

PROMOTION OF RECYCLING AND FEDERAL PROCUREMENT REQUIREMENTS FOR RECOVERED CONTENT PRODUCTS

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OVERVIEW

The purpose of RCRA is not merely to control waste generation, waste management, or waste disposal. The title of the Act itself clearly reveals a major focus and intent – resource conservation and recovery. As discussed in chapter I, a major goal of RCRA is energy and natural resource conservation through reducing the depletion of our natural resources and to protect those resources from hazardous constituents. Another major goal of RCRA is resource recovery through extracting usable resources from materials that are unintentionally created (i.e., wastes).

Resource recovery or recycling requires separating and collecting wastes for their subsequent transformation or remanufacture into usable products and materials. Resource recovery is a major component of the RCRA program because it

diverts large amounts of solid waste from landfills and incinerators, conserves space in landfills, recovers the precious raw materials that are often found in solid waste, and preserves natural resources that would otherwise be used to produce virgin products and materials.

To further this waste management approach, RCRA established specific provisions to promote the development of recycling capabilities and technologies, and develop a market for recyclable materials. As a result, the Statute contains provisions for technology and market development activities, as well as federal procurement requirements intended to bolster the demand for products containing recycled materials.

PROMOTION OF RECYCLING

When the Statute was enacted, the waste management and recycling industries were unable to maintain and promote substantial resource conservation and recovery of a wide range of materials. While specific industries, such as metals and glass recycling, were mature and developed, recycling of other commodities, such as old newspapers was not as advanced. While recycling was a major component of the regulatory program, there was neither the technology to recycle nor a market in which to sell and purchase such commodities. Without a market to sell or a demand to purchase recycled products, there was no incentive to perform recycling activities in the first place.

Congress recognized this opportunity within the recycling industry and sought ways to promote both recycling activities and market development. As a result, RCRA includes provisions requiring EPA to take steps to identify markets for recovered materials, identify economic and technical barriers to the use of recovered materials, encourage the development of new uses for recovered materials, and promote recycling technologies. In addition, RCRA requires the National Institutes of Standards and Technology to develop specifications for recycled materials to facilitate their reuse in replacing virgin materials in various industrial and commercial products.

FEDERAL PROCUREMENT REQUIREMENTS FOR RECOVERED CONTENT PRODUCTS

Realizing that recycling is not only the collection of materials for remanufacture, but also the purchase of products with recovered content by consumers, Congress sought ways to stimulate market demand for recycled materials. Congress realized that the purchasing power of the federal government, if focused on procuring products with recovered content, could create a significant demand for recycled materials thus stimulating the market. Increased demand by the federal government for products with recovered content would boost manufacturing of such items and encourage the private sector to purchase such goods as well. As a result, RCRA §6002 established a requirement for EPA to issue guidelines for the federal procurement of products containing recovered materials.

RCRA §6002 also requires procuring agencies to purchase those items composed of the highest percentage of recovered materials practicable. In short, it is the government's "buy-recycled" program.

Procuring agencies are defined as:

- Federal government departments or agencies
- State government agencies that use appropriated federal funds for procurement of a designated item
- Local government agencies that use appropriated federal funds for procurement of a designated item
- Government contractors that work on a project funded by appropriated federal funds, with respect to work performed under the contract.

Only procuring agencies that purchase \$10,000 or more worth of a designated item during the course of their fiscal year, or that purchased at least \$10,000 worth of a procurement item during the preceding fiscal year, are subject to these procurement requirements.

The Statute requires EPA to designate products that are or can be made from recovered materials, and to make recommendations concerning the procurement of items containing recovered materials. Procuring agencies can use these guidelines to meet these statutory requirements.

■ Comprehensive Procurement Guidelines

EPA designates items in a **Comprehensive Procurement Guideline (CPG)**, which is updated periodically. Currently, there are 59 items designated within 8 product categories (see Figure V-1). These product categories are:

- Paper and Paper Products
- Vehicular Products
- Construction Products
- Transportation Products
- Park and Recreation Products
- Landscaping Products
- Nonpaper Office Products
- Miscellaneous Products.

