

CLIENT ALERT

EPA Considers Updating Federal Procurement Guidelines for Recycled Content

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On April 7, 2020, the U.S. Environmental Protection Agency (EPA) published a notice in the Federal Register requesting comments on federal procurement guidelines that designate products that are or can be produced with “recovered materials” and set forth recommended practices for purchasing such items. Recovered materials are those waste materials that have been recovered or diverted from the solid waste stream. The procurement guidelines are required under section 6002 of the Resource Conservation and Recovery Act (RCRA), which established the “buy recycled” program to use Federal purchasing power to stimulate the demand for products made with recovered materials. Federal agencies, as well as state and local agencies and government contractors, that use appropriated funds to purchase \$10,000 or more of designated items are required to purchase items containing recovered materials to the fullest extent possible.

The public comment period closes on July 6, 2020.

Within one year after EPA’s designation of an item in a comprehensive procurement guideline, federal agencies are required, also under section 6002 of RCRA, to revise their procurement specifications. Agencies are also required to develop an affirmative procurement program for the purchasing of items with recovered, or recycled, content. The Office of Federal Procurement Policy is responsible for coordinating implementation across the Federal government to maximize the purchase of items containing recovered materials.

EPA currently has comprehensive procurement guidelines for eight categories of products:

- Paper and paper products
- Vehicular products
- Construction products
- Transportation products
- Park and recreation products
- Landscaping products
- Non-paper office products
- Miscellaneous products (including awards and plaques, bike racks, and signage)

In 1993, President Clinton issued Executive Order 12873 (“Federal Acquisition, Recycling, and Waste Prevention”), which directed agency heads to consider use of environmentally preferred products, waste prevention, and life cycle costs as part of their program and acquisition plans. It also established a formal process for EPA to use in developing and updating the comprehensive procurement guidelines and establishing recovered material advisory notices that provide a range of recovered content levels that are available for the designated items.

Between 1995 and 2007, EPA issued five comprehensive procurement guidelines covering 61 products. EPA has not updated the comprehensive procurement guidelines or recovered material advisory notices since 2007. In 2019, EPA released its National Framework for Advancing the U.S. Recycling System, a plan to bolster recycling infrastructure and strengthen the secondary materials markets.

EPA is seeking comment on whether the right items have been designated, whether products should be added or deleted based on what agencies are actually procuring, and if the specifications for recycled content contained in the recovered material advisory notices are appropriate.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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