TABLE 1.—EPA-APPROVED TENNESSEE REGULATIONS

| State citation | Title/subject | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * * * | * | * | * | * |
| **CHAPTER 1200–3–9 CONSTRUCTION AND OPERATING PERMITS** | | | | |
| Section 1200–3–9–.01 | Construction Permits | 02/14/06 | 09/14/07 [Insert citation of publication]. | |
| * * * | * | * | * | * |

TABLE 5.—EPA-APPROVED NASHVILLE-DAVIDSON COUNTY, REGULATIONS

| State citation | Title/subject | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * * * | * | * | * | * |
| **Article II. Standards for Operation** | | | | |
| * * * | * | * | * | * |
| Regulation No. 3 New Source Review | | | | |
| Section 3–1 | Definitions | 03/14/06 | 09/14/07 [Insert citation of publication]. | |
| Section 3–2 | New Source Review | 03/14/06 | 09/14/07 [Insert citation of publication]. | |
| Section 3–3 | Prevention of Significant Deterioration (PSD) Review. | 03/14/06 | 09/14/07 [Insert citation of publication]. | |
| Section 3–4 | Plantwide Applicability Limits (PAL). | 03/14/06 | 09/14/07 [Insert citation of publication]. | |

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[FR Doc. E7–17975 Filed 9–13–07; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 247

**[EPA–HQ–RCRA–2003–0005; FRL–8468–3]**

**RIN 2050–AE23**

## Comprehensive Procurement Guideline V for Procurement of Products Containing Recovered Materials

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is amending the Comprehensive Procurement Guideline (CPG) for recovered content products. Specifically, EPA is revising the list of items designated in the category of landscaping products. First, EPA is changing the description of ''compost'' by consolidating all compost designations under one item designation: ''compost made from recovered organic materials.'' At the same time, the Agency is amending the definition of compost. The effect of the two changes will be to include compost from biosolids and manure, and not limit the designation to specific types of organic materials. Second, EPA has added ''fertilizer made from recovered materials'' as a designated landscaping item and added a definition for ''fertilizer made from recovered organic materials.'' (In the notices section of this **Federal Register**, EPA also is making available the final Recovered Materials Advisory Notice (RMAN) that contains recommendations for purchasing these designated items.)

The CPG implements section 6002 of the Resource Conservation and Recovery Act (RCRA) which requires EPA to designate items that are or can be made with recovered materials and to recommend practices that procuring agencies can use to procure designated items. Once EPA designates an item, any procuring agency that uses appropriated federal funds to procure that item must purchase the item containing the highest percentage of recovered materials practicable. This action harnesses government purchasing power to stimulate the use of recovered materials in the manufacture of products, thereby fostering markets for materials recovered from solid waste.

**DATES:** This final rule is effective on September 15, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2003–0005. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the OSWER Docket EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270.

**FOR FURTHER INFORMATION CONTACT:** Marlene RedDoor, Office of Solid Waste, Municipal and Industrial Solid Waste Division (5306P), Environmental Protection Agency, 1200 Pennsylvania Avenue; 703–308–7276; fax number: 703–308–8686; e-mail address: *Regelski-RedDoor.Marlene@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does This Action Apply to Me?*

This action may potentially affect agencies that are procuring agencies under RCRA section 6002 that purchase the following items: compost made from recovered organic materials and fertilizers made from recovered organic materials. Section 6002 defines procuring agencies to include the following: (1) Any federal agency; (2) any state or local agency using appropriated federal funds for a procurement; or (3) any contractors of these agencies who are procuring these items for work they perform under the contract. See RCRA section 1004(17). The requirements of section 6002 apply to these procuring agencies only when the agencies procure designated items whose price exceeds $10,000 or when the quantity of the item purchased in the previous year exceeded $10,000. A list of entities that this rule may cover is provided in Table 1.

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

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

This table is not intended to be exhaustive. To determine whether this action applies to your procurement practices, you should carefully examine the applicability criteria in 40 CFR 247.12. If you have questions about whether this action applies to a particular entity, contact Marlene RedDoor at 703–308–7276.

**Preamble Outline**

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IV. What criteria did EPA use to select items for designation?
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G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
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IX. Supporting Information and Accessing Internet

## I. What is the statutory authority for this amendment?

EPA (''the Agency'') is promulgating this amendment to the Comprehensive Procurement Guideline (CPG) 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 (RCRA), as amended, 42 U.S.C. 6912(a) and 6962. This amendment is also consistent with Executive Order 13423, ''Strengthening Federal Environmental, Energy, and Transportation Management,'' (72 FR 3919, January 26, 2007), which revoked Executive Order 13101, ''Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition,'' (63 FR 49643, September 14, 1998). Per section 2(d)(i) of Executive Order 13423, the head of each Federal agency shall require in the agency's acquisition of goods and services the use of, among other things, recycled content products.

## II. Why is EPA taking this action?

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

Between 1983 and 1989, EPA issued five guidelines for the procurement of

products containing recovered materials, which were previously codified at 40 CFR parts 248, 249, 250, 252, and 253. These products include cement and concrete containing fly ash, paper and paper products, re-refined lubricating oils, retread tires, and building insulation. Table 2 summarizes designations of CPG I–IV and references the **Federal Register** publications.

TABLE 2.—CPG I–IV DESIGNATIONS

| Designation | Date published | FR No. | Number items designated |
|---|---|---|---|
| CPG I | May 1, 1995 | 60 FR 21370 | 19 new, 5 previous in 8 product categories. |
| RMAN I | May 1, 1995 | 60 FR 21386. | |
| Paper Product RMAN | May 29, 1996 | 61 FR 26985. | |
| CPG II | November 13, 1997 | 62 FR 60962 | 12 new items. |
| RMAN II | November 13, 1997 | 62 FR 60975. | |
| Paper Product RMAN | June 8, 1998 | 63 FR 31214. | |
| CPG III | January 19, 2000 | 65 FR 3070 | 18 new items. |
| RMAN III | January 19, 2000 | 65 FR 3082. | |
| CPG IV | April 20, 2004 | 69 FR 24028 | 7 new, 3 revised. |
| RMAN IV | April 30, 2004 | 69 FR 24039. | |

On December 10, 2003, EPA published the proposed CPG V (68 FR 68813) and draft RMAN V (68 FR 68919) which are finalized by this action.

EPA is consolidating all compost designations into one item designation: compost made from recovered organic materials. In addition, EPA is establishing a new item designation: ''fertilizers made from recovered organic materials.'' These items are being designated under the Landscaping Products category. Recovered organic materials include, but are not limited to, yard waste, food waste, manure, and biosolids. (For more information on CPG, go to the EPA Web site at *(http://www.epa.gov/cpg/.)*

## III. What are the related requirements for biobased products?

Section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA) provides for the preferred procurement of biobased products by procuring agencies. 7 U.S.C. 8192. Under FSRIA, once the U.S. Department of Agriculture (USDA) designates an item, procuring agencies, when procuring the item, must, in specified circumstances, procure it as a biobased product. Some of the products that are biobased items designated for preferred procurement may also be items that EPA has designated under EPA's CPG program for recovered content products. Where that occurs, and where the item is used for the same purpose and the performance standards are the same for both the product containing recovered materials and the biobased item, an EPA-designated recovered content product (also known as ''recycled content products'' or ''EPA-designated products'') has priority in Federal procurement over the qualifying biobased product. See 71 FR 13686, *http://www.biobased.oce.usda.gov/fb4p/files/Round_1_Final_Rule.pdf*).