Figure V-1: Designated Procurement Items**Paper and Paper Products**

- Commercial/industrial sanitary tissue products
- Miscellaneous papers
- Newsprint
- Paperboard and packaging products
- Printing and writing papers

Vehicular Products

- Engine coolants
- Rebuilt vehicular parts
- Re-refined lubricating oils
- Retread tires

Construction Products

- Building insulation products
- Carpet
- Carpet cushion
- Cement and concrete containing coal fly ash, ground granulated blast furnace slag, cenospheres, silica fume
- Consolidated and reprocessed latex paint
- Floor tiles
- Flowable fill
- Laminated paperboard
- Modular threshold ramps
- Nonpressure pipe
- Patio blocks
- Railroad grade crossing surfaces
- Roofing materials
- Shower and restroom dividers/partitions
- Structural fiberboard

Transportation Products

- Channelizers
- Delineators
- Flexible delineators
- Parking stops
- Traffic barricades
- Traffic cones

Parks and Recreation Products

- Park benches and picnic tables
- Plastic fencing
- Playground equipment
- Playground surfaces
- Running tracks

Landscaping Products

- Compost made from recovered organic materials
- Fertilizer made from recovered organic materials
- Garden and soaker hoses
- Hydraulic mulch
- Lawn and garden edging
- Plastic lumber landscaping timbers and posts

Non-paper Office Products

- Binders, clipboards, file folders, clip portfolios, and presentation folders
- Office furniture
- Office recycling containers
- Office waste receptacles
- Plastic desktop accessories
- Plastic envelopes
- Plastic trash bags
- Printer ribbons
- Toner cartridges

Miscellaneous Products

- Awards and plaques
- Bike racks
- Blasting grit
- Industrial drums
- Manual-grade strapping
- Mats
- Pallets
- Signage
- Sorbents

■ Recovered Materials Advisory Notice

For each item designated in the CPG, EPA also publishes corresponding and guidance in a **Recovered Materials Advisory Notice (RMAN)** (see Figure V-2). EPA recommends recovered content levels and provides information on specifications for purchasing a particular item and other pertinent purchasing information.

■ Affirmative Procurement Program

If an agency meets the definition of a procuring agency and is purchasing a certain dollar amount of a designated item, that agency is required to purchase items with the highest levels of recovered content practicable. An agency may elect not to purchase designated items only when the cost is unreasonable, items are not available within a reasonable period of time, or items do not meet the agency's reasonable performance specifications. Within one year after EPA designates an item, procuring agencies must revise their product specifications to require the use of recovered materials and to eliminate administrative barriers to the use of materials with recovered content, such as removing purchasing provisions that prohibit the use of recovered materials or require the exclusive use of virgin materials.

Within one year after EPA designates an item, each procuring agency must develop an affirmative procurement program for each designated item, setting forth the agency's policies and procedures for implementing the requirements.

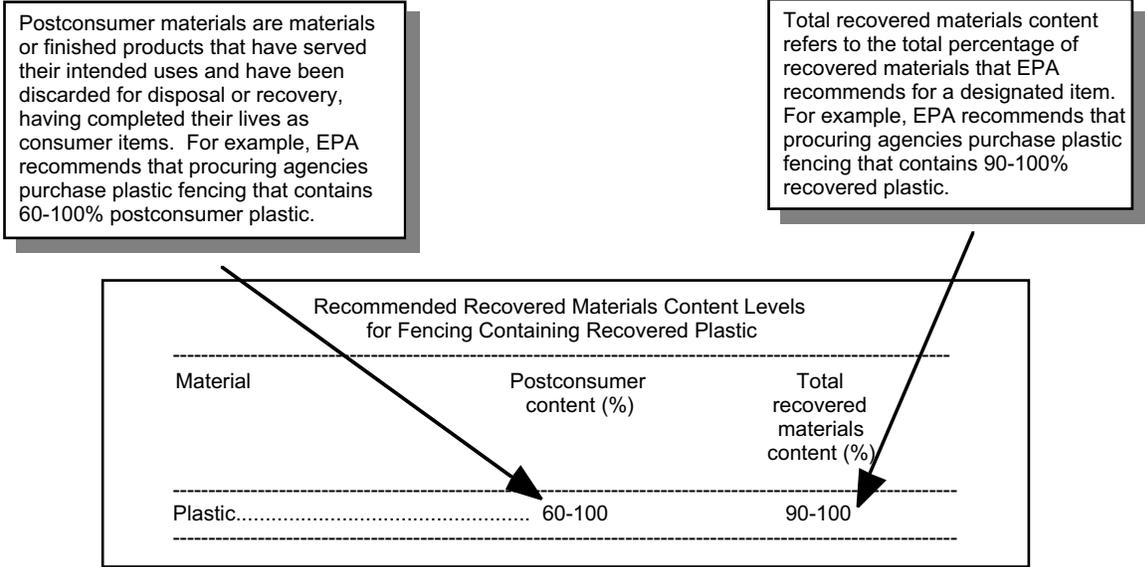
The affirmative procurement program consists of four parts:

