

earlier item designations.¹ At the same time, EPA also published a notice of 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. At the same time, EPA published a draft RMAN IV notice (66 FR 45297). EPA expects to promulgate the final CPG IV and publish a notice concerning the availability of RMAN IV in the near future. For more information on CPG, go to the EPA Web site at <http://www.epa.gov/cpg/>.

Today, in CPG V, EPA is proposing to revise the current compost designation to include composts made from manure or biosolids, and also designate fertilizers made from recovered organic materials.^{2,3} Both of these items fall under the Landscaping Products category of designations in the CPG.

A. What Criteria Does EPA Use for Selecting Items for Designation?

While not limiting consideration to these criteria, 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; and
- (4) Other uses for the recovered materials used to produce the item.

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.

² A number of parties have asked EPA to consider the following items for future CPG designations: asphalt, electronics, industrial ceramics, offset guardrail blocks, roofing sealants and refuse-derived fuel. EPA will consider these for future designation.

³ This regulatory proposal is an important component of EPA's recently announced "Resource Conservation Challenge," which is designed to encourage and provide new incentives for increased reuse and recycling of materials (for further information on this initiative, see www.epa.gov/epaoswer/osw/conservation/index.htm.)

EPA consulted with Federal procurement and requirement officials to identify other criteria to consider when selecting items for designation. Based on these discussions, the Agency concluded that the factors set forth in RCRA section 6002(c) should also be considered in its selection decisions. This provision requires each procuring agency that procures an item designated by EPA to procure the item composed of 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 it determines: (1) The item is not available within a reasonable period of time, (2) the item fails to meet the performance standards set forth in the Agency's specification, or (3) the item is available only at an unreasonable price.

EPA recognized that the above criteria limit the conditions under which procuring agencies must purchase EPA-designated items with recovered materials content, and, thereby, could limit the potential impact of an individual item designation on the demand for that recovered content item in the U.S. economy. (The limitations of RCRA section 6002(c) also effectively describe the circumstances in which a designated item is "available" for purposes of the statute.) For these reasons, EPA is also taking into account the limitations cited in RCRA section 6002(c) in its selection of items for designation in today's proposed CPG V. Thus, the Agency considers the following criteria in selecting items for designation: (1) use of materials found in solid waste; (2) economic and technological feasibility and performance; (3) impact of government procurement, availability and competition; and (4) other uses for recovered materials. These criteria are discussed in detail in Section II of the document entitled, "Background Document for Proposed CPG V and Draft RMAN V." A copy of this document is included in the RCRA public docket for this rule.

EPA has adopted two approaches in its designation of items that are made with recovered materials. For some items, such as paper and paper products, the Agency designates broad categories of items and provides information in the related RMAN as to their appropriate applications or uses. For other items, such as plastic trash bags, EPA designates specific items, and, in some instances, includes in the designation the specific types of recovered materials or applications to which the designation applies. The

Agency explained these approaches to designating items in the preamble to CPG I (60 FR 21373, May 1, 1995).

The Agency has learned that some procuring agencies may erroneously believe that the designation of a broad category of items in a CPG requires them (1) to procure all items included in such category with recovered materials content and (2) to establish an affirmative procurement program for the entire category of items, even where specific items within the category may not meet current performance standards. This is not required under RCRA as implemented through the CPGs and RMANs. RCRA section 6002 does not require a procuring agency to purchase recovered-content items that are not available or that 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 with recovered materials content is only available at an unreasonable price or the purchase of such item is inconsistent with maintaining a reasonable level of competition. However, EPA stresses that, when procuring any product for which a recovered materials alternative is available that meets the procuring agency's performance needs, the procuring agency should seek to purchase the product made with the highest percentage of recovered materials practicable.

The items proposed for designation today have all been evaluated with respect to EPA's criteria. Details of these evaluations are discussed in the "Background Document for Proposed CPG V and RMAN V. Section IV of this preamble provides a summary of EPA's rationale for designating these items.

B. How Can I Comment on EPA's Proposed Rule?

EPA requests comments and information throughout this preamble. In general, the Agency is requesting comments on: (1) the items selected for designation and (2) the accuracy of the information presented in the discussions of the basis of the item designations. Requests for specific comments and information are included in the narrative discussions for each of the designated items, which follow in Section IV.

EPA also is requesting comments on the draft RMAN V published in the notice section of today's **Federal Register**. It includes procurement methods for each of the items EPA is proposing to designate today.