

GAO

Report to the Chairman, Subcommittee
on Transportation and Hazardous
Materials, Committee on Energy and
Commerce, House of Representatives

May 1993

SOLID WASTE

Federal Program to Buy Products With Recovered Materials Proceeds Slowly





United States
General Accounting Office
Washington, D.C. 20548

**Resources, Community, and
Economic Development Division**

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May 17, 1993

The Honorable Al Swift
Chairman, Subcommittee on Transportation
and Hazardous Materials
Committee on Energy and Commerce
House of Representatives

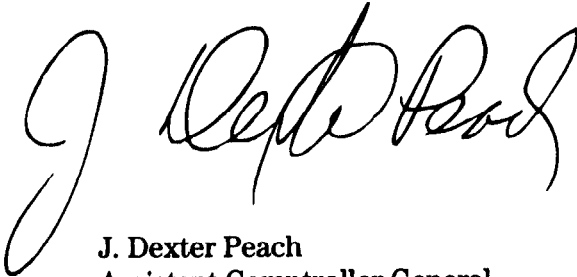
Dear Mr. Chairman:

As you requested, this report discusses the implementation of the federal program to buy products containing recovered material, as mandated by section 6002 of the Resource Conservation and Recovery Act of 1976.

As arranged with your office, unless you publicly announce its contents earlier, we will make no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies to the Secretary of Commerce; the Administrator, Environmental Protection Agency; the Director, Office of Management and Budget; the Administrator, General Services Administration; and other interested parties. We will also make copies available on request.

This work was performed under the direction of Richard L. Hembra, Director, Environmental Protection Issues, who may be reached at (202) 512-6111 if you or your staff have any questions. Other major contributors are listed in appendix VII.

Sincerely yours,



J. Dexter Peach
Assistant Comptroller General

Executive Summary

Purpose

By the year 2000, everyone in the United States is expected to discard more than 4 pounds of solid waste a day. Most of the waste ends up in landfills that are reaching capacity, and establishing new sites is increasingly difficult. The Congress recognized that the federal government could encourage the development of products containing materials recovered from discarded waste by buying such products for its own use. In the Resource Conservation and Recovery Act (RCRA) of 1976, the Congress directed federal procuring agencies to purchase items composed of recovered materials. It also directed the Environmental Protection Agency (EPA) to designate which items agencies should purchase, required the Department of Commerce to develop markets for recovered materials, and required the Office of Management and Budget's Office of Federal Procurement Policy (OFPP), in cooperation with EPA, to implement the RCRA procurement policy.

Concerned about the implementation of these requirements, the Chairman, Subcommittee on Transportation and Hazardous Materials, House Committee on Energy and Commerce, requested that GAO examine (1) EPA's progress in developing guidelines for procuring agencies to use in purchasing products containing recovered materials, (2) Commerce's efforts to develop markets for products containing recovered materials, and (3) the effectiveness of program leadership and the overall progress that agencies have made in implementing program requirements.

Background

Section 6002 of RCRA requires EPA to issue guidelines that designate products made with recovered materials and to recommend practices for purchasing the products. These guidelines apply to all executive branch agencies, state and local agencies using appropriated federal funds, and their contractors. Within 1 year after EPA issues a guideline, agencies are to establish affirmative procurement programs for each guideline product to ensure that items composed of recovered materials will be purchased to the maximum extent practicable. OFPP is required to (1) coordinate the procurement program for products containing recovered materials with other federal procurement policies and (2) periodically report to the Congress on the progress made in implementing the program. Executive Order 12780, issued in 1991, established the Council on Federal Recycling and Procurement Policy to identify and recommend initiatives to encourage the acquisition of products produced with recovered materials.

Results in Brief

EPA has been slow to develop procurement guidelines. EPA took more than 6 years to issue its first guideline and more than a decade to issue others. EPA has recently increased resources for guideline development, but it continues to encounter delays, primarily because of (1) obstacles in obtaining information, (2) its time-consuming formal review and approval process, and (3) staff and contractor changes.

Commerce has done little to stimulate market development. It terminated its program in 1982, stating that its major objectives had been achieved. Since 1982, however, difficulties in developing markets for recovered materials have created an oversupply of recyclable materials. Commerce is currently doing only limited work that could assist the recycling industry.

Until recently, program leadership had been ineffective. In the absence of such leadership, some federal procuring agencies stated, they had been unaware of the program or had assigned it a low priority. In response to the recent executive order and heightened congressional interest, agencies have begun to comply with program requirements but in so doing have identified barriers that could hinder program effectiveness. While OFPP has submitted reports to the Congress, it has only recently requested the information needed to measure agency progress. Without a system to provide needed data, complete data to assess the program may not be available in the near future.

Principal Findings

EPA Needs Improved Focus to Develop Procurement Guidelines

Because EPA had not issued any guidelines 4 years after RCRA was enacted, the Congress directed EPA to issue its first five guidelines by 1982. However, EPA did not issue the first guideline (cement and concrete containing fly ash) until 1983 and the other four guidelines (paper and paper products, re-refined lubricating oil, retread tires, and building insulation) until 1988 and 1989.

Although EPA has increased resources for guideline development, it has not yet issued more guidelines because its process is lengthy, involving extensive research and time-consuming rule-making procedures. It has delayed the issuance of four new guidelines in development since 1989. EPA also has faced obstacles in obtaining information about the availability of products containing recovered materials and about agencies' purchases.

Commerce and the General Services Administration (GSA) have not always helped EPA to obtain this information, and EPA has not established a mechanism to coordinate efforts with these agencies. EPA has begun to develop a long-term strategy for developing procurement guidelines that could address these issues but had not completed it as of February 1993.

Commerce Plays a Limited Role in Promoting Uses for Recovered Materials

Because Commerce stated in 1982 that it had basically fulfilled its statutory responsibilities, it has not maintained a program to identify the location of existing or potential markets for recovered materials. Recently, an oversupply of recyclable materials has developed as a result of successful local collection programs and a corresponding lack of markets for the materials collected. Although Commerce could address this market imbalance, it continues to give recycling a low priority.

Program Leadership Has Been Limited

Program leadership was limited until 1991, when OFPP began to take some actions. Before then, some procuring agencies had placed little priority on implementing affirmative procurement programs. Because the executive order and a congressional hearing raised agency awareness, 19 of the 34 federal procuring agencies that had not had affirmative procurement programs prior to December 1991 had established or had begun to establish programs by June 1992. However, this increased awareness of program requirements has pointed out a number of barriers that could affect implementation. For example, procuring agencies have noted that the RCRA procurement requirements need to be incorporated into governmentwide procurement and grant policies to ensure consistency. Furthermore, some agencies have expressed a need to clarify whether a price preference for products containing recovered materials should be used and when prices for these products are unreasonable.

Although OFPP met the statutory requirement to report to the Congress on agencies' progress, its reports did not contain the data needed to measure agencies' purchases. OFPP has recently started requesting needed data, but the lack of information on federal purchases of products containing recovered material may limit its efforts. Moreover, measurable goals have not been established to assess the program's progress.

OFPP has recently begun to incorporate program requirements into governmentwide procurement and grant policies. The new Council has also taken on some leadership responsibility by establishing work groups

to address program barriers. GAO believes that OFPP, with assistance from the Council, should continue its recently embraced leadership role.

Recommendation to the Congress

To help federal agencies better understand the parameters for procuring products containing recovered materials, GAO recommends that the Congress clarify the meaning of unreasonable price and explicitly state its views on establishing a price preference.

Recommendations to Federal Agencies

So that EPA can better assist agencies to increase their procurement of products containing recovered materials, GAO recommends that EPA make final a long-term strategy for developing procurement guidelines. To address the changing market conditions facing the recovered materials industry, GAO recommends that Commerce reestablish a program to stimulate the demand for recovered materials. To strengthen the overall leadership of the RCRA procurement program, GAO recommends that OFPP (1) work with the Council to establish measurable program goals and (2) complete incorporation of the RCRA program requirements into governmentwide procurement policies.

Agency Comments

EPA, GSA, and OFPP provided written comments on this report. Commerce said that it did not have any comments at this time. EPA and GSA generally concurred with the information presented and provided technical corrections and clarifying information, which have been incorporated into the report as appropriate. OFPP concurred with GAO's findings that, until recently, agencies were generally slow to implement affirmative procurement programs. OFPP did not believe that the report adequately recognized many of its recent initiatives to encourage greater federal use of environmentally sound and energy-conserving products. However, the main focus of GAO's report is on implementation of the RCRA section 6002 procurement program. While GAO believes that many of the OFPP initiatives are noteworthy efforts, they are not specifically related to section 6002. However, GAO has updated the report to reflect recent actions by OFPP to improve the section 6002 procurement program. The agencies' full comments are provided in appendixes III, IV, V, and VI.

We also obtained comments from the Departments of Defense, the Interior, Health and Human Services, and Housing and Urban Development, as well as the Government Printing Office, on excerpts of the report that were relevant to their agencies. Their clarifying comments were incorporated into the report, as appropriate.

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Abbreviations

ASTM	American Society of Testing and Materials
DOD	Department of Defense
EDA	Economic Development Administration
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration
FAR	Federal Acquisition Regulation
GAO	General Accounting Office
GPO	Government Printing Office
GSA	General Services Administration
HHS	Department of Health and Human Services
HUD	Department of Housing and Urban Development
ITA	International Trade Administration
NIST	National Institute of Standards and Technology
OFPP	Office of Federal Procurement Policy
OMB	Office of Management and Budget
RCRA	Resource Conservation and Recovery Act

Introduction

The United States produces more waste than any other country. By the year 2000, every man, woman, and child is expected to discard an average of 4.4 pounds per day of paper, glass, metals, plastics, food and yard wastes, rubber, and other solid wastes. Currently, we put about 80 percent of these wastes into landfills, incinerate about 10 percent, and recycle about another 10 percent. However, some landfills are reaching capacity, and others are closing or have closed because they cannot operate within new safety standards established by the Environmental Protection Agency (EPA). Moreover, approval for new sites for combustion plants and landfills is increasingly difficult to obtain, and disposal costs are rising significantly. Many discarded wastes destined for landfills can be recovered and reused.

Federal procurement accounts for about 8 percent of all goods and services produced nationwide.¹ The federal government could play an important role in encouraging the development of markets for products containing recovered materials if it directs its purchasing power towards such products. Recognizing this, the Congress included provisions in the Resource Conservation and Recovery Act of 1976 (RCRA) to direct procuring agencies to purchase items composed of recovered materials.²

Procurement Program Provisions

Section 6002 of RCRA requires EPA to prepare guidelines that identify products that are or can be produced with recovered materials and to set forth recommended practices for procuring agencies to follow when purchasing the designated products. The section also specifies criteria for choosing products for guidelines. The guidelines themselves are to include information on recovered material and product availability, price, and performance standards, and standards for the minimum amount of recovered material that the product should contain, where applicable. The guidelines also are required to recommend ways of obtaining vendor certification of the recovered material content of products. EPA is required to consult with officials from the General Services Administration (GSA), the Department of Commerce, and the Government Printing Office (GPO) when developing procurement guidelines.

¹Based on calendar year 1991 data from the Economic Report of the President, transmitted to the Congress in Jan. 1993.

²Procuring agencies are executive branch agencies, state and local agencies using appropriated federal funds, and their contractors. The requirements of a particular EPA guideline apply only if the procuring agency spends more than \$10,000 a year on the guideline product and if all or part of that is from appropriated federal funds.

Within 1 year after EPA publishes a product guideline, each procuring agency is required to develop an affirmative procurement program to ensure that items composed of recovered materials will be purchased to the maximum extent practicable, consistent with applicable provisions of federal procurement law. Each affirmative procurement program must, at a minimum, contain the following four components:

- a preference program to buy products containing recovered materials,
- a strategy to promote the purchase of such products,
- procedures for obtaining and verifying estimates and certifications of the recovered material content of products, and
- an annual review and monitoring effort to assess the effectiveness of the affirmative procurement program.

Section 6002 further requires procuring agencies to review their specifications for the guideline products and to revise them to allow procurement of products containing recovered material. The law also provides that procuring agencies should eliminate requirements that specifically exclude the use of recovered materials. In addition, the law states that procuring agencies should revise performance standards that in effect exclude products containing recovered materials and that are more stringent than necessary to satisfy the agency's needs. For example, if an agency has a specification that precludes the use of retread tires, the specification must be replaced, preferably with a performance specification that specifies relevant performance factors for tires—such as tread wear, burst strength, and stopping distance.

Other Agency Roles and Responsibilities

The Office of Federal Procurement Policy (OFPP), within the Office of Management and Budget (OMB), is required to implement RCRA section 6002 in cooperation with EPA. Specifically, OFPP is responsible for coordinating section 6002 provisions with other policies for federal procurement so that the use of recovered resources is maximized. OFPP is also required to periodically report to the Congress on actions taken by federal agencies and on the progress made in implementing the recovered materials procurement program.

Subtitle E of RCRA assigns the Department of Commerce several resource recovery duties designed to promote the commercialization of proven resource recovery technology. These duties include (1) providing accurate specifications for recovered materials, (2) stimulating the development of markets for recovered materials, (3) promoting proven resource recovery

technology, and (4) providing a forum for the exchange of technical and economic data on resource recovery facilities. According to a congressional committee report accompanying RCRA, the Congress specifically gave these responsibilities to Commerce because of the Department's close working relationship with industry and the need to separate promotional activities from EPA's research and regulatory activities.

Recent Program Initiatives

On October 31, 1991, the President signed Executive Order 12780 to, among other things, (1) stimulate market demand for items produced using recovered materials and (2) require that federal agencies promote waste reduction and recycling of reusable waste. The executive order directs the immediate implementation of cost-effective federal procurement preference programs to stimulate market demand. It establishes a Council on Federal Recycling and Procurement Policy, chaired by a senior EPA official—the Federal Recycling Coordinator, and requires each agency to designate an Agency Recycling Coordinator. The Council includes representatives from OFPP, EPA, the Council on Environmental Quality, GSA, the National Aeronautics and Space Administration, and the Departments of Commerce, Defense, Energy, and the Interior. EPA officials helped to draft the executive order, and EPA staff provide technical assistance to the Council. The order also required executive branch agencies to report to EPA, by April 30, 1992, on their adoption of affirmative procurement programs. In addition, these agencies are required to annually review their programs' effectiveness and to report their findings to EPA and OFPP by December 15 of each year, beginning with a report covering fiscal year 1992.

On March 24, 1992, OFPP published a notice in the Federal Register soliciting public comment on a draft policy letter that provides governmentwide policies for the acquisition and use of environmentally sound, energy-efficient products and services. Among other things, the policy letter, which became effective on December 9, 1992, reiterates (1) the RCRA requirement that procuring agencies must develop agency-specific affirmative procurement programs for EPA guideline products and (2) the executive order requirement that federal executive agencies annually report to EPA and OFPP on the effectiveness of their affirmative procurement programs.

Objectives, Scope, and Methodology

The Chairman, Subcommittee on Transportation and Hazardous Materials, House Committee on Energy and Commerce, asked us to examine the recovered materials procurement program. As subsequently agreed, we assessed

- EPA's progress in developing procurement guidelines for products containing recovered materials,
- efforts made by the Department of Commerce to develop markets for products containing recovered materials, and
- the current program leadership's effectiveness and federal agencies' progress in implementing affirmative procurement programs.

We provided testimony for the record to the Subcommittee on April 3, 1992, that included preliminary information on the above objectives.³ This report includes the information contained in the testimony as well as additional information necessary to address the three objectives in more detail. Earlier, we issued a report that assessed federal civilian agencies' wastepaper recycling programs and addressed obstacles to expanded recycling.⁴

To address the first objective, we obtained information about guideline development by interviewing EPA officials, reviewing documents on the development of procurement guidelines, and interviewing EPA contractor officials involved in guideline development efforts. We also interviewed GSA officials to determine their role in the guideline development process. In order to determine the types of recovered material products states procure, we interviewed procurement officials from seven states. These states were identified by the Northeast Maryland Waste Disposal Authority as having proactive programs to purchase recycled products. Selected states included California, Florida, Illinois, Maryland, New Jersey, New York, and Washington.

To accomplish the second objective, we analyzed a Commerce report summarizing the Department's responsibilities under RCRA. We also interviewed current and former Commerce and current EPA officials to obtain their views on Commerce's role in supporting recycling facilities, improving the competitiveness of domestic recovered materials markets,

³Solid Waste: Progress in Implementing the Federal Program to Buy Products Containing Recovered Materials (GAO/RCED-92-42, Apr. 3, 1992).

⁴Wastepaper Recycling: Programs of Civil Agencies Waned During the 1980s (GAO/GGD-90-3, Dec. 15, 1989).

developing resource recovery technology, and developing standards for products containing recovered materials.

To address the third objective, we reviewed federal procuring agencies' reports to OFPP concerning implementation of the RCRA procurement program and reports to EPA in response to Executive Order 12780 concerning the status of agencies' adoption of affirmative procurement programs. We also reviewed testimony submitted for Senate and House hearings on government procurement during 1991.⁵ Further, we interviewed procuring agency officials at EPA, GSA, the Defense Logistics Agency, GPO, and the Departments of the Interior, Health and Human Services, and Housing and Urban Development to obtain information on, among other things, agencies' progress in implementing affirmative procurement programs, any barriers to buying recycled products, and reviews by agencies of their specifications to determine if they contain biases against recycled products. GSA and GPO also provided data on purchases of paper and paper products containing recovered and virgin materials for the most recent 12-month period for which data were available. We also interviewed selected state officials and obtained data on their programs to procure items containing recovered materials, state laws and regulations that specify price preferences and goals for the purchase of recycled products, and their purchases of recycled and virgin paper and paper products for the most recent 12-month period.

The federal procuring agencies interviewed were judgmentally selected on the basis of their respective roles in the overall federal procurement program, the size of their procurements, the types of procurements made, and their knowledge of the requirements of affirmative procurement programs. We selected EPA because it has a key role in the overall federal program. GSA, the Defense Logistics Agency, and GPO were selected because they are the largest central procuring/supply agencies of guideline items in the federal government. The Department of Health and Human Services was selected because it stated in its response to a questionnaire sent by the Subcommittee on Oversight of Government Management, Senate Committee on Governmental Affairs, that it did not know about EPA's procurement guidelines. Further, according to the Subcommittee staff, the Department was not aware of its responsibilities under section 6002 to develop an affirmative procurement program. The Department of Housing and Urban Development was selected because of its large volume of service contract awards, particularly for construction-related services.

⁵Hearings before the Subcommittee on Transportation and Hazardous Materials, Committee on Energy and Commerce, U.S. House of Representatives, June 13, 1991. Hearings before the Subcommittee on Oversight of Government Management, Committee on Governmental Affairs, U.S. Senate, Nov. 8, 1991.

The Department of the Interior was selected because it is a relatively small federal procuring agency.

In addition, we interviewed agency officials at OFPP and received their written comments to our questions on the instructions and guidance that had been provided to procuring agencies on affirmative procurement programs and the type of information agencies should report on their implementation. We interviewed officials from federal procuring agencies to determine what guidance and instructions had been received from OFPP, EPA, or any other agency regarding the implementation of affirmative procurement programs and what types of barriers were hindering their efforts to institute such programs.

We conducted our review between September 1991 and October 1992 in accordance with generally accepted government auditing standards. EPA, Commerce, OFPP, and GSA provided written comments on a draft of this report, which are included in appendixes III, IV, V, and VI, respectively. Written and oral comments were also received from the Departments of Defense, Health and Human Services, Housing and Urban Development, and the Interior, as well as GPO, on excerpts of the report that were relevant to their agencies. Their comments were incorporated as appropriate.

EPA's Efforts to Develop Procurement Guidelines Need Improved Focus

EPA has been slow to develop procurement guidelines for products containing recovered materials. Between 1976 and 1989, EPA published five product guidelines. In general, the development of these guidelines was driven by congressionally established deadlines, all of which EPA had missed because of higher priorities. Beginning in 1989, EPA placed greater emphasis on the procurement guideline program by dedicating additional resources and staff, and the agency is developing four additional guidelines for products it has selected. However, no new guidelines have been issued since 1989.

Delays have occurred because of the lengthy process EPA uses to study and issue new guidelines, difficulties EPA has experienced in obtaining necessary information to support guideline development, and frequent staff turnover. Further, EPA has limited its examination of potential guideline items to products currently available and has not evaluated products containing recovered materials that may be expected to develop in the future.

EPA is identifying ways to streamline the guideline development process and is beginning to develop a long-term strategy for its procurement guideline work. However, neither initiative has been implemented to date.

EPA Giving Greater Emphasis to Procurement Guideline Program

From 1976 to 1989, EPA placed a low priority on developing procurement guidelines for products containing recovered materials and, as a result, missed statutory deadlines. However, starting in 1989, EPA placed a higher priority on guideline development because of increased public concern over solid waste disposal. EPA established a separate procurement guideline program in its Office of Solid Waste and committed additional resources and staff to the program.

EPA Missed Statutory Deadlines for Issuing Procurement Guidelines

In 1976 RCRA required EPA to publish guidelines for federal purchases of recycled products, but EPA had not issued any product guidelines by 1980. In 1980 the Congress directed EPA to issue five guidelines, identifying two specifically and leaving three to EPA's selection. The Congress directed EPA to issue three guidelines, including one for paper, by May 1981; and two, including one for construction materials, by September 1982. EPA did not meet these deadlines but did issue one guideline for construction materials (cement and concrete containing fly ash) in January 1983. In 1984 the Congress extended the paper deadline to May 1985 and required the remaining three guidelines to be issued by October 1985. At this time,

the Congress identified one guideline specifically—retread tires—and left the other two to EPA's selection. EPA again did not meet these deadlines. The paper guideline was subsequently issued in 1988, following a lawsuit brought by the Environmental Defense Fund and others that charged EPA with only issuing one of the five congressionally directed guidelines. EPA agreed to issue the remaining guidelines according to a schedule established in the consent decree.¹ The three remaining guidelines were issued shortly thereafter: lubricating oils in June 1988, retread tires in November 1988, and building insulation containing recovered materials in February 1989. An EPA contractor who worked on guideline development told us that the 1988 lawsuit provided the leverage needed to encourage EPA to issue the remaining congressionally mandated guidelines.

