



Federal Register

**Friday,
April 30, 2004**

Part V

Environmental Protection Agency

40 CFR Part 247

**Comprehensive Procurement Guideline IV
for Procurement of Products Containing
Recovered Materials; Recovered Materials
Advisory Notice IV; Final Rule and Notice**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 247

[RCRA-2001-0047; SWH-FRL-7655-2]

RIN 2050-AE23

Comprehensive Procurement Guideline IV for Procurement of Products Containing Recovered Materials

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is amending the Comprehensive Procurement Guideline (CPG) by designating seven new items that are or can be made with recovered materials, including: modular threshold ramps; nonpressure pipe; roofing materials; office furniture; rebuilt vehicular parts; bike racks; and blasting grit. In addition, EPA is revising the designations for three items, including cement and concrete, railroad grade crossing surfaces, and polyester carpet. For cement and concrete, EPA is adding cenospheres and silica fume as recovered material options. For railroad grade crossing surfaces, EPA is adding recovered wood and plastic as recommended recovered materials. For polyester carpet, EPA is revising its designation to designate polyester carpet for moderate end-uses only, as defined by the Carpet and Rug Institute.

The CPG implements portions of the Resource Conservation and Recovery Act (RCRA) and the Executive Order "Greening the Government Through Waste Prevention, Recycling, and

Federal Acquisition," which require EPA to designate items that are or can be made with recovered materials and to recommend practices that procuring agencies can use to procure such 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. Today's action will use government purchasing power to stimulate the use of these materials in the manufacture of products, thereby fostering markets for materials recovered from solid waste.

EFFECTIVE DATES: This rule is effective on May 2, 2005.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Call Center at (800) 424-9346 or TDD (800) 553-7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412-9810 or TDD (703) 412-3323. For technical information on individual item designations, contact Terry Grist at (703) 308-7257 or Sue Nogas at (703) 308-0199.

ADDRESSES: EPA has established a docket for this action under Docket ID No. RCRA-2001-0047. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket> Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (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 in EDOCKET or in hard copy at the OSWER Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center 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.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

This action may potentially affect procuring agencies that purchase the following items: Cement and concrete; polyester carpet for moderate end-use; railroad grade crossing surfaces; modular threshold ramps; nonpressure pipe; roofing materials; office furniture; rebuilt vehicular parts; bike racks; and blasting grit. Under RCRA section 6002, procuring agencies 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 Terry Grist at (703) 308-7257 or Sue Nogas at (703) 308-0199.

As noted above, RCRA section 6002 applies to procuring agencies that use at least a portion of federal funds to procure over \$10,000 worth of a designated product in a given year. Therefore, EPA estimates that this rule would apply to 35 federal agencies, all 56 states and territories and 1,900 local governments. EPA calculated the number of local governments that would

be impacted by this rule based on information on the amount of federal funds that are dispersed to specific counties. In addition, EPA assumed that 1,000 contractors may be affected. A description of this information is provided in the Economic Impact Analysis for today's rule.

B. How Can I Get Copies of This Document and Other Related Information?

1. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select "search," then key in the appropriate docket identification number.

Preamble Outline

- I. What is the statutory authority for this amendment?
- II. Why is EPA taking this action?
- III. What criteria did EPA use to select items for designation?
- IV. What are the definitions of terms used in today's action?
- V. What did commenters say about the proposed CPG IV and draft RMAN IV?
 - A. General Comments
 1. Designation of Steel
 2. Designation of Additional Items
 3. Other General Comments
 - B. Comments on Proposed Item Designations
 1. Tires
 2. Rebuilt Vehicular Parts
 3. Cement and Concrete Containing Cenospheres and Silica Fume
 4. Nylon Carpet and Nylon Carpet Backing
 5. Bike Racks
 6. Polyester Carpet
- VI. Where can agencies get information on the availability of EPA-designated items?
- VII. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 1. Summary of Costs
 2. Product Cost
 3. Summary of Benefits
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
 - 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. Congressional Review Act
VIII. 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 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. The Agency is also promulgating this amendment in compliance with section 502 of Executive Order (E.O.) 13101, "Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition," (63 FR 49643, September 14, 1998).

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 items designated under RCRA section 6002. 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.

E. O. 13101 establishes the procedures EPA must follow when implementing RCRA section 6002(e). Section 502 of the Executive Order directs EPA to issue a Comprehensive Procurement Guideline (CPG) that designates items that are or can be made with recovered materials. At the same time EPA promulgates the CPG, the Agency must publish its recommended procurement practices for entities that purchase designated items in a related Recovered Materials Advisory Notice (RMAN). These practices must also provide recommendations for the content of recovered materials in the designated items. The Executive Order also directs EPA to update the CPG every 2 years and to issue RMANs periodically to reflect changing market conditions.

