SEC. ___. REMOVAL OF RECOVERED MATERIALS CERTIFICATION REQUIREMENT FOR CONTRACTORS OR SUBCONTRACTORS.

Section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962), is amended—

(1) in subsection (c), by striking paragraph (3); and

(2) in subsection (i)(2)—

(A) by inserting "and" after the semicolon in subparagraph (B);

(B) by striking subparagraph (C); and

(C) by redesignating subparagraph (D) as subparagraph (C).

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would eliminate statutory requirements in 42 U.S.C. 6962(c)(3) and (i)(2)(C) that require a federal contractor to certify that it will use recovered material in accordance with the terms of the contract and, following completion of the contract, estimate the percentage of recovered materials that were used or certify that it has met its contractual obligations. The basic requirement to use recovered materials remains unchanged. However, contractor estimates and certification required by 42 U.S.C. 6962(c)(3)) and (c)(3)(A)(ii) are unnecessary because compliance with the requirement to use recovered/recycled products can be verified through contract administration processes in accordance with Federal Acquisition Regulation (FAR) requirements, including through inspection, acceptance, and documentation. As part the review process, contracting officers can validate compliance by checking manufacturer's product documentation and EPA's Comprehensive Procurement Guideline (CPG) Product Supplier Directory. Moreover, FAR clause 52.211-5 requires Government approval for a contractor to provide used, reconditioned, or remanufactured supplies, which puts the Government on notice when recovered materials are provided or used by a federal contractor.

Requiring the contractor to submit a separate certification and estimate places an additional burden on the contractor that is unnecessary and duplicative when the objective can be better achieved at a lower cost for the Government and contractors by providing agencies the flexibility to use normal contract administration activities for validating compliance and allowing contractors to demonstrate compliance using existing commercial practices.

Budget Implications: There would be no budgetary impact for civilian agencies as a result of this legislative change because the proposal only addresses removal of a certification requirement placed on contractors and would not increase the overall budget requirements of any Federal agency.

Changes to Existing Law: The proposal would amend section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962) as follows:

FEDERAL PROCUREMENT

SEC. 6002. (a) APPLICATION OF SECTION.—Except as provided in subsection (b), a procuring agency shall comply with the requirements set forth in this section and any regulations issued under this section, with respect to any purchase or acquisition of a procurement item where the purchase price of the item exceeds $10,000 or where the quantity of such items or of functionally equivalent items purchased or acquired in the course of the preceding fiscal year was $10,000 or more.

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(c) REQUIREMENTS.—(1) After the date specified in applicable guidelines prepared pursuant to subsection (e) of this section, each procuring agency which procures any items designated in such guidelines shall procure such items composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the postconsumer recovered materials referred to in subsection (h)(1) practicable), consistent with maintaining a satisfactory level of competition, considering such guidelines. The decision not to procure such items shall be based on a determination that such procurement items—

(A) are not reasonably available within a reasonable period of time;

(B) fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or

(C) are only available at an unreasonable price. Any determination under subparagraph (B) shall be made on the basis of the guidelines of the Bureau of Standards in any case in which such material is covered by such guidelines.

(2) Agencies that generate heat, mechanical, or electrical energy from fossil fuel in systems that have the technical capability of using energy or fuels derived from solid waste as a primary or supplementary fuel shall use such capability to the maximum extent practicable.

~~(3)(A) After the date specified in any applicable guidelines prepared pursuant to subsection (e) of this section, contracting offices shall require that vendors—~~

~~(i) certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements and~~

~~(ii) estimate the percentage of the total material utilized for the performance of the contract which is recovered materials.~~

~~(B) Clause (ii) of subparagraph (A) applies only to a contract in an amount greater than $100,000.~~

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(e) GUIDELINES.—The Administrator, after consultation with the Administrator of General Services, the Secretary of Commerce (acting through the Bureau of Standards), and the Public Printer, shall prepare, and from time to time, revise, guidelines for the use of procuring agencies in complying with the requirements of this section. Such guidelines shall—

(1) designate those items which are or can be produced with recovered materials and whose procurement by procuring agencies will carry out the objectives of this

section, and in the case of paper, provide for maximizing the use of postconsumer recovered materials referred to in subsection (h)(1); and

(2) set forth recommended practices with respect to the procurement of recovered materials and items containing such materials and with respect to certification by vendors of the percentage of recovered materials used, and shall provide information as to the availability, relative price, and performance of such materials and items and where appropriate shall recommend the level of recovered material to be contained in the procured product. The Administrator shall prepare final guidelines for paper within one hundred and eighty days after the enactment of the Hazardous and Solid Waste Amendments of 1984, and for three additional product categories (including tires) by October 1, 1985. In making the designation under paragraph (1), the Administrator shall consider, but is not limited in his considerations, to—

(A) the availability of such items;

(B) the impact of the procurement of such items by procuring agencies on the volume of solid waste which must be treated, stored or disposed of;

(C) the economic and technological feasibility of producing and using such items; and

(D) other uses for such recovered materials.

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(i) PROCUREMENT PROGRAM.—(1) Within one year after the date of publication of applicable guidelines under subsection (e), each procuring agency shall 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.

(2) Each affirmative procurement program required under this subsection shall, at a minimum, contain—

(A) a recovered materials preference program;

(B) an agency promotion program to promote the preference program adopted under subparagraph (A);

~~(C) a program for requiring estimates of the total percentage of recovered material utilized in the performance of a contract; certification of minimum recovered material content actually utilized, where appropriate; and reasonable verification procedures for estimates and certifications;~~ and

(~~D~~C) annual review and monitoring of the effectiveness of an agency's affirmative procurement program.

In the case of paper, the recovered materials preference program required under subparagraph (A) shall provide for the maximum use of the post consumer recovered materials referred to in subsection (h)(1).

(3) In developing the preference program, the following options shall be considered for adoption:

(A) Case-by-Case Policy Development: Subject to the limitations of subsection (c)(1) (A) through (C), a policy of awarding contracts to the vendor offering an item composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the post consumer recovered materials referred to in subsection (h)(1)). Subject to such limitations, agencies may make an award to a vendor offering items with less than the maximum recovered materials content.

(B) Minimum Content Standards: Minimum recovered materials content specifications which are set in such a way as to assure that the recovered materials content (and in the case of paper, the content of post consumer materials referred to in subsection (h)(1)) required is the maximum available without jeopardizing the intended end use of the item, or violating the limitations of subsection (c)(1) (A) through (C).

Procuring agencies shall adopt one of the options set forth in subparagraphs (A) and (B) or a substantially equivalent alternative, for inclusion in the affirmative procurement program.