**EPA Committed Few Staff
and Resources Before 1990**

EPA missed deadlines for the five procurement guidelines because it placed a low priority on the procurement guideline program. According to an EPA official and an EPA contractor working on guideline development, EPA viewed the issuance of guidelines as a lower priority than other EPA programs, such as the management of hazardous waste, and this low priority was reflected in staffing. EPA officials told us that prior to 1984 the guideline development program was run by a staff of five people, who, because of other responsibilities, only worked part-time on the program. From 1984 through 1988, EPA officials noted that only one full-time person oversaw the selection, development, and processing of procurement guidelines. This oversight included directing EPA contractors who examined potential guideline items and drafted procurement guidelines, and circulating and obtaining approval for the draft guidelines both internally and externally.

Table 2.1 illustrates the approximate staffing and extramural expenditures (including both contractors' expenses and grants) from fiscal year 1986 through fiscal year 1992 for EPA's procurement guideline work.² Staff years and extramural dollars increased by over 200 percent between 1986 and 1992.

¹Environmental Defense Fund v. Thomas, No. 87-CV-3212-SS (S.D.N.Y. Apr. 8, 1988).

²EPA officials were unable to provide us with information on resources for the procurement guideline program prior to fiscal year 1986.

Table 2.1: EPA Resources for Procurement Guidelines, Fiscal Years 1986 Through 1992

Fiscal year	Full-Time equivalent staff	Extramural expenditures
1986	1.1	\$207,684
1987	1.0	252,016
1988	0.4	145,914
1989	0.8	186,220
1990	1.3	334,821
1991	2.2	577,911
1992	3.4	636,420

Note: Dollars are in 1987 constant dollars.

Beginning in 1990, EPA allocated more resources to procurement guidelines in order to foster markets for recovered materials. Public concern had grown about landfill capacity shortages and the high cost of managing waste. To respond to this concern, EPA formed a task force in 1988 to develop an agenda for meeting an EPA goal of managing 25 percent of the nation's municipal solid waste through source reduction and recycling by 1992. As part of this agenda, EPA identified the need to stimulate markets for recovered materials. One way to accomplish this was for EPA to study additional procurement guideline items. In 1989 EPA established a new program within the Municipal and Industrial Solid Waste Division of the Office of Solid Waste to provide greater emphasis on procurement guidelines. EPA hired additional staff in fiscal year 1991, and in fiscal year 1992, it increased extramural expenditures to \$636,420 in 1987 constant dollars to make the procurement guideline program a higher priority. During fiscal year 1992, EPA also devoted 3.4 full-time equivalent positions to this program.

Despite Increased Priority, EPA Has Not Issued Additional Procurement Guidelines

Even though EPA made procurement guideline work a higher priority 3 years ago, it has yet to issue a new procurement guideline for several reasons. First, EPA follows a lengthy, formal process to designate a product as a guideline item and process it through intra-agency and interagency review. Second, when researching which items to designate for guidelines, EPA and its contractor have encountered obstacles in obtaining necessary information on product availability and federal purchases. Third, EPA has no comprehensive strategy to focus the procurement guideline effort or to serve as a basis for communicating progress with the Congress and others. Finally, staffing and contractor changes have extended the amount of time EPA requires to develop new procurement guidelines. EPA has recently

begun to explore ways to streamline the guideline development process and to develop a long-term strategy for organizing the procurement guideline work and placing greater emphasis on new guidelines issuance. Neither initiative had been implemented when we completed our audit work. In February 1993 the Deputy Assistant Administrator for Finance and Acquisition stated that EPA had begun to develop the strategy.

EPA's Procedures Have Contributed to Delays

EPA has several guideline initiatives under way or planned, but it has missed internally generated estimates for their completion because of the lengthy procedures it uses to develop new guidelines and revise existing ones. EPA officials told us that it takes a minimum of 2 years to develop and issue a new procurement guideline or revise a controversial existing one. However, EPA now estimates that the new guidelines will not be made final until 1994, 5 years from the time the products were considered for selection. EPA began to revise the paper guideline over 2 years ago but estimates that the final revised guideline will not be issued until 1994.

EPA's planned guidelines include two for products made from recovered paper—fiberboard and hydraulic mulch—and two for products made from recovered plastic—geosynthetics and drain and sewer pipe. In commenting on our draft report in February 1993, the Deputy Assistant Administrator for Finance and Acquisition stated that EPA had completed feasibility studies and is now drafting guidelines for geosynthetics, fiberboard, and hydraulic mulch. EPA is completing feasibility studies on compost made from yard waste and on drain and sewer pipe made from recovered plastic. In addition, EPA is preparing draft analysis for peer review on the technology and economics of asphalt pavement made from waste rubber.

Selection of guideline items is the initial stage in guideline development. The amount of time needed to complete this stage varies by product and depends, among other things, on whether information is available about the minimum content standards that manufacturers can meet.

Once an item is selected, a feasibility study is conducted to determine if the guideline is warranted. Typically, the feasibility study examines how the product is used, estimates the amount purchased by the federal government, analyzes federal and state specifications for the product, and provides a profile of the industry involved in manufacturing the product.

If the feasibility study indicates that federal agencies could purchase a particular product containing recovered material, a guideline is drafted. The draft guideline includes data on suppliers of the product and, if applicable, the minimum recovered content material the product should contain.

EPA then circulates and obtains approval for the draft guideline both internally and externally. The steps involved in this stage include (1) review and approval by a guideline work group composed of interested federal agency officials, (2) review and approval by a steering committee made up of representatives from each interested EPA office, (3) review and approval by OMB, and (4) publication in the Federal Register and EPA solicitation of public comments.

After the work group reconvenes to consider public comments, the draft guideline goes to the EPA steering committee and to OMB for approval before being incorporated into the Code of Federal Regulations. None of the four guidelines under development has gone through the review and approval process. Four months elapsed between the time the draft guideline on fiberboard was drafted and the first of EPA's two work group sessions because EPA did not know which federal officials should be contacted for participation in the work groups. An EPA staff member in the procurement guideline program stated that the Agency Recycling Coordinators, who serve on the recently established Council on Federal Recycling and Procurement Policy, could help identify appropriate federal agency contacts to participate in guideline work group sessions in the future.

EPA is developing ways to reduce the time needed to issue procurement guidelines by designating items through the standard regulatory process but issuing guidance and revisions in a nonregulatory fashion. For example, if EPA designated garden hose containing recovered materials, this determination would go through the regulatory review and approval process and be published in the Code of Federal Regulations. At this point, interested parties could provide information to EPA to help the agency develop guidance, including minimum content standards, to explain how procuring agencies should implement the guideline. If garden hose manufacturers subsequently found that garden hoses could include a higher recovered materials content, they could so inform EPA, and EPA could raise the minimum content standards without having to go through the rule-making process. A staff member responsible for developing the streamlining initiative expects that the initiative will be submitted to the

Assistant Administrator for Solid Waste and Emergency Response for approval in early 1993.

EPA officials could not document the benefits that streamlining the procurement guideline process would achieve but envisioned several advantages. For example, the modified procedure could save the agency time in the feasibility study stage of the guideline development process because the contractor would not have to develop minimum content standards. Internal and external review of draft guidance might proceed more rapidly because industry, procuring agencies, and other interested parties would have the opportunity to help develop the guidance by providing input on minimum content standards. To obtain this input, EPA is considering holding focus groups with procuring agencies and industries and publishing articles in trade journals informing the public about designated products. Also, revising noncontroversial guidelines might be easier because EPA would no longer have to propose the changes through the Federal Register.

**EPA Has Faced Obstacles
in Obtaining Some Product
Information**

Obstacles in obtaining sufficient information to select potential guideline items also contribute to delays. These obstacles occur in deciding what products containing recovered material are available and what procurement actions agencies have taken.

**Obstacles to Obtaining
Information on Product
Availability**

According to an EPA staff member responsible for developing procurement guidelines, the number of private industries EPA has contacted for information on the availability of products containing recovered material has been limited. This has occurred because of certain procedural requirements imposed by the Paperwork Reduction Act, as interpreted by the project officer who administers the procurement guideline contract. Under the Paperwork Reduction Act, an agency must submit an "information collection request," which solicits answers to identical questions from 10 or more nonfederal parties, to OMB for approval. An EPA guideline development staff member told us that EPA is reluctant to obtain OMB approval because the process is lengthy and time-consuming and could further delay guideline development efforts. However, a policy analyst in the Office of Information and Regulatory Affairs at OMB told us that it generally takes between 30 and 60 days for OMB to act on an EPA request and that the Paperwork Reduction Act's procedural requirements do not apply to information provided voluntarily. Moreover, two EPA contractors who worked on guideline development during the 1980s told us that they were able to accomplish the information gathering needed

without triggering the Paperwork Reduction Act by, for example, contacting trade associations representing numerous companies and not asking identical questions of the industries contacted.

The Department of Commerce and some state government agencies could provide information on what industries produce as well as on which companies provide items containing recovered material. In fact, RCRA specifically requires EPA to consult with Commerce during the guideline development process. The conference report accompanying RCRA stated that Commerce has "because of its long-standing relationship with private enterprise, the channels of communication necessary to encourage greater involvement in resource recovery and use of recovered materials."³ Moreover, Commerce solicits information from industries for the Census of Manufacturers every 5 years. Thus, while Commerce also is subject to the Paperwork Reduction Act, it may not be as difficult for Commerce to obtain needed information from industries on recovered materials product availability as it would be for EPA to do so.

Until recently, EPA has obtained only limited assistance from Commerce on product availability. Two former EPA contractors told us that the information made available from Commerce has not been specific enough to indicate the amounts of recovered material that manufacturers are using for various products. They said that it would be very helpful if Commerce published, as part of the Census of Manufacturers, information on the types and amounts of recovered materials that manufacturers are using. To do this, Commerce would need to ask manufacturers about the materials they consume to make their products and, specifically, the amount of recovered materials they use. An industry analyst at Commerce working on the Census of Manufacturers stated that Commerce does not currently request this information from manufacturers but that it would not be difficult to do so. However, the analyst said that small manufacturers might find it difficult to respond if they do not currently collect information on the amount of recovered materials they use in their products. The EPA staff member in charge of guideline development from 1986 to 1989 told us that while Commerce provided EPA with assistance on the re-refined oil guideline during the mid-1980s, Commerce did not attend work group sessions to discuss the three other guidelines issued during his tenure, even though EPA invited Commerce to participate.

³House Committee on Interstate and Foreign Commerce, H.R. Rep. No. 1491, 94th Cong., 2nd Sess., pt. 1, at 43 (1976).

EPA has not routinely coordinated with state government agencies when studying the feasibility of guideline items. An EPA official responsible for issuing four of the five final guidelines told us that, with limited funds, EPA did not attempt to find out what state agencies were procuring or from whom. However, in developing the procurement guideline for retread tires, the EPA contractor contacted many states to find out whether they were buying retread tires. EPA currently contacts some states while conducting feasibility studies to obtain information on specifications for products EPA is considering. Some state central procuring agencies also have information that could help EPA identify manufacturers of products containing recovered material, even though RCRA does not specifically require EPA to coordinate with these agencies. The seven states we contacted during this review are purchasing numerous products containing recovered material (see app. I). Four of the states can readily identify the companies supplying these products.

Obstacles to Obtaining Information on Agencies' Procurement

In developing procurement guidelines, EPA and contractor officials also said that they face obstacles in obtaining information on federal agencies' purchases (the type and volume) to determine the extent to which the federal government's procurement of a potential guideline product might reduce the amount of solid waste. The governmentwide procurement data system—Federal Procurement Data System—does not provide specific enough information to identify which procurement actions include products containing recovered material. According to the Administrator of OFPP, data on the purchase of products containing recovered materials cannot be obtained without much time, cost, and difficulty. This official further stated that it might be more practicable to develop an automated system apart from the Federal Procurement Data System to collect data on products containing recovered materials and that OFPP would further consider this idea during fiscal year 1993. Currently, without a central source of information on agencies' procurement of products containing recovered material, EPA officials stated that they must contact each federal procuring agency to obtain information on the potential demand agencies may have for items containing recovered material. This is both a time-consuming and a cumbersome process. RCRA requires EPA to consult with GSA, the lead agency for federal procurement, while developing procurement guidelines. EPA has examined the data collection mechanisms available through GSA, but EPA has no formal agreement to consult with GSA. EPA also does not have any ongoing efforts to work with GSA to find ways to obtain information on agencies' purchases of products containing recovered materials, for example, by working together with OFPP to develop an automated system to collect such information. While GSA

provided advice to EPA during the development of the guidelines on paper, retread tires, building insulation, and re-refined oil, GSA was unable to identify agencies' purchases of products containing recovered materials because of limitations in the governmentwide procurement data system. Moreover, according to the EPA staff member responsible for guideline development when these guidelines were issued, GSA's advice was not always constructive. Specifically, the EPA staff member stated that GSA opposed the development of guidelines for retread tires and insulation. For example, this staff member told us that (1) GSA stated that it could not obtain good quality retread tires, even though GSA recognized that they were available, and (2) GSA was reluctant to challenge fiberglass insulation manufacturers to find ways to incorporate more recovered materials into their products.⁴ In the view of this EPA staff member, GSA's opposition during the mid-to-late-1980s slowed, rather than facilitated, the guideline development process.⁵ Furthermore, no GSA representative attended a May 1992 work group session on fiberboard even though EPA invited two individuals at GSA. Recently, however, GSA has expressed more interest in participating in work group sessions on guidelines. GSA staff participated in a September 1992 session and have answered questions about specifications and procurement of various products. In commenting on our draft report in February 1993, the GSA Acting Administrator stated that GSA acted in December 1992 to ensure that EPA will have the proper GSA contacts for future meetings. In addition, in February 1992 GSA published an updated and reformatted edition of its Recycled Products Guide to help identify the products containing recovered materials available through the GSA supply system.

In addition, the chairman of the recently established Council on Federal Recycling and Procurement Policy told us that EPA is beginning to explore what information the Council could provide to help EPA identify purchases of products containing recovered materials. The Council has formed a work group to design a process for reporting, information sharing, and measuring progress in establishing affirmative procurement programs. This would include investigating the feasibility of developing an automated data system that would track purchases of products containing recovered materials. In addition to providing technical assistance to the Council, EPA staff from the procurement guideline program participate in this work group.

⁴Currently, GSA procures retread tires.

⁵An engineer from GSA's recycling program told us that, historically, GSA has used "off-the-shelf" specifications and has not been interested in developing its own specifications for products to include, for example, greater levels of recovered material.

**EPA Has Not Made Final a
Comprehensive
Procurement Guideline
Strategy**

Delays in issuing additional procurement guidelines also occur in part because EPA's procurement guideline efforts have proceeded without the benefit of a comprehensive strategy for organizing and prioritizing the work. Before 1989, because of limited resources and staff as well as mandatory guideline deadlines, EPA did not conduct any overall assessment of products for guidelines. Without such a plan, EPA has not taken the leadership role in developing a strategy to systematically study the best approach for the development of procurement guidelines. As a result, numerous bills have been introduced into the Congress, most recently during the RCRA reauthorization process, to direct EPA to develop specific procurement guidelines. In addition, according to an EPA staff member responsible for guideline development, for 15 months after the EPA contractor published a report recommending the construction products for which EPA is currently developing guidelines, no work was begun on guideline development. The delay occurred, in part, because EPA focused during this period on implementation of the previously issued guidelines. For example, EPA headquarters funded regional conferences on agency responsibilities under RCRA section 6002. In commenting on our report in February 1993, the Deputy Assistant Administrator for Finance and Acquisition stated that over the last 3 years, EPA's procurement guideline program has allocated substantial resources to short-term guideline implementation and has not focused exclusively on guideline development.⁶

As part of a broader effort to develop a 5-year work plan for the Municipal and Industrial Solid Waste Division, EPA began in 1992 to draft a long-term strategy for organizing the procurement guideline work and for selecting products for possible future procurement guidelines. According to the Deputy Assistant Administrator for Finance and Acquisition, the strategy will place greater emphasis on issuing new guidelines. EPA has begun to develop systematic procedures for selecting potential guideline products but has not formalized any procedures in a plan. To date, the EPA contractor has been asked to provide information on products that the federal government purchases that could be replaced with products containing recycled content. Using this information and the statutory criteria, EPA plans to eliminate some products from guideline development and set priorities for the remaining products.

⁶EPA's implementation activities have included outreach and education targeting agencies and vendors, procurement conferences in EPA regions, partial sponsorship of the Government Buy Recycled Trade Fair and Showcase, and recommendations to make changes to minimum recovered content standards in the existing guidelines.

Progress on the overall strategy has been limited. EPA officials stated that they were unable to provide us with any documentation on the strategy because it is not yet sufficiently developed. According to an EPA staff person in the procurement guideline program, the planned long-term strategy is to lay out funding and staff needs, goals, and a systematic approach to selecting items for procurement guidelines. However, EPA has not formalized the plan sufficiently to specify how it would organize the procurement guideline work. Nor has EPA specified how, if at all, it would attempt to ensure that the procurement guideline program would reduce or eliminate the factors that have contributed to the difficulties EPA has faced in issuing additional procurement guidelines since 1989.

Bills have been introduced into the Congress to require EPA to designate additional procurement guideline items within specific time frames. For example, H.R. 3865 and S. 976, both introduced in the 102nd Congress during RCRA reauthorization proceedings, would require EPA to prepare procurement guidelines for seven specific products or product categories within 1-1/2 to 3 years following RCRA reauthorization. Some of the items or product categories proposed in these bills are ones that EPA has considered in the past but decided not to develop for technological or economic reasons or for lack of adequate resources. For example, both bills include recovered asphalt and various plastic products. However, in 1986 EPA had proposed a guideline for recovered asphalt to be used in road construction but determined that a guideline would not be advisable because of economic and technical concerns. In 1990 the EPA contractor recommended guidelines for a range of plastic products. EPA determined that while the guidelines may be warranted, it did not have sufficient resources to pursue all of them. EPA officials told us that additional guidelines for plastic products will be considered in the future, if justified and if resources are available.

Staffing and Contractor Changes Contributed to Delays

Finally, staffing and contractor changes have extended the time needed to develop additional procurement guidelines. The only EPA staff person with experience in guideline development left the program in 1989. Another staff person with little procurement experience joined the program in 1989, when it first received more attention. This individual remained the only staff person working on guideline development for the next 18 months. In 1991 additional staff were hired, but they also had little experience and required some time to learn about the program. In February 1992 the staff person with the most experience left EPA. According to the EPA contractor working on guideline development during

the 1980s, disruptions and transition problems created by organizational and staff changes contributed toward complicating and delaying contractor guideline activities as well as the guideline regulatory process.

EPA officials told us that the Municipal and Industrial Solid Waste Division and another division within the Office of Solid Waste jointly let a contract for their extramural work. That is, the procurement guideline program did not control the selection of the contractor for its work. In 1990 a new contractor received the contract for the two divisions. This contractor had no prior experience in the procurement guideline program. The previous contractor told us that it would have been very helpful for the new contractor if EPA could have arranged for the previous and new contractor to share information about the procurement guideline program. In commenting on our draft report in February 1993, the Deputy Assistant Administrator for Finance and Acquisition stated that EPA has added a provision to a new contract to provide continuity of work between the previous and new contractor.

EPA Does Not Fully Evaluate Experimental Products

Under RCRA, EPA is to prepare guidelines designating products "which are or can be produced with recovered materials." EPA is to consider the following criteria in selecting guideline items: (1) the availability of products containing recovered materials; (2) the impact federal agencies' procurement would have on the volume of solid waste requiring treatment, storage, or disposal; (3) the economic and technological feasibility of producing and using such products; and (4) other uses for the recovered materials. "Other uses" of recovered materials might include (1) experimental or developmental products not currently available in the marketplace and (2) a range of products that could contain the waste material.

EPA does not specifically require its contractor to consider the RCRA criteria when selecting potential guideline items. Rather, EPA directs the contractor to consider criteria EPA developed as part of its first guideline (fly ash). These criteria primarily consider information on product availability, the potential contribution of federal purchases of the product to reducing the volume of solid waste, and economic and technological feasibility. EPA officials told us that they focus only on currently available products when developing procurement guidelines: They believe that considering experimental or developmental products that are "other uses" of the waste material would conflict with considering product availability and be an ineffective use of resources. For example, EPA stated in its preamble to the

fly ash guideline that only items that are technically and economically proven and available within a reasonable period of time can be designated as guideline items. EPA's current efforts to develop procurement guidelines continue to reflect this interpretation.

EPA and contractor officials told us that the contractor does develop information on other uses of the recovered material when selecting potential guideline items. The May 1990 report, which recommended the construction products for which EPA is currently developing guidelines, included, to a limited extent, a description of other uses of the recovered materials under examination.⁷ For example, the report described several instances of recovered plastics being used in other products, including construction products and bottles containing household cleaners. The study recommended that EPA pursue procurement guidelines for plastic construction products but did not recommend guidelines for other products containing recovered plastics because this was outside the scope of the contractor's research. The study also identified some research under way to identify possible new products not yet available in the marketplace that could contain recovered materials. But the study concluded that technical and regulatory issues had to be resolved before such products should be encouraged through a procurement guideline.

Recently, EPA has explored ideas for expanding its selection criteria to include consideration of, among other things, the feasibility of implementing a guideline and the potential impact of a guideline in altering the market for a particular waste material. However, even these additional criteria do not include the other uses criterion. As a result, EPA contractors have no instructions to examine experimental or developmental products that can be produced with recovered materials when selecting potential guideline items.