The first CPG (CPG I) was published on May 1, 1995 (60 FR 21370). It established eight product categories, designated 19 new items in seven of those categories, and consolidated five earlier item designations.¹ At the same time, EPA also published a notice of

¹ 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.

availability of the first RMAN (RMAN I) (60 FR 21386). On November 13, 1997, EPA published CPG II (62 FR 60962), which designated an additional 12 items. At the same time, EPA published an RMAN II notice (62 FR 60975). Paper Products RMANs were issued on May 29, 1996 (61 FR 26985) and June 8, 1998 (63 FR 31214). On January 19, 2000, EPA published CPG III (65 FR 3070), which designated an additional 18 items. At the same time, EPA published an RMAN III notice (65 FR 3082).

On August 28, 2001, EPA published a proposed CPG IV (66 FR 45256), which proposed to designate an additional 11 items—including cement and concrete containing cenospheres and silica fume—and revise two other previously designated items.² At the same time, EPA published a draft RMAN IV notice (66 FR 45297), which provided draft recommendations on purchasing the proposed designated items. (For more information on CPG, go to the EPA Web site at <http://www.epa.gov/cpg/>.)

Today, EPA is designating seven of the items that were proposed: modular threshold ramps; nonpressure pipe; roofing materials; office furniture; rebuilt vehicular parts; bike racks; and blasting grit. In addition, in today's action, EPA is revising the designations for three items: cement and concrete, railroad grade crossing surfaces, and polyester carpet. EPA explained fully the basis for its proposed designations and revised designations in proposed CPG IV at 66 FR 45256. These form the basis for today's decision to designate seven items and to revise designations for three others. For the reasons explained in Section V of this notice, EPA is not issuing final designations at this time for two of the items proposed in the proposed CPG IV: carpet made from nylon fiber facing and/or nylon carpet backing made from recovered materials, and tires containing recovered rubber. The seven newly designated items are listed below by product category.

Construction Products

Modular threshold ramps
Nonpressure pipe
Roofing materials

Nonpaper Office Products

Office furniture

Vehicular Products

Rebuilt vehicular parts

Miscellaneous

Bike racks
Blasting Grit

² EPA now considers that two of the items that it proposed for designation (cement and concrete containing cenospheres and silica fume) were in actuality proposed revisions to the existing designation for cement and concrete containing coal fly ash and ground granulated blast furnace slag.

III. What Criteria Did EPA Use To Select Items for Designation?

RCRA section 6002(e) requires EPA to consider the following when determining which items it will designate:

- (1) Availability of the item
 - (2) Potential impact of the procurement of the item by procuring agencies on the solid waste stream
 - (3) Economic and technological feasibility of producing the item
 - (4) Other uses for the recovered materials used to produce the item
- EPA also consulted with federal procurement officials to identify other criteria to consider when selecting items for designation. Based on these discussions, the Agency concluded that the limitations set forth in RCRA section 6002(c) should also be factored into its selection decisions. This provision requires 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. Therefore, in CPG I, the Agency outlined the following criteria that it uses 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 repeated that discussion, for reader convenience, in Section II of the document entitled, "Proposed Comprehensive Procurement Guideline (CPG) IV and Draft Recovered Materials Advisory Notice (RMAN) IV—Supporting Analyses." The RCRA public docket for the proposed CPG IV rule, Docket No. RCRA-2001-0047, 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 that 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, as implemented through the CPG and the RMAN. 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 today have all been evaluated against EPA's criteria. The Agency discusses these evaluations in the "Background Document for the Final CPG IV/RMAN IV," which the Agency has placed in the docket for the final CPG IV and RMAN IV. You can also access the document electronically. (See Section VIII below for Internet access directions.)

IV. What Are the Definitions of Terms Used in Today's Action?

Today, in 40 CFR 247.3, EPA is defining the following new item-specific terms: cenospheres; silica fume; modular threshold ramps; nonpressure pipe; roofing materials; office furniture; rebuilt vehicular parts; bike racks; and blasting grit. These definitions are based on industry definitions, such as the American Society for Testing and Materials (ASTM) or other industry standards. Where industry definitions do not exist for the designated items, EPA's definitions describe the scope of items that the Agency is designating.

For several items that the Agency is designating today (i.e., railroad grade crossing surfaces, modular threshold ramps, nonpressure pipe, roofing materials, office furniture, bike racks, and blasting grit), EPA recommends in the final RMAN IV that procuring agencies use two different measures of the content of recovered materials: (1) a component of postconsumer recovered materials and (2) a component of total recovered materials. In these instances, EPA found that manufacturers were using both types of materials to manufacture the products. Limiting the Agency's recommendation to only postconsumer content levels would be inconsistent with RCRA's requirement that EPA designate items which are or can be made with recovered materials whose procurement will carry out the objective of section 6002—the procurement of items composed of the highest percentage of recovered materials practicable. The statute defines "recovered materials" to include waste materials and byproducts which have been recovered or diverted from solid waste. Section 1004(19) of RCRA, 42 U.S.C. 6903(19). If the Agency only recommended postconsumer content levels, it would fail to take into account the contribution that manufacturers using other manufacturers' byproducts

as feedstock have made and can make to solid waste management.