Composts and fertilizers can be both products containing recovered materials and biobased products. USDA has proposed to designate biobased fertilizer as a product for Federal procurement. Once USDA promulgates a final designation, if an agency purchases fertilizer or landscaping or facilities management services that require the use of fertilizer, then the agency should first consider specifying fertilizer containing recovered materials. This should satisfy both the requirement to purchase EPA-designated products and the requirement to purchase USDA-designated products. If such fertilizer will not meet the agency's reasonable performance needs, then the agency should specify other biobased fertilizer.

As noted previously, section 6002 of RCRA requires a procuring agency procuring an item designated by EPA generally to procure such items composed of the highest percentage of recovered materials content practicable. However, a procuring agency may decide not to procure such an item based on a determination that the item fails to meet the reasonable performance standards or specifications of the procuring agency. An item with recovered materials content may not meet reasonable performance standards or specifications, for example, if the use of the item with recovered materials content would jeopardize the intended end use of the item.

## IV. What criteria did EPA use to select items for designation?

RCRA section 6002(e) requires EPA to consider the following criteria 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.

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

Section 6002(e) also authorizes EPA to consider other factors in its designation decisions. EPA, consequently, also consulted with federal procurement officials to identify other criteria it should consider. 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. Specifically, this provision requires that each procuring agency that procures an item that EPA has designated, procure the item that contains 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 the procuring agency determines: (1) The item is not available within a reasonable period of time; (2) the item fails to meet the performance standards that the procuring agency has set forth in the product specifications; or (3) the item is available only at an unreasonable price.

EPA recognized that these criteria could provide procuring agencies with a rationale for not purchasing EPA-designated items that contain recovered materials. For this reason, EPA considers the limitations cited in RCRA section 6002(c) when it selects items to designate in the CPG. In CPG I, the Agency outlined the following criteria that it continues to use when it selects items for designation:

- Use of materials found in solid waste.
- Economic and technological feasibility and performance.
- Impact of government procurement.
- Availability and competition.
- Other uses for recovered materials.

EPA discussed these criteria in the CPG I background documents and in Section II of the document entitled, ''Background Document for the Final Comprehensive Procurement Guideline (CPG) V and Final Recovered Materials Advisory Notice (RMAN) V.'' The RCRA public docket for the proposed CPG V rule, Docket No. RCRA–2003–0005, contains this document.

In CPG I, EPA stated that it had adopted two approaches for designating items that are made with recovered materials. For some items, such as floor tiles, the Agency designated broad categories and provided information in the RMAN about the appropriate applications or uses for the items. For other items, such as plastic trash bags, EPA designated specific items, and, in some instances, specified the types of recovered materials or applications to which the designation applies. The Agency explained the approaches it took to designate items in the preamble to CPG I (60 FR 21373, May 1, 1995), and repeats them here for the convenience of the reader:

> 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.

The Agency understands that some procuring agencies may believe that designating a broad category of items in the CPG requires that they (1) procure all items included in such category with recovered materials content and (2) establish an affirmative procurement program for the entire category of items, even when specific items within the category do not meet the procuring agency's performance standards. RCRA clearly does not require such actions. RCRA section 6002 does not require a procuring agency to purchase items that contain recovered materials if the items are not available or if they 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 that contains recovered material is only available at an unreasonable price, or if purchasing such items does not maintain a reasonable level of competition. See also 40 CFR 247.2(d). However, EPA stresses that the statute requires that a procuring agency must purchase the product made with the highest percentage of recovered materials practicable in the absence of the circumstances identified above.

The items designated have been evaluated against EPA's criteria. The Agency discusses these evaluations in the ''Background Document for the Proposed CPG V/Draft RMAN V,'' which the Agency has placed in the docket for the final CPG V and RMAN V. You may also access the document electronically. (See Section IX below for Internet access directions.)

## V. What are the definitions of terms used in this action?

For this action, in 40 CFR 247.3, EPA is revising the previous definition of compost from CPG III (65 FR 3070) and adding a definition for ''fertilizer made from recovered organic materials.'' [1] EPA generally bases its definitions on industry definitions. Because there are a number of industry definitions for ''compost'' and ''fertilizer,'' EPA developed its own to prevent confusion to procuring agencies. EPA based its fertilizer definition in part on a USDA definition of ''fertilizer'' (see *http://www.ams.usda.gov/NOP/NOP/standards/DefineReg.html*).

Because the description of the items designated in CPG V uses the term ''recovered materials,'' the Agency also is providing a definition for that term in this notice. The Agency previously provided this definition in CPG I, and it is also provided at 40 CFR 247.3.

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

## VI. What did commenters say about the proposed CPG V and draft RMAN V?

EPA received 395 comments on the proposed CPG V and the draft RMAN V. Many of the comments received on the proposed CPG V were equally applicable to the draft RMAN V.

In this section, EPA discusses the major comments that commenters provided on the proposed CPG V. The most significant comments received on the draft RMAN V are discussed in the preamble to the final RMAN V, which is published in the notices section of this **Federal Register**. You can find a more thorough summary of comments and EPA's responses in the ''Background Document for the Final Comprehensive Procurement Guideline (CPG) V and Final Recovered Materials Advisory Notice (RMAN) V.'' The Final CPG V and RMAN V Background Document also has reference numbers to specific comments found in the CPG V Docket: EPA–HQ–RCRA–2003–0005.

### *A. Request for Comments*

This section summarizes and responds to the comments that address the Agency's specific requests for comments in the CPG V proposed rule.

1. Items Selected for Designation

*Comments:* EPA received comments specifically regarding the designation of compost and/or fertilizers. Some commenters opposed consolidating all compost designations under one heading called ''compost made from recovered organic materials.'' A few of these comments described the proposed revision as deceptive or misleading due to an inconsistent use of the term ''organic.'' One commenter discussed the need for appropriate labeling were the revision to be carried out.

Many commenters also opposed revising the compost designation to include sewage sludge or generally opposed using biosolids, manure, and/or sewage sludge in compost or fertilizer. One of these comments claimed that composts and fertilizers made from these materials are likely to contaminate the land and cause adverse effects to human health and welfare and the environment.

One commenter specifically supported the revision of compost to include manure or biosolids and the designation of fertilizers containing recovered organic materials. One other commenter believed the proposed, more generic designation that defines compost as ''compost made from recovered organic materials'' is more accurate and encompassing.