Conclusions

A combination of factors has resulted in EPA's not issuing additional procurement guidelines since 1989. Contributing to the delay are EPA's time-consuming procedures for guideline development, review, and approval; obstacles to obtaining product and procurement information; and staffing and contractor changes. Perhaps most importantly, EPA has not had a strategy for organizing its procurement guideline program. A comprehensive, long-term strategy could be the vehicle for overcoming

⁷Feasibility Of Federal Procurement Guidelines For Construction Products Containing Recovered Materials, EPA Contract No. 68-01-7454, Work Assignment No. 26.

the factors that have prevented the agency from issuing additional procurement guidelines.

First, by laying out funding and staff needs, measurable goals, milestones, and a systematic approach to selecting items for procurement guidelines, the strategy could enable EPA to better focus the program and better assess the agency's resource needs and the impact of missed milestones. For example, resource limitations prevented EPA from developing procurement guidelines for some plastic products identified by the EPA contractor in 1990: The strategy could be used to determine the resources needed to undertake this work. For over a year after the contractor published the report recommending additional procurement guidelines, EPA took no action to develop them: The strategy could help EPA focus available resources on all aspects of the procurement guideline program—both guideline development and implementation.

Second, by providing the framework for measuring the impact of EPA's initiative to streamline guideline development, the strategy could help measure the extent to which time could be saved in developing future procurement guidelines.

Third, by clarifying how the procedural requirements of the Paperwork Reduction Act apply to the types of information requests EPA and EPA contractors need to seek from industries and whether OMB approval should be sought, the strategy could build in the necessary time to help ensure that adequate information is obtained.

Fourth, by formally identifying procedures for consulting with the Department of Commerce, GSA, OFPP, state agencies, and the Council on Federal Recycling and Procurement Policy, the strategy could enable EPA to learn more about product availability and agencies' procurement.

Fifth, by focusing and prioritizing each of EPA's procurement guideline initiatives, the strategy could be a good communications tool within EPA and between EPA and the Congress on the procurement guideline program and its focus and potential impact.

Finally, a comprehensive strategy for the procurement guideline work could provide the basis for exploring not only currently available products but also experimental or developmental products containing recovered materials, which could further reduce the amount of solid waste requiring disposal. If EPA decided that such products are not sufficiently available to

warrant procurement guidelines, the strategy could still explore options for encouraging their development by, for example, publicizing the fact that they exist and looking for ways, possibly through research and/or demonstrations, to foster their growth.

Recommendation

So that EPA can better assist agencies to increase their procurement of products containing recovered materials, we recommend that the Administrator, EPA, make final the long-term strategy for developing procurement guidelines. This strategy should include the following:

- funding and staff needs, measurable goals, milestones, and a systematic approach to selecting items for procurement guidelines and to balancing resource allocations between guideline development and implementation;
- provisions for measuring the impact of EPA's initiative to streamline guideline development on the amount of time needed to develop and issue procurement guidelines;
- provisions for clarifying whether OMB's approval is necessary for information requests made of nonfederal parties by EPA or EPA contractors and for building in the time for this approval if it is necessary;
- agreements and procedures for fully exploring with Commerce the information Commerce could provide, including more complete information about the availability of recovered materials and their uses;
- agreements and procedures for fully exploring ways to obtain information about products purchased by federal procuring agencies that contain recovered materials with GSA, OFPP, and the Council on Federal Recycling and Procurement Policy;
- requirements to coordinate and consult with states so that their views and expertise can be incorporated into the guideline development process;
- requirements to cooperate with other federal agencies through the Council on Federal Recycling and Procurement Policy to help keep these agencies informed of new guideline efforts so that appropriate individuals from those agencies can work effectively with EPA on guideline development; and
- requirements to keep interested parties, particularly the Congress, informed of plans for setting priorities and systematically selecting and developing future procurement guidelines as well as of the resource needs these efforts require.

To maximize EPA's potential impact in finding ways to further reduce the amount of solid waste requiring disposal, the strategy should also include a requirement to consider ways to identify experimental or developmental

products that could incorporate recovered materials, to publicize the extent to which these products are now becoming available, and to look for ways to foster their development.

Agency Comments and Our Evaluation

EPA agreed that it would be desirable to develop a written strategy for the procurement guideline program, but EPA commented that the overall tone of our report would lead readers to incorrectly conclude that the procurement guideline program lacks focus and direction. In particular, EPA pointed out that it (1) has developed an effective internal strategy focusing on both guideline development and guideline implementation and (2) has demonstrated leadership in working with other agencies to further the goals of the procurement program. In the last 3 years, EPA has focused primarily on ensuring that issued guidelines were being implemented. We agree that EPA should focus on guideline implementation, and we modified the report to reflect this. However, we continue to believe that a formal written strategy for the procurement guideline program would better enable EPA to focus available resources on all aspects of the program—both guideline development and implementation. Furthermore, a formal strategy could serve as a communications tool between EPA and the Congress, illustrating more effectively EPA's leadership in establishing the focus and direction of the procurement guideline program.

EPA also believes that it and other agencies have not encountered any problems that a formal, written agreement would resolve. However, we continue to believe that past difficulties in obtaining the constructive participation and assistance of GSA and Commerce have slowed the guideline development process. Formal agreements would focus the commitment of both parties to ensuring their cooperation in obtaining data on the availability of products containing recovered materials and the extent of their procurement by federal agencies. EPA also highlighted ways it has worked effectively with the Office of the Federal Recycling Coordinator and OFPP to foster guideline implementation and to obtain better data on agencies' purchases by jointly designing questionnaires for federal agency reporting of purchases of products containing recovered materials.

Further, EPA commented that designating products as experimental or developmental is an ineffective use of resources and that such designation is inconsistent with RCRA. We have revised the report to reflect this view. However, RCRA does not give greater weight to any one of the selection criteria, and the criterion to consider product availability does not prohibit

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EPA from using the criterion for examining other uses of recovered material, such as in experimental or developmental products not currently available in the marketplace. Further, we are not recommending that EPA develop procurement guidelines for such products. Rather, we are stating that EPA could identify additional means to reduce the solid waste stream by exploring ways to encourage the growth of experimental or developmental products containing recovered materials. Guideline development, if appropriate, could come later. EPA's complete comments on the report are contained in appendix III.

Commerce Has Limited Its Activities Related to the Recycling Industry

Since 1982, the Department of Commerce has not initiated any work in response to RCRA subtitle E, which is intended to promote the commercialization of proven resource recovery technology. At that time, Commerce stopped requesting and receiving funds for activities under subtitle E. Commerce does, however, have limited work under way that is related to its general statutory responsibilities and that could help support the recycling industry in the areas of international trade, recycling technologies, and standards setting. Members of Congress have introduced bills that would provide Commerce with additional responsibilities in the areas of information sharing and market development, but these have not been acted upon.

Commerce Terminated Much of Its Resource Recovery Efforts in 1982

Between 1976 and 1982, Commerce operated an Office of Recycled Materials within the National Bureau of Standards to encourage greater commercialization of proven resource recovery technology and to fulfill other statutory responsibilities. The Congress envisioned that Commerce's role would occur together with EPA's development of procurement guidelines and federal agencies' implementation of those guidelines. However, in its fiscal year 1983 budget request, Commerce proposed terminating the recycled materials program because it believed that the major program objectives had been achieved and that it was now appropriate for the private sector to continue further efforts. The Congress did not appropriate further funds. The Office was disbanded at the end of fiscal year 1982, before EPA had issued the first of five procurement guidelines.

Commerce Actively Carried Out Its Responsibilities Between 1976 and 1982

Commerce has major responsibilities under RCRA subtitle E. First, through the National Bureau of Standards (now called the National Institute of Standards and Technology), and in conjunction with national standards-setting organizations, Commerce is to publish guidelines for the development of specifications to classify waste materials. Second, to stimulate the development of markets for recovered materials, Commerce is to identify the location of existing or potential markets for recovered materials, identify economic and technical barriers inhibiting the use of recovered materials, and encourage the development of new uses for recovered materials. Finally, to promote proven recovered materials technology and establish a forum for the exchange of information on resource recovery facilities, Commerce is authorized to (1) evaluate the commercial feasibility of resource recovery facilities, (2) publish the

results of the evaluation, and (3) develop a data base to assist persons in choosing such a system.

Between 1976 and 1982, Commerce operated the Office of Recycled Materials within the National Bureau of Standards. This office actively carried out work to fulfill the responsibilities it was assigned. For example, to provide guidelines for the development of specifications to classify waste materials, Commerce characterized some recyclable components of municipal and industrial wastes destined for disposal according to various material properties. This characterization enabled Commerce to establish parameters that need to be taken into account in a set of specifications. Commerce also contributed to the development of 15 standards for the use of municipal solid waste and refuse-derived fuels. To stimulate the development of markets for recovered materials, Commerce (1) published a national directory of recycled product manufacturers, (2) commissioned a market survey for wastepaper in four southeastern states, (3) produced a study of procurement of products containing recovered materials in seven states, (4) developed a bid modifier designed to adjust bids received for a commodity to incorporate the estimated disposal costs of the commodity, (5) developed a de-inking process for newspaper, and (6) sponsored efforts to find ways to reduce the difficulties associated with recycling cans with ferrous metal bodies and aluminum tops. To promote proven recovered materials technology and establish a forum for the exchange of information regarding resource recovery facilities, Commerce

- worked with the Department of Energy to investigate the feasibility of renovating incinerators in the New York City area that had been abandoned because they did not meet Clean Air Act requirements to provide energy;
- examined the feasibility of converting a failed resource recovery facility in San Diego into a research center to (1) assess the commercial feasibility of various resource recovery equipment and (2) conduct combustion research, methanol production research, and glass insulation production research; and
- worked with Japan to examine resource recovery systems in both countries.

Between fiscal years 1978 and 1982, Commerce expended about \$4 million on the work of the Office of Recycled Materials.

Other efforts at Commerce also contributed toward exchanging information on resource recovery facilities. For example, Commerce sponsored an International Conference on Urban Development to promote the concept of resource recovery as a tool in urban industrial development and provided a grant to the U.S. Conference of Mayors to conduct case studies on issues affecting the commercial feasibility and performance of resource recovery programs in 12 U.S. cities.

Commerce Disbanded the Office of Recycled Materials

In its fiscal year 1983 budget request, Commerce proposed terminating the recycled materials program to comply with an administration directive to set priorities for the work of the National Bureau of Standards. Among other things, priorities were to be based on (1) the relationship of the work to the original mission of the Bureau, (2) possible alternative sources of funding, and (3) the work's relative importance with respect to other Bureau programs. The Bureau Director stated in testimony before the House and Senate appropriations committees that the major objectives of the resource recovery program had been sufficiently achieved so that it was appropriate for the private sector to continue further efforts. The Congress did not appropriate further funds. The program, funded at \$740,000 in 1982, with 7.5 full-time equivalent positions, was terminated at the end of fiscal year 1982.

Oversupply of Recovered Materials Creates Need for Market Stimulation

Following Commerce's disbanding the Office of Recycled Materials, the recovered materials industry has faced difficulties because of changing market conditions. The supply of some recoverable materials has increased more rapidly than the demand for them, causing prices for these materials to drop and making it difficult for states and local governments to recoup collection costs. Renewed effort by Commerce to stimulate the demand for recovered materials could help to correct the market imbalances.

To reduce the need for landfills, state and local governments have been implementing residential curbside collection programs for recyclable materials. The National Solid Wastes Management Association estimates that the number of programs grew from about 600 in 1988 to more than 3,000 by 1992. These programs are increasing the total supply of recyclable materials, including paper and newsprint, glass, plastic, aluminum, and steel cans. Between 1988 and 1990, the amount of materials recovered increased from 23.5 million tons to 29.2 millions tons.

However, the demand side has not kept pace with the growth in supply. There are not enough manufacturers to absorb the volume of recyclable materials available. For example, until 1991, only 9 of the 62 U.S. and Canadian paper mills supplying newsprint had "de-inking" equipment, which is necessary to turn old newspapers into clean pulp for remanufacture. With new mills costing an estimated \$350 million to \$400 million, the paper industry has been reluctant to expand its "de-inking" capacity without assurances that it could get adequate old newsprint supplies and then sell recycled newsprint to publishers. Recovery of old newsprint increased by 50 percent between 1979 and 1990, when it reached 4.4 million tons and represented a third of the total newsprint used that year. But U.S. consumption of recycled newsprint—for tissue paper, building insulation, and paperboard as well as new printing paper—has lagged far behind the supply.

Moreover, as the supply of recyclable materials has flooded the market, the prices of these materials have declined. Newspapers are a prime example. The price of old newsprint in 1988 was \$40 a ton in many parts of the country. At least partially because of successful campaigns to collect old newspapers, that price fell to a negative \$10 a ton or lower in many locations, as some communities were forced to pay to have old newspapers hauled away. In addition, the prices paid for other recyclable materials declined steadily, partly as a result of oversupply. The Recycling Times showed a steady decline in the prices paid for recyclable materials between January 1990 and June 1991. Aluminum prices fell 42 percent—to their lowest level in over 20 years. Prices paid for clear glass declined by over 80 percent; and prices for plastics fell between 29 to 51 percent.

Collection programs cost money. Cities must make large investments—in some cases tens of millions of dollars—to establish collection systems. The National Solid Wastes Management Association estimates that collecting newspaper, glass, aluminum and other common recyclables from residences averages from \$70 a ton for co-mingled wastes to \$150 a ton for waste sorted at curbside. Processing recyclables so that they can be marketed costs an average of \$40 a ton—a figure that can go higher if a materials recovery facility is built. A 1991 New Jersey study found that curbside programs cost some cities as much as \$200 a ton.

Some communities depend on revenues from the sale of recyclable materials to support their programs. The recent oversupply of recyclable materials and subsequent drop in their prices has made it more difficult for state and local governments to fund recycling programs. In 1991 budget

constraints forced New Jersey to lay off its recycling coordinator, and Michigan's governor proposed closing the state's recycling office as a cost-saving step. In November 1990 New York State voters turned down a ballot initiative that would have given the state government authority to make up to \$140 million in grants to municipal governments for developing recycling markets. Almost every state is encountering budget problems, and unless states can find a market for the recyclable materials that they are collecting, it is unknown how local governments will be able to continue recycling efforts.

According to some estimates, if the materials proposed to be diverted from landfills and incineration were actually returned to commerce as new products, the nation would achieve a recycling rate of approximately 45 percent within a couple of years. In 1990 the national recycling rate was about 15 percent. Currently, only three states—Minnesota, Washington, and New Jersey—have achieved recycling rates of more than 30 percent. Other estimates indicate that if the state and federal recycling goals were met, the amount of materials available for recycling would need to increase four-fold, from about 23 million tons in 1988 to about 100 million tons in less than 10 years. As localities work toward meeting these goals, new and expanded markets for recyclables will be needed to absorb the large volumes of materials that will be diverted from the waste stream.

Commerce Programs Could Benefit the Recycling Industry

Since closing its Office of Recycled Materials in 1982, Commerce has had no program to specifically address the market conditions facing the recovered materials industry. RCRA subtitle E responsibilities have been assigned to the Office of Materials, Machinery, and Chemicals within the International Trade Administration (ITA), which has undertaken several projects of interest to the recycling industry but has no program in place to update or build upon the pre-1983 work conducted under the Office of Recycled Materials. In addition, Commerce has other programs under way that could indirectly benefit the subtitle E goals as well as the recycling industry at large. These include Commerce's programs to develop employment in economically distressed areas, to facilitate the commercialization of technologies, and to help develop product standards.

Export Assistance to Domestic Industries

Through ITA, Commerce assists U.S. exporters in competing internationally by providing industry-specific information on trade opportunities overseas. It also provides industries with counseling and technical assistance to better enable them to compete. While its primary mission is

to assist U.S. companies to compete in the world market, some ITA work has been related to the recovered materials market, such as its December 1989 study of the impact of recycling on the rigid container industry. However, according to the Director of ITA's Office of Metals, Chemicals, and Commodities (now the Office of Materials, Machinery, and Chemicals), the Office has fallen short of fulfilling all of its responsibilities under subtitle E. He stated that activities directed specifically toward addressing the market conditions facing the recovered materials industry have been a relatively low priority. For example, the study on rigid containers was conducted on a staff member's own time and an ongoing analysis of domestic and foreign wastepaper consumption prospects has been delayed repeatedly because of higher priorities.

In early 1992, ITA's Director, Office of Metals, Chemicals, and Commodities, submitted an internal budget request to ITA's Deputy Assistant Secretary for Basic Industries to establish a division within the director's office to fulfill RCRA subtitle E responsibilities. The director recommended that the program consist of 10 full-time equivalent positions in addition to a starting budget of \$100,000 in fiscal year 1994 to cover items such as office supplies (including computers), travel, and contacts with private companies. The proposed program would stress the development of markets and trade for recovered materials, including recovered metals, paper, plastics, and chemicals. Specific activities would include (1) identifying and assessing barriers to trade; (2) identifying foreign buyers and promoting sales of recycled materials in foreign markets; (3) providing data on prices, capacity, trade, and recycling rates in domestic and foreign markets; and (4) assessing foreign recycling technologies. However, the internal budget request was not approved.

The Director told us that additional annual appropriations would enable Commerce to provide other information about recovered materials that could assist EPA in developing guidelines. For example, Commerce could serve as a central repository for information on the amount of recovered materials in products and provide a standard level of recovered material in products. Specifically, Commerce could list the percentage of recovered materials that are used in various products, as well as components of products that cannot be recovered. As described in chapter 2, EPA and its contractors need information on the availability of products containing recovered materials but have found this information difficult to obtain.

**Assistance to Financially
Distressed Areas**

Through its Economic Development Administration (EDA), Commerce offers grants, loan guarantees, and technical assistance to support projects

designed to alleviate conditions of unemployment in economically distressed areas of the country. Recently, Commerce has renewed earlier efforts to overcome development problems that are preventing economic growth by encouraging the development of recycling and solid waste disposal facilities in depressed areas through its economic development program.

During the 1970s Commerce provided financial assistance to several recycling projects, and in recent years Commerce has explicitly encouraged requests for funding of recycling facilities. For example, in its two most recent annual Federal Register announcements of availability of funds, EDA stated that it "will give consideration to atypical EDA projects that would assist an area to overcome a special development or infrastructure problem that is preventing real employment growth and economic development from taking place. Such projects include . . . innovative projects designed for the development of solid waste disposal or recycling facilities."¹ However, EDA staff were unable to identify any proposals from recycling facilities that had been submitted as a result of these announcements. The Northeast-Midwest Institute, a nonprofit policy research group, identified several factors that could have contributed to the lack of applications, including the relative newness and small scale of many recycling operations, which could have made it difficult to document the jobs creation potential that is required for EDA approval. In addition, in March 1992 EDA funded a seminar hosted by the Council on Urban Economic Development to discuss the development of markets for recovered materials. Also in 1992, EPA and EDA started exploring the development of joint projects for stimulating recovered materials markets. As of November 1992, however, no interagency agreement for work had been developed.

Facilitating Technology Transfers

Through its National Institute of Standards and Technology (NIST), Commerce assists U.S. industries in developing technology that would improve product quality and facilitates the commercialization of products that have been developed through scientific research. Commerce is also responsible for providing industry and government institutions with current information, techniques, and advice on achieving higher quality and productivity by making available information on the latest developments in domestic and international science and technology. Prior to 1983, the Office of Recycled Materials sponsored cooperative efforts with industry to develop ways to separate ferrous and nonferrous metals

¹55 Fed. Reg. 52248 (Dec. 20, 1990); 57 Fed. Reg. 4294 (Feb. 4, 1992).

in bimetal cans, reducing the difficulties posed by the presence of the aluminum tops in the detinning process.

The executive director of the Institute of Scrap Recycling Industries told us that the resource recovery technologies to separate traditional materials, such as steel, aluminum, and glass, are now well developed and used. However, he stated that more efforts are needed to make manufacturers aware that technologies are available that transform nontraditional waste materials, such as different resins of plastic, into materials that can be used to make another product. For example, an American company operating in Belgium takes mixed plastics and makes a plastic flake that is bought by manufacturers of plastic containers. According to the executive director, technologies to transform nontraditional waste materials into materials for new products are not well recognized in the United States, and, as a result, scrap dealers have difficulty in getting manufacturers to buy nontraditional recyclable materials. In his view, it would be useful if NIST, as part of its responsibilities in technology transfer, stimulated the demand for nontraditional waste materials by publicizing the availability of such technologies and the substitutability of the recyclable material for the currently used virgin alternative.

In a March 1992 letter to OFPP describing how Commerce is implementing its responsibilities under RCRA section 6002, the Director of Commerce's Procurement and Administrative Services stated that NIST has expressed renewed interest in facilitating improvements in domestic markets for recovered materials through technology transfers. He also said that Commerce, through NIST, can facilitate an exchange of technological information, leading to quality improvements in products containing recovered/recycled material and thus stimulating market demand. However, a NIST official told us that NIST will undertake no work to stimulate the markets for recovered materials unless it is provided with specific appropriations and a mandate to do so.

Setting Standards and Testing Products

NIST also participates in the technical committees of various national standards-setting organizations. For example, a Commerce official chairs a subcommittee of the American Society for Testing and Materials (ASTM)² that develops standards for municipal solid waste. His subcommittee has

²ASTM is one of the world's largest voluntary, full-consensus standards development organizations. ASTM publishes standard test methods, specifications, practices, guides, classifications, and terminology for materials, products, systems, and services through the work of 133 technical standards-writing committees.

developed a set of chemical and physical requirements that waste materials must meet if they are to be used by various industries. For example, recovered steel cans must meet certain characteristics to be sold for use by the detinning industry and other characteristics to be used by foundries. His subcommittee does not develop standards for products containing recovered materials.

ASTM specifications generally focus on performance attributes, not on recycled content in the product. NIST's participation in ASTM standards-setting committees has focused on materials, not products. As a result, NIST has not examined specifications for products to determine the extent to which they include attributes that are not necessary but that could discriminate, in effect, against the use of recovered materials in products. An EPA contractor working on guideline development stated that manufacturers of drain and sewage pipes that use recovered plastic resins to make their products are unable to obtain ASTM approval for their products because the organization that determines whether a plastic pipe can obtain ASTM approval does not include representation from recovered plastic resin suppliers. This contractor said that it would be very useful if NIST tested pipes containing recovered plastic resins to measure their success in meeting ASTM specifications, and published the results.

