

For purposes of assessing the impacts on small entities of today's rule, 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 any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

EPA evaluated the potential costs of its proposed designations 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 proposal, if promulgated, 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 2 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 to comply 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 proposed rule on small entities, EPA certifies that the proposal, if promulgated, would not have a significant economic impact on a substantial number of small entities.

This proposal, therefore, does not require a regulatory flexibility analysis. The basis for EPA's conclusions that today's proposed rule, if adopted, will not have a significant impact on a substantial number of small entities is described in greater detail in the EIA for the proposed rule.

While not a factor relevant to determining whether the proposed rule will have a significant impact for RFA purposes, EPA has concluded that the effect of today's proposed rule would 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), Pub. 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 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 proposed 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 proposed 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, \$1.1 million annually. The cost of enforceable duties that may arise as a result of today's proposed rule on the private sector are estimated not to exceed \$20,000 annually. Thus, the proposed rule is not subject to the written statement requirement in sections 202 and 205 of the Act.

The designated items included in the proposed CPG V 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, \$1.1 million annually. In compliance with Executive Order 12875 entitled Enhancing the Intergovernmental Partnership, 58 FR