*Response:* In the CPG V final rule, the Agency consolidated all compost designations under one item designation: ''compost made from recovered organic materials.'' This is being done partly in response to the request of procuring agencies that EPA

[1] In proposed CPG V, the Agency proposed that the definition be entitled ''organic fertilizer.'' However, in final CPG V, EPA is instead entitling the definition ''fertilizer made from recovered organic materials'' so that the definition title and the designation description are more consistent.

simplify the compost designations to make it easier for them to track and report their purchases of compost. For discussion on the labeling issue and the term ''organic,'' please see the responses below in sections VI.B.2 and 3, respectively.

Regarding those comments that opposed the designations for compost and fertilizer made with sewage sludge because of perceived risks, EPA notes that, if a compost product or fertilizer contains biosolids, then its use would be subject to the Part 503, Standards for the Use or Disposal of Sewage Sludge (40 CFR part 503). EPA believes that these standards ensure protection of human health and the environment.

2. Accuracy of Information Presented in the Item Discussions

*Comment:* The U.S. Composting Council (USCC) commented on the accuracy of the information presented in the designation of compost. Specifically, USCC claimed that compost can be a sole source of plant nutrients when applied at sufficient application rates, countering EPA's background statement that ''compost is not a complete fertilizer unless amended.'' The commenter cited research projects demonstrating that compost alone can result in yields equivalent to those obtained with chemical fertilizers. The commenter requested that EPA correct this misconception in its background statement.

*Response:* EPA first explained that ''compost is not a complete fertilizer unless amended'' in the April 20, 1994 **Federal Register** notice for the proposed CPG I. (See 59 FR 18877.) EPA based its explanation on USCC's own description in its ''Composting Glossary'':

> Compost is the stabilized and sanitized product of composting; compost is largely decomposed material and is in the process of humification (curing). Compost has littleresemblance in physical form to the original material from which it was made. Compost is a soil amendment, to improve soils. Compost is not a complete fertilizer unless amended, although composts contain fertilizer properties, e.g., nitrogen, phosphorus, and potassium, which must be included in calculations for fertilizer application.

Since USCC has modified its position on this issue, as evidenced in their subsequent referenced comment, the Agency has removed this statement from the compost discussion in the final CPG V background document (see section VIII.A.6 of the background document).

3. Definitions of ''Organic Fertilizer'' and ''Compost''

*Comments:* EPA received comments on the definitions EPA provided for ''compost'' and ''organic fertilizers'' in its proposal. Several of these comments actually appear to address the ''designation'' of the items, rather than the ''definition,'' and EPA is responding to those comments in this section.

A few of the commenters stated that they agreed with the proposed definition of compost and/or organic fertilizers, or that they agreed with or supported including biosolids or manure in the definition of compost because it allows for the addition of other materials or appropriately broadens the definition to include other types of materials. One of these commenters also requested that EPA include some means to acknowledge and evaluate compost products that are produced at lower temperatures, short of thermophilic.

On the other hand, one commenter suggested that EPA amend the compost definition to require the composting process to meet the time-temperature relationships in 40 CFR part 503. A few other commenters stated concern that the definitions may cause confusion over the term ''organic'' or that the definitions must be carefully phrased so as not to conflict with organic food production laws. One of these commenters suggested using the term ''nutrient-rich products from recovered organic materials'' rather than ''fertilizers.'' One other commenter opposed re-defining compost to include sewage sludge because it would blur the distinction between sludge-based and non sludge-based compost.

*Response:* The CPG V defines compost as a thermophilic converted product and does not include compost products that are produced at lower temperatures, short of thermophilic. For more discussion on these issues, please see the response in section VI.B.8 below.

The definition does not include specific language about the time-temperature relationships in 40 CFR part 503. However, the Specifications section of the final RMAN V for compost does reference 40 CFR part 503. For more on the time-temperature requirements in Part 503, see pp. 28, 38, *et al*, of the EPA document entitled, *Environmental Regulations and Technology: Control of Pathogens and Vector Attraction in Sewage Sludge.* This document can be found at *http://www.epa.gov/ORD/NRMRL/Pubs/1992/625R92013.pdf.*

Regarding the potential confusion over the term ''organic,'' EPA acknowledges that USDA's National Organic Program (NOP) regulations prohibit the use of biosolids and sewage sludge for use in growing organic foods (*i.e.*, of or relating to foods grown or raised without synthetic fertilizers, pesticides, or hormones), as addressed in the proposed background document for CPG V/Draft RMAN V. However, in EPA's proposal, EPA used the term ''organic'' to mean ''of, relating to, or derived from living organisms.'' EPA is using the word ''organic'' in the phrase ''recovered organic materials'' because this is the term commonly used by those promoting the recovery and use of these materials. In these circumstances, EPA has concluded there is little potential for confusion. (See section VI.B.3 below for more discussion on the term ''organic.'')

Regarding a potential blurred distinction between sludge-based and non sludge-based compost, EPA has previously explained that, if biosolids are included as part of the compost, the processing and product are subject to the 40 CFR part 503 regulations which are protective of human health and the environment. (See 68 FR 68818.) Further, all users of sludge-based products also must comply with applicable local, state, and federal laws regarding the use of biosolids and sewage sludge.

4. Limitations on the Recovered Organic Materials Contained in the Fertilizers Proposed by EPA

*Comments:* EPA received comments asking that restrictions be placed on the materials used in fertilizers. Most of these comments either stated that sewage sludge or human waste should not be used as fertilizer, or made a reference to sewage sludge being too toxic, hazardous, or unsafe to use as fertilizer. One commenter did not support the use of biosolids in public projects due to possible toxic contamination of biosolids, which could contaminate organic production operations. Another commenter requested that EPA maintain a separation of sewage sludge and fertilizers that will be used for growing organic fruits and vegetables. Still another commenter claimed that the idea of proposing that composted ''municipal sludge'' be used as an ''organic'' fertilizer has already been rejected for ''Organic'' standards, as defined in NOFPA. (EPA could not identify ''NOFPA.'')

Another commenter stated that to be an effective fertilizer, the dung (i.e., sewage) must be totally vegan. Another

commenter mentioned a report that indicates that the ''greensands'' that EPA proposed as rock and mineral powders for ''organic fertilizers'' are highly contaminated with heavy metals and organic toxins. The commenter cites a report that refers to ''green sand'' that is foundry sand. The commenter concludes that greensand is not an adequate, appropriate, or effective substitution for virgin rock or minerals.

*Response:* Regarding the comments that sewage sludge should not be used as fertilizer or that sewage sludge is too toxic, hazardous, or unsafe to use as fertilizer, please see the responses in sections VI.B.4 and 5 below. Also, as previously stated, EPA has evaluated the potential risks of sewage sludge in developing the Part 503 Standards for the Use or Disposal of Sewage Sludge (40 CFR part 503). EPA believes that these regulations will ensure that sewage sludge used in compliance with the Part 503 Standards will not be harmful to human health and the environment. Procuring agencies should not procure compost or fertilizer that is not appropriate for its intended use.

The commenter opposing the use of biosolids in public projects due to possible toxic contamination of biosolids, and who expressed concern that this could contaminate organic production operations, provided no further explanation as to what was meant by ''public projects'' or the mechanism by which contamination of organic production operations would occur.