Because the recommendations for the items that the Agency is designating today use the terms "postconsumer materials" and "recovered materials," we repeat the definitions for these terms in this notice. The Agency provided these definitions in CPG I, and they are also provided at 40 CFR 247.3.

Postconsumer materials means a material or finished product that has served its intended end use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. *Postconsumer material* is part of the broader category of recovered materials.

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

V. What Did Commenters Say About the Proposed CPG IV and Draft RMAN IV?

Twenty-nine commenters responded to the proposed CPG IV and the draft RMAN IV. These commenters represented various interests, including but not limited to Federal, state, and local government agencies; product manufacturers; trade associations; environmental interest groups; and product users.³

In this section, EPA discusses the major comments that commenters provided on the proposed CPG IV. The most significant comments received on the draft RMAN IV are discussed in the preamble to the notice of availability of the final RMAN IV, which is published in the notices section of today's **Federal Register**. You can find a summary of all comments and EPA's responses in the "Background Document for the Final CPG IV/RMAN IV."

A. General Comments

1. Designation of Steel

Comment: The Office of the Deputy Under Secretary of Defense commented that items manufactured from steel should either not be listed, or listed as a generic category rather than as individual items. The Office contends that virtually all new steel produced today has recovered content, and there is no practical way a purchasing officer could influence the recovered material content in steel items, such as bike

racks. In addition, in the Office's view, there would be no way of verifying that a particular batch of steel was made from either a basic oxygen furnace or an electric arc furnace. The Office added that designating steel bike racks and furniture does not appear to support the objectives of RCRA Section 6002 because listing individual items would not significantly increase the procurement of products made from recovered material or help develop a market for recyclable waste materials.

Response: The CPG designates individual items because agency requirements are typically expressed in terms of end products rather than raw material inputs. With the exception of large system acquisitions, agencies generally procure individual items. In addition, RCRA 6002(e)(1) requires EPA to designate "items" that are or can be made with recovered materials. For these reasons, the CPG designates items and organizes them by functional category rather than by material type. With regard to verification of the steel manufacturing process used to produce a specific steel item, EPA obtained this information from the steel industry prior to making its recommendations in the RMAN. Therefore, if an item is generally made from steel from an electric arc furnace (EAF), EPA's recommendations reflect the recovered materials content from that particular process. Likewise, EPA's recommendations for items made from steel made in a basic oxygen furnace (BOF) reflect the recovered materials content for that process. Therefore, agencies need not be concerned with verifying the type of steel process used to make the item. EPA's RMAN recommendations already take the type of steel into account. In those cases where a designated item is manufactured using both of the steel processes, the ranges of recovered materials for both of those processes are provided. Therefore, in determining the recovered materials content for any given steel item, procuring agencies may use the RMAN ranges provided for that item. In cases where an item can be made from both steel processes, agencies may use a combination of the ranges of both processes to signify the potential range of recovered materials. Therefore, the recommended recovered materials content ranges would be 25%–100% total recovered materials and 16%–67% postconsumer content. (EPA also used this method in the draft RMAN recommendations for blasting grit.)

Furthermore, EPA disagrees that designating bike racks and office furniture does not support the objectives

of RCRA. One of the objectives of RCRA is to encourage the procurement of products made with recovered materials. Bike racks and office furniture are items that can be made from recovered steel as well as from other recovered materials. Therefore, designating these items promotes the recovery of steel, as well as these other materials. EPA has concluded that if products are made from more than one type of recovered material, then the procurement guidelines should accurately reflect that fact and promote the procurement of all recovered content products, regardless of the particular recovered material used. Not to include steel products in the CPG could result in a bias against the purchase of steel products when procurement officials are considering a purchase of several functionally equivalent products made from various recovered materials. Furthermore, RCRA requires EPA to make recommendations, including recycled content recommendations, for designated items. Since bike racks and office furniture are made from recovered steel, as well as from other recovered materials, EPA has concluded that it is appropriate to include recovered steel among the recovered materials listed in the designations for bike racks and office furniture.

2. Designation of Additional Items

Comment: The Department of Defense suggested additional items for future CPG designations, including biobased fuels made from recovered cooking oils; roofing shingles (both asphalt and tile) made from recovered vinyl, aluminum, and cellulose fiber; and asphalt mixes made from crumb rubber.

Response: EPA will consider biobased fuels made from cooking oils as potential CPG items and requests that DOD provide additional information, as outlined in EPA's September 20, 1995, Notice and Request for Information entitled "Procedures for Submission of Recycled Content Products" (60 FR 48714). This notice describes the criteria used by EPA to designate items, including purchasing barriers; the solid waste impacts of an item designation; economic and technological feasibility and performance; impact of government purchasing; and suggested recovered material content levels.

