

important impetus for beginning sustained serious new development of biobased alternatives for fossil based energy and other products in the United States. Hence, USDA has chosen to use 1972 as a dividing point between mature and emerging markets for this program.

IV. Responsibilities and Implementation Strategies under Section 9002

A. USDA's Responsibilities and Implementation Strategies

To carry out the requirements of section 9002, USDA will:

- Propose guidelines, after consultation with the EPA, GSA, and NIST, for the use of Federal agencies that indicate which items are or can be produced with biobased products and whose procurement by procuring agencies would carry out the objectives of this program;
- Determine in the guidelines, as appropriate, the minimum level of biobased material to be contained in a designated item;
- Propose items to be available for designation under the guidelines and explain the factors to be considered in their designation (availability, economic and technological feasibility, and life cycle costs);
- Identify in the guidelines the information about availability, relative price, performance, and environmental and public health benefits that will be provided to Federal agencies on items designated for preferred procurement; and
- Set forth recommended practices for the procurement of biobased products and designated items.

B. Federal Agencies' Responsibilities and Implementation Strategies

Following the issuance of final guidelines and the designation of items, Federal agencies would