

Example Approaches to Green Purchasing Compliance Monitoring

The Resource Conservation and Recovery Act of 1976 and the Farm Security and Rural Investment Act of 2002 require Federal agencies to establish affirmative procurement programs for purchasing Environmental Protection Agency- and U.S. Department of Agriculture-designated recycled content and biobased products, respectively. One required element of these programs is annual review and monitoring of the program. Auditing or compliance monitoring also is part of the standards for success for the green purchasing standard the Office of Management and Budget's environmental stewardship scorecard.

The following monitoring approaches are based on compliance monitoring programs in use by Federal agencies. These options are provided as guidance only and should not be construed as a directive from OFEE or the Office of Federal Procurement Policy that these are the only alternatives for monitoring compliance with the statutory and Executive Order 13423 green purchasing requirements.

The basic monitoring requirement is to establish and implement a program -- including corrective action of problems identified -- that suits your agency's size, mission, organization, and resource constraints. The key is establishing a program that provides an assessment of compliance across the various green products and service contracts in which these products could be supplied or used. Each agency must determine whether the monitoring program uses one of the approaches listed below, uses a hybrid of these approaches, uses an approach not listed in this document, or is integrated in agency or facility environmental management systems. Each agency must also determine whether monitoring will be done centrally, by each operating division, or by individual facilities.

In addition, because a one-size-fits-all approach might not suit an agency's organization, mission, and resources, agencies can choose multiple approaches, using one option for one location or operating division, another option at another location or operating division, and another approach created by the agency at other locations or operating divisions.

Approach 1 – Contract Sampling and Review

The following discussion is based on contract sampling and review conducted by the Department of Commerce.

Agencies can select a sample of contracts to review for compliance with the green purchasing requirements. Data from the Federal Procurement Data System can help to identify contracts to review. This type of compliance monitoring can include sampling of contracts from all operating entities within the department or agency; sampling of specific types of contracts (e.g., construction, janitorial, IT); or sampling of contracts across the geographic locations in which a department or agency is located.

Key points:

- It is recommended that this be a collaborative effort between the environment office and the acquisition office.
- Pull FPDS data and identify contracts for which the contracting officials coded “A” in response to the question “will EPA-designated recycled content products be supplied or used in this contract.” Alternatively, select contracts in a category which should be coded A but have been coded E.
- Select a representative sample of these contracts. By looking at the title of the contracting action, try to identify contracts in which recycled content products were likely to be used. There is no hard and fast rule regarding what constitutes a “representative sample.” As used here, “representative” means representative of the breadth of the agency’s operations (i.e., monitoring contracts from all operating divisions) and types of contracts in which green products are likely to be supplied or used (e.g., construction, janitorial services, grounds maintenance, food services, office supplies, IT products or services, facility operation and maintenance, fleet vehicle maintenance).
- Request contract data from the operating groups that issued the contracts.
- Review the contracts and identify those properly coded and those mis-coded. For example, a contract for office electronic equipment should not be coded “A,” because there are no EPA-designated recycled content electronic products.
- Identify appropriate corrective action, such as training about the green purchasing requirements and/or properly coding FPDS data.
- Note: Commerce used the TEAM guide (see below) as a basic reference when reviewing the contracts.

Approach 2 – Incorporate Contract Sampling Into Facility Compliance Audits

The following discussion is based on NASA’s facility compliance audits.

Key points:

- NASA’s compliance monitoring is referred to as an environmental functional review (EFR). Auditors visit every NASA facility once every three years. Two members of the review team review green purchasing, using an audit questionnaire.
- In order to do the reviews, it is important to understand what the FAR requires and how the FAR provisions should be applied. Understanding the FAR allows the reviewer to understand the boundaries and rules within which the contracting officials operate.
- It is recommended that reviewers examine specific types of contracts that should require the supply or use of green products, such as transportation, janitorial, office supplies, and logistics contracts.
- Prior to visiting the facility, the reviewer should gather information on the type of contracting actions issued by the facility. When a support services contract is used, it is important to learn whether the contract imposes a general obligation on

- the contractor to comply with all environmental laws, a general requirement to implement the facility's green purchasing requirements, or specific requirements (e.g., use re-refined oil in fleet vehicles).
- It is recommended that reviewers discuss with the contracting officer technical representatives the kind of challenges they face in implementing the green purchasing requirements.
 - It also is helpful to determine how the contractor's performance is evaluated; generally, environmental aspects are a small part of overall performance.
 - As part of field verification of compliance, observe what types of products are used in equipment (e.g., the type of paper used in the copiers) and the chemicals and products in supply cabinets.
 - When reviewing contracts for compliance, determine whether green purchasing is included through the generic clauses (i.e., FAR clause 52.223-10 clause, Waste Reduction Program), provisions in the scope of work requiring support services contractors to follow facility requirements, or more detailed provisions in the scope of work.
 - For construction contracts, it is better to incorporate the green purchasing requirements in each relevant section (e.g., concrete, paint/finishes) because implementation of these sections is usually the responsibility of a subcontractor, who will look only at that section.
 - It is recommended that adverse findings be levied against an office or a procedure, not an individual.
 - It is further recommended that adverse findings be fed into the environmental management system (EMS) corrective action process. The facility EMS manager is responsible for ensuring that correction action is taken.

Approach 3 – Use of TEAM and CP-Track

The following discussion is based on the use of the TEAM guide and CPTrack by several agencies.

- The Environmental Assessment Manual (TEAM) is prepared and maintained by the U.S. Army Corps of Engineers Engineer Research & Development Center. It is available on a subscription basis. It provides summaries of Federal legal requirements and guidance in the form of checklists on what needs to be done to comply with the requirements.
- Green purchasing is part of the Pollution Prevention chapter, which currently covers the EPA-designated recycled content products under RCRA, FAR clauses, and USDA-designated biobased products.
- The checklists identify the regulatory requirement and what must be done to meet that requirement so the reviewer knows what to review.
- The Compliance and Processes Tracking System (CP-Track) is an on-line tool to assist agencies with annual compliance inspections and management, including annual facility surveys. It is prepared and maintained by USACE Engineer Research & Development Center.

- CPTrack is based on the environmental management system plan/do/check/act approach.
- CPTrack allows an agency to create tailored questions for a facility or for agency-specific requirements. It can be used for self-auditing, for auditing by an outside agency group such as a Tiger team, or for auditing by a third-party.
- The recycled content product questions in CPTrack ask whether the facility purchases products in the 8 EPA designation categories. It asks specifics for a couple of the designated products – oil, tires, engine coolant, janitorial products, copier paper, and carpet. It also a general question about purchasing biobased, biodegradable lubricating and hydraulic oils.
- The CP-Track audit questions can be used by a facility or by a third party, such as a headquarters or outside auditor. For example, a headquarters can go through the CP-Track survey with the facility manager and operations staff. The survey results can help to identify corrective actions needed, such as education and additional tools for the acquisition community.