meet reasonable performance standards; or are only available at an unreasonable price.

3. In § 247.3, the following definitions are added alphabetically:

* * * * *

Channelizers means highly visible barrels or drums that can be positioned to direct traffic through detours;

* * * * *

Delineator means a highly visible pavement marker that can be positioned to direct traffic or define boundaries;

* * * * *

Flexible delineator means a highly visible marker that can be positioned to direct traffic or define boundaries and that will flex if struck by a vehicle to prevent damage to the vehicle or the delineator;

* * * * *

Garden hose means a flexible tubing that conducts water to a specific location;

* * * * *

Ink jet cartridge means a casing containing ink used in ink jet printers and some types of facsimile machines and plotters;

* * * * *

Latex paint means a water-based decorative or protective covering having a latex binder;

* * * * *

Lawn edging means a barrier used between lawns and landscaped areas or garden beds to prevent grass roots or weeds from spreading to the landscaped areas;

* * * * *

Pallet means a portable platform for storing or moving cargo or freight;

* * * * *

Parking stop means a barrier used to mark parking spaces and keep parked vehicles from rolling beyond a designated parking area;

* * * * *

Printer ribbon means a nylon fabric designed to hold ink and used in dot matrix and other types of impact printers;

* * * * *

Restroom divider means a barrier used to provide privacy in public restroom facilities;

* * * * *

Shower divider means a water-proof barrier used to provide privacy in public shower facilities;

* * * * *

Snow fencing means a barrier with an open-weave pattern that can be used to control drifting snow or sand by restricting the force of wind;

* * * * *

Soaker hose means a perforated flexible tubing that is used to deliver gentle irrigation to plants;

* * * * *

4. Section 247.12 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 247.12 Construction products.

* * * * *

(f) Shower and restroom dividers containing recovered plastic or steel.

(g) Latex paint.

5. Section 247.13 is amended by designating the existing text as paragraph (a) and by adding new paragraphs (b), (c), (d), and (e) to read as follows:

§ 247.13 Transportation products.

* * * * *

(b) Parking stops made from concrete or containing recovered plastic or rubber.

(c) Channelizers containing recovered plastic or rubber.

(d) Delineators containing recovered plastic, rubber, or steel.

(e) Flexible delineators containing recovered plastic.

6. Section 247.14 is amended by redesignating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 247.14 Park and recreation products.

* * * * *

(b) Snow fencing containing recovered plastic.

7. In § 247.15, new paragraphs (c) and (d) are added to read as follows:

§ 247.15 Landscaping products.

* * * * *

(c) Garden and soaker hoses containing recovered plastic or rubber.

(d) Lawn and garden edging containing recovered plastic or rubber.

8. In § 247.16, new paragraphs (f), (g), and (h) are added to read as follows:

§ 247.16 Non-paper office products.

* * * * *

(f) Printer ribbons.

(g) Ink jet cartridges.

(h) Plastic envelopes.

9. Section 247.17 is revised to read as follows:

§ 247.17 Miscellaneous Products.

(a) Pallets containing recovered wood, plastic, or paperboard.

(b) (Reserved)

[FR Doc. 96-28733 Filed 11-6-96; 8:45 am]

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