Regarding a separation of sewage sludge from fertilizer that will be used for growing organic fruits and vegetables, in the final RMAN V for fertilizers, EPA references USDA's NOP regulations, which prohibit the use of biosolids in organic production. EPA also references the Organic Materials Review Institute (OMRI), which developed guidelines and lists of materials allowed and prohibited for use in the production, processing, and handling of organically grown products, and the land application requirements for biosolids in 40 CFR part 503. For more discussion on the term ''organic,'' please see section VI.B.3 below.

EPA appreciates the comment that dung (i.e., sewage) should be vegan, but does not believe that this characteristic is necessary to achieve a high-quality fertilizer. Therefore, EPA is not addressing this issue in the recommendations for fertilizer in the final RMAN V. Finally, EPA has determined that the commenter who claimed that ''greensands,'' highly contaminated with heavy metals and organic toxins, and therefore not appropriate for use in fertilizer, was confusing the term EPA used with a different type of green sand—that which is found in foundry sand. EPA is clarifying that the proposed CPG V background document referenced greensand which is sedimentary rock containing the mineral glauconite. The two materials are unrelated.

5. Types of Recovered Materials Identified in the Item Recommendations, and Other Recommendations, Including Specifications for Purchasing the Designated Items

*Comments:* EPA received a number of comments on the types of recovered materials identified in the item designations, and other recommendations, but none that appeared to address specifications for purchasing the designated items. Several comments supported allowing biosolids and/or manure to be used for compost and/or fertilizer. Some of these commenters stated that the inclusion of biosolids in the compost and fertilizer designations will increase market demand for these recovered material products, but will also provide further support for the long-standing practice of biosolids land application.

EPA also received comments that suggested or implied that additions should be made to the list of materials covered by the scope of ''recovered organic materials'' in the compost and fertilizer item designations and RMAN recommendations such as EQ biosolids, cotton gin by-products, sawdust, and yard trimmings.

Yet another commenter encouraged EPA to retain the 247.15(b) designation of compost language ''for use in landscaping, seeding of grass or other plants on roadsides and embankments * * *'' and add ''and other uses'' at the end of the sentence.

*Response:* EPA appreciates the comments supporting the use of biosolids and/or manure for compost and/or fertilizer and agrees that their designation will achieve one of the most important goals of the CPG program-to increase market demand for items made from recovered materials. For responses to comments opposing the use of biosolids, manure, and/or sewage sludge in compost and/or fertilizer, please refer to section VI.B.5.

EPA appreciates the suggestions for additional materials to be included in EPA's recommendations. In EPA's view, EQ biosolids, cotton gin by-products, sawdust, and yard trimmings are already included in the scope of the item designations and recommendations, because EPA has revised the description of fertilizer and compost to ''made with recovered organic materials,'' a term which does not restrict the organic content only to the specified material. Also, in CPG V and RMAN V, the Agency did not exclude any particular types of biosolids. Instead, in the final RMAN V, the Agency referred to Part 503, as well as to applicable federal, state, and local government regulations on the use of compost and fertilizer made with biosolids and other recovered organic materials.

Regarding the comments about permitting the use of sewage-derived products only on trees and non-vegetable crops, please refer to the comments and responses in section VI.B.4. In response to the comment which encouraged EPA to retain the 247.15(b) designation of compost language ''for use in landscaping, seeding of grass or other plants on roadsides and embankments * * *'' and add ''and other uses'' at the end of the sentence, EPA did retain this language in the Preference Program section of the RMAN V for compost. However, the final CPG V compost designation language does not prescribe specific applications. Recognizing that government agencies typically use compost for numerous applications, such as landscaping, bioremediation, roadside maintenance, and erosion control, EPA wanted to be as inclusive as possible in terms of potential applications of compost, while ensuring that the Agency would not have to re-propose the compost designation each time it learned of an additional use by procuring agencies. Regarding the suggestion that the processing and handling protocols in Part 503 should be further emphasized, EPA referenced Part 503 in the final RMAN V for both compost and fertilizers.

6. Any Other Specifications the Agency Should Recommend That Pertain to Fertilizers Made With Recovered Organic Materials

*Response:* The Agency did not appear to receive any comments on other specifications pertaining specifically to fertilizers.

*B. Issue-Specific Comments*

This section summarizes and responds to other significant comments. Many of the comments were similar, and most could be grouped in one or more particular topic categories that captured the general essence of the comment.

1. General Comments About Sewage Sludge/Biosolids as Compost or Organic Compost

*Comments:* EPA received many comments that essentially found the idea of calling, renaming, or labeling biosolids as compost problematic, especially without labeling that indicated that the compost originated from sewage. Approximately half of the comments in this topic category were opposed to toxic, hazardous, or contaminated sewage sludge being called compost or organic. A few commenters mentioned negative impacts to human health from using sewage sludge as compost.

Some of the comments also mentioned that designating manure and biosolids compost is misleading to the public or is a misrepresentation of the labeling for organic products. Specifically, many comments were opposed to calling, renaming, labeling, or using biosolids as compost if there was not accurate labeling indicating that the compost originated from sewage.

*Response:* EPA is not renaming or re-labeling biosolids or sewage sludge as compost. This designation acknowledges that biosolids and treated and processed sewage sludge are components in recovered organic material used in commercial compost and fertilizer. For a discussion on the toxicity, health, and labeling issues, please see additional responses below in sections VI.B.5, 4, and 2, respectively.

2. Proper Labeling of Compost or Fertilizers

*Comments:* A number of commenters emphasized that compost and/or fertilizer made from biosolids should be appropriately labeled. While most of these commenters seem to oppose the designations, several do not seem to oppose it as long as the compost and/or fertilizer derived from biosolids is accurately labeled with what it contains so that users could make informed decisions when purchasing these products.

Many of these commenters made the general point that appropriate labeling was necessary. Some commenters specifically stated that proper labeling of these products was necessary in order to be fair to the consumer or the public. One other commenter suggested that labeling biosolids as ''recovered organic materials'' is not appropriate or honest.

Approximately half of the comments in this category suggested that appropriate labeling was particularly necessary due to the toxic or unsafe nature of biosolids.

*Response:* The final CPG V rule does not include a labeling requirement because under RCRA EPA is not authorized to promulgate labeling requirements, and because labeling requirements that ensure product safety exist under other Federal and State regulations such as the USCC's Test Methods for the Examination of Composting and Compost (TMECC) and USCC's Seal of Testing Assurance (STA) labeling program. In the draft (and final) RMAN V, EPA recommends that procuring agencies refer to USCC's TMECC, which are standardized methods for the composting industry to test and evaluate compost and verify the physical, chemical, and biological characteristics of composting source materials and compost products. The TMECC also includes material testing guidelines to ensure product safety and support market claims. In addition to referencing the TMECC, the final RMAN V recommends that procuring agencies refer to the USCC's STA labeling program. STA is a compost testing and information disclosure program that uses the TMECC. Participating compost producers regularly sample and test their products using STA Program approved labs, all of which must use the same standardized testing methodologies. Participants must make test results available to customers and certify that they are in compliance with all applicable local, state, and federal regulations with respect to their compost products. The USCC then certifies the participants' compost as ''STA certified compost'' and allows the use of the STA logo on product packaging and literature. Procuring agencies may wish to consider specifying STA certified compost in their solicitations to the extent otherwise authorized. The USCC has developed sample specification and contract language, available at *http://www.compostingcouncil.org/pdf/Specifying_STA_Prog.pdf*. More information on TMECC and STA can be found at *http://www.composting council.org.*

3. Use of the Term ''Organic''

*Comments:* EPA received a number of comments that supported the proposal and discussed the use of the term ''organic'' when describing recovered materials used in compost. A couple of the commenters noted that the proposal, as it defines ''organic,'' is not renaming organic amendments or foods. The rest of these commenters suggested that the definitions presented in CPG V should be carefully worded so that they do not conflict with ''organic food production laws'' or ''USDA's organic farming and food standards.'' One commenter suggested using the term ''biologically-derived.''