Legislation Introduced for Greater Commerce Involvement

Two bills have recently been proposed that would create new units within Commerce to develop markets for recovered materials. H.R. 2746 was introduced in the 102nd Congress to develop, assist, and stabilize recycling markets. The bill would create a Bureau of Recyclable Commodities to promote the use of recovered materials. The Bureau would be responsible for, among other things, identifying grades of recovered materials, promoting markets for recovered materials domestically and in foreign countries, and periodically analyzing the recovered materials markets for prices, recycling rates, and technical and economic developments. In commenting on this bill, an industry analyst at Commerce stated that Commerce has the expertise to analyze the technical and economic factors that may influence future foreign and domestic markets for recovered materials and to evaluate the potential for expanded recycling of various materials, including paper, rubber, plastics, yard and food wastes, and metals. H.R. 300, introduced in the 102nd Congress with 60 sponsors, would establish an Office of Recycling Research and Information to provide information on recycling technology and would establish a grant program for recycling research and an outreach program to provide

information on recycling. At the conclusion of the 102nd Congress, however, neither bill had been enacted into law.

Conclusions

Between 1976 and 1982, Commerce led the federal effort to strengthen the markets for recovered materials and promote resource recovery technologies. Since then, however, Commerce has had no program in place to support the recycling industry. As state and local governments have implemented collection programs during the 1980s and early 1990s, the market has not expanded to absorb the growing supply of recyclable materials, and collection programs are in danger of not being self-supporting. Commerce is uniquely qualified to address the market imbalances because of its ongoing efforts in international trade and commerce, programs to spur economic development, technology transfer responsibilities, and experience and position on national standards-setting committees. However, Commerce has generally assigned a low priority to activities under these programs that are directed specifically to the market conditions facing the recycling industry.

By establishing an identifiable program to fulfill the Department's continuing responsibilities under RCRA subtitle E, Commerce could increase recycling and trade in recovered materials. By publicizing the availability of technologies that transform waste materials into materials that can be used to make other products, Commerce could help find new uses for recovered materials and help reduce their oversupply. By testing recovered materials products and examining product specifications to help ensure that they do not discriminate against the use of recovered materials, Commerce could enable more recovered materials suppliers to compete. In light of EPA's recent progress in developing and issuing procurement guidelines as well as the recent legislative initiatives to expand Commerce's recycling activities, it is particularly appropriate that Commerce itself assess the contributions it could make toward reducing the solid waste stream by stimulating the markets for recovered materials, as well as the resources these efforts would require.

Recommendation to the Secretary of Commerce

In order to further the goals of RCRA subtitle E, we recommend that the Secretary of Commerce establish a program to support the recycling industry and stimulate the demand for recovered materials. The program should incorporate a recovered materials focus into ongoing work Commerce conducts to help industries develop domestically and compete internationally. The program should also draw upon the technical

expertise of Commerce to strengthen the demand for recovered materials and achieve quality improvements in products containing recovered materials. In establishing the program, Commerce will need to assess its current activities within the various departmental units that could help stimulate the markets for recovered materials and to determine the resources needed to gather these activities into an identifiable recovered materials program.

Agency Comments

Commerce noted that it appreciated the opportunity to review the report, but it did not have any comments on the report's contents.

Overall Progress in Implementing the RCRA Procurement Program Has Been Slow

Although more than 9 years have passed since EPA issued its first guideline for construction products containing recovered material, the federal agencies we reviewed have been slow to implement affirmative procurement programs to buy guideline items. Oversight of the program has, until recently, been limited. As a result, the federal procuring agencies we reviewed are only now establishing affirmative procurement programs for EPA guideline products and responsible agencies are reviewing specifications to eliminate biases against products containing recovered materials. However, adequate data have not been collected to determine program effectiveness.

In the past, federal procuring agencies identified problems affecting program implementation, such as the applicability of RCRA procurement program requirements to subcontractors. Now that programs are being developed, additional problems or barriers, such as inconsistencies between certain program requirements and existing federal procurement practices, have been identified that may hinder effective program implementation.

Effective program oversight and leadership to address these barriers have been lacking during the first 15 years of the program. However, some efforts, including the establishment of and actions by the Council on Federal Recycling and Procurement Policy, are under way to address certain program problems.

Limited Progress Has Been Made in the Procurement Program

Federal procuring agencies have made limited progress in establishing affirmative procurement programs for EPA guideline products and in reviewing product specifications to eliminate biases against recovered materials. Some federal agencies we reviewed stated that they were either unaware of program requirements or, if aware, generally assigned the program a low priority. Only recently have agencies initiated such programs. However, until the most recent reporting period,¹ OFPP did not request or collect data specific enough to determine whether agencies were complying with RCRA or to assess program effectiveness.

¹RCRA requires OFPP to report periodically to the Congress on the program's progress. To meet that requirement, OFPP requested agencies in 1977 to report annually, and then biennially beginning in 1984, on progress made to maximize the use of recovered materials. The most recent reporting period was for 1990-91.

Agencies Slow to Establish Affirmative Procurement Programs

RCRA requires each procuring agency to establish an affirmative procurement program within 1 year after EPA publishes a procurement guideline. However, we are aware of only one federal procuring agency, GPO, that generally met this deadline. Further, of the seven procuring agencies we reviewed, EPA, GPO, HHS, and Interior are the only ones that have established programs with all four RCRA program elements: (1) a preference and promotion program to purchase products containing recovered material, (2) requirements for vendor estimates and certification of recovered material content, (3) verification of these estimates, and (4) annual program reviews. Because of recent increased emphasis on the RCRA procurement program, more agencies are taking steps to establish affirmative procurement programs.

Procuring agencies that spend more than \$10,000 annually on an EPA guideline product are required to establish an affirmative procurement program for that product by the following dates:

- cement and concrete containing fly ash by January 28, 1984;
- paper and paper products containing recovered materials by June 22, 1989;
- lubricating oils containing re-refined oil by June 30, 1989;
- retread tires by November 17, 1989; and
- building insulation containing recovered materials by February 17, 1990.

We reviewed seven federal procuring agencies: EPA, GSA, GPO, and the Departments of Defense, Health and Human Services (HHS), Housing and Urban Development (HUD), and the Interior. Of these seven, only GPO came close to meeting a statutory deadline when it established an affirmative procurement program limited to paper and paper products containing recovered materials. This is the only guideline item GPO procures in sufficient quantities to be subject to the RCRA requirements.

Although not meeting the statutory deadlines, four of the six remaining federal agencies in our review—GSA, EPA, HHS and Interior—have since developed affirmative procurement programs. GSA reported to OFPP in its 1990-91 biennial report that it had developed an affirmative procurement program for all EPA guideline items except re-refined lubricating oil. It noted, however, that the programs did not meet all the requirements of RCRA section 6002 because GSA does not (1) require vendor estimates of recovered material content, (2) verify vendors' certifications of recovered material content, and (3) review or monitor implementation of the program. GSA is currently developing a program for re-refined oil because it recently became aware that its purchases exceed the annual minimum of

\$10,000 required to develop a program. According to a procurement analyst in GSA's Acquisition Policy Office, GSA has no immediate plans to require vendor estimates of recovered material content because contractors find it extremely burdensome to provide estimates, estimates generally are not verifiable, and estimates cannot serve as a basis for a contract award.

EPA formally established its program in May 1991 when it revised its Contracts Management Manual to include the affirmative procurement program requirements for all five guideline products. EPA did not establish its program earlier because, according to an EPA procurement analyst, there was considerable confusion within the agency over what the procurement guidelines actually required and how the guidelines were to be applied to contractors. EPA has since shared its affirmative procurement program with other federal procuring agencies, including HHS and Interior, which have used the EPA program as a model in developing their own agency programs. The EPA program contains the required four elements of an affirmative procurement program. However, as of October 1992, EPA had not had an opportunity to implement two of the elements—verification of vendor certifications and annual program review.

Interior's program was established in March 1992 and HHS' in April 1992. An Interior procurement analyst noted that prior to receiving a copy of EPA's affirmative procurement program, Interior lacked specific guidance on how to develop such a program and did not take the RCRA requirement seriously until it was included in Executive Order 12780. HHS stated that it became aware of the requirement to establish an affirmative procurement program in August 1991. At that time it, along with other executive departments and agencies, was asked by the Subcommittee on Oversight of Government Management, Senate Committee on Government Affairs, to respond to a survey on efforts to implement the EPA procurement guidelines. Both Interior's and HHS' affirmative procurement programs contain the four required program elements.

The two remaining federal agencies in our review, HUD and the Department of Defense have begun or plan to begin developing affirmative procurement programs. Officials at both HUD and Defense stated that while their agencies were aware of program requirements, they did not establish affirmative procurement programs because of higher priorities. For example, Defense officials noted that establishing an affirmative procurement program was a lower environmental priority than issues

related to human health, such as the elimination of chlorofluorocarbons and substitution and elimination of hazardous materials.

Agencies have begun to develop affirmative procurement programs because of several recent actions: the October 1991 Executive Order 12780 directing the immediate implementation of cost-effective procurement programs for products containing recovered materials; the November 1991 hearing before the Subcommittee on Oversight of Government Management, Senate Committee on Government Affairs, on buying products containing recovered materials; and the March 24, 1992, OFPP draft policy letter in the Federal Register reiterating the need for affirmative procurement programs. For example, the reports submitted to OFPP for the 1990-91 biennial report to the Congress showed that by June 15, 1992, 19 of the 34 agencies that did not have affirmative procurement programs in December 1991 had either implemented, drafted, or were developing formal programs. (See app. II for a listing of these agencies.) In commenting on our report, EPA stated that in late 1992, over 52 agencies had "buy recycled" programs in various stages of development.

**Agencies Have Made
Limited Progress in
Reviewing Specifications**

By May 1986 RCRA required federal agencies responsible for drafting or reviewing specifications for procurement items to eliminate from such specifications any (1) exclusion of recovered materials and (2) requirement that items be manufactured from virgin materials. RCRA also required federal agencies, within 1 year after the date of publication of each EPA procurement guideline, to ensure that their specifications for these guideline items require the use of recovered materials to the maximum extent possible without jeopardizing the intended use of the item. We found that agencies have made limited progress in reviewing their specifications.

Information provided to OFPP for its 1990-91 biennial report to the Congress shows that eight reporting federal agencies are responsible for drafting or reviewing specifications. Of these eight, only one, GSA, reported reviewing all of its specifications. Most of the others, including the Departments of Agriculture, Commerce, Interior, the Treasury, and Veterans Affairs, reported that they are now reviewing their specifications. In addition, two other federal procuring agencies with review responsibilities—Defense and the Department of Energy—did not report

any specification data to OFPP during our review.² Defense, however, noted in a June 1992 letter to the newly established Council on Federal Recycling and Procurement Policy that it plans to identify and review all of its specifications related to EPA's five guideline products during the next 2 years in order to ensure compliance with EPA guidelines.

Three of the eight agencies responsible for drafting or reviewing specifications noted they had not completed their review within the statutory time frames, primarily because of a lack of emphasis or priority within their agencies for conducting such reviews. These agencies have recently begun to review their product specifications and standards, largely as a result of the increased emphasis placed on the program by the October 1991 executive order.

Data for Assessment Not Collected

Although OFPP is required to report to the Congress on federal agencies' progress in implementing the RCRA procurement program, it had not been collecting the data needed to determine whether agencies were complying with RCRA or to assess overall program effectiveness. To satisfy its reporting requirements, OFPP solicits information from federal executive agencies. However, until its most recent data collection effort, OFPP did not specify a reporting format that could be used to assess progress. Consequently, information reported to OFPP, and subsequently to the Congress, had not been sufficient to determine whether agencies were complying with RCRA or to assess overall program effectiveness. These reports often contained tangential data on the status of agencies' in-house recycling programs and sales of items to private industry for recycling rather than information on the procurement of products containing recovered materials. For example, in its 1988-89 biennial report to OFPP, the Department of the Treasury reported the value of mixed paper, ferrous scrap, copper shavings, brass, and nickel scrap sold for recycling—not its procurement of EPA guideline products. Reported data were also inconsistent from agency to agency and from year to year.

Each of OFPP's seven reports to the Congress—before the 1990-91 biennial report released in December 1992—on the procurement of recovered materials identified problem areas needing attention. Some of these problems areas, such as the applicability of RCRA procurement program requirements to subcontractors, were noted in each of OFPP's reports to the Congress, but the reports never discussed resolving problems. An OFPP

²Subsequent to our review, the Departments of Energy and Defense provided specification review information to OFPP on Nov. 23, 1992, and Dec. 9, 1992, respectively.

official responsible for preparing these reports noted that RCRA does not give OFPP specific responsibility to resolve problems, and therefore the problems noted by the federal agencies were directed to the attention of the Congress. However, according to RCRA, OFPP is responsible for maximizing the use of recovered materials; by resolving program problems, OFPP would be accepting this responsibility.

The October 1991 executive order (1) reemphasizes the RCRA requirement that federal executive branch agencies annually review the effectiveness of their affirmative procurement programs and (2) requires these agencies to report the results of these reviews to both OFPP and EPA, with the first report covering fiscal year 1992. It is uncertain whether these actions will improve agency reporting because the executive order does not (1) delineate the content or format for these reports, (2) establish measurable goals by which to assess program effectiveness, or (3) assign responsibility to follow up on reported information or to measure overall program effectiveness. In addition, even if OFPP or the executive order clearly identified the content and format for agency reporting purposes, data to measure program effectiveness were not readily available.

To improve the data reported by federal procuring agencies, OFPP requested in January 1992 that these agencies provide data for the 1990-91 biennial report on product specification reviews, status of adoption of affirmative procurement programs, the amounts spent for purchasing each guideline product, and problems encountered in complying with the RCRA procurement provisions. However, some federal procuring agencies have had problems in providing specific data on the total spent for purchasing guideline products, principally because they lack a mechanized system to collect and retrieve such specific data. These data are especially difficult to collect, as noted by Commerce, because they were not identified nor requested until well after the conclusion of the 2 report years. Consequently, many agencies qualified the procurement data they reported to OFPP for the 1990-91 biennial report as best estimates.

Currently, the only governmentwide procurement data system, the Federal Procurement Data System, does not contain detailed information on all agency purchases so that agencies can identify which procurements include products containing recovered materials. According to the chair of the Federal Procurement Data System Policy Advisory Board, the system includes data from about 60 federal departments and agencies, of which about half report procurement data via automated systems and about half from documents. About 400,000 contract actions over \$25,000 are reported

annually, and the contracts are categorized by the predominant purpose of the contract action. Therefore, if an agency let a \$30,000 contract to purchase \$20,000 worth of tires and \$10,000 worth of lubricating oil, the data system would account for the total \$30,000 contract under "tires." In addition, the current system does not distinguish whether the tires were new or retread, because the system does not identify products containing recovered materials.

The data system also only accounts for federal agencies' direct contract purchases. It does not track purchases made under grants or cooperative agreements. Furthermore, the data system accounts for procurement actions of over \$25,000, whereas EPA procurement guidelines apply if a procuring agency spends more than \$10,000 a year on a guideline product. The chair of the Federal Procurement Data System Policy Advisory Board stated that any change to the system in order to account for products containing recovered material would be very expensive, time-consuming, and probably inadvisable. OFPP noted, however, that no formal analysis has been performed to determine the cost and benefits associated with changing the system.

Barriers to Effective Program Implementation

With the implementation of affirmative procurement programs and the issuance of more product guidelines, procuring agencies are identifying a number of barriers that could affect the success of the federal program. Federal procuring agency reports indicate that these barriers include (1) burdensome documentation requirements and inconsistencies with some current procurement practices, (2) the absence of RCRA program requirements in federal grant and procurement policies, and (3) a lack of clarity over a key RCRA provision on unreasonable prices. While OFPP is responsible for coordinating RCRA requirements with other federal procurement policies to maximize the use of recovered materials, it made limited efforts in the past to ensure that these barriers were resolved. The new Council on Federal Recycling and Procurement Policy and OFPP have recently begun to address program barriers.

Documentation Requirements Burdensome and Inconsistent With Some Procurement Practices

In reporting to OFPP and EPA on their progress in implementing affirmative procurement programs during 1990 and 1991, several agencies identified a common problem with the RCRA requirements. They said that applying the RCRA estimation, certification, and verification requirements to their agency procurements, particularly those made as part of construction or service contracts or certain types of small-value purchases, would be

burdensome and, in some cases, require them to implement procedures not consistent with current procurement practices. Both EPA and GSA indicated that they had not required their contractors/vendors to provide the required estimates or certifications of the recovered materials included in procurements of guideline items as required by RCRA. EPA reported that although it could not provide detailed information in this report to OFPP, it had recently developed solicitation provisions requiring contractors to estimate the percentage and cost of recovered materials to be used in the performance of a contract. These provisions were to be included in all contracts awarded after August 1991. According to an agency procurement official, EPA is informally testing the effect of this requirement but has not yet sought OMB approval, which is needed to formally implement this requirement.

In its responses to OFPP and EPA for 1990-91, GSA pointed out several difficulties it would have in incorporating the RCRA requirements into its procurements. OFPP had requested, as part of their reports for 1990-91, that agencies provide information on the cost of recovered materials used in the guideline items they had procured. According to the reporting official, GSA could not provide, for example, information on the amount or cost of cement and concrete containing fly ash used by its contractors in constructing a building. He said that in many instances contractors would not have the information and that requiring them to provide such information would be "extremely burdensome."

He also stated that verification of recovered material content is often difficult to prove because records to support a claim of recovered material content may be with a supplier far removed from the prime contractor or subcontractor and not readily available to them or the government. In its 1990-91 response, GSA stated that it had not implemented verification procedures for any of the guideline items covered by its affirmative procurement programs. It stated that for paper and building insulation, there is no test that will demonstrate the percentage of recycled content, and thus verification would require plant visits and/or a review of documents. In the case of cement and concrete, verification would be even more difficult because GSA would not have access to the records of its contractors' suppliers.

The agencies' responses also indicated that the RCRA requirements were not consistent with procurement practices followed for construction projects. In bidding on construction and service contracts, contractors generally bid one price for an entire project, rather than breaking down

the bid for various items. As a result of this practice, the GSA official reported that GSA had no way of knowing how many of its contract dollars are being spent by a contractor on concrete. The HHS report to OFPP also pointed out that obtaining detailed cost information on construction contracts was contrary to existing Federal Acquisition Regulation (FAR) policy, which prefers overall pricing as opposed to line-item pricing. The OFPP Administrator stated that the current preference for lump-sum pricing on construction contracts reflects a long-standing policy of relying on sealed bids, but that the FAR did not preclude separately priced line items.

Although other executive agencies had not implemented affirmative procurement programs, some of them expressed their concerns about implementing the estimation, certification, and verification requirements in response to OFPP's March 1992 draft policy letter. A Department of Veterans Affairs' official said, for example, that it is very difficult to collect reliable information and report on the quantities of recovered materials used in procurements—such as construction projects, when the government is not directly purchasing the specific products—and requested implementation guidance. HHS and Interior officials pointed out that they often obtain guideline products, such as paper, through vendors, including small businesses, that may neither know nor have the ability to determine whether the product contains recycled or recovered materials. These officials suggested that OFPP consider this circumstance in developing the final policy letter. These two agencies' officials also pointed out that verification of those estimates and certifications would be burdensome and, to fully implement, would require a physical inspection of the manufacturing process.

Although OFPP's final policy letter, published in the Federal Register on November 9, 1992, limits the circumstances under which certification will be required, it does not specifically address these agency concerns. With respect to agency verifications, the policy letter notes that because RCRA states that verification shall be reasonable, agencies have some flexibility in selecting implementation procedures. According to OFPP, it is working through the new Council to investigate the feasibility of incorporating estimation, verification, and certification requirements into the FAR.

Agencies also noted that the application of RCRA requirements to small-value agency purchases is burdensome. Under the FAR, small-value purchases are supplies, nonpersonal services, and construction of \$25,000 or less. For these purchases, the regulation establishes such procedures as imprest funds, purchase orders, and blanket purchase orders. One purpose

of these mechanisms is to prescribe simplified procedures for small-value purchases in order to reduce their administrative costs. RCRA requires, however, that agencies' affirmative procurement programs apply to purchases of guideline items when the quantity of such items acquired by an agency is \$10,000 or more a year.

In response to OFPP's March 1992 draft policy letter, Interior stated it was one of the major users of the governmentwide commercial credit card that was developed as a method to streamline the small-value purchase process. It reported that collecting the RCRA-related data for these types of transactions is an added burden and defeats the streamlining goal. In response to OFPP, GSA stated that because RCRA's \$10,000 threshold is cumulative, it applies to virtually every agency transaction involving a guideline product, including small-value purchases, credit card purchases, and local vendor purchases, and questioned whether the burden this policy places on the procuring agencies and their contractors could be justified. Agriculture also expressed concern that the RCRA certification requirement would burden credit card, cash, and other small-value purchases, and stated that the reporting burden would outweigh the value of the data. In its report to OFPP for 1990-91, HHS pointed out that accumulating the required data for purchases under \$25,000 is an onerous administrative burden for the government's contracting offices because there is no automated system in place to collect the data. It also noted that its contracts information system contained only minimal information on purchases below \$25,000.

These agencies recommended that the threshold be raised to exclude small-value purchases. With respect to credit card purchases, for example, the OFPP Administrator said that requiring vendors to provide data on the characteristics of products containing recovered materials would burden the system and thus collecting such data probably would not be cost beneficial to the government. But he also said that procedures for small-value purchases should not preclude agencies from purchasing such products. He recognized the difficulty that agencies would have in reporting on such procurements because agencies are not now required to report product information on purchases of \$25,000 or less. In its November 1992 policy letter, OFPP agreed that the RCRA threshold should be raised to coincide with the small-value purchase threshold. The policy letter also stated that OFPP could not accomplish this change administratively, only legislatively. OFPP, however, did not indicate whether it would recommend a legislative change.