With regard to roofing shingles (both asphalt and tile) made from recovered vinyl, aluminum, and cellulose fiber, EPA researched these types of roofing products and is designating roofing products made from recovered aluminum, fiber, and plastic, among various other recovered materials, in

³ As noted previously, EPA is not issuing final designations for two of the items proposed in CPG IV—tires containing recovered rubber and nylon fiber facing and/or nylon carpet backing made from recovered materials. Nevertheless, we generally discuss the comments received on these items and explain why we are not proceeding to finalize them in today's **Federal Register**.

today's rulemaking. EPA also considered the designation of roofing shingles made from recovered asphalt, as discussed in the "Recovered Material Product Research for the Comprehensive Procurement Guideline IV: Draft Report," which is available in the docket for this rulemaking. The agency's research indicated that the asphalt used in matting, roll roofing, shingles, coatings, modified bitumen, and built-up roofing is not recovered asphalt. However, EPA did not discount roofing products containing asphalt. EPA has included RMAN recommendations for these products under the category of the recovered material used in the product along with the virgin asphalt. For example, if a product contains both asphalt and recovered fiber, EPA's recommendations can be found under the "Fiber (Felt) or Fiber Composite" material category in the RMAN table, implying that the fiber is the recovered material in the product, not the asphalt.

Finally, regarding asphalt mixes made from crumb rubber, EPA is currently researching the use of various recovered materials, including crumb rubber and recycled asphalt pavement (RAP), in road construction applications for possible future designation.

3. Other General Comments

Comment: The White House Task Force on Recycling requested that EPA include examples of solicitation and contract language used by federal agencies and others to purchase the proposed designated construction products, including cement and concrete containing silica fume, nonpressure pipe, roofing materials, and blasting grit.

Response: The Office of the Federal Environmental Executive (OFEE) has workgroups consisting of federal procuring agencies which focus on a number of issues, such as record keeping and reporting. The purpose of these workgroups is to share information and develop consensus programs. EPA will contact procuring agencies, possibly through the existing workgroups established by OFEE, to help identify contract language that has been used to procure these items and/or to draft model language that could be used in solicitations, as well as to share any sample language developed with the other federal agencies.

Comment: OFEE further requested EPA to provide guidance regarding unintentional barriers to purchasing the proposed designated construction products, and specifically referenced a barrier to the purchase of blasting grit

created by inappropriate packaging (volume) requirements.

Response: EPA includes general guidance on the development of affirmative procurement plans in Appendix V of the background document to this final rulemaking. Section A of Appendix V explains that agencies are required to examine their specifications for designated items and should remove any requirements that constitute barriers to their purchase. EPA has revised this section to discuss the need to consider unintentional barriers to purchasing designated items, such as packaging, color, or cosmetic requirements that have no bearing on the item's functionality or performance, but that might prevent its purchase with the highest percentage recovered materials practicable. EPA has provided guidance in Appendix V of the "Background Document for Final CPG IV/RMAN IV" and in the final RMAN IV in the "General Recommendations" section.

Comment: The U.S. Department of Energy commented that a key problem in implementing the CPG has been finding vendors and manufacturers who have the designated items available with recycled content. DOE believes EPA's vendor list needs to be updated and that a process needs to be developed to provide procuring agencies with current information on the availability of recycled-content products.

Response: During 2002, EPA developed and launched a comprehensive, searchable online vendor database covering all CPG-designated items and more than 2,000 individual vendor entries. This database was tested by a number of procuring agencies through a coordinated effort with OFEE and is fully operational. The database allows a user to search for vendors and suppliers by product category, individual product, or material. The purpose of the database system is to provide buyers with a more accessible and reliable reference source they can use to identify vendors. EPA intends to maintain and update the database on a regular basis to ensure that the information is accurate and current, given the constraints of obtaining this information from the companies themselves.

B. Comments on Proposed Item Designations

The vast majority of commenters supported the item designations proposed in CPG IV and provided only minor comments. A few commenters provided major comments on several specific items, as discussed below. No commenters provided comments on

nonpressure pipe and threshold ramps. EPA has included a summary of all comments on the proposed CPG IV and our responses in the "Background Document for the Final CPG IV/RMAN IV." Comments related to the draft RMAN IV are discussed in the preamble to the notice of availability of the final RMAN IV, which is published in the Notices section of today's **Federal Register**.

Based on the item-specific comments received, we are designating seven of the items proposed in the proposed CPG IV, and we are not finalizing the designations for two other items at this time (carpet made from nylon fiber facing and/or nylon carpet backing made from recovered materials, and tires containing recovered rubber). This section discusses the major comments submitted on several items proposed for designation in the proposed CPG IV.

1. Tires

Comment: The Department of Defense commented that the safety, durability, and other environmental impacts of tires containing recovered rubber are not adequately addressed to justify designating them in the CPG. DOD highlighted several assertions in EPA's research regarding tensile strength, heat built-up, tire durability, and decreased tread life. It also argued that a shorter tire life will result in no overall savings in the use of recovered material, producing no net reduction in the amount of solid tire waste produced by the overall system.