EPA also received a large number of comments that opposed the proposal and took issue with the idea that EPA would label or represent compost made from biosolids as ''organic,'' many claiming that there is nothing organic about it. Some of these commenters were generally opposed to representing compost derived from biosolids or sewage sludge as organic.

Some commenters stated that this designation would dilute, compromise, or otherwise undermine the term ''organic'' as used or defined by USDA's NOP standards. Similarly, other commenters claimed that the use of the word ''organic'' would be misleading, deceptive, or confusing to the public. In addition, a number of comments argued that (biosolids) compost could not possibly be considered organic due to the toxic, hazardous, or polluting nature of chemicals that are found in sewage sludge.

A few commenters offered solutions to any confusion that may arise from using the term ''organic.'' One suggested that any compost labeled ''organic'' must have the same restrictions as food labeled as such. Another commenter suggested that EPA replace ''organic'' with the word ''natural'' or ''biobased'' to avoid confusion with materials produced under 7 CFR part 205.

*Response:* By the term ''organic,'' EPA means ''of, relating to, or derived from living organisms.'' EPA used the word ''organic'' in the phrase ''recovered organic materials,'' which include food and yard waste, biosolids, and manure, of animal or vegetable origin. EPA's use of the term ''organic materials'' is consistent with the compost and fertilizer industries' commercial use of that term. For this reason, EPA is not using an alternative word, such as those suggested by the commenters. Also, EPA is not using the term ''organic'' to refer to organic farming, organically grown food, or USDA's NOP standards. EPA recognizes that the NOP standards do not allow biosolids to be used in the production of organic food and the final CPG V does not revise the NOP standards in any way. In addition, in the final CPG V RMAN, EPA notes that the NOP standards prohibit the use of sewage sludge (biosolids) in organic production.

4. Use of Compost or Fertilizer Made from Sewage Sludge on Food or Crops

*Comments:* EPA received comments that emphasized that compost or fertilizers made from biosolids or sewage sludge should not be used on foods or crops. Many of these comments

expressed general opposition to the use of sewage sludge or biosolids on food or agricultural crops. Nearly half of the food/crop related comments mentioned the general issue of toxicity. Some included direct or indirect references to a 1992 determination or decision which the commenters claimed determined that biosolids are too toxic to be dumped in the ocean and questioned how they could be spread on crops; many of the commenters attributed this determination to EPA.[2] One commenter believed the proposed designations would make it more difficult for consumers to know what went into the production of their food. One comment requested studies to ensure the safety of food treated with sludge, and another suggested that any untested sewage sludge is unsafe for crops.

*Response:* EPA disagrees with the commenters who argue that the use of biosolids and or sewage sludge can not be safely used on foods or crops. (The basis for this position is discussed more fully below.) Therefore, in RMAN V, EPA recommends that procuring agencies can purchase and use fertilizer made from recovered organic materials in such applications as agriculture and crop production, landscaping, horticulture, parks and other recreational facilities, on school campuses, and for golf course and turf maintenance. Both EPA (*http://www.epa.gov/owm/mtb/biosolids/*) and USDA (*http://www.ams.usda.gov/nop/NOP/NOPhome.html*) have promulgated regulations and requirements to be followed in the production, use and application of fertilizers made from recovered organic materials, including biosolids and sewage sludge. Also, OMRI (*http://www.omri.org*) has developed guidelines and lists of materials allowed or prohibited for use in the production, processing and handling of organically grown products. If a fertilizer is produced with recovered organic materials, including biosolids, it must have already met the standards for production or be in violation of legal requirements. As previously stated, EPA has concluded that these standards protect human health and the environment.

Specifically, in 1993, EPA promulgated regulations that limit pollutants and pathogen content in biosolids. These regulations (known as ''the Part 503 Standards for the Use or Disposal of Sewage Sludge'' (40 CFR part 503)) are designed to protect public health and the environment with an adequate margin of safety. If a composted product contains biosolids, the product and its processing are subject to Part 503. The regulations require that sewage sludge meet metals standards and require either the elimination or significant reduction of concentrations of pathogens in sewage sludge before land application. For Class B sewage sludge that contains reduced levels of pathogens, Part 503 standards impose crop-harvesting restrictions and site controls to ensure that the pathogen levels in the sewage sludge-soil mixture are reduced below pathogen background levels before crops may be harvested, domestic animals are allowed to graze or humans are allowed unrestricted access to the land application site. Class A sewage sludge contains no pathogens or pathogen indicator organisms. There are no restrictions in the use of Class A biosolids. (For more information, see subpart D of 40 CFR part 503.)

EPA's national sewage sludge standards are protective of public health and the environment, including sensitive human subpopulations, such as the elderly and small children. In establishing national standards for sewage sludge under the 40 CFR part 503 regulations, EPA assessed the exposure and hazard to members of a modeled highly exposed farm family who live on farms where sewage sludge is land-applied as a fertilizer or a soil amendment. Uses include fertilizer use on both pasture-land and crop land, and as a soil amendment on mining reclamation areas. The farm family's diet is assumed to include a significant portion of home-produced foods, including exposed and protected fruits and vegetables, root vegetables, beef, and milk. We also assumed that a child will consume a biosolids-soil mixture via hand to mouth exposure. Ecological species modeled include invertebrate and vertebrate animals and plants that may be exposed to contaminants through agricultural application of sewage sludge as a fertilizer or soil amendment.

Based on this assessment, the Agency concluded that the Part 503 regulations are protective of public health and the environment and continues to support biosolids management in full compliance with State and Federal regulations. Moreover, EPA is in an ongoing process to evaluate additional toxic pollutants for potential regulation under section 405(d) of the CWA, and the Part 503 Standards for the Use and Disposal of Sewage Sludge.

Finally, although EPA does not have baseline data on the amount of compost or fertilizers used by each federal agency, we believe that the major purchases by procuring agencies of compost or fertilizers would be used in landscaping applications.