Federal Grant and Procurement Policies Do Not Incorporate RCRA Requirements

In reports on their 1990 and 1991 progress, procuring agencies indicated that some of the RCRA procurement program requirements need to be incorporated into existing governmentwide procurement and grant policies to ensure consistency. RCRA requirements apply to procurements made by both federal procuring agencies and state and local governments that receive federal grants. The FAR establishes federal policy to ensure that federal executive agencies follow uniform procurement policies and procedures. Similarly, OMB Circular A-102 provides policy to promote uniform and consistent administration of federal grants and cooperative agreements to state and local governments. The OFPP Administrator agrees that incorporating the RCRA requirements into these policies would promote more uniform and consistent implementation of those requirements and has recently acted to incorporate changes into the FAR and OMB Circular A-102.

Several federal agencies expressed reluctance to establish their own RCRA procedures since they viewed a governmentwide approach as a more efficient and effective way of implementing the requirements. According to those agency officials, a governmentwide approach would be beneficial in such areas as RCRA procedures for obtaining estimates and certifications of the percentage of recovered materials in the guideline items used and methods to be used by the agencies in verifying the recovered material information that contractors provide. As reported previously, our review of agencies' reports to OFPP showed that EPA was the only agency that had developed contract clauses to obtain estimates and certifications from its contractors and is obtaining the information on a test basis for all contracts awarded after August 1991. But EPA had not sought the OMB approval required under the Paperwork Reduction Act to formally implement the requirement.

In the absence of governmentwide procedures, each executive agency must develop its own environmental solicitation provisions, contract clauses, and certification and reporting requirements. According to some agency officials, as each agency develops its own program, duplication and overlap will occur, with little chance of consistency. HHS and Commerce officials said, for example, that each agency developing its own RCRA procurement requirements is contrary to the concept of having a single set of acquisition regulations for all agencies to avoid unnecessary duplication. Treasury and Commerce officials also said that this was the type of regulatory proliferation the President was attempting to reduce or

eliminate when he implemented his regulatory review initiative in January 1992.³

Treasury officials pointed out that unless these issues are addressed governmentwide as part of the federal acquisition regulatory process, there will be duplication in agency requests for OMB approval under the Paperwork Reduction Act prior to the collection of the required vendor certifications and duplication in the publication of agency programs in the Code of Federal Regulations. Other agency officials also expressed concern about the duplication that will occur as all agencies obtain OMB approval, required under the Paperwork Reduction Act, for collecting estimation and certification information from contractors. The OFPP Administrator told us that it would be appropriate for one agency to obtain OMB approval for use governmentwide. In its report to both EPA and OFPP, GSA suggested that either OFPP or EPA obtain such approval. As yet, however, neither of these agencies has taken this initiative. In its final policy letter, published in the Federal Register on November 9, 1992, OFPP said that each agency should request appropriate paperwork clearances on an interim basis, but that, in the long run, it would appear appropriate for GSA to obtain this clearance on a governmentwide basis as it has for other paperwork requirements associated with the FAR.

In addition to the duplication that would occur, the Commerce report to OFPP pointed out that if each agency develops its own program, then federal contractors that do business with more than one federal agency will have to bear the cost and the burden of learning the requirements of individual agencies' affirmative procurement programs rather than those of a single federal program. The report also stated that in the absence of governmentwide procedures, a data base does not exist to evaluate program effectiveness. Furthermore, uniform regulations would establish common definitions and practices so that agencies could report their results consistently and the program could be measured.

Officials representing 6 of the 17 largest procuring agencies have suggested to OFPP that the RCRA requirements that apply to all agencies be incorporated into the FAR. According to a Commerce official, the best way

³On Jan. 30, 1992, the President announced a regulatory reform initiative to streamline the regulatory process and reduce the burden of regulation. As part of this initiative, the heads of regulatory agencies were to set aside a 90-day period to (1) review regulations and programs that may hinder economic growth and (2) identify and accelerate action on initiatives that will reduce the burden of existing regulations or otherwise promote economic growth. The President also imposed a concurrent 90-day moratorium on issuing proposed or final rules to the extent that agencies could do so without violating statutory deadlines or threatening public health and safety. On Apr. 29, 1992, the President extended the moratorium for 120 days.

to develop a single approach would be to have the Federal Acquisition Regulatory Council, consisting of Defense, GSA, the National Aeronautics and Space Administration, and OFPP, work together to establish a single federal affirmative procurement program. Further, incorporating RCRA requirements into the FAR could provide guidance to agencies in instances where RCRA appears to conflict with other statutory requirements. For example, GSA notes that if it established parameters for recovered material content in products, these might conflict with federal procurement law that favors the use of commercial item descriptions. GSA also notes that if it solicited retread tires made from domestic tire casings, the solicitation might be inconsistent with Trade Agreements Act requirements that prohibit discrimination against products from designated countries.

In 1991 OFPP requested that GSA take the lead in working with the Civilian Agency Acquisition Council to consider revising the FAR by incorporating provisions giving preference to products containing recovered materials. The Council established an ad hoc interagency committee to determine the feasibility of this idea and suggest any changes that might be made. According to the GSA procurement specialist responsible for drafting the proposed regulations, the ad hoc committee recommended changes to incorporate the RCRA requirements. This official also said, however, that because of other pressing priorities within his office, he had been unable to work on the committee's recommendations and did not know when a draft of those suggested changes would be completed. The November 1992 OFPP policy letter requires that the policies established by the policy letter be incorporated into the FAR within 210 days of the date of the policy letter. However, in commenting on a draft of this report, GSA stated that because the committee's recommendations conflict with OFPP's policy letter that provides a preference only when performance and price are equal, the committee has been dissolved. Revisions to the FAR are currently being considered by the new Council on Federal Recycling and Procurement Policy as discussed later in this chapter.

With respect to federal grant policies, states and local agencies are "procuring agencies" under RCRA section 6002 if they spend federal grant funds on guideline items and meet the annual \$10,000 threshold. Until recently, OFPP did not take steps to inform states of RCRA's requirements because it believed that this was EPA's responsibility as issuer of the guidelines or the responsibility of the grantor agencies. However, none of the agencies included in our review had incorporated the RCRA requirement into their grants to state and local governments. As a result,

we believe that significant opportunities to increase the procurement of guideline items may have been lost.

At EPA, for example, after a brief involvement in the affirmative procurement program several years ago, the grants administration division no longer participates because it had been advised that grantees were not required to have such a program. When OFPP requested information on the amount of guideline products procured indirectly for its 1990-91 report to the Congress, EPA decided that the RCRA requirements would apply to its state and local government grantees. The agency is determining how to implement the requirements and obtain information from the states on purchases of items containing recovered materials.

A HUD official stated that HUD's grants to state and local governments do not require grantees to purchase products containing recovered materials to the maximum extent possible. The official also stated that, because of the nature of HUD grant programs, such as construction and public works, HUD grantees are likely to purchase EPA guideline items. According to this HUD official, HUD had intended to modify its grant regulations to incorporate these requirements, but other priorities had prevented them from doing so. Further, modifying individual program regulations would be duplicative and extremely time-consuming when the same purpose could be accomplished governmentwide by modifying the OMB Circular A-102 "common rule,"⁴ a position that HUD has advocated in past reports to OFPP. HHS and Interior officials also pointed out the need to include the RCRA program requirements in the common rule provision of OMB Circular A-102.

The following examples illustrate the effect of not incorporating the RCRA requirements into federal agency grants.

- In December 1990, the American Coal Ash Association notified the city of Los Angeles that it intended to file a RCRA citizen's suit to enforce the federal procurement guideline to use concrete containing fly ash, as a substitute for cement, in a concrete taxiway paving project at the city-owned Los Angeles International Airport. The paving project was funded by the Federal Aviation Administration (FAA), and although it had a specification for concrete mix that required the use of up to 25-percent fly ash by weight, it did not include the requirement in its grant. Therefore, the city's airport department designed and solicited bids for the taxiway

⁴The common rule contains the fiscal and administrative requirements for grants to state and local governments.

paving project that established minimum cement content requirements that eliminated the need for fly ash. In April 1991 the suit was settled, and the city's airport department agreed to comply with the mandates of RCRA section 6002 by allowing the use of concrete containing the highest percentage of fly ash consistent with the FAA specification.

- The FAA funded a project at the Hartsfield Atlanta International Airport to install batt or blown insulation into the attic space of homes surrounding the airport. The grantee agency specified the use of fiberglass insulation. In March 1992 an insulation contractor that distributes both fiberglass and rock wool insulation (which typically contains an industrial by-product recovered material) challenged the project's restrictive specification by citing (1) the EPA procurement guideline that requires the use of insulation products containing recovered materials; (2) the October 31, 1991, executive order that emphasizes the RCRA requirement to buy recycled products; and (3) the November 1991 Senate hearing on federal procurement of recycled products. According to the grantee's senior contract coordinator, the grantee subsequently approved a change in the ceiling insulation specification to allow the use of insulation containing recovered material.

OMB published a proposed revision to Circular A-102 in the Federal Register on August 5, 1992. As part of this revision, the common rule would be modified to include, by reference, the RCRA requirements. Specifically, the modification advises state and local government grantees of their responsibility to comply with RCRA when federal funds are used to procure guideline items. The modification, however, does not change the grantee's reporting requirements. Both OMB and OFPP officials told us that they were opposed to adding to the states' reporting burden. Without a reporting requirement, the federal government cannot know how well state and local governments are implementing RCRA. Further, there is no responsibility at the federal level for determining how effectively states are administering their affirmative procurement programs.

Unreasonable Price and Preference Are Unclear

RCRA section 6002 provides that agencies' affirmative procurement programs must give preference to products that contain recovered materials. However, it states that a procuring agency need not purchase an EPA procurement guideline product composed of recovered materials if the price is unreasonable. RCRA does not define unreasonable price and does not provide explicit authority for agencies to give a price preference to products containing recovered materials. A definition of unreasonable price would provide an agency with criteria for determining when it could

or should solicit products containing only recovered materials, even though the price for such products may, for example, be 10 percent higher than a virgin-content product. In contrast, a price preference for products with recovered materials would be applied after the solicitation was made and offers for both recovered- and virgin-content products were received. Federal procuring agencies have expressed a need for clarifying what RCRA means by unreasonable price and whether price preferences are permitted.

In its May 1991 affirmative procurement program, EPA defines a price as unreasonable if it is 10 percent or more higher than the cost of virgin material products. According to a procurement analyst in EPA's Procurement and Contracts Management Division, this definition provides guidance to the program office that initiates a procurement action on what should be considered an exorbitant price. For example, if the cost of a recovered-content product is 9 percent higher than a comparable virgin-content product, the program office could decide to purchase the recovered-content product—on the basis of the unreasonable price definition—and include a requirement for recovered material content in its specification. The contracting office would then include the recovered-content requirement in its solicitation. Under a sealed bid procurement, only offers that contained recovered content would be considered responsive, and the award would be based on the lowest price. On the other hand, if the program office initially determined that the cost of a recovered-content product would be 11 percent higher than a virgin material product, it could issue a solicitation that did not specify a requirement for recovered material content.

In its response to OFPP for the 1990-91 biennial report, HHS noted that virtually all of its contracting offices wanted guidance on when prices of recovered-content products could be considered unreasonable. Several federal procuring agencies, including HHS, HUD, and Defense, indicated that tight budgets would preclude them from paying more for products containing recovered materials. HHS and HUD procurement officials noted that given the quantity of some products purchased, such as copy paper, even small price differences between virgin and recovered-material products have a significant budget impact. A bill introduced in the 102nd Congress—H.R. 2746—would prohibit federal agencies from determining that the price of a recovered-material product was unreasonable unless it exceeds by more than 10 percent the price of a product not meeting the standard for recovered-material contents.

Agencies also have expressed a need for clarification on whether they may give a price preference for products containing recovered material. As noted by the EPA procurement analyst, a price preference for recovered-content products, if allowed, would be applied when the solicitation did not specify recovered content and responsive bids were received for both virgin and recovered-content products. If an agency had a 10-percent price preference for recovered-content products, it could award a procurement to a higher priced recovered-content offeror if that offeror's price was within 10 percent of a competing virgin content product.

The Congress has, in the past, established preferential procurement programs in order to attain socioeconomic goals. For example, in procurements for which award is based on price and price-related factors, the Department of Defense is directed by the Defense Federal Acquisition Regulation to give offers from small, disadvantaged business concerns a preference by adding 10 percent to the price of all other offers. Such a price preference allows the procuring agency to pay a higher price, if necessary, for a specified product.

Because the price of products made with recovered materials is sometimes higher than the price for products made from virgin materials, EPA considered establishing a price preference in its procurement guidelines. However, EPA found neither the statutory language nor support in the legislative history for RCRA section 6002 that would allow it to authorize or recommend the use of a price preference. Therefore, in its procurement guidelines, EPA recommended that a procuring agency not use a price preference unless the agency has an independent authority that allows such use. In addition, OFPP's November 1992 policy letter states, in response to comments on the draft policy letter that it provide a price preference, "there is no legal mandate for such preference."

We found one example of a procuring agency's reliance on independent authority to provide a price preference. In that case, the Portland Oregon Housing Authority, a HUD grantee, requested approval to deviate from HUD's regulations on grantee procurements in order to follow a state law that imposes up to a 5-percent price preference for the purchase of recovered-material products. In concurring with this practice, HUD stated that its grant regulations provide that grantees shall use procurement procedures that follow state law, unless they are inconsistent with federal law. HUD concluded that the Oregon law imposing a bid preference is

consistent with the requirement in RCRA section 6002 that grantees establish a program that provides preference for recovered materials.

Six of the seven states we contacted have implemented price preferences, ranging from 5 percent to 15 percent, for a variety of products, such as paper, tires, concrete, and re-refined oil. However, none of the states' price preference programs is specifically funded. As a result, any increased costs for procuring items having recovered material have to be absorbed in the procuring agencies' budgets. At least two states are finding it necessary to use price preferences to buy products containing recovered material. New Jersey, for example, indicated that a price preference is used often and is essential for its recovered-material program.

**Purchases of Some Paper
Products With Recovered
Material Have Been Significant**

Despite questions over pricing, agencies have purchased significant amounts of at least one guideline product for which we were able to obtain information—paper containing recovered material. Table 4.1 shows purchases of paper and paper products from GSA, GPO, and for five of the seven states we reviewed that had available data. The percent of total recovered-content paper and paper products (50 percent) purchased from GSA and GPO exceeded three of the five states' purchases; two of these states (California and New York) have price preferences for paper and paper products. These two states, however, were not readily able to determine the extent to which their price preferences for recovered-content paper and paper products were actually used.

Chapter 4
Overall Progress in Implementing the RCRA
Procurement Program Has Been Slow

Table 4.1: Total Federal Paper and Paper Product Purchases Compared With Selected State Purchases

Dollars in millions				
Procuring agency	Total purchases	Virgin purchases	Recycled purchases	Percent recycled
Federal				
GSA ^a	\$344.120	\$214.490	\$129.630	38
GPO ^b	380.900	147.800	233.100	61
Total federal	\$725.020	\$362.290	\$362.730	50
California ^c	22.500	16.527	5.973	26
Illinois ^d	9.048	5.615	3.433	38
Maryland ^d	14.903	3.681	11.222	75
New Jersey ^d	9.091	4.091	5.000	55
New York ^c	30.911	18.939	11.972	39

Notes: Data are those most recently available. Of the five states listed, only Illinois did not have a price preference for paper and paper products containing recovered material.

^aJuly 1, 1991, through June 30, 1992.

^bAugust 1, 1990, through July 31, 1991.

^cCalendar year 1991.

^dJuly 1, 1990, through June 30, 1991.

Further, with the exception of copy paper, GSA and GPO officials noted that the federal central supply agencies do not offer federal procuring agencies a choice between paper and paper products with virgin content and similar products with recovered content. Many of the paper products offered, including envelopes, corrugated boxes, toilet paper, and paper towels, are only available with recovered material content.

In contrast, when products with virgin and recovered-material content are both available, price differences can be significant and can thus affect procurements in the absence of a price preference. Table 4.2 shows that the percentage of federal agency purchases of copy paper with recovered content was small, ranging from 3 percent of total purchases through GSA to 10.4 percent through GPO—or less than 4 percent of the combined total.

**Chapter 4
Overall Progress in Implementing the RCRA
Procurement Program Has Been Slow**

Table 4.2: Total Federal Agency Purchases of Virgin and Recovered-Content Copy Paper From GSA and GPO, July 1991 to June 1992

Dollars in millions				
Supply agency	Value of virgin-content purchases	Value of recovered-content purchases	Total purchases	Percent recovered content
GSA	\$58.6	\$1.8	\$60.4	3.0
GPO	6.2	0.7	6.9	10.4
Total	\$64.8	\$2.5	\$67.3	3.7

Because the supply of copy paper with recovered content would not be sufficient to meet total federal demand, copy paper is available with both recovered and virgin content. According to GSA's Director of the Office Supplies and Paper Products Commodity Center, a major reason for the low demand for copy paper with recovered-material content is the higher price GSA must charge for such high-grade paper. He noted that to stimulate demand and use of recovered-content copy paper and make it more competitive with its virgin counterpart, GSA reduced the box price (10 reams) of recovered-content copy paper to within 25 cents of virgin copy paper in May 1992. This has contributed to a gradual increase in federal agencies' demand for recovered-content copy paper. The director of the Engineering Division at GSA's Office Supplies and Paper Products Commodity Center projected that when the supply of recovered-content copy paper is sufficient to meet demand, the price would then have declined sufficiently to be competitive with paper containing only virgin material. At that time, GSA officials said, the agency would offer only the recovered-content copy paper.

According to a GPO senior procurement analyst, the higher price of the recovered-content copy paper is also probably the reason that most agencies purchase the virgin product from GPO. For example, during the 12-month period ending June 30, 1992, the price of virgin copy paper ranged from \$3.53 to \$3.54 per 1,000 sheets. In contrast, the price of recovered-content copy paper ranged from \$4.22 to \$4.41 per 1,000 sheets, or 19.5 to 24.6 percent higher than the virgin paper product.

Effective Program Oversight and Leadership Have Been Lacking

Effective implementation of the RCRA procurement program has been hampered by a lack of overall program oversight and leadership. In addition to monitoring and reporting on the federal program, OFPP, in cooperation with EPA, is responsible for implementing program requirements. The duties entailed by implementation, however, are not

clearly specified in RCRA. Consequently, an OFPP official noted, OFPP did not believe it was responsible for addressing barriers identified by agencies or for otherwise providing the leadership and oversight the program requires. However, as noted earlier, RCRA does make OFPP responsible for coordinating section 6002 provisions with other policies for federal procurement so that the use of recovered resources is maximized. OFPP has, within the past 2 years, taken steps to improve program monitoring and reporting, as well as to inform agencies of their responsibilities under RCRA.

OFPP and the Federal Council Assume Some Leadership Responsibility

Under the basic statutory authority provided by the Office of Federal Procurement Policy Act, as amended, OFPP is to provide direction and leadership in developing executive branch procurement systems and to prescribe governmentwide procurement policy. This authority includes resolving differences among agencies that arise over those provisions. In addition, RCRA section 6002 designates OFPP, in cooperation with EPA, as responsible for implementing the legislative requirements. Apart from stating that OFPP is responsible for coordinating the RCRA procurement program with other federal procurement policies and periodically reporting to the Congress on agencies' actions to implement the program, RCRA does not specify what these agencies are to do. Until recently, OFPP had not acted to address the problems some agencies had identified over the first 15 years because, according to OFPP officials, such action was believed to be beyond OFPP's RCRA mandate. Consequently, until recently no office assumed the leadership and oversight required to ensure that agencies adopt affirmative procurement programs and review product specifications, to collect data needed to assess the overall effectiveness of the program, or to effectively address problems reported by agencies.

The Subcommittee on Oversight of Government Management, Senate Committee on Governmental Affairs, held a hearing in November 1991 to examine, among other things, implementation of the RCRA procurement program by EPA, OFPP, and other federal agencies. Overall, the Subcommittee found that the federal government's procurement efforts lacked coordination and leadership. The Subcommittee discovered at the hearing that neither EPA nor OFPP knew how many agencies have affirmative procurement programs or to what extent federal purchases comply with EPA procurement guidelines. In addition, the hearing showed that neither EPA nor OFPP was able to identify which agency—if either—was responsible for ensuring that affirmative procurement programs were in place. The Subcommittee Chairman and Ranking

Minority Member sent a letter to the President in February 1992 that addressed these concerns and urged continued commitment to full implementation of Executive Order 12780.

Although the October 1991 executive order establishing the Council on Federal Recycling and Procurement Policy emphasizes a constructive role for the Council, it does not clarify which office or agency is responsible for overseeing the effectiveness of the RCRA procurement program. The executive order directs the Council to (1) identify and recommend the development of incentives for encouraging the purchase of products produced with recovered materials, (2) review federal agency specifications and standards and recommend changes that will enhance federal procurement of products made from recovered materials, (3) collect and disseminate federal agencies' information on current market sources and prices of products produced with recovered materials, and (4) provide guidance and assistance to agency recycling coordinators in setting up and reporting on agency programs. The Council, however, is not vested with specific leadership authority or responsibilities to resolve problems impairing program success, to assess individual agency efforts, or to determine the program's overall effectiveness.

During its first year of operation, the Council has provided some of the leadership needed to ensure that federal agencies implement effective affirmative procurement programs. For example, the Federal Recycling Coordinator helped to establish a network of recycling coordinators in 52 federal agencies to provide a focal point for implementing the executive order. In addition, the Council chairman requested each federal procuring agency to report on the status of its affirmative procurement program by April 28, 1992. The Federal Recycling Coordinator used the procuring agencies' responses to report to OMB on implementation of the executive order; the EPA Administrator used this information to report to the President on agencies' compliance with affirmative procurement program requirements.