Response: At the time of EPA's initial research, the Agency identified at least five major U.S. tire manufacturers that were incorporating some percentage of crumb rubber into some of their tire lines. Based on DOD's comments, however, EPA conducted additional research on tires containing recovered rubber. EPA was not able to verify to what extent recovered rubber is currently being incorporated into tires or obtain answers to any of the safety concerns raised by the commenter. Until such time that EPA can obtain current information on these issues, we have decided it is not appropriate to include tires containing recovered materials as a designated item. EPA will continue to conduct research on tires and monitor the tire-making industry to determine if designation is feasible at a future time.

2. Rebuilt Vehicular Parts

Comment: The White House Task Force on Recycling-Office of the Federal Environmental Executive questioned what the designation of rebuilt automotive parts will accomplish toward the statutory objectives of

reducing solid waste by creating markets for materials recovered from solid waste, since most federal agencies are already purchasing them and are satisfied with their performance. In addition, The Task Force indicated that rebuilt automotive parts are primarily purchased with federal credit cards, so it would be difficult for agencies to track procurement of them and lead to an administrative burden with no appreciable new benefit to the environment.

Response: EPA's proposal of rebuilt vehicular parts is consistent with previous designations for other remanufactured or refurbished products, such as reinked printer ribbons and toner cartridges. Motor vehicle part rebuilders recover and reclaim thousands of automotive components made from plastic and metal that could otherwise be landfilled. While EPA realizes that rebuilt vehicular parts may seem to be a common practice in the industry, markets for products containing recovered materials can fluctuate and directly influence the recovery rate of these items in the industry. While the designation of rebuilt vehicular parts may not create "new" markets, it can help ensure market stability, perhaps some market expansion, and continued recovery of these items. By designating these items, EPA also has concluded that increased environmental awareness with respect to procuring vehicular parts and services will contribute positively to an agency's overall effort to purchase more environmentally preferable products and services.

With regard to recordkeeping burden, EPA notes that procuring agencies have been statutorily required to monitor the procurement of designated items, regardless of the method of procurement, since the first guidelines were issued in 1983. Therefore, this requirement is not new. Furthermore, neither RCRA 6002 nor E.O. 13101 requires that the designation of items be based on the relationship between administrative burden and the level of benefit to the environment, as implied in the comments.

3. Cement and Concrete Containing Cenospheres and Silica Fume

Comment: The Department of Energy (DOE) submitted a comment expressing concerns that cenospheres and silica fume additives may not be readily available in all locations. In addition, DOE indicated that, although silica fume can be used to produce a higher-strength concrete, it has inherent problems of placement, workability, and curing, and is considerably more

expensive than fly ash. None of DOE's concrete vendors are familiar with the application of cenospheres as a concrete additive.

Response: EPA has stated in the past that it recognizes that some items or materials may not always be readily available. Under section 6002(c)(1)(A), any procuring agency may decline to procure designated items where such items are not reasonably available within a reasonable period of time. Here, EPA's designation simply expands the list of recovered materials recommended to procuring agencies when purchasing cement and concrete. If an application warrants the use of higher-strength concrete, an agency may want to consider the use of cement and concrete with additional recovered materials, such as cenospheres or silica fume. Agencies, however, are not limited to using cement and concrete containing silica fume or cenospheres. EPA's research found that there is a small market for specialty cement containing cenospheres, which is typically used as a patching cement where higher strength is desired.

Comment: The Department of Defense submitted a comment stating that cenospheres appear to be a specialty item costing significantly more than fly ash, and, therefore, the value derived from using cenospheres in concrete will primarily be due to special properties, such as lightness and strength, rather than any societal gains based on diverting waste material.

Response: EPA agrees that cement and concrete containing cenospheres is a specialty item that may cost more than regular cement and concrete. An agency can choose whether cement and concrete with cenospheres suits its needs, application, and/or budget. If not, the agency can use cement and concrete containing one of the other recovered materials recommended in the RMAN. In EPA's view, the value and benefit of using cement and concrete with cenospheres (or silica fume) will be derived both from its special properties, as well as the diversion of these materials from disposal.

4. Nylon Carpet and Nylon Carpet Backing

EPA received a number of comments on its proposed comprehensive procurement guideline for nylon carpet and its recovered materials content recommendations for nylon carpet face fiber and nylon carpet backing contained in the draft RMAN IV. Many of these comments provided additional information that was conflicting in nature. As a result of these comments, EPA decided not to finalize the

designation of carpet made from nylon fiber facing and/or nylon carpet backing at this time. EPA instead issued a Notice of Data Availability (NODA) on July 16, 2003 (68 FR 42040) announcing the availability of information on nylon carpet submitted both during and after the public comment period and provided a summary of the revisions EPA is considering making to the draft RMAN for nylon carpet as a result of this information. EPA will consider information and data submitted in response to this notice when issuing the final RMAN recommendations for nylon carpet in the future. The NODA can be accessed at <http://www.epa.gov/cpg>. Supporting materials and public comments submitted in response to the NODA are available through EPA's electronic public docket and comment system, *EPA Dockets* [EDOCKET]. The docket number is RCRA-2003-0013.