5. Toxins in Sewage Sludge and Potential Health Effects

*Comments:* EPA received a number of comments regarding the toxic, radioactive, pathogenic, or chemical nature of biosolids. More than half of the comments in this category generally described sludge or biosolids as toxic, hazardous, poisonous, or containing harmful chemicals. Many of the comments mentioned specific substances found in wastewater and/or sludge, such as radionuclides, hormones, drugs, heavy metals, pesticides, solvents, and pathogens. Some comments focused particularly on pathogens present in sludge or biosolids. A few other commenters stated that radioactivity can end up in the sludge, because NRC, DOE, DOT, and EPA are proposing that nuclear waste go to landfills, with the resultant leachate going to wastewater treatment plants, and radioactivity is not monitored or regulated in sludge.

Other comments expressing concern about substances found in wastewater mentioned a variety of materials they believe homeowners and industry flush down the drain; one of these suggested education for households and industry to prevent contamination of biosolids with chemicals. A few comments also suggested that landfill and Superfund leachates are disposed of in local sewage treatment plants.

A little more than a dozen comments raised concerns over the potentially harmful human health effects of sewage sludge/biosolids. One in particular cited the 2002 Report of the Board of Environmental Studies and Toxicology of the National Academy of Sciences (NAS), which the commenter claimed underscored the uncertainties about the human health effects from exposure to biosolids. One commenter also suggested that, ''If the limits used in the HWIR also allow a hazardous waste to escape regulation as a hazardous waste, then they should be used as the upper limit delimiting solid that is allowed as fertilizer feedstock under the Procurement Rule.''

*Response:* As noted above, EPA has established standards for sewage sludge to protect public health and the environment. Thus, the Agency does not agree with those commenters who argue that the use of biosolids as compost or fertilizer is not protective of human

[2] We believe this is a reference to the Ocean Dumping Ban Act of 1988 that prohibited the dumping of sewage sludge in ocean waters. Specifically, the Act made it unlawful for any person to dump or transport for the purpose of dumping sewage sludge or industrial waste into ocean waters after December 31, 1991.

health and the environment. (For more information on Part 503, please refer to the response in section VI.B.4 above.) In addition, EPA has an ongoing effort to evaluate further pollutants for potential regulation in sewage sludge.

Regarding the 2002 NAS report cited by a commenter, EPA requested the NAS to prepare a study of sewage sludge to assist the Agency in evaluating regulatory requirements and non-regulatory measures with respect to the land application of biosolids. The NAS completed an 18-month study in July 2002 entitled, *Biosolids Applied to Land, Advancing Standards and Practices.* The overarching findings of the report indicated that there is no documented scientific evidence that the Part 503 rule has failed to protect public health. The findings went on to say that additional research is needed to reduce the persistent uncertainty concerning the potential for adverse human health effects from exposure to biosolids. The NAS report can be found at *http://www.epa.gov/waterscience/biosolids/nas/complete.pdf*.

As a result, in December 2003, EPA developed a biosolids action plan aimed at responding to the NAS report. The EPA action plan includes conducting a review to identify additional pollutants for possible regulation, conducting a targeted survey of potential pollutants, and evaluating the next steps for investigating adverse health allegations following land application of sewage sludge. A number of projects from the action plan are either completed or nearing completion, including field studies of application of treated sewage sludge, the targeted national analytical sewage sludge survey, and an exposure measurement workshop. Several analytical methods reports and several research projects have been published and a number of documents are scheduled to be published by the end of 2007. For more information see: *http://www.epa.gov/waterscience/biosolids/.*

One comment referred to EPA's Proposed Hazardous Waste Identification Rule (HWIR). EPA notes that it never finalized this rule.

6. Specific Applications of Sewage Sludge

*Comments:* EPA received a number of comments supporting the proposed CPG V that discussed specific applications of compost made from biosolids. A few commenters stated that they support the proposal because it would promote the use by government agencies and their contractors of biosolids-derived compost on landscaping and not on food crops. Use on farm land was supported by one commenter, who stated it resulted in significant crop growth and yield and reduces the need for chemical fertilizers. Another commenter stated that several municipalities in Georgia have used compost derived from a combination of biosolids and yard waste for use in landscaping, agriculture, and as landfill cover, with good success. Yet another commenter encouraged EPA to retain the 247.15(b) designation of compost language ''for use in landscaping, seeding of grass or other plants on roadsides and embankments * * *'' and add ''and other uses'' at the end of the sentence. The commenter stated that the majority of materials procured in large quantities by government agencies and their contractors are used in applications that involve minimal public contact, such as highway construction, land reclamation after construction, landfill covers, parks, and golf courses. Encouraging such uses could reduce demand for biosolids applications in agriculture, which, while widely considered safe and effective, has been criticized by some. This commenter also stated that, in densely-populated regions, such as parts of New England, the nutrients and organic matter in biosolids are needed less in agriculture and more to build healthy urban and suburban soils that are then better able to absorb precipitation and reduce storm runoff and erosion.

EPA also received several comments that were opposed to certain types of land applications of sewage sludge or sludge products. One comment opposed all land applications of sludge. A few other commenters opposed application of sewage sludge near food, as an agricultural soil amendment, or on recreational public places. Some of these commenters did suggest, however, that there were appropriate land applications of sludge, such as on trees and non-vegetable crops or along roadways and similar places.

*Response:* Regarding the use of biosolids on food crops, please see the response in section VI.B.4 above. In response to the comment which encouraged EPA to retain the previous 40 CFR 247.15(b) designation of compost language ''for use in landscaping, seeding of grass or other plants on roadsides and embankments* * * '' and add ''and other uses'' at the end of the sentence, EPA has retained this language in the Preference Program section of the RMAN V for compost. However, the final CPG V compost designation language does not prescribe specific applications. Recognizing that government agencies typically use compost for numerous applications, such as landscaping, bioremediation, roadside maintenance, and erosion control, it is appropriate to be as inclusive as possible in terms of potential applications of compost, while ensuring that the Agency would not have to re-propose the compost designation each time it learned of an additional use by procuring agencies.

As explained in sections VI.B.4 and 5 above, EPA's Part 503 regulations are protective of public health and the environment, and the Agency continues to support biosolids management that complies with the Part 503 regulations. EPA supports the beneficial reuse of biosolids as an option for biosolids use, but recognizes that any decisions regarding those choices are local decisions subject to state requirements in addition to federal regulations.

7. Manure

*Comments:* EPA received a few comments that discussed animal manure. A few of the commenters supported changes to the definition of compost and the description of the fertilizer designation that would have the effect of allowing the recovered material content of these designated items to include manure. A number of other commenters addressed both manure and biosolids. One of the commenters supported the use of manure as a recovered material, but also expressed concern that it (including human manure) could be very toxic regarding ''medications, diseases, and any products that are flushed in the toilet.'' Another opposed allowing manure or biosolids as recovered materials for the compost designation, asking how these materials are not considered ''a risk for human consumption, especially once they are [leached] into our ground water systems?'' One commenter was opposed to the use of manure, claiming that CAFOs produce manure full of hormones and antibiotics.