The Federal Recycling Coordinator co-chaired a 2-day Government Buy Recycled Trade Fair and Showcase in June 1992 that brought together manufacturers of products with recycled contents and the federal procuring agencies to demonstrate the availability and quality of products with recovered material. Associated workshops at the trade fair instructed procuring agency representatives on how to specify and procure recycled-content products and educated manufacturers on selling to the government. The trade fair—attended by more than 3,000

people—attracted 209 exhibitors that showed several thousand products containing recovered materials. Among the sponsors of the trade fair were OMB, Defense, GSA, EPA, and the Council on Environmental Quality.

At its fourth meeting in September 1992, the Council adopted a 2-year plan that established work groups to address, among other things, issues about affirmative procurement programs, including (1) defining the data elements needed for reporting and measuring progress, (2) removing barriers to guideline implementation, and (3) establishing governmentwide procedures to carry out affirmative procurement programs. These work groups, chaired by Council members with representation from other relevant federal agencies,⁵ are to collect and organize information and formulate recommendations for addressing these issues to the Council.⁶

In commenting on our draft report, OFPP noted various initiatives that they had undertaken in 1992 to promote the procurement and use of recycled products, including: (1) establishing an interagency task group to review and critique agencies' affirmative procurement programs and (2) submitting a change to OMB Circular No. A-110 that requires state and local institutions of higher education, hospitals, and nonprofit organizations receiving direct federal grants to give preference in their procurement programs to the purchase of EPA guideline products.

Neither RCRA nor the executive order establishes measurable program goals that could be used to assess program effectiveness. OFPP officials told us that OFPP has not formally considered establishing goals for the program because it believes that federal agencies should develop goals tailored to their unique requirements. The Council is considering a recommendation that agencies establish voluntary, specific annual goals for their programs, but it is too early to determine what direction the Council will provide and whether this direction will include establishing either parameters for the agencies to use in developing their individual program goals or governmentwide goals that could be used to assess the overall effectiveness of the federal procurement program.

Five of the seven states we contacted have established measurable goals for the purchase of recycled products. Three of the five states have goals

⁵The governmentwide procedures work group, for example, is co-chaired by the Administrator, OFPP, and the Federal Recycling Coordinator. Its purpose is to address whether RCRA procurement program requirements should be included in the FAR.

⁶As of Dec. 1992, the Council had established six work groups to address various program issues, including an education and training work group co-chaired by the Administrator, OFPP.

that are based on the percentage of total product purchases that must contain recycled materials. For example, according to the Procurement Office Manager of the California Department of General Services, state legislation mandates that by January 1, 1992, at least 35 percent of the total dollar value of paper and paper products purchased by the Department of General Services shall have recovered material. The percentage increases to 40 percent beginning January 1, 1994, and 50 percent beginning January 1, 1996. The remaining two states have goals that reflect the amount of pre- versus post-consumer waste contained in the product in addition to the percentage-of-purchase goals. For example, New Jersey legislation requires recycled paper to contain 10-percent post-consumer waste by April 1, 1992; 15-percent post-consumer waste by January 1, 1993; and 25-percent post-consumer waste by January 1, 1995.

In March 1992 OFPP requested public comment on a draft policy letter that requires implementation of cost-effective procurement preference programs favoring the purchase of environmentally sound and energy-efficient products and services. The policy letter, issued in final form on November 9, 1992, provides guidance to be followed by procuring agencies in implementing RCRA section 6002 requirements. It reiterates the statutory requirement for procuring agencies to develop agency-specific affirmative procurement programs for EPA guideline products. It also requires the Federal Acquisition Regulatory Council to incorporate the policies established in the policy letter into the FAR. Furthermore, it reiterates the Executive Order 12780 requirement that each executive branch agency annually review the effectiveness of its affirmative procurement program and provide a report of its findings to EPA and OFPP, beginning with a report covering fiscal year 1992. The policy letter requires the effectiveness reports by December 15. OFPP planned to provide procuring agencies with a format for the fiscal year 1992 report prior to the close of that fiscal year. However, the new report format was sent to the procuring agencies about 2 weeks after the close of the fiscal year because OFPP worked with an interagency working group to revise the previous reporting format and gather supplemental information to further assist agencies in responding more accurately. As noted by HHS and Commerce, requesting data after the close of a report period is unsatisfactory if reasonably accurate data are desired.

Conclusions

According to RCRA requirements, procuring agencies should have implemented affirmative procurement programs for designated products containing recovered material within 1 year following EPA's designation.

However, we are aware of only one agency, GPO, that generally met this requirement for the one guideline item (paper) that it reportedly purchases in sufficient quantity to be subject to the RCRA requirements. Some federal agencies were either unaware of program requirements, or if aware, generally assigned the program a low priority and did not establish required programs. Because the Congress and the administration have increasingly emphasized this program, more agencies are now taking steps to implement it.

Although required to report to the Congress on the program, OFPP until recently had not requested, and agencies had not provided, sufficient information to allow the Congress and others to determine the extent to which agencies procured products containing recovered material and reviewed product specifications. While OFPP and the newly created Council on Federal Recycling and Procurement Policy have recently taken steps to improve agency reporting, it is likely that data are not available to provide detailed information on program effectiveness.

With the establishment of affirmative procurement programs, barriers are being identified that could impair the success of the program: (1) burdensome reporting requirements and inconsistencies between RCRA program requirements and some existing federal procurement practices, (2) the failure to include program requirements in key federal grant and procurement policies, and (3) confusion over the definition of an unreasonable price and the need for a price preference. OFPP, under its basic authority provided by the Office of Federal Procurement Policy Act, has the responsibility to provide direction and leadership in developing executive branch procurement systems and to prescribe governmentwide procurement policy. Further, under RCRA, OFPP has responsibility for maximizing the use of recovered materials. However, until recently, OFPP had not assumed this leadership role.

We believe that it is important that OFPP continue its recently embraced leadership and oversight role by (1) monitoring agencies' progress in implementing affirmative procurement programs and reviewing product specifications, (2) working with procuring agencies to obtain the information needed for a report to the Congress so that the Congress can determine the overall effectiveness of the program, and (3) advising agencies on how to overcome barriers that might preclude full implementation of program requirements. Judging by the initiatives it has already undertaken, the Council should be a useful forum to assist OFPP in carrying out these responsibilities.

Although OFPP has only recently begun to incorporate RCRA requirements into governmentwide federal procurement guidelines, such as OMB Circular A-102 and the FAR, these are important first steps that have the potential for addressing some of the problems noted by the various federal agencies. The proposed change to OMB Circular A-102, however, does not include any change in reporting requirements, which is needed to determine whether states are implementing the RCRA requirements.

The Council is to review specifications and recommend changes, incentives, and market sources to enhance federal procurement of products containing recovered material. The Council is now defining how it will carry out its responsibilities, and, judging from its efforts to date, the Council can be an important forum for improving the implementation of the section 6002 requirements.

Despite the recent positive attention given to the RCRA procurement program, some questions remain about program objectives. If these questions are resolved, the program could be strengthened. Neither the legislation nor the executive order require any federal entity (1) to establish measurable program goals for the procurement program or (2) to be responsible for determining the overall effectiveness of the federal program in meeting such goals. The Council is considering a recommendation that agencies establish voluntary, specific annual goals for their programs. We believe that governmentwide goals, or guidelines that agencies could use to establish their own goals, are necessary for assessing the overall effectiveness of the federal procurement program. Further, the legislation is not clear on what constitutes an unreasonable price and does not provide explicit authority for agencies to give a price preference to products containing recovered materials. Clarification of the Congress' views on these issues would better enable the procuring agencies to know what their parameters are for procuring products containing recovered materials.

Recommendations to the Director, Office of Management and Budget

In order to assess the overall effectiveness of the federal procurement program, we recommend that the Director of OMB direct the Administrator, OFPP, to have the Council on Federal Recycling and Procurement Policy to either (1) establish governmentwide goals for the federal procurement program or (2) develop broad parameters for individual agencies to use in establishing their own procurement program goals and then require each agency to establish such goals consistent with the overall parameters established by the Council.

We further recommend that the Director of OMB, working through OFPP, (1) seek timely completion and incorporation of RCRA section 6002 requirements into the Federal Acquisition Regulation and (2) implement as soon as possible the proposed change to OMB Circular A-102 to require state and local governments to comply with section 6002 requirements. In addition, we recommend that either the reporting requirements of Circular A-102 be amended or another mechanism be devised that will allow the federal government to assess state and local governments' implementation of the RCRA requirements.

Recommendations to the Congress

We recommend that the Congress clarify the meaning of "unreasonable price" by either (1) establishing parameters for an unreasonable price and any conditions that might alter those parameters or (2) delegating the authority for establishing such parameters and conditions.

We also recommend that the Congress explicitly state its views on establishing a price preference under section 6002.

Agency Comments and Our Evaluation

OFPP concurred with our findings that, until recently, agencies have generally not been aware of program requirements and have been slow to implement affirmative procurement programs. OFPP also concurred with our finding that, until the 1990-91 reporting period, agencies had not been requested, and had not provided, meaningful data to assess their activities.

OFPP disagrees, however, that its efforts to ensure that barriers encountered by agencies now implementing affirmative procurement programs have been limited, or that it has not assumed a leadership role to resolve conflicts. We agree that recent actions taken by OFPP, such as drafting revisions to OMB circulars and updating policy letters, reflect the types of action required by RCRA and are needed to effectively implement the program. However, the events described in this report cover the entirety of the RCRA procurement program since its authorization in 1976. It was not until the November 1991 hearings that OFPP was instructed to show leadership and improve agencies' responsiveness and reporting. Therefore, we do not agree with OFPP that it has demonstrated the type and extent of leadership expected and required over the 17-year history of the program. In addition, a number of the OFPP actions related to section 6002, beyond those initially recognized in the report, reflect recent actions, while others represent undocumented actions that were carried out during

several meetings in 1992. We have updated our report to better reflect these actions.

OFFP's complete comments on this report and our detailed responses to these comments are contained in appendix V.

GSA generally concurred with our assessment of the implementation of the RCRA procurement program. However, GSA did not fully agree with our recommendation. GSA noted that it would be beneficial if the Congress explicitly stated its views on establishing a price preference under section 6002. However, GSA did not believe that establishing parameters for any price preference should be fixed by statute. We are not recommending that fixed parameters be established for a price preference. We are recommending that the Congress explicitly state whether a price preference should be allowed for products containing recovered material in procurements in which material content is not specified. We are also recommending that the Congress, or some other delegated authority, clarify the meaning of unreasonable price in order to guide federal agencies' decisions on whether to proceed with a solicitation for products containing only recovered materials. GSA's complete comments on this report and our detailed responses to these comments are contained in appendix VI.

Examples of Recovered Material Products Purchased by Selected States

State	Recovered materials purchased
California	Various paper products, including carbonless paper, corrugated fiberboard, food service items, mimeo and duplicator paper, paper bags, and toilet seat covers; glass spheres used in traffic paint
Florida	Various paper products, glass spheres used in traffic paint, plastic garbage cans and waste receptacles, automotive and marine batteries, laser printer cartridges
Illinois	Various paper products; re-refined motor oil; retread tires; antifreeze; a variety of automotive parts, including water pumps, fuel pumps, rack-and-pinion steering gears, power steering pumps, carburetors, alternators, starters, engines, transmissions, brake shoes, driveshafts, and cylinder heads and components
Maryland	Various paper products; desk trays, bins, trash cans and liners, bituminous and crushed concrete, sign posts, laser printer cartridges
New Jersey	Various paper products, motor oils, recycling buckets, laser printer cartridges, aluminum license plates
New York	Various paper products, cellulose insulation, bituminous concrete, retread tires, hypodermic needles, polyethylene film, floor maintenance equipment, chair parts, waste receptacles, culvert pipes and bands, glass spheres for pavement markings, snowplow shoes, boats and canoes, leather footwear
Washington	Various paper products, report covers, trash can liners, aluminum license plates, wire products, tire chains, re-refined motor oil, wiping cloths

Status of Federal Agencies' Establishment of Formal/Written Affirmative Procurement Programs as Reported to OFPP as of June 15, 1992

Federal agency	Established prior to Jan. 1992	Established, drafted, or in process of developing after Jan. 1992	No comment on status or no time frame for establishing such programs
Agriculture		X	
Agency for International Development		X	
Central Intelligence Agency		X	
Commerce		X	
Comptroller of the Currency			X
Consumer Product Safety Commission			X
Defense			X
Education		X	
Equal Employment Opportunity Commission			X
Environmental Protection Agency	X		
Federal Communications Commission		X	
Federal Labor Relations Authority			X
Federal Emergency Management Agency			X
Federal Trade Commission			X
General Services Administration	X		
Health and Human Services		X	
Housing and Urban Development		X	
Interstate Commerce Commission			X
Interior		X	
Justice		X	
Labor			X
National Aeronautics and Space Administration		X	
National Labor Relations Board			X
Nuclear Regulatory Commission		X	
Office of Management and Budget			X
Office of Personnel Management		X	

(continued)

**Appendix II
 Status of Federal Agencies' Establishment of
 Formal/Written Affirmative Procurement
 Programs as Reported to OFPP
 as of June 15, 1992**

Federal agency	Established prior to Jan. 1992	Established, drafted, or in process of developing after Jan. 1992	No comment on status or no time frame for establishing such programs
Panama Canal Commission		X	
Peace Corps			X
Railroad Retirement Board		X	
Securities and Exchange Commission			X
Selective Service System			X
State		X	
Transportation		X	
Treasury		X	
U.S. Arms Control and Disarmament Agency			X
Veterans Affairs		X	

Comments From the Environmental Protection Agency

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 26 1993

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

Mr. Richard L. Hembra
Director
Environmental Protection Issues
Resources, Community, and Economic Development Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Hembra:

As requested in your letter and pursuant to the General Accounting Act of 1980 (PL 96-226), I am transmitting to you the Agency response to the General Accounting Office (GAO) report entitled Solid Waste: Federal Program to Buy Products with Recovered Materials Proceeds Slowly (GAO/RCED-93-58).

For the most part, the Agency found that the report, including the conclusions and recommendations, is reasonable and accurate. However, we believe that it is necessary that the report present our progress in implementing existing procurement guidelines and in preparing new guidelines in context of recent developments. Specifically the report should recognize that EPA:

- has developed an effective internal strategy for recycling guidelines development and implementation;
- has demonstrated leadership in coordinating recycling activities with other agencies;
- believes that designating products as experimental or developmental is an ineffective use of resources and that such designation is inconsistent with the statute, which states that procuring agencies need not procure guideline items if they are not reasonably available; and
- will ensure that a smooth transition is planned between the old and new contractors to provide for continuity of work in the procurement guideline program.

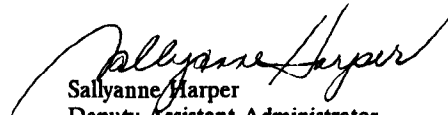
See comment 1.

**Appendix III
Comments From the Environmental
Protection Agency**

2

Our detailed explanation of these issues is contained in the enclosure. We have also identified a few factual errors. I would appreciate your consideration of these comments so that the final report accurately reflects Agency activities. I would also appreciate publishing both the letter and the enclosure in the final report.

Sincerely,


Sallyanne Harper
Deputy Assistant Administrator
for Finance and Acquisition

Enclosure

Enclosure

**EPA Comments on GAO's Draft Report,
Solid Waste: Federal Program to Buy Products with
Recovered Materials Proceeds Slowly (GAO/RCED-93-58)**

STRATEGY FOR PROCUREMENT GUIDELINES DEVELOPMENT

Throughout the text, the GAO report refers to EPA's lack of a formal, written strategy as a contributing factor that delayed issuing new guidelines. In addition, the report states that the Agency has no strategy to focus the procurement guidelines effort or to serve as a basis for communicating progress to Congress and others.

While EPA agrees with GAO that it would be desirable to develop a written strategy, the Agency is concerned that the overall tone of the report will lead readers to incorrectly conclude that the procurement guidelines program lacks focus and direction. The report should reflect the following information to avoid this misunderstanding. Since the five existing guidelines were issued, the Office of Solid Waste (OSW) has developed an internal strategy focusing on both guidelines development and implementation to meet the statutory goal of developing markets for products containing recovered materials. The Agency strongly believes that procurement guidelines will effectively stimulate markets only if procuring agencies implement them. Therefore, over the last three years EPA has allocated substantial resources to short-term guidelines implementation and has not focused exclusively on development of new guidelines. It is suggested that the report note that in the fall of 1992 the Agency began developing a formal strategy with more emphasis on new guidelines issuance.

Development activities. After the five guidelines were issued, OSW completed a guidelines feasibility study examining a broad range of construction products which can be produced from waste materials of interest to state and local waste management officials. OSW targeted selected plastic pipe and geotextiles (containing recovered plastics) and fiberboard and hydraulic mulch (containing recovered paper) for new guidelines development. In addition, compost and crumb rubber modified asphalt were identified as potential guideline items.

See comment 2.

See comment 3.

**Appendix III
Comments From the Environmental
Protection Agency**

See comment 4.

It is also suggested that the report cite that:

- OSW has completed detailed feasibility studies on geotextiles, fiberboard, and mulch, and is preparing draft guidelines for these items;
- OSW is preparing a draft analysis of the technology and economics of crumb rubber modified asphalt for peer review; and
- OSW is completing detailed feasibility studies of organic compost and plastic pipe.

Implementation activities. While the Resource Conservation and Recovery Act (RCRA) section 6002 requires Federal procuring agencies to develop affirmative procurement programs for purchasing items designated in EPA's guidelines, RCRA does not sanction the failure to establish and implement these programs. The Agency understands this and has "marketed" the guidelines program to other agencies. Recognizing the barriers to guidelines implementation, our strategy has been to:

- work with the Office of Federal Procurement Policy (OFPP) to foster implementation of the guidelines and to obtain better data on agencies' purchases; and
- work with other Federal agencies to draft an Executive Order to foster the implementation of guidelines.

Since the Agency is seriously implementing this strategy it is suggested that the report reflect the following EPA activities:

- funding a guidelines outreach and education program targeting governmental purchasing agencies, manufacturers and vendors, and recycling agencies;
- sponsoring recycled product procurement conferences in EPA's regions, two Federal Agency Recycling Conferences, and the highly regarded Government Recycled Products Trade Fair, as well as buy-recycled and recycling conferences;
- identifying implementation issues, and recommending changes to minimum recovered materials content standards through issuance of Procurement Guidelines Advisories; and
- providing direct assistance to procuring agencies and vendors of products containing recovered materials.

See comment 5.

See comment 6.

EPA prepared Executive Order 12780 (October 31, 1991) that directs Federal agencies to implement the procurement guidelines, establishes reporting requirements, and establishes a Federal Recycling Coordinator, recycling coordinators in each executive agency, and a Council on Federal Recycling and Procurement Policy. During the Council's first year, it met quarterly and established six work groups to address measurement of progress, barriers to guidelines implementation, revisions to the Federal Acquisition Regulation, and education, among other issues. A senior EPA employee serves as the Federal Recycling Coordinator, and additional Agency staff provide technical assistance and participate in the work groups.

EPA LEADERSHIP AND COORDINATION WITH OTHER AGENCIES

See comment 7.
Now on p. 21.

Agency Coordination with Other Agencies. The report states (on page 29) that EPA has no formal, written agreement with the General Services Administration (GSA) to provide for consultation while developing guidelines. Despite the fact that EPA and GSA are without a written agreement, the GAO report should note that participating agencies have not encountered any problems that an agreement would resolve. So far, GSA staff have participated in most of EPA's work group meetings, have answered questions about specifications and procurement of various products, and have fostered implementation of the existing guidelines.

See comment 8.

The GAO report states that EPA is not working with GSA and OFPP to obtain information on agencies' purchases of products containing recovered materials. The record should note that EPA has worked with these and other agencies. For example, OSW has researched data collection mechanisms available through GSA (e.g., the Federal Procurement Data System) and the Department of Commerce (e.g., Census of Manufacturers' data). EPA staff have worked directly with OFPP and the Office of the Federal Recycling Coordinator to design questionnaires for Federal agency reporting of purchases of products containing recovered materials. In addition, staff participate in the measurements work group established by the Council on Federal Recycling and Procurement Policy. Subgroups of this work group are examining existing data systems, identifying and assessing potential data element requirements, and defining reporting goals.

See comment 9.

It is suggested that the report supplement its discussion on the situation in which EPA did not know which Federal officials to contact to participate in a guidelines development work group. While it is true that at times staff have had difficulty in identifying the appropriate agencies or agency staff to participate in guidelines work groups, EPA developed Executive Order 12780 to create the Council on Federal Recycling and Procurement Policy and the designation of Federal agency recycling coordinators. As a result, there are contacts in each agency, and the earlier situation characterized in the report is alleviated.

See comment 10.

Leadership Infrastructure. The report fails to capture the strong leadership role that EPA and other agencies have played over the past year in establishing an infrastructure to deal with the universe of barriers to guideline implementation. Executive Order 12780 strengthened the Federal government's efforts to coordinate the recycling effort. With a focus on leadership in the affirmative procurement area, the Executive Order established the Federal Recycling Coordinator and charged the Coordinator with monitoring and assisting agency program implementation.

The Order also established a Council led by EPA and consisting of representation from OFPP, GSA, the Departments of Defense, Commerce, Energy, Interior, the National Aeronautics and Space Administration, and the Council on Environmental Quality. The Council is charged with the responsibility of recommending initiatives to spur government affirmative program implementation. The order also required the appointment of Recycling Coordinators in each Federal department or agency to coordinate the development and reporting on recycling programs. The Federal Recycling Coordinator is required to report on and assess recycling progress in the Federal government.

Agencies' progress and affirmative procurement program leadership are described in detail and assessed in two recent reports. These reports, mandated by the Executive Order, are the Federal Recycling Coordinator's Report to the Office of Management and Budget (September 1992) characterizing activities implementing the Executive Order and previous Administrator Reilly's Report to the President (October 1992) assessing agencies' affirmative procurement compliance.