5. Bike Racks

Comment: The White House Task Force on Recycling submitted a comment in which it questioned the rationale for designating bike racks. The Task Force claims it is not clear whether individual agencies purchase \$10,000 worth of bike racks annually or if agencies create barriers to using bike racks containing recovered content.

Response: As discussed in the proposed FR notice and background document, EPA has determined that bike racks meet all of the statutory criteria for designating items under the CPG. It is conceivable that agencies such as the Department of the Interior, state and local governments, and large school districts receiving federal funds could purchase \$10,000 worth of bike racks annually. Moreover, the \$10,000 level is not a selection criterion for designation, but rather is just the threshold at which certain provisions of RCRA 6002 apply. EPA believes designating bike racks will encourage the use of alternative materials, such as plastic, in the manufacture of bike racks.

6. Polyester Carpet

In the proposed CPG IV, EPA requested comments on its proposal to revise the polyester carpet designation based on new Carpet and Rug Institute (CRI) end-use classifications of moderate- and heavy-wear.

Comment: Five organizations submitted comments on EPA's recommended use of polyester carpet in moderate and heavy use classifications. Comments submitted by CRI included a new carpet End-Use Applications Classification table which lists private offices as heavy and severe wear applications. In its comments, CRI urged

that EPA limit its recommendation for polyester carpets to polyester carpets used only in moderate end-use applications, as indicated in CRI's Carpet End-Use Applications Classification table.

Response: EPA had proposed the use of polyester carpet for moderate end-use applications, which, at the time, included private offices. In the Background Document for Proposed CPG IV, EPA noted that, at the time the proposed CPG IV was issued, the CRI End-Use Classifications were under review and were expected to be revised. The revised CRI classification now classifies private offices as heavy- and severe-use applications. Based on the public comments received, as well as the fact that private offices have been re-classified as heavy- and/or severe-use applications and so are no longer classified as moderate-use applications, the final CPG designation for polyester carpet has been revised to remove references to heavy-wear applications and private offices.

VI. Where Can Agencies Get Information on the Availability of EPA-Designated Items?

EPA has developed a searchable online Supplier Database containing names of manufacturers, suppliers, and distributors of CPG-designated items. (See section VIII 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), state and local recycling offices, private corporations, and trade associations. Refer to Section XV of the document, "Background Document for the Final CPG IV/RMAN IV" for more information on these other sources of information.

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. Information is also available from trade associations whose members manufacture or distribute products containing recovered materials.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Executive Order 12866 requires agencies to determine whether a regulatory action is "significant." The Order defines a "significant" regulatory action as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA estimates that the costs associated with today's rule is well below the \$100 million threshold. EPA has prepared an Economic Impact Analysis (EIA) to evaluate the potential impact of today's action. The results of the EIA are discussed below. More information on the estimated economic impact of today's rule is included in the "Economic Impact Analysis for the Final Comprehensive Procurement Guideline IV." A copy of this document is in the public docket.

1. Summary of Costs

As shown in Table 2 below, EPA estimates that the annualized costs of today's rule will range from \$5.0 to \$9.7 million, with costs being spread across all procuring agencies (i.e., federal agencies, state and local agencies that use appropriated federal funds to procure designated items, and government contractors). 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 sensitivity analyses to identify the range of potential costs of today's rule. Thus, high-end and low-end estimates are presented along with the best estimate. The primary parameter affecting the range of cost estimates is the number of products each procuring agency is assumed to procure each year. Details of the costs associated with today's final rule are provided in the EIA for this rule.

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

| Procuring agency | Total annualized costs (\$1000) | Best estimate total annualized costs (\$1000) |
|-------------------------|---------------------------------|---|
| Federal Agencies | 2,853–5,707 | 5,707 |
| States | 542–1,085 | 1,085 |
| Local Governments | 1,556–2,762 | 2,159 |
| Contractors ... | 34–101 | 68 |
| Total | 4,985–9,655 | 9,019 |

As a result of today's 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 2 represent the estimated annualized costs associated with these activities. Table 2 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 today's rule are included in the EIA.

There may be both positive and negative impacts to individual businesses, including small businesses. EPA anticipates that today's 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 recycling programs.

EPA is unable to determine the number of businesses, including small businesses, that may be adversely impacted by today's 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 new specifications

or solicitation requirements for products containing recovered materials. Thus, many businesses, including small businesses, that market to procuring agencies have the option to adapt their product lines to meet specifications.

