

"Procurement Requirements Applicable to Government Agencies"
(Key Words: Federal agency; procurement guidelines; recycling;
Subtitle D)

QUESTION: One of the primary objectives of the Resource Conservation and Recovery Act (RCRA) is to conserve valuable material and energy resources (Section 1003(a)). Because the collective purchasing power of federal, state, and local governments has significant potential to expand markets for products made with recovered materials, RCRA Section 6002 requires government procuring agencies, when purchasing EPA-designated items, to select items with the highest amount of recovered material content practicable. All federal agencies must review and revise all of their specifications for products to eliminate language which discriminates against the use of recovered materials. In addition, each procuring agency subject to Section 6002 must establish an affirmative procurement program for each item designated by EPA. How does a government agency determine whether or not it must comply with the requirements of Section 6002?

ANSWER: A government agency should answer the following three questions to determine if it is subject to the requirements of Section 6002. First, does the government agency meet the definition of a procuring agency? The definition of procuring agency includes federal agencies, as well as state and local government agencies using federal funds, and their contractors. Specifically, RCRA Section 1004(17) defines a procuring agency as "...any federal agency, or any state agency or agency of a political subdivision of a state which is using appropriated federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract." For purposes of this definition, the use of appropriated federal funds includes the use of federal funds commingled with state or local funds.

The second question is, does the government agency purchase a product designated in an EPA guideline? The affirmative procurement program requirements in Section 6002 are limited to products specifically designated by EPA procurement guidelines. Procuring agencies, however, are encouraged to establish affirmative procurement programs for other available items made with recycled materials. In addition to designating which items

are covered by Section 6002, EPA procurement guidelines provide recommendations for government agencies to carry out the responsibilities of Section 6002. To date, EPA has issued five procurement guidelines. The guidelines are found in 40 CFR Parts 248, 249, 250, 252 and 253, and provide recommendations for the procurement of building insulation, cement and concrete containing fly ash, paper and paper products, re-refined lubricating oil, and retread tires, respectively.

Finally, does the government agency purchase \$10,000 or more worth of a product designated in an EPA guideline during the course of the current fiscal year or did the agency purchase \$10,000 or more worth of a designated item or functionally equivalent items during the preceding fiscal year? Each guideline specifies how "functional equivalence" should be interpreted to determine whether the government agency has reached the \$10,000 threshold. If the answer to all three of the above questions is yes, the agency must comply with the requirements of Section 6002. In other words, government agencies that meet the definition of a procuring agency and purchase \$10,000 or more worth of a product designated in a EPA guideline during the current fiscal year, or purchased \$10,000 or more worth of a designated item or functionally equivalent items during the preceding fiscal year, are required to comply with RCRA Section 6002. (August 1993 Monthly Hotline Report)