It is suggested that the report discuss the Federal agencies' success in establishing and strengthening their buy-recycled programs over the last year and agencies' support for the Federal government's recycling initiative. For example, in the summer of 1991, a Senate Subcommittee could find only two agencies with affirmative procurement programs. However, in late 1992, over 52 agencies had buy-recycled programs in various stages of development. The Federal Recycling Coordinator is analyzing data from Recycling Coordinators and working with OSW and OFPP to develop strategies for further strengthening agencies' buy-recycled programs. The Federal Recycling Coordinator has been strongly supported by the Council agencies. In addition, many non-Council agencies are volunteering to support the Council by serving on various Council work groups that are seeking to resolve implementation barriers to the Executive Order.

See comment 11.

GUIDELINES FOR EXPERIMENTAL AND DEVELOPMENT PRODUCTS

The report concludes that EPA does not fully consider the RCRA criteria for identifying guideline items because EPA does not adequately explore experimental or developmental products. The report should also state that RCRA section 6002 does not require EPA to consider these products.

EPA finds that designating products as "experimental" or "developmental" is an ineffective use of our resources and is inconsistent with the statute, which states that procuring agencies need not procure guideline items if they are not reasonably available (e.g., only experimental). The Agency unsuccessfully tried this approach in 1986 when it proposed a guideline for use of crumb tire rubber in asphalt pavements. At that time, there were conflicting studies and data on the performance of crumb rubber modified asphalt pavements, and there was a nationally accepted specification for only one minor use. The Agency proposed other uses which were considered experimental or developmental by some state highway departments but accepted by others. The Agency proposed that agencies procure the product for the uses that many considered experimental or developmental. However, EPA received overwhelming opposition to the proposed approach.

The Agency believes that procurement guidelines are ineffective unless procuring agencies take them seriously. This is especially true for products that are experimental or developmental. The Agency recommends encouraging the development of testing programs for these products; for example, under the auspices of the National Institute of Standards and Technology.

CONTRACTOR SUPPORT

On page 32, the report identifies the delays involved with the changing of extramural support contractors. It is suggested that the report point out such delays are often inevitable and that, to mitigate delay, EPA added a work assignment under the new contract that provided a continuity of work between the previous and the new contractor.

See comment 12.

Now on page 25.

The following are GAO's comments on the Environmental Protection Agency's letter dated February 26, 1993.

GAO's Comments

1. We added the section on Agency Comments and Our Evaluation to chapter 2 and modified the chapter to include this information.
2. We modified chapter 2 to reflect EPA's focus on guidelines implementation.
3. We revised chapter 2 to include this information.
4. We revised chapter 2 to indicate the status of the guidelines currently under development.
5. We revised chapter 2 to include examples of EPA's guideline implementation activities.
6. We revised chapters 1 and 2 to indicate EPA's work in helping to prepare the executive order and in working with the Council on Federal Recycling and Procurement Policy.
7. We continue to believe that past difficulties in obtaining the participation and assistance of the General Services Administration and Commerce have slowed the guideline development process. Formal, written agreements would focus the commitment of both parties to ensuring their cooperation in obtaining data on the availability of products containing recovered materials and the extent of their procurement by federal agencies.
8. We modified chapter 2 to include this information.
9. This point was included in chapter 2 of our draft report and is now on page 18.
10. We have recognized the stronger efforts, particularly through the Council, in the past year and have revised chapters 2 and 4 to describe more of EPA's and the Council's efforts to provide leadership in the affirmative procurement area over the last couple of years.
11. RCRA does not give greater weight to any one of the selection criteria, and the criterion to consider product availability does not prohibit EPA

from using that criterion to examine other uses of recovered material, such as in experimental or developmental products not currently available in the marketplace. Further, we are not recommending that EPA develop procurement guidelines for such products. Rather, we are concluding that EPA could identify additional means of reducing the solid waste stream by exploring ways to encourage the growth of newly developing products containing recovered materials.

12. We revised the report to include this information in chapter 2.

Comments From the Department of Commerce



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer
Assistant Secretary for Administration
Washington, D.C. 20230


10 MAR 1993

Mr. Richard L. Hembra
Director, Environmental Protection
Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Hembra:

Thank you for the opportunity to review your draft report entitled "Solid Waste: Federal Program to Buy Products with Recovered Materials Proceeds Slowly." The Department recognizes the importance of addressing the disposition of recovered materials. We appreciate the opportunity to review the report; however, we have no comments at this time.

Sincerely,


Chief Financial Officer and
Assistant Secretary for Administration

Comments From the Office of Federal Procurement Policy

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



OFFICE OF FEDERAL
PROCUREMENT POLICY

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

February 23, 1993

Mr. Richard L. Hembra
Director, Environmental Protection Issues
Resources, Community, and Economic
Development Division
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Hembra:

Thank you for providing us the opportunity to review and comment on the draft General Accounting Office report entitled "Solid Waste: Federal Program to Buy Products With Recovered Materials Proceeds Slowly." We are, however, disappointed in the report, as drafted, as it does not accurately reflect the activities of this Office in leading the Federal Government's efforts to promote and utilize recycled products.

Over the last two years, the Office of Federal Procurement Policy (OFPP) has dedicated a substantial amount of its staff resources and effort to this program. As a result, many significant and, ultimately, far-reaching actions have been taken to foster Executive Branch procurement and use of recycled products. Few, unfortunately, are cited in the report, as drafted. These initiatives range from specific topics such as using energy-efficient light bulbs and recharged copier cartridges, to general policies covering agencies' practices for purchasing products containing recovered and biodegradable materials. Our goal -- in accordance with our statutory mandate -- is to leverage the Government's \$210 billion annual purchasing program toward greater use of recycled products and, thus, to reduce the cost of Government and help make the Government a model consumer. Enclosure 1 provides a listing of some of our principal activities.

Since the draft report does not address many of the initiatives OFPP has undertaken, it does not adequately reflect the current status of our efforts. We have been on an extremely fast track over the last two years: issuing policy guidance, consulting regularly with the agencies and the private sector, arranging conferences, and fostering every tool at our disposal -- the acquisition of recycled products. As a result, we believe that any objective observer would conclude that much has been accomplished since 1991 to develop and promote environmentally sound, energy-efficient procurement practices.

See comment 1.

See comment 1.

**Appendix V
Comments From the Office of Federal
Procurement Policy**

See comment 1.

We do not object to constructive criticism of any actions we have taken or failed to take. We do, however, object to the overall negative tone of the report and to its apparent misrepresentation regarding the alleged lack of OFPP leadership. Such statements, replete throughout the report, simply are not accurate and do a positive disservice to the furtherance of this program. We would note, in that regard, that this Office has been commended by several private sector groups and individuals for its leadership efforts. The National Recycling Congress and Mr. Ralph Nader, for example, have praised this Office's efforts during recent months.

Our specific comments for improving the accuracy of the report are provided in Enclosure 2. We hope you will give them serious consideration. If you have questions about any of our comments, please call me.

Sincerely,



Allan V. Burman
Administrator

Enclosures

cc: Mr. Milton Socolar

OFFP INITIATIVES TO ENCOURAGE PROCUREMENT OF
ENVIRONMENTALLY SOUND AND ENERGY-EFFICIENT PRODUCTS

See comment 1.

1. SEPT. 1991 OFFP issued a new guidance memorandum to agencies on using life cycle cost (LCC) analysis. The memo encouraged agencies to use LCC techniques in their procurement programs and to consider such factors as energy conservation, material recycling, and reduction of the waste stream in their acquisition plans.
2. OCT. 1991 OFFP provided guidance to the agency heads regarding the purchase and use of environmentally sound energy conserving (ESEC) products and services and outlined 11 specific initiatives. GSA was given the lead to coordinate Government-wide implementation. Initiatives were:
 - Highlight ESEC products in GSA supply catalog.
 - Expand use of electronic bulletin boards to List ESEC Products.
 - Use energy-efficient light bulbs.
 - Highlight ESEC products on GSA Federal Supply Schedules.
 - Develop FAR clause to establish clear priorities among preferred sources and to require use of ESEC products.
 - Use recharged toner cartridges for copiers and laser printers.
 - Eliminate styrofoam products and other packaging materials containing harmful chlorofluorocarbons (CFCs).
 - Use biodegradable and other packaging and wrapping materials to replace plastic and other petroleum-based materials.
 - Use recycled paper.
 - Encourage healthy fats in cafeterias.
 - Use life cycle cost (LCC) analyses.

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3. OCT. 1991 Executive Order 12780, Federal Agency Recycling and the Council on Federal Recycling and Procurement Policy, was issued requiring agencies to adopt a recycling program for paper, plastic, metals, glass, used oil, lead batteries and tires. It established an 11 member Federal Recycling Council and reinforced RCRA requirements (affirmative procurement programs, procurement of recovered materials and reporting). It also required all executive agencies to designate a recycling coordinator. OFPP assisted in the development and refinement of the Executive Order.
4. NOV. 1991 Senators Levin and Cohen held hearings on implementation of RCRA section 6002. OFPP as well as DOD, EPA and GSA testified. Senator Levin instructed OFPP to show leadership and improve biennial reports. OFPP has complied.
5. DEC. 1991 OMB agreed to co-sponsor the first Government-wide trade fair emphasizing products made with recovered material and educating Federal employees on purchasing these products. OFPP participated on the steering committee to organize this event and co-chaired the subcommittee organizing the education program.
6. DEC. 1991 OFPP established and convened the first meeting of the "Interagency Energy/Environmental Policy Working Group." Representatives from 22 agencies participate in quarterly held meetings. Agencies are requested to report on their implementation of the 11 initiatives noted above, their affirmative procurement programs, and any other issues or problems they wish to discuss. Some of the other initiatives being implemented in the agencies include:
 - soy-based ink
 - polyester carpets made from plastic soda bottles
 - fire extinguishers containing no CFCs
 - alternatively fueled vehicles
 - blended gasoline
 - recycled printer cartridges
 - park furniture made from recycled plastic
 - fire fighting camps: recycled tin cans, aluminum cans, batteries, containers
 - occupancy sensors
 - energy-efficient lighting systems in large institutions

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7. JAN. 1992 OFFPP established new reporting requirements (quantitative purchase data) for the RCRA report and forwarded approximately 40 new environmental initiatives to agencies for their consideration and implementation.
8. MARCH 1992 OFFPP published a proposal in the Federal Register for a new OFFPP Policy Letter (Policy Letter 92-4) to replace policies issued in 1976 and 1977.
9. MARCH 1992 OFFPP published in the Federal Register, proposed amendments to OMB Circular No. A-119, Federal Participation in the Development and Use of Voluntary Standards. The revision, in part, was proposed to require the consideration of environmental and energy factors in the development and use of voluntary standards.
10. MARCH 1992 The OFFPP Administrator actively participated in the first meeting of the Council on Federal Recycling and Procurement Policy and assisted the Federal Recycling Coordinator in organizing the agenda for the meeting and the charter for the Council's operation.
11. JUNE 1992 OMB co-sponsored a Government-wide "Buy Recycled Products Trade Fair and Showcase," and developed concurrent education program for attendees. 3000 people attended; 209 exhibitors.
12. JULY 1992 OFFPP, EPA, GSA, DOD and Agriculture convened a task group to review and critique agencies' affirmative procurement plans to ensure their compliance with the RCRA requirements. Comments were provided to the agencies.
13. AUG. 1992 OMB published revisions, proposed by OFFPP, to Circular A-102, Grants-in-Aid to States and Local Governments which included requirements for states and localities using federal funds to comply with RCRA.
14. SEPT. 1992 OFFPP held the first meeting of the Council on Federal Recycling workgroup on FAR Implementation. The OFFPP Administrator co-chairs this workgroup with the Federal Recycling Coordinator.
15. SEPT. 1992 OFFPP met with representatives from DOD, DOE, EPA, GSA and USDA to discuss improvements to the January 23, 1991 RCRA reporting format. As a result of several meetings, the format was revised, more pertinent questions were added, and additional information about the guideline products was provided to assist agencies in completing the survey.

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16. OCT. 1992 OFPP submitted a change to the OMB Circular No. A-110 that requires state and local institutions of higher education, hospitals and non-profit organizations receiving direct federal grants or other funds to give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.
17. NOV. 1992 OFPP issued Policy Letter 92-4 in final for agency implementation. The Policy Letter was forwarded to Agency Assistant Secretaries for Management by the OMB Deputy Director for Management to focus the attention of program and requirements personnel on the need to request recycled products in their procurements.
18. DEC. 1992 The OFPP Administrator agreed to co-chair a second workgroup for the Council on Federal Recycling that is addressing Education and Training issues.

**Appendix V
Comments From the Office of Federal
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OFPP's Specific Comments on Draft GAO Report

Now on p. 3.

1. Page 2, Paragraph 2. The report states that "...OFPP has not provided the leadership required to ensure that federal agencies maximize their procurement of products containing recovered materials."

See comment 2.

OFPP Comment: OFPP has exerted much leadership in this area over the last two years. A complete listing of leadership actions initiated by OFPP since September 1991 is included as Enclosure 1.

Suggested Edit: "OFPP did not until recently provide...."

Now on p. 3.

2. Page 3, Paragraph 2. The report states that "without OFPP leadership," federal procuring agencies were unaware of RCRA requirements or assigned them a low priority.

See comment 3.

This statement is inaccurate since the Office of Federal Procurement Policy (OFPP) did make agencies aware of Resource Conservation and Recovery Act (RCRA) requirements. Policy letters were issued in 1976 and 1977 to inform agencies of their responsibilities under RCRA and to urge them to purchase products made with recovered materials. In addition, OFPP notified Agency Procurement Executives when each of the Environmental Protection Agency (EPA) guidelines were issued and included copies for their information. In addition, this statement does not convey the even more aggressive, recent initiatives taken by OFPP to provide leadership in the Executive branch.

Suggested Edit: "Some Federal procuring agencies stated that they...."

Now on p. 4.

3. Page 4, Paragraph 3. The second sentence criticizes OFPP for agencies' inaction and makes it appear as though OFPP continues to not take responsibility for leadership which is untrue.

See comment 4.

As noted above, OFPP did make agencies aware of RCRA requirements.

Suggested Edit: "Because OFPP did not exert aggressive leadership prior to 1991, procuring agencies have placed..."

Now on p. 4.

See comment 5.

4. Page 5, Paragraph 2. This paragraph as written indicates that OFPP has not done anything and that the prior reports to Congress did not comply with RCRA. The paragraph is erroneous. Edit: Suggest that paragraph be rewritten as follows:

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"OFPP's previous reports to the Congress on agencies' progress in complying with RCRA complied with the statutory requirement for such reports, but the reports did not contain quantitative data necessary to measure the extent of agencies' purchases. However, the lack of information on Federal purchases of products containing recovered material may limit OFPP's efforts. While OFPP has recently started requesting quantitative data, measurable goals have not been established to assess the program's progress."

Now on p. 4.

5. Page 5, Paragraph 3. This paragraph blatantly omits much activity that has occurred through OFPP and through the Council to overcome barriers.

See comment 6.

OFPP is actively pursuing ways to resolve barriers and problems encountered by the agencies in implementing RCRA such as chairing two Council work groups to implement Government-wide regulations in the FAR and to promote education and training throughout the Federal Government. The Administrator chairs an energy/environmental policy group with representatives from 22 agencies who report on their implementation of RCRA and other environmentally sound, energy-efficient procurements. Additionally, OFPP has participated on two other interagency groups formed to review agencies' affirmative procurement plans and to coordinate the information obtained and data collection instrument used for reporting. Moreover, this entire section focuses blame on EPA and OFPP even though the statute specifically directs responsibility for RCRA implementation to individual agencies.

Suggested Edit: Delete paragraph or change to past tense.

Now on p. 5.

6. Page 5, Paragraph 4. Even though numerous other suggestions and recommendations are mentioned throughout the report, only one recommendation to Congress is noted. Others noted in the report are:

See comment 7.

- (1) Define measurable program goals
- (2) Designate Federal entity to be responsible for meeting goals
- (3) Provide implementation date for implementation of additional guidelines
- (4) Provide statutory authority and funding to the Council
- (5) Better define the roles of oversight and implementing agencies
- (6) Direct the development of a Government-wide data collection system and provide adequate funding for it

Now on page 5.

7. Page 6, Paragraph 1. The report recommends that OFPP monitor agencies' progress and work with agencies to overcome barriers.

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See comment 8.

Now on p. 8.

See comment 9.

Now on p. 9.

See comment 10.

Now on p. 10.

See comment 11.

Now on p. 13.

See comment 12.

See comment 13.

Now on p. 46.

See comment 14.

Since OFPP is already working to achieve these goals, the sentence should be reworded to state "General Accounting Office (GAO) recommends that OFPP continue to..."

8. Page 10, Paragraph 2. The Gross Domestic Product in 1992 was about \$5 trillion. Federal procurement expenditures were \$200 billion. Thus, the comment about the Government buying 7 percent to 8 percent of all goods produced nationwide appears to be erroneous.

9. Page 12, Paragraph 2. This sentence states that OFPP is required to implement Section 6002 in cooperation with the EPA.

OFPP's Comment. The sentence, as written, is wrong. Each agency is responsible for implementing RCRA. OFPP is only responsible for procurement policy and biennial reports.

10. Page 13, Paragraph 3. The report references the March 24, 1992 proposed OFPP policy letter rather than the final OFPP Policy Letter 92-4, November 9, 1992. Suggest that the final Policy Letter be referenced.

11. Page 16, Paragraph 16. This paragraph indicates that GAO interviewed OFPP officials. It fails to state that GAO submitted written questions to OFPP on three different occasions. OFPP responded to these questions by letters of March 16, 1992; May 11, 1992 and September 1, 1992. It is suggested that the OFPP letters be appended to the report.

12. Page 28, Paragraph 2. The report appears to take issue with OFPP's claim that revising the Government-wide data system to collect information on purchases of products containing recovered material would be costly and difficult, by stating that no analysis has been undertaken.

Though it is true that no formal analysis was performed, OFPP's experience with the budgeting and oversight of the Federal Procurement Data System (FPDS) convinces us that the development of another system or revisions to the FPDS would be costly, particularly since the benefits associated with such a system have not been quantified. In addition, until it is decided what specific information is needed, a realistic assessment of costs cannot be made. Paragraph 2 as written, does not agree with the OFPP Administrator's Letter of September 1, 1992.

13. Page 54, Paragraph 1, Last Sentence. The wording of this sentence implies that OFPP is still not collecting information. In order to make it more accurate, please edit to read: "However, until the 1990-1991 reporting period,

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Now on page 44.
See comment 15.

Now on p. 45.
See comment 16.

Now on p. 46.
See comment 17.

Now on p. 46.
See comment 18.

Now on p. 48.
See comment 19.

Now on p. 48.
See comment 20.

Now on p. 50.

OFPP did not collect data specific enough to determine whether agencies..."

14. Page 56, Bottom Line, and Page 57, Top Line. This sentence states that HHS was not aware of the requirement to establish a program [affirmative procurement program] until 1991. The sentence is either untrue or misleading as HHS has been reporting to OFPP and Congress on the status of their program since 1982. See prior reports to Congress.
15. Page 57, Paragraph 3. The report again refers to OFPP's proposed policy letter rather than the final one issued in November 1992.
16. Page 58, Paragraph 2. The report states that the Department of Defense (DOD) and the Department of Energy did not report data to OFPP during GAO's review. Although this is a true statement, these agencies have since submitted their reports which have been incorporated into the 1990-1991 biennial report to Congress.
17. Page 59, Paragraph 1. The report states that OFPP has not specified the content or format for agencies' input which is inaccurate. This sentence should read, "Until its most recent data collection effort, OFPP did not specify a specific reporting format that could be used to assess..."
18. Page 61, Paragraph 2. Please refer to previous comments made about the FPDS system. To provide corroborative data would require additional information, although data on the current costs of the FPDS system can be made available. Also, please note that GAO did not request "corroborative data" from OFPP.
19. Page 62, Paragraph 1. The report states that OFPP has made limited efforts to ensure that barriers are resolved.

OFPP does not agree that its efforts have been "limited." We would again reference the initiatives noted in Enclosure 1 and the fact that OFPP has staff represented on all six of the Council's work groups and is co-chairing two of these groups on FAR Implementation and Education & Training; that the OFPP Administrator established and chairs an interagency policy group to monitor agencies' progress and overcome the barriers encountered by them; and that numerous policy memoranda, Policy Letters, and OMB Circulars have been issued or are being revised to better effect RCRA implementation.

20. Page 65, Paragraph 1. The report states that OFPP Policy Letter 92-4 does not address agencies' concerns with regard to requiring certification.

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Procurement Policy**

See comment 21.

Although the Policy Letter did not address the burden of certification, the OFPP Administrator as co-chair of the Council's FAR work group, is investigating the feasibility of incorporating estimation, verification and certification requirements into the FAR. All agencies that had voiced concerns about this issue were invited to participate on the work group.

Now on p. 52.

See comment 22.

21. Page 67, Paragraph 1, last sentence. The statement on revisions to the FAR and OMB Circular A-102 being considered is outdated, actions are already being taken to incorporate changes. The report should note this as well as actions being taken on OMB Circulars A-119 and A-110 (see Enclosure 1).

Now on p. 54.

See comment 23.

22. Page 69, Penultimate Paragraph. The last sentence references a "Federal Acquisition Regulation Council" under the leadership of OMB. There is no such Council. The Federal Acquisition Regulatory Council, established by Section 25 of the OFPP Act, consists of DOD, the General Services Administration, the National Aeronautics and Space Administration, and OFPP. OFPP was not given statutory leadership.

Now on page 54.

See comment 24.

23. Page 70, Paragraph 2. The statement that OFPP is not informing states of RCRA requirements and believes that this is EPA's responsibility is inaccurate.

OFPP Policy Letter 92-4 states that this should be accomplished through OMB Circular A-102. OFPP drafted a revision to A-102 to effect this which was published for comment in August 1992 and should be issued shortly in final form.

Now on p. 62.

See comment 25.

See comment 26.

24. Page 79, Paragraph 3. The report quotes an OFPP official as saying "OFPP is not responsible for addressing barriers identified by agencies or for otherwise providing the leadership and oversight the program requires."