2. Product Cost

Another potential cost of today's action is the possible price differential between an item made with recovered materials and an equivalent item manufactured using virgin materials. 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 today's 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, waste prevention leads to a reduction in the environmental impacts of mining, harvesting, and other extraction processes.

Recycling can effect the more efficient use of natural resources. For many products, the use of recovered materials in manufacturing can result in significantly lower energy and material input costs than when virgin raw materials are used; reduce the generation and release of air and water pollutants often associated with manufacturing; and reduce the environmental impacts of mining, harvesting, and other extraction of natural resources. For example, according to information published by the Steel Recycling Institute, recycling one ton of steel saves nearly 11 million Btus of energy; 2,500 lbs. of ore; 1,400 lbs. of coal; and 120 lbs. of limestone.

Recycling can also reduce greenhouse gas emissions associated with manufacturing new products. When compared to landfilling, recycling one ton of high density polyethylene, low density polyethylene, or polyethylene terephthalate plastic can reduce greenhouse gas emissions by up to 0.64 metric tons of carbon equivalent (MTCE). In addition to conserving non-renewable resources and reducing the environmental impacts associated with resource extraction and processing, recycling can also divert large amounts of materials from landfills, conserving increasingly valuable space for the management of materials that truly require disposal.

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

B. Paperwork Reduction Act

This final rule contains no new information collection requirements. Therefore, this rule is not subject to the Paperwork Reduction Act.

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 today's final rule on small entities, a small entity is defined as: (1) A small business as defined by RFA default definitions for small business (based on Small Business Administration size standards); (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 a not-for-profit enterprise that

is independently owned and operated and is not dominant in its field.

EPA evaluated the potential costs of today's 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 designation of the seven new items and the revised designations of three 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.

Furthermore, 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 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 today's 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 today's 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 innovation 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), P.L. 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, EPA generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with federal mandates that may result in estimated costs to state, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act, EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with the law. Before EPA establishes regulatory requirements that may significantly or uniquely affect

small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that today's final rule does not include a federal mandate that may result in estimated annualized costs of \$100 million or more to either state or local or tribal governments in the aggregate, or to the private sector. To the extent enforceable duties arise as a result of this final rule on state and local governments, they are exempt from inclusion as federal intergovernmental mandates if such duties are conditions of federal assistance. Even if they are not conditions of federal assistance, such enforceable duties do not result in a significant regulatory action being imposed upon state and local governments since the estimated aggregate cost of compliance for them are not expected to exceed, at the maximum, \$3.85 million annually. The cost of enforceable duties that may arise as a result of today's final rule on the private sector is estimated not to exceed \$101,000 annually. Thus, the final rule is not subject to the written statement requirement in sections 202 and 205 of the Act.

The designated items included in the CPG IV final rule may give rise to additional obligations under section 6002(i) (requiring procuring agencies to adopt affirmative procurement programs and to amend their specifications) for state and local governments. As noted above, the expense associated with any additional costs is not expected to exceed, at the maximum, \$3.85 million annually. In compliance with Executive Order 12875 entitled *Enhancing the Intergovernmental Partnership*, 58 FR 58093 (October 28, 1993), which requires the involvement of state and local governments in the development of certain federal regulatory actions, EPA conducts a wide outreach effort and actively seeks the input of representatives of state and local governments in the process of developing its guidelines.

When EPA proposes to designate items in a CPG, information about the proposal is distributed to governmental organizations so that they can inform their members about the proposals and solicit their comments. These organizations include the U.S.

Conference of Mayors, the National Association of Counties, the National Association of Towns and Townships, the National Association of State Purchasing Officials, and the American Association of State Highway and Transportation Officials. EPA also provides information to potentially affected entities through relevant recycling, solid waste, environmental, and industry publications. In addition, EPA's regional offices sponsor and participate in regional and state meetings at which information about proposed and final designations of items in a CPG is presented.

The requirements do not significantly affect small governments, because they are subject to the same requirements as other entities whose duties result from today's rule. As discussed above, the expense associated with any additional costs to state and local governments is not expected to exceed, at the maximum, \$3.85 million annually. The requirements do not uniquely affect small governments because they have the same ability to purchase these designated items as other entities whose duties result from today's rule. Additionally, use of designated items affects small governments in the same manner as other such entities. Thus, any applicable requirements of section 203 of the Act have been satisfied.

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 today's 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 today's final rule will range from \$5.0 to \$9.7 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), not just states and localities. Thus, the costs to states and localities alone will be even 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

Under Executive Order 13175, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13175 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13175 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's final 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. Accordingly, the requirements of section 3(b) of Executive Order 13175 do not apply to this final rule.

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

Executive Order 13045, entitled "Protection of Children from Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that EPA determines is (1) "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.

EPA interprets the E.O. 13045 as encompassing only those regulatory actions that are risk based or health based, such that the analysis required under section 5-501 of the E.O. has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it does not involve decisions regarding environmental health or safety risks.