*Response:* As previously explained, EPA is only designating items that may be produced with recovered materials. In doing so, under section 6002 of RCRA, we evaluated a number of factors, including availability. Compost and fertilizers are available with manure content, one of many types of compost and fertilizers composed of recovered materials content. Accordingly, the descriptions of the compost and fertilizer designations do not address specific types of recovered organic materials in the compost or fertilizers. The use of the compost or fertilizer and their suitability for particular uses is a determination made by individual

procuring agencies. That decision made by individual procuring agencies will reflect many factors, including the required organic material content, necessary nutrient concentration, as well as the necessity for complying with all state and local limitations or restrictions relative to the organic content.

As discussed in the background document for proposed CPG V, if improperly managed, animal manures can and have created significant environmental problems, including human health issues caused by contamination of surface water and groundwater. Using animal manures as a raw material for compost, as opposed to applying it directly to the land or stockpiling it, represents an environmentally beneficial option for this waste product that should help in controlling the pathogens in the manure. With respect to more general concerns about animal manure, EPA notes that, under EPA regulations, Concentrated Animal Feeding Operations (CAFOs) must obtain permits, submit annual reports, and develop and follow nutrient management plans for proper handling of manure and wastewater associated with CAFO operations (68 FR 7176, February 12, 2003).

8. Thermophilic Process and Vermicompost

*Comments:* EPA received a few comments requesting that the agency include vermicompost (the end-product of the breakdown of organic matter by some species of earthworm) in the designation. One of the commenters requested that the Agency not require thermophilic treatment, while the other requested that EPA acknowledge compost products (e.g., vermicompost) that are produced at temperatures lower than thermophilic.

*Response:* Vermicompost (the end-product of the breakdown of organic matter by some species of earthworm) does not appear to meet the statutory criteria under RCRA section 6002 by which EPA evaluates products for designation, including widespread availability. The commenters did not provide sufficient information to assist EPA in evaluating vermicompost against those criteria. Furthermore, EPA understands that there are very few large-scale vermicomposting operations in the U.S. and that this could impact the availability of vermicompost. Therefore, EPA's definition of compost promulgated in the final CPG V is limited to compost produced by the thermophilic processes. Since vermicompost is not a thermophilic product, it is not covered by the definition, and therefore it is not included within the scope of the final CPG V compost designation.

As background, EPA sought to designate the broadest category of compost so as to promote its wide applicability for procuring agencies. Consequently, EPA originally designated compost produced under thermophilic conditions in CPG I in 1995 because these conditions result in mature, cured composts that can be used for a broad range of applications for which procuring agencies were known to use compost. Among these applications are landscaping, seeding of grass or other plants on roadsides and embankments, use as a nutritious mulch under trees and shrubs, erosion control, and land reclamation. This diverse range of applications requires that the compost have several characteristics. These include an ability to hold several times its weight in water and to change the infrastructure of soils. In addition, the compost should degrade the hydrocarbons found in petroleum products, pesticides, and wood preservatives; degrade volatile organic compounds (VOCs); and form metal, humus, and soil complexes that are too large to pass through the cell walls of plants grown in this compost. Thermophilic compost has these characteristics. Furthermore, thermophilic microorganisms that develop only at higher temperatures are needed to promote rapid composting and destroy pathogens and weed seeds that may be present in the composted materials. While vermicompost has been shown to enhance plant growth as a soil amendment, it does not appear to exhibit characteristics that would make it useful in the other applications previously mentioned.

## VII. Where can agencies get information on the availability of EPA-designated items?

EPA has developed a searchable online Supplier Database containing the names of manufacturers, suppliers, and distributors of CPG-designated items (see section IX below for Internet access information). 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 their needs.

Other information is available from the GSA, the Defense Logistics Agency (DLA), private corporations, and trade associations. State and local recycling programs are also a potential source of information on local distributors and the availability of designated items. In addition, state and local government purchasing officials that are contracting for recycled content products may have relative price information.

## VIII. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO)12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

However, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the ''Economic Impact Analysis for the Comprehensive Procurement Guideline V.'' A copy of the analysis is available in the docket for this action and is briefly summarized here.

1. Summary of Costs

As shown in Table 3 below, EPA estimates that the annualized costs of the final rule will range from $1.75–$3.51 million, with costs being spread across all procuring agencies (i.e., federal agencies, state and local agencies that use appropriated federal funds to procure designated items, and government contractors that use appropriated federal funds to procure designated items). 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 influence the costs, EPA conducted a sensitivity analysis to identify the range of potential costs of the final 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 the final rule are provided in the Economic Impact Analysis (EIA) for this rule.

TABLE 3.—SUMMARY OF ANNUALIZED COSTS OF CPG V AMENDMENTS TO ALL PROCURING AGENCIES

| Procuring agency | Total annualized costs ($1000) | Best estimate total annualized costs ($1000) |
|---|---|---|
| Federal Agencies | $668–$1,336 | $1,336 |
| States | 240–480 | 480 |
| Local Governments | 836–1,673 | 1,673 |
| Contractors | 10–20 | 20 |
| Total | 1,754–3,509 | 3,509 |

As a result of this rule, procuring agencies will be required to take certain actions pursuant to RCRA section 6002, including rule review and implementation; estimation, certification, and verification of designated item procurement; and for federal agencies, reporting and recordkeeping. The costs shown in Table 3 represent the estimated annualized costs associated with these activities. Table 3 also includes estimates for federal agencies that will incur costs for specification revisions and affirmative procurement program modification. More details of the costs associated with this rule are included in the EIA.

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

EPA is unable to determine the number of businesses, including small businesses, which may be adversely impacted by this final rule. If a business currently supplies products to a procuring agency and those products are made only out of virgin materials, the amendments to the CPG may reduce that company's ability to compete for future contracts. However, the amendments to the CPG will not affect existing purchase orders, nor will it preclude businesses from adapting their product lines to meet the 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 this action is the possible price differential between an item made with recovered materials and an equivalent item manufactured using virgin materials. The relative prices of recycled content products compared to prices of comparable virgin products vary. In many cases, recycled content products are less expensive than similar virgin products. In other cases, virgin products have lower prices than recycled content products. Many factors can affect the price of various products. For example, temporary fluctuations in the overall economy can create oversupplies of virgin products, leading to a decrease in prices for these items. Under RCRA section 6002(c), procuring agencies are not required to purchase a product containing recovered materials if it is only available at an unreasonable price. However, the decision to pay more or less for such a product is left up to the procuring agency.

3. Summary of Benefits

EPA anticipates that this final rule will result in increased opportunities for recycling and waste prevention. Waste prevention can reduce the nation's reliance on natural resources by reducing the amount of materials used in making products. Using less raw materials results in a commensurate reduction in energy use and a reduction in the generation and release of air and water pollutants associated with manufacturing.

Additionally, using compost can reduce the need for water, fertilizers, and pesticides. It serves as a marketable commodity and is a low-cost alternative to standard landfill cover and artificial soil amendments. Composting also extends municipal landfill life by diverting organic materials from landfills and provides a less costly alternative to conventional methods of remediating (cleaning) contaminated soil. The use of compost and fertilizer made from recovered organic materials reduces the need for chemical manufacturing and processing and reduces energy costs associated with that.