Even if an OFPP official unwittingly made this statement, it is not true. OFPP has taken responsibility for addressing barriers and providing leadership as noted in Enclosure 1.

25. Page 79, Paragraph 3. The report implies that since the Council is not given statutory authority it is unable to ensure program implementation. This is misleading. The Executive Order gives the Council the authority necessary to monitor the implementation of these programs effectively.

Now on p. 62.

26. Page 80, Paragraph 1, Lines 14 and 15. These lines reference unnamed "OFPP officials" and fail to mention that RCRA specifically assigns responsibility to "each procuring

**Appendix V
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Procurement Policy**

See comment 27.

agency." Some problems with RCRA are obviously beyond OFPP's jurisdiction, however, many are within our jurisdiction and we have acted to address them.

Now on p. 64.

See comment 28.

27. Page 82, Paragraph 3. The report mentions two of the Council's work groups. In fact, the three areas mentioned are being addressed by two of the groups. The six work groups are: Data Collection and Reporting, Removing Barriers, Creating Opportunities, FAR Implementation, Waste Reduction, and Education and Training.

Now on p. 65.

See comment 29.

28. Page 84, Paragraph 1. Please revise the sentence beginning "However, the new report..." to more accurately reflect our efforts by stating "...OFPP worked with an interagency working group to revise the previous reporting format and gather supplemental information, for inclusion as appendices to the survey, to further assist agencies in responding more accurately."

Now on p. 66.

See comment 30.

29. Page 84, Paragraph 2. This paragraph states that only one agency, the Government Printing Office (GPO), has met the affirmative procurement program requirements. It is our understanding that GPO's affirmative procurement program only covers paper and does not address any of the other items such as retread tires, refined oil, etc. Moreover, we believe that the OFPP reporting requirements for 1990 and 1991 are quite specific and are adequate to allow Congress to assess the program. Please change this paragraph to reflect these views.

Now on page 66.

See comment 31.

30. Page 85, Paragraph 1. The report states that OFPP does not believe that it should assume a leadership role to resolve conflicts.

This is an untrue statement. OFPP has assumed a leadership role in this area, and has aggressively acted to resolve conflicts between the agencies over RCRA implementation.

The report mentions OFPP efforts to incorporate RCRA requirements into OMB Circular A-102 but does not also mention A-110 and A-119. Please add references to these additional Circulars.

Now on p. 66.

31. Page 86, Paragraph 2. The report recommends that the OMB Director direct OFPP to strengthen its leadership and oversight role by monitoring agencies progress in implementing Affirmative Procurement Programs (APPs) and reviewing product specifications and by working with agencies to obtain necessary information to determine overall effectiveness of the program.

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Procurement Policy**

See comment 32.

As stated previously in our overall comments, OFPP has exerted leadership and oversight, is monitoring agencies progress in implementing APPs and is working with agencies to obtain the information necessary to measure success. We recommend that the word "strengthen" in the 5th line of the second paragraph be changed to "continue." This would more accurately reflect the current situation without the negative connotation that OFPP is not acting responsibly.

The following are GAO's comments on the Office of Federal Procurement Policy (OFPP) letter dated February 23, 1993.

GAO Comments

1. We appreciate OFPP's dedication of substantial staff resources over the last 2 years to help make the government a model consumer of recycled products. However, it should be noted that the main focus of our review and report is on the implementation of the Resource Conservation Recovery Act (RCRA) section 6002 procurement program. As such, our review assessed the Environmental Protection Agency's (EPA) efforts to develop procurement guidelines, agencies' efforts to eliminate biases towards the use of recovered materials in their product specifications, agencies' progress in developing affirmative procurement programs, and program oversight and monitoring. We believe that many of the initiatives cited by OFPP in enclosure 1—such as the proposed amendments to Office of Management and Budget (OMB) Circular A-119 and the life cycle cost guidance memorandum—although environmentally positive, do not specifically relate to or make reference to the RCRA section 6002 procurement program. In addition, a number of the OFPP actions related to section 6002, beyond those initially recognized in the report, reflected events that occurred after our audit work was completed, while others represent undocumented actions that were carried out during several meetings in 1992. As such, our report did not make reference to many of these OFPP initiatives. We have updated our report to better reflect these latter actions.
2. We revised the executive summary to state that until recently program leadership has been ineffective.
3. We revised the executive summary to state that in the absence of program leadership, some federal procuring agencies were either unaware of RCRA requirements or assigned them a low priority.
4. We revised the executive summary to state that until OFPP began to exercise program leadership in late 1991, some procuring agencies placed little priority on implementing affirmative procurement programs.
5. We revised the executive summary to state that while OFPP's previous reports to the Congress complied with the statutory requirement for such reports, the reports did not contain the data needed to measure agencies' purchases. We also note that OFPP has recently started requesting quantitative data.

6. We revised the executive summary to state that OFPP has recently begun to take steps to incorporate program requirements into governmentwide procurement policies and procedures and to encourage agencies to implement affirmative procurement programs.

7. Because executive summaries must be brief, we do not always include all recommendations in the executive summary. Rather, we highlight a few key recommendations.

8. We revised the executive summary to state that it is important that OFPP continue to work with the Council to provide leadership in overcoming program barriers.

9. We revised chapter 1 to show that federal procurement accounts for about 8 percent of all goods and services produced nationwide and attributed this information to its source.

10. We did not revise chapter 1 because RCRA clearly states what we have included in the text.

11. We revised chapter 1 to refer to the final policy.

12. We added a statement to chapter 1 that we received OFPP's written comments to our questions, but we do not believe it is appropriate to append OFPP's written responses to the report—these documents are our workpapers.

13. We deleted the reference in chapter 2 to the lack of an analysis of the cost and benefits of revising the governmentwide data system. However, see our related comment 19.

14. Chapter 4 was changed to reflect past data collection efforts.

15. Prior OFPP reports to the Congress show that the Department of Health and Human Services (HHS) was awaiting "regulations and guidance" before taking further action to implement the program. As such, we have incorporated the suggested revision of HHS' Deputy Assistant Secretary for Grants and Acquisition Management into chapter 4. This revision notes that HHS became aware of the requirement to establish an affirmative procurement program in August 1991 in response to a Senate Subcommittee survey.

16. Our reference to the March 1992 draft policy letter rather than the November 1992 final policy letter is appropriate in context of the paragraph—that is, actions that helped increase agencies' awareness of the RCRA program requirements.

17. Footnotes have been added to chapter 4 to show that these two agencies subsequently submitted their reports.

18. Chapter 4 was revised as suggested.

19. The last sentence of the subject paragraph was changed to state that no formal analysis has been performed to determine the cost and benefits associated with changing the system.

20. Chapter 4 was changed to state that OFPP and the Council have recently begun to address program barriers.

21. Chapter 4 was changed to state that OFPP is working through the new Council to investigate the feasibility of incorporating estimation, verification, and certification requirements in the Federal Acquisition Regulation (FAR).

22. Chapter 4 was changed to state that OFPP recently has taken action to incorporate changes into the FAR and OMB Circular A-102.

23. Chapter 4 was changed to state that the Federal Acquisition Regulatory Council consists of the Department of Defense, General Services Administration, the National Aeronautics and Space Administration, and OFPP.

24. Chapter 4 was changed to state that until recently OFPP did not take steps to inform the states of RCRA requirements. OFPP's effort to revise OMB Circular A-102 is described later in the same section of the report.

25. Chapter 4 was revised to state the OFPP official's belief and that OFPP, within the past 2 years, has taken steps to improve program monitoring and reporting, as well as to inform agencies of their responsibilities under RCRA.

26. This reference to the council's statutory authority has been deleted.

27. The report text in chapter 4 was revised to put OFPP's views in proper perspective.

28. Chapter 4 was changed to recognize these other work groups.

29. Chapter 4 was changed to recognize the work of the interagency working group.

30. Chapter 4 was changed to state that Government Printing Office (GPO) met the requirement for the one guideline item (paper) that it reportedly purchases in sufficient quantity to be subject to the RCRA requirements.

31. Chapter 4's conclusion was modified to state that until recently OFPP had not assumed a leadership role.

32. Chapter 4 was revised to reflect some recent actions by OFPP and its recently embraced leadership and oversight role.

Comments From the General Services Administration

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



Administrator
General Services Administration
Washington, DC 20405

February 24, 1993

The Honorable Charles A. Bowsher
Comptroller General
of the United States
General Accounting Office
Washington, DC 20548

Dear Mr. Bowsher:

Thank you for the opportunity to review and comment on the General Accounting Office's (GAO's) draft report entitled "Solid Waste: Federal Program to Buy Products with Recovered Materials Proceeds Slowly."

The draft report provides an assessment of (1) the Environmental Protection Agency's (EPA's) progress in developing guidelines for procuring agencies to use to purchase products containing recovered materials, (2) the efforts of the Department of Commerce (DOC) to develop markets for products containing recovered materials, (3) the Office of Federal Procurement Policy (OFPP) and EPA leadership of the implementation of the Resource Conservation and Recovery Act (RCRA) affirmative procurement programs for products containing recovered materials, and (4) the overall progress agencies have made in implementing RCRA affirmative procurement program requirements. Recommendations are made to the Administrator of EPA; the Secretary of Commerce; the Director of Management and Budget; and the Congress.

Since the enactment of RCRA, the General Services Administration (GSA) has been an active participant in the development of EPA procurement guidelines and, as the report notes, was one of two agencies that did implement affirmative procurement programs despite certain unresolved issues over their practicality to Federal procurement. GAO, itself, identifies some of these issues.

GSA also has initiated programs that have gone beyond EPA's procurement guidelines to purchase products containing recovered materials not covered by the five guidelines. The "Recycled Product Guide," published by the GSA Federal Supply Service (FSS), identifies more than 700 products with recovered material content. Products with recovered material content also are highlighted in the GSA Supply Catalog. Furthermore, GSA has established contracts, under its New Item Introductory Schedule,


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that ordering activities can use for more than 170 non-guideline items with environmentally beneficial features. Another example of an FSS initiative is its expansion of its Multi-Use File for Interagency News (MUFFIN) to include a new program offering a menu for environmental products, including products with recovered material content, that facilitates the ordering of such products.

GSA generally concurs with GAO's assessment of RCRA implementation. The report provides a useful overview of EPA's experiences in developing guidelines and the DOC's responsibilities under RCRA. We also acknowledge GAO's efforts to identify barriers, real and perceived, that affect program implementation.

Notwithstanding our general concurrence, GSA does offer a number of suggested clarifications and corrections to certain statements contained in the report. Furthermore, although the report contains no recommendations for GSA, we do not believe that GAO's recommendations to the Congress will fully accomplish the Congress' stated objectives in enacting section 6002 of RCRA. Support for this conclusion is provided in the enclosed comments.

Sincerely,


Dennis J. Fischer
Acting Administrator

Enclosures

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**General Services Administration (GSA)
Response to the
General Accounting Office (GAO) Draft Report
"Solid Waste: Federal Program to Buy
Products with Recovered Materials Proceeds Slowly"**

Concerned about the implementation of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended, the Chairman, Subcommittee on Transportation and Hazardous Materials, House Committee on Energy and Commerce, requested that GAO examine (1) the Environmental Protection Agency's (EPA's) progress in developing guidelines for procuring agencies to use to purchase products containing recovered materials, (2) the Department of Commerce's efforts to develop markets for products containing recovered materials, (3) the effectiveness of leadership responsible under RCRA for the program to purchase those products, and (4) the overall progress that agencies have made in implementing program requirements.

GAO concludes that (1) EPA's progress in developing guidelines for procuring agencies has suffered from a lack of program emphasis and the absence of a comprehensive, long-term strategy for organizing its procurement guideline program, (2) Commerce's conclusion, in 1982, that it had fulfilled its statutory responsibilities, terminated an active program developing specifications to classify waste materials, standards for the use of municipal solid waste and refuse-derived fuels, and for stimulating the development of markets for recovered materials, and (3) until recently, procuring agencies have either been unaware of program requirements or have placed little emphasis on implementing affirmative procurement programs and reviewing specifications to eliminate biases against products containing recovered materials. GAO attributes the failings of procuring agencies, in large measure, to limited oversight and leadership by the Office of Management and Budget's (OMB's) Office of Federal Procurement Policy (OFPP).

Besides making recommendations to EPA, Commerce and OMB, GAO includes a recommendation to the Congress that it explicitly state its views on establishing a price preference and, if payment of a price premium for a recovered material product over a product made from virgin material is authorized, clarify when such a premium would become unreasonable.

GSA's comments on chapters 2 and 4 of the draft report follow and concentrate on chapter 4, Overall Progress in Implementing the RCRA Procurement Program Has Been Slow.

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**CHAPTER 2: EPA'S EFFORTS TO DEVELOP PROCUREMENT GUIDELINES NEED
IMPROVED FOCUS**

In the section entitled, "Obstacles to Obtaining Information on Agencies' Procurements" (page 29), GAO states that EPA has encountered difficulty in obtaining input from GSA during the guideline development process. GAO cites, as the only example supporting such a conclusion, a single work group session meeting in May 1992, that a representative of GSA did not attend. GSA's only notice of this work group meeting was a telephone call to an individual who was leaving GSA's recycling program. Unfortunately, the notice by EPA did not provide GSA with time to find an appropriate substitute. GSA attended a subsequent meeting in September 1992 and has provided comments on the resulting draft guideline.

To forestall any potential miscommunication regarding GSA's attendance at EPA guideline meetings, GSA took action in December 1992 to ensure that EPA knew for future meetings who to contact for environmental issues.

GSA believes GAO's single example does not accurately reflect GSA's contribution. GSA's Federal Supply Service, has met with and provided input to EPA during the development of the guidelines on paper and paper products and retread tires. Comments were also submitted to EPA on building insulation and re-refined oil guidelines.

If there are other examples to support GAO's conclusion, GSA would like to know about them. GSA believes that it has been supportive of EPA in its development of guidelines.

**CHAPTER 4: OVERALL PROGRESS IN IMPLEMENTING THE RCRA PROCUREMENT
PROGRAM HAS BEEN SLOW**

GAO notes that until recently, Federal agencies have been slow to implement affirmative procurement programs to buy guideline items and review specifications to eliminate biases against products containing recovered materials. GAO's draft report identifies and discusses a number of barriers to effective program implementation. It concludes with recommendations that the Congress "clarify unreasonable price by either (1) establishing parameters on what constitutes an unreasonable price and any conditions that might alter those parameters or (2) delegating the authority for establishing such parameters and conditions" and implicitly state its views on establishing a price preference under section 6002.

Now on pages 21 and 22.

See comment 1.

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Section 6002 of RCRA required Federal agencies with responsibilities for drafting or reviewing specifications by mid-1986, to have eliminated from those specifications general biases against the use of recovered materials and within one year after publication of an EPA guideline, to assure that specifications require the use of recovered materials to the maximum extent possible considering the intended end use of the product. Section 6002 also requires each procuring agency, within one year of the publication of an EPA guideline, to develop an affirmative procurement program "which will assure that items composed of recovered materials will be purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement law." The four elements required as a minimum for an affirmative procurement program are:

1. A recovered material preference program;
2. An agency program promoting its preference program;
3. A program for requiring estimates of the total percentage of recovered material utilized in the performance of a contract; certification of the minimum recovered material content actually utilized, where appropriate; and reasonable verification procedures for estimates and certifications; and
4. Annual review and monitoring of the effectiveness of the program.

GAO notes that GSA, out of the eight Federal agencies acknowledging responsibility for drafting or reviewing specifications, is the only agency to date that has met its RCRA responsibility. However, its statements on pages 55 and 56 misrepresent what was contained in GSA's 1990-91 biennial report to OFPP. GAO states that GSA's report noted that GSA's affirmative procurement program did not meet RCRA minimum requirements "because GSA (1) does not require vendor estimates of recovered material content, (2) does not verify vendors' certifications of recovered material content, and (3) does not review or monitor implementation of the program." The phrases quoted above are not from GSA's report, but instead appear to be GAO's conclusions. Not only do GAO's conclusions minimize GSA's commitment to section 6002 that is demonstrated by its contracting for many environmentally beneficial products that are not covered by EPA guidelines, it also does not accurately reflect GSA's program.

Now on p. 43.

See comment 2.

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Heretofore, GSA, following the recommendations in three EPA guidelines, adopted minimum content standards in its affirmative procurement programs. Under this approach, the minimum content stated in the solicitation and not in vendor estimates, is used to assure that GSA contracting officers procured items composed of the highest percentage of recovered material practicable. To the extent that other agencies may adopt a case-by-case approach, estimates obtained to evaluate competitive offers are used to assure that the same results are obtained. In fact, verification under either approach often has proved difficult, if not impossible. Tests often cannot verify recovered material content. Moreover, contracts do not provide for the inspection or audit of records other than those of the contractor or its subcontractors. Whenever feasible, however, GSA does require actual content indications and minimum content certifications and has used such requirements in procurements for paper and paper products.

Regardless of the approach used, GSA agrees that improved data collection techniques to measure overall program effectiveness are necessary. Improved data collection would facilitate GSA's previous efforts to go beyond EPA's minimum content standards. GAO's own statements acknowledge some issues associated with measuring program effectiveness, issues currently being addressed by a workgroup established under the Council on Federal Recycling and Procurement Policy.

While GSA believes that GAO's recommendation to the Congress to explicitly state its views on establishing a price preference under section 6002 would be beneficial in overcoming certain barriers to program implementation, GSA believes establishing parameters for any price preference should not be fixed by statute. Contracting officers do not need such parameters to conclude a price is "unreasonable." When minimum content standards are included in the procurement, price comparisons with products made from virgin material are not authorized. On the other hand, under the case-by-case approach, the contracting officer, as with any other award decision made under the Federal Acquisition Regulation (FAR), must conclude the award price is "reasonable".

GAO's recommendations for overcoming barriers do not address certain requirements of section 6002 that are difficult to reconcile with other provisions of Federal procurement law. Two examples that GAO may wish to consider are the impact of RCRA requirements on statutory requirements favoring commercial products and on purchases made under the Trade Agreements Act.

See comment 3.

See comment 4.

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Federal procurement law favors the use of commercial item descriptions over specifications stated, for example, in terms of material. Establishing material parameters (recovered material content) appears to go against the use of commercial item descriptions. Without such a parameter, however, such products are at a disadvantage if they cost more. A fact that GAO correctly observes is often the case.

In the second example, the requirement in the Trade Agreements Act that Federal agencies not discriminate against products from designated countries suggests a potential conflict with sections 1002 and 1003 of the Solid Waste Disposal Act (42 U.S.C. 6901 and 6902). These sections infer that the intent of the legislation is to address this Nation's environmental and resource conservation problems. GSA's reliance upon section 1002 and 1003 as a basis to include a specification requirement to use domestic tire casings in a procurement for retread tires has been challenged as inconsistent with both the Trade Agreements and Buy American Acts.

On page 70 of the draft report, GSA believes the interagency ad hoc committee's responsibilities require clarification. In fact, such a committee met under GSA sponsorship, drafted regulations to implement a procurement preference program for products made with recovered materials but, as GAO notes, never presented its recommendations. A work group established under the Council on Federal Recycling and Procurement Policy, co-chaired by the Administrator of OFPP and the Federal Recycling Coordinator, was formed to investigate the need for additional regulatory coverage. Additionally, upon issuance of OFPP's Policy Letter 92-4, Procurement of Environmentally-Sound and Energy-Efficient Products and Services, it became apparent that the ad hoc committee's draft regulation was not consistent with and could not be reconciled to OFPP's policy applying a preference for the more environmentally-sound or energy-efficient product only in circumstances when performance and price comparisons are equal. Under these circumstances, the ad hoc committee was dissolved. The ad hoc committee never had responsibilities with regard to implementation in FAR of OFPP's Policy Letter 92-4.

Now on p. 54.

See comment 5.

The following are GAO's comments on the General Services Administration letter dated February 24, 1993.

GAO Comments

1. We revised the report to (1) show additional examples in chapter 2 of the difficulties encountered by EPA in obtaining the General Services Administration's (GSA) input during the guideline development process, and (2) include GSA's comment in chapter 2 that it took action in December 1992 to ensure that EPA knew for future meetings who to contact for environmental issues.

2. In its 1990-91 biennial report to OFPP, GSA notes that its affirmative procurement programs for fly ash, paper and paper products, retread tires, and building insulation products do not meet the minimum requirements of RCRA section 6002(i) and of 40 CFR Part 248, and refers to another section of the report for clarification. Analysis of this section of the report, which was verified by a procurement analyst in GSA's Office of Acquisition Policy, resulted in our list of reasons why GSA's affirmative procurement programs did not meet minimum requirements. Specifically, our conclusion is based on the following statements contained in the 1990-1991 biennial report:

- "Obtaining from offerors estimates of the total percentage of recovered material content in products to be utilized in the performance of the contract is extremely burdensome on contractors. . . . The GSA has not sought approval under the Paperwork Reduction Act to require estimates from its contractors."
- "Since those estimates are often not verifiable . . . reliance for the estimate is derived from the contractor's certification included in the solicitation."
- "Lack of a Central Office responsible for reviewing and monitoring implementation of this program has impeded efforts to assess its effectiveness."

We do not view these statements as a lack of commitment, but rather as an illustration of an area that represents a barrier for GSA.

3. We are not recommending that fixed parameters be established for a price preference. We are recommending that the Congress explicitly state whether a price preference should be allowed for products containing recovered material in procurements in which material content is not specified. We are also recommending that the Congress, or some other delegated authority, clarify the meaning of unreasonable price in order to

guide federal agencies' decisions on whether to proceed with a solicitation for products containing only recovered materials.

4. We revised chapter 4 to caution that incorporation of RCRA requirements into the FAR should also consider the potential conflict with other provisions of federal procurement law. We noted the statutory requirements favoring commercially available products and purchases made under the Trade Agreements Act as examples.

5. We revised chapter 4 to show that because the committee's recommendations conflict with OFPP's policy letter—which provides a preference only when performance and price are equal—the Civilian Agency Acquisition Council's ad hoc interagency committee has been dissolved.

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