



ENVIRONMENTAL PROTECTION AGENCY

[FRL-10007-05-OLEM; EPA-HQ-OLEM-2019-0589]

Existing Comprehensive Procurement Guideline Designations and Recovered Materials

Advisory Notice Recommendations: Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comments.

SUMMARY: Buying products with recycled content fosters the diversion of materials from the solid waste stream and promotes the use of these materials in the manufacture of new products, strengthening the United States' recycling system. Congress required the issuance of procurement guidelines in Section 6002 of the Resource Conservation and Recovery Act (RCRA). Section 6002 requires the Environmental Protection Agency (EPA or the Agency) to designate items that are or can be made with recovered materials and to recommend practices for procurement of such items. EPA has designated 61 items in eight product categories in a Comprehensive Procurement Guideline (CPG) and has issued recycled-content recommendations and procurement specifications for these items in a series of Recovered Materials Advisory Notices (RMANs) published in the *Federal Register*. EPA last updated the CPG/RMANs in 2007. Today, the Agency is seeking comment concerning the list of CPG-designated items and recommendations issued in the associated RMANs.

DATES: Comments must be received on or before **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OLEM-2019-0589, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.
- eMail: U.S. Environmental Protection Agency, EPA Docket Center, OLEM Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- DHand Delivery / Courier: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. – 4:30 p.m., Monday – Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this action, EPA-HQ-OLEM-2019-0589. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ksenija Janjic, Resource Conservation and Sustainability Division, Office of Resource Conservation and Recovery (5306P), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (703) 347-0376; email address: janjic.ksenija@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA) and the Hazardous and Solid Waste Amendments of 1984, established the government “buy-recycled” program that seeks to harness the federal purchasing power to stimulate the demand for products made with recovered materials. The statute requires EPA to issue guidelines to be used by procuring agencies to buy products with recovered material content. Section 1004(17) defines “procuring agency” to include any Federal or State agency using appropriated Federal funds for a procurement as well as any

person contracting with any such agency with respect to work performed under the contract. The EPA must designate items that are or can be made with recovered materials and must also recommend practices to assist procuring agencies in meeting their obligations. Once an item is designated by EPA, procuring agencies that use appropriated federal funds to purchase the item are required to purchase the item composed of the highest percentage of recovered materials practicable.

Within one year after EPA designates a CPG item, federal agencies must revise their procurement specifications to require the use of recovered materials to the maximum extent possible without jeopardizing the intended end-use of the item (Section 6002(d)(2)). Federal agencies responsible for drafting or reviewing specifications must also review all their product specifications to eliminate both provisions prohibiting the use of recovered materials and requirements specifying the exclusive use of virgin materials (Section 6002(d)(1)). For each item designated by EPA, procuring agencies are further required to develop an affirmative procuring program, which sets forth the agency's policies and procedures for implementing the requirements of RCRA section 6002 (Section 6002(i)). Finally, the Office of Federal Procurement Policy must implement the statute requirements and coordinate the purchasing policy with other federal procurement policies in order to maximize the use of recovered materials (Section 6002(g)).

Executive Order (EO) 12873, entitled "Federal Acquisition, Recycling, and Waste Prevention" established a bifurcated, two-part process for EPA to use when developing and issuing the procurement guidelines for items containing recovered materials, as required by RCRA section 6002(e). The first part, the Comprehensive Procurement Guideline (CPG), involved designating items that are or can be made with recovered materials, which is an activity requiring a rulemaking, including the formal notice-and-comment rulemaking procedures. CPGs are therefore, codified in the *Code of Federal Regulations (CFR)*. The second part

involves issuing recommendations to procuring agencies on purchasing the items designated in CPGs. These recommendations are issued in Recovered Materials Advisory Notices (RMANs) and published in the notice section of the *Federal Register (FR)* for public comment but are not codified in the Code of Federal Regulations. Subsequent EOs continued to require the preferred purchasing of recycled content products, as required by statutory mandates. Between 1995 and 2007, EPA issued five CPGs designating 61 items in eight distinct product categories. With each group of proposed items, EPA also published recommendations on purchasing designated items in RMANs. The recommendations published in the RMANs were developed based on information on commercially available items with recovered materials and their associated specifications.

The process established in EO 12873 that provides for publication of an RMAN in the FR for public comment without its being codified in the Code of Federal Regulations, fulfills the statutory intent and requirements of RCRA Section 6002. Procuring agencies can obtain information on the availability and sourcing of designated items for use in developing procurement programs to meet their obligations under the statute. Furthermore, because the established process is more flexible than a rulemaking process, RMAN can be issued more expeditiously as well as revised easily to reflect development of new technologies and/or changes in commercial availability of items.

II. Request for Comment

Today, EPA requests comments on the existing five CPGs and the five corresponding RMANs.

These five CPGs and RMANs pertain to 61 items in the following eight product categories:

- Paper and Paper Products;
- Vehicular Products;
- Construction Products;
- Transportation Products;

- Park and Recreation Products;
- Landscaping Products;
- Non-paper Office Products; and,
- Miscellaneous Products.

A. *Topic Areas*

EPA is seeking comment, relating to the following topics:

Topic 1: Designated Items

- Based on procuring agencies purchases, are the right items designated?
- Do the items currently designated represent items that procuring agencies purchase?
- Should items be deleted, added or modified? Why?

Topic 2: Recommendations for the Designated Items Including Recovered Material Content and Specifications

- Are the recommended recovered content levels/ranges appropriate?
 - If not, please provide appropriate levels.
- Are the specifications published in RMANs appropriate?
 - If not, please provide appropriate specifications.

Commenters should provide ample justification and background information for their comments in order to ensure appropriate consideration of the commenter's recommendations.

B. *Where to Find Documents*

The individual *FR* notices that were published to designate the CPG items and provide RMAN recommendations, as well as the supporting technical information, can be accessed from the table entitled Federal Register Notices Related to the Guidelines for Procurement of Products Containing Recovered Materials, at <https://www.epa.gov/smm/regulatory-background-comprehensive-procurement-guideline-program-cpg>. Existing notices are also available under Docket Details for this Docket, ID No. EPA-HQ-OLEM-2019-0589, at

<https://www.regulations.gov>.

III. Public Participation

Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2019-0589, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For example, commenters should provide ample justification and background information for their comments to ensure appropriate consideration of the commenter's views.

IV. Follow-Up Actions

The EPA plans to review all comments received and determine next steps. Any future revisions to the CPG or RMANs will be noticed in the Federal Register. Action with respect to a CPG will be made through the notice-and-comment rulemaking. EPA will also make every attempt to alert the public when an action is forthcoming via multiple official social media platforms.

Dated: March 31, 2020.

Peter Wright,

Assistant Administrator,

Office of Land and Emergency Management.

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