Recycling, in general, can affect the more efficient use of natural resources. For many products, the use of recovered materials in manufacturing can result in significantly lower energy and material input costs than when virgin raw materials are used; reduce the generation and release of air and water pollutants often associated with manufacturing; and reduce the environmental impacts of mining, harvesting, and other extraction of natural resources.

By purchasing products made from recovered materials, government agencies can increase opportunities for all of these benefits. On a national and regional level, this final 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 the increased purchase of recycled products, locally, regionally, and nationally and provide opportunities for businesses involved in recycling activities.

*B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the

existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

*C. Regulatory Flexibility Act*

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

For purposes of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

EPA evaluated the potential costs of this rule to determine whether its actions would have a significant impact on a substantial number of small entities. In the case of small entities that are small governmental jurisdictions, EPA has concluded that the rule 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 designated items because it is improbable that such jurisdictions will purchase more than $10,000 of any designated item. Consequently, RCRA section 6002 would not apply to their purchases of designated items. Moreover, there is no evidence that complying with the requirements of RCRA section 6002 would impose significant additional costs on the small governmental entity 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.

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

After considering the economic impacts of this final rule on small entities, EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This final rule, therefore, does not require a regulatory flexibility analysis. The basis for EPA's conclusions is described in greater detail in the EIA for the final rule.

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

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The estimated aggregate cost of compliance

for state and local governments is not expected to exceed, at the maximum, $2.1 million annually. The cost of enforceable duties that may arise as a result of this action on the private sector is estimated to not exceed $20,000 annually. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule does not significantly affect small governments because they are subject to the same requirements as other entities whose duties result from this rule. As discussed above, the expense associated with any additional costs to state and local governments is not expected to exceed, at the maximum, $2.1 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.

*E. Executive Order 13132: Federalism*

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

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule will not impose substantial costs on states and localities. As a result of this action, procuring agencies will be required to perform certain activities pursuant to RCRA section 6002, including rule review and implementation, and for federal agencies, reporting and record keeping. As noted above, EPA estimates that the total annualized costs of this final rule will range from $1.75 to $3.51 million. EPA's estimate reflects the costs of the rule for all procuring agencies (i.e., federal agencies, state and local agencies that use appropriated federal funds to procure designated items, and government contractors that use appropriated federal funds to procure designated items), not just states and localities. Thus, the costs to states and localities alone will be lower and not substantial. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. This rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule does not impose any mandate on tribal governments or impose any duties on these entities. Thus, Executive Order 13175 does not apply to this rule.

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

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

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

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

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The Agency has referenced USCC's Test Methods for the Examination of Composting and Compost (TMECC) and USCC's Seal of Testing Assurance (STA) labeling program, as well as the OMRI guidelines.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The effect, if any, of our action is to increase the procurement, and hence the quantity produced, of items with recovered materials content. This may result in the increased diversion of waste products from the disposal stream and thus may have positive effects on human health and the environment. Reuse of the waste materials may prevent improper disposal with its potential for adverse

consequences to public health or the environment. To the extent that disadvantaged populations are disproportionately at risk for such effects, this rule may well result in community benefits.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective September 15, 2008.

## IX. Supporting Information and Accessing Internet

Supporting materials for this final CPG V are available in the OSWER Docket and on the Internet. The address and telephone number of the OSWER Docket are provided in the **SUPPLEMENTARY INFORMATION** section above. Supporting materials can be accessed on the Internet at *www.regulations.gov.* Among the supporting materials available in the OSWER Docket and on the Internet are the following:

''Background Document for the Final Comprehensive Guideline (CPG) V and Final Recovered Materials Advisory Notice (RMAN) V,'' U.S. Environmental Protection Agency, Office of Solid Waste, August, 2007.

''Economic Impact Analysis for Final Comprehensive Procurement Guideline V,'' U.S. Environmental Protection Agency, Office of Solid Waste, July 2007.

## List of Subjects in 40 CFR Part 247

Environmental protection, Government procurement, Recycling.

Dated: September 6, 2007.

**Stephen L. Johnson,**

*Administrator.*

■ For the reasons discussed in the preamble, title 40, chapter I, of the Code of Federal Regulations, is amended as follows:

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

■ 1. The authority citation for part 247 is revised to read as follows:

**Authority:** 42 U.S.C. 6912(a) and 6962; EO 13423, 72 FR 3919, 3 CFR, 1998 Comp., p. 210.

■ 2. Section 247.3 is amended by revising the definition of ''compost'' and adding a definition in alphabetical order for ''fertilizer made from recovered organic materials'' to read as follows:

### § 247.3 Definitions.

* * * * *

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

* * * * *

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

* * * * *

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

### § 247.15 Landscaping products.

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(b) Compost made from recovered organic materials.

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(f) Fertilizer made from recovered organic materials.

[FR Doc. E7–18150 Filed 9–13–07; 8:45 am]

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## LEGAL SERVICES CORPORATION

## 45 CFR Part 1626

## Restrictions on Legal Assistance to Aliens

**AGENCY:** Legal Services Corporation.

**ACTION:** Final rule.

**SUMMARY:** LSC is amending section 1626.10(a) of this regulation to permit LSC grant recipients to provide legal assistance to otherwise financially eligible citizens of the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau legally residing in the United States.

**DATES:** This final rule is effective as of October 15, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mattie Cohan, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007; 202–295–1624 (ph); 202–337–6519 (fax); *mcohan@lsc.gov.*

**SUPPLEMENTARY INFORMATION:** LSC-funded legal services providers are permitted to provide legal assistance only to citizens of the United States and aliens upon whom eligibility has been expressly conferred by statute. LSC regulations at 45 CFR part 1626 implement the various existing statutory authorities and set forth the eligibility standards based on citizenship and eligible alien status. Since 1996 Part 1626 has limited the eligibility of citizens of the Republic of the Marshall Islands (''RMI'') and the Federated States of Micronesia (''FSM'') and the Republic of Palau to services provided in those respective nations (unless the applicant is otherwise eligible under Part 1626). In connection with LSC's development of a 2007 Rulemaking Agenda, the Legal Aid Society of Hawai'i (LASH) and Legal Aid of Arkansas (LAA) have both requested that LSC engage in rulemaking to change the section 1626.10(a) to provide for the eligibility of citizens of RMI, FSM and Palau legally residing in the United States for legal assistance from LSC-funded programs.

LSC agreed that there was sufficient reason and authority for LSC to amend its regulation in this regard. To that end, the Operations and Regulations Committee of the LSC Board of Directors considered a Draft NPRM and the Board of Directors approved an NPRM for publication and comment at their respective meetings on July 28, 2007. That NPRM was published on August 2, 2007 (72 FR 42363).

LSC received twelve timely filed comments and one late filed comment on the NPRM. In addition to comments from grantees, LSC received comments from the Embassy of the Federated States of Micronesia, several organizations representing the Micronesian community, community services organizations providing aid and services to citizens of RMI, FSM and Palau, and two individual citizens.[1] All

[1] In addition to the comments filed directly in response to the NPRM, LSC also notes that it had, prior to the issuance of the NPRM, received letters from the Department of Interior's Office of Insular Affairs and the Embassy of Palau, a letter signed by several Members of Congress, and several oral