- Preference program
- Promotion program
- Estimation, certification, and verification provisions
- Monitoring and review program.

Preference Program

The preference program is a means by which an agency shows its preference for products made with recovered materials. It may consist of established minimum content standards, a case-by-case approach when the minimum content standard is inappropriate, or an equivalent alternative. Minimum content standards specify the minimum amount of recovered materials that designated items should contain. Agencies can adopt these standards on an agency-wide basis for all procurement actions. Case-by-case policy development allows the procuring agency to establish a separate recovered

Figure V-2: Sample Recovered Materials Advisory Notice Content Level Specification



materials content requirement for a specific procurement action, while still enabling the agency to procure other designated products with the highest amount of recovered materials practicable. The procuring agency can also choose an alternative that is equivalent to either of these options, such as contracting for recycling of spent engine coolant.

Promotion Program

Through the promotion program, the agency must actively promote its desire to buy recycled products, both internally within the agency and externally to product vendors. Internal promotion usually is a broad-based employee education program that affirms an agency’s procurement policy through advertising, workshops, agency newsletters, and technical and staff manuals. Examples of external promotion include publishing articles in trade journals, participating in vendor shows or trade fairs, placing statements in bid solicitations, and discussing an agency’s procurement policy at bidders’ conferences.

Estimation, Certification, and Verification Provisions

Agencies should use standard contract provisions to estimate, certify, and, where appropriate, reasonably verify the recovered materials content in a product procured by an agency.

Monitoring and Review Program

The monitoring and review program requires agencies to monitor affirmative procurement programs to ensure that they are fulfilling their obligation to purchase items composed of recovered materials.

■ **Compliance**

Once EPA designates an item in the CPG, the responsibility for complying with the procurement program rests with the procuring agency. There are no provisions in the Statute for federal enforcement of the guidelines. On the other hand, RCRA §7002 citizen suit provisions allow citizens to sue in U.S. District Court to seek relief against any person alleged to be in violation of the requirements of the Act, including the procurement requirements.

(Citizen suit provisions are fully discussed in Chapter III, Enforcement of Hazardous Waste Regulations).

SUMMARY

In order to further RCRA's resource, conservation, and recovery goals, the Statute includes provisions to promote recycling and market development. RCRA created federal procurement requirements to create a significant demand for products with recovered content, boost manufacturing of such products, and encourage the private sector to purchase such goods as well.

The procurement requirements apply to procuring agencies that purchase \$10,000 or more worth of a designated item during the course of their fiscal year, or that purchased at least \$10,000 worth of a procurement item during the preceding fiscal year.

Procuring agencies are defined as:

- Federal government departments or agencies
- State government agencies that use appropriated federal funds for procurement of a designated item
- Local government agencies that use appropriated federal funds for procurement of a designated item

- Government contractors that work on a project funded by appropriated federal funds, with respect to work performed under the contract.

RCRA §6002 requires procuring agencies to purchase designated recycled-content items of the highest percentage or recovered content practicable.

Each procuring agency must develop an affirmative procurement program for each designated item, setting forth the agency's policies and procedures for implementing the requirements. This program consists of four parts:

- Preference program
- Promotion program
- Estimation, certification, and verification program
- Monitoring and review program.

ADDITIONAL RESOURCES

Additional information about the topics covered in this chapter can be found at www.epa.gov/cpg.

