

23.107-1 Products containing recovered materials.

(a) *Authorities.* The Resource Conservation and Recovery Act of 1976 (RCRA), [42 U.S.C. 6962](#), as implemented at [40 CFR part 247](#).

(b) *EPA Comprehensive Procurement Guidelines (CPG) Program.* Under RCRA, EPA *must* designate items that are or can be made with *recovered materials* and *must* also recommend practices to assist procuring agencies in meeting their obligations.

(c) *Applicability.*

(1) This section applies to *contract actions* involving an EPA-designated item, if—

(i) The price of the EPA-designated item exceeds \$10,000; or

(ii) The aggregate amount paid for multiple purchases of the EPA-designated item, or a functionally equivalent item, in the preceding fiscal year was \$10,000 or more.

(2) While *micro-purchases* are included in determining the aggregate amount paid under paragraph (c)(1) of this section, it is not necessary for an agency to track *micro-purchases* when—

(i) The agency anticipates the aggregate amount paid will exceed \$10,000; or

(ii) The agency intends to establish or continue an affirmative *procurement* program as described in paragraph (d) of this section in the following fiscal year.

(d) *Agency affirmative procurement program.* An agency *shall* establish an affirmative *procurement* program for EPA-designated items if the agency's purchases of EPA-designated items exceed the threshold set forth in paragraph (c)(1) of this section.

(1) Agency affirmative *procurement* programs *must* include—

(i) A *recovered materials* preference program;

(ii) A program to promote the *recovered materials* preference program;

(iii) A program for requiring reasonable estimates and certification of *recovered material* used in the performance of contracts, including a preaward certification that *products* will meet EPA recommendations (see [52.223-4](#), *Recovered Material Certification*), and either an estimate or a certification at contract completion (see [52.223-9](#), *Estimate of Percentage of Recovered Material Content for EPA-Designated Items*, and its *Alternate*), as well as agency procedures for verification of estimates and certifications;

(iv) Annual review and monitoring of the effectiveness of the affirmative *procurement* program; and

(v) Guidance for purchases of EPA-designated items at or below the *micro-purchase threshold*.

(2) Technical or requirements personnel and *procurement* personnel are responsible for the preparation, implementation, and monitoring of affirmative *procurement* programs.

(3) Agencies have a period of 1 year to revise their affirmative *procurement* program(s) after the designation of any new item by EPA.

(e) *Procedures*. The following procedures apply when the thresholds set forth in paragraph (c)(1) of this section are exceeded.

(1) Once an item has been designated by EPA, agencies *shall* purchase conforming *products* to the maximum extent practicable in accordance with 23.104(a), unless a justification, exception, or exemption applies (see 23.104(a), 23.105, and 23.106, respectively).

(2) Agencies *may* use their own specifications or *commercial product* descriptions when procuring *products* containing *recovered materials*; however, the contract *should* specify that the product is composed of the—

(i) Highest percentage of *recovered materials* practicable; or

(ii) Minimum content standards in accordance with EPA's RMANs.

(3) When acquiring *products* with *recovered material*, the *contracting officer may* request information or data on such *products*, including recycled content or related product standards (see 11.301(c)).

(f) *Resources*.

(1) For information on EPA-designated items and associated minimum content standards, see <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#products>.

(2) *Contracting officers should* also consult their agency's affirmative *procurement* program for agency-specific guidance.

Parent topic: 23.107 Statutory purchasing programs.