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 ("NTTAA"), Pub. L. No. 104-113, section 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, business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule does not establish technical standards. Therefore, the Agency has not conducted a search to identify potentially applicable test methods from voluntary consensus standard bodies. As part of this rulemaking effort, EPA has developed guidance for procuring agencies to use in complying with section 6002's obligation to purchase items with recovered materials content to the maximum extent practicable. These recommendations include reference to any known industry standards and, as

previously noted, are published today in the companion RMAN for the designated items. In developing these recommendations, EPA did consider current voluntary consensus standards on recovered materials content.

J. 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 May 2, 2005.

VIII. Supporting Information and Accessing Internet

The index of supporting materials for today's final CPG IV is available at the OSWER Docket in the EPA Docket Center and on the Internet. The address and telephone number of the EPA Docket Center are provided in the **SUPPLEMENTARY INFORMATION** Section above. The index and the following supporting materials are available at the EPA Docket Center and on the Internet: "Background Document for the Final CPG IV/RMAN IV," U.S. EPA, Office of Solid Waste and Emergency Response, September 2003.

Copies of the following supporting materials are available for viewing at the EPA Docket Center only:

"Economic Impact Analysis for the Final Comprehensive Procurement Guideline IV," U.S. Environmental Protection Agency, September 2003.

"Processing and characterization of a lightweight concrete using cenospheres," *Journal of Materials Science*, Vol. 37, 4217-4225, October 1, 2002.

To access information on the Internet go to <http://www.epa.gov/cpg>.

List of Subjects in 40 CFR Part 247

Environmental protection, Government procurement, Recycling.

Dated: April 22, 2004.

Michael O. Leavitt,
Administrator.

■ For the reasons set out in the preamble, title 40 of the Code of Federal

Regulations, Part 247, is amended as set forth below.

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; E.O. 13101, 63 FR 49643, 3 CFR, 1998 Comp., p. 210.

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

§ 247.3 Definitions.

* * * * *

Bike racks are free-standing or anchored units that provide a method for cyclists to secure their bicycles safely.

* * * * *

Blasting grit is a type of industrial abrasive used to shape, cut, sharpen, polish, or finish surfaces and materials.

* * * * *

Cenospheres, a naturally-occurring waste component of coal fly ash, are very small, inert, lightweight, hollow, "glass" spheres composed of silica and alumina and filled with air or other gases.

* * * * *

Modular threshold ramps are ramps used to modify existing door thresholds and other small rises to remove access barriers created by differentials in landing levels.

* * * * *

Nonpressure pipe is pipe used to drain waste and wastewater, to vent gases, and to channel cable and conduit in various applications.

* * * * *

Office furniture is furniture typically used in offices, including seating, desks, storage units, file cabinets, tables, and systems furniture (or "cubicles").

* * * * *

Rebuilt vehicular parts are vehicular parts that have been remanufactured, reusing parts in their original form.

* * * * *

Roofing materials are materials used to construct a protective cover over a structure to shield its interior from the natural elements.

* * * * *

Silica fume is a waste byproduct of alloyed metal production.

■ 3. In § 247.11, add paragraph (d) to read as follows:

§ 247.11 Vehicular products.

* * * * *

(d) Rebuilt vehicular parts.

■ 4. In § 247.12, revise paragraphs (c), (d), and (j) and add paragraphs (k), (l), and (m), to read as follows:

§ 247.12 Construction products.

* * * * *

(c) Cement and concrete, including concrete products such as pipe and block containing:

- (1) Coal fly ash;
- (2) Ground granulated blast furnace slag (GGBF);
- (3) Cenospheres; or
- (4) Silica fume from silicon and ferrosilicon metal production.

(d) Carpet made from polyester fiber made from recovered materials for use in moderate-wear applications such as single-family housing and similar wear applications.

* * * * *

(j) Railroad grade crossing surfaces made from cement and concrete containing fly ash, recovered rubber, recovered steel, recovered wood, or recovered plastic.

(k) Modular threshold ramps containing recovered steel, rubber, or aluminum.

(l) Nonpressure pipe containing recovered steel, plastic, or cement.

(m) Roofing materials containing recovered steel, aluminum, fiber, rubber, plastic or plastic composites, or cement.

■ 5. In § 247.16, add paragraph (l) to read as follows:

§ 247.16 Nonpaper office products.

* * * * *

(l) Office furniture containing recovered steel, aluminum, wood, agricultural fiber, or plastic.

■ 6. In § 247.17, add paragraphs (h) and (i) to read as follows:

§ 247.17 Miscellaneous products.

* * * * *

(h) Bike racks containing recovered steel or plastic.

(i) Blasting grit containing recovered steel, coal and metal slag, bottom ash, glass, plastic, fused alumina oxide, or walnut shells.

[FR Doc. 04-9864 Filed 4-29-04; 8:45 am]

BILLING CODE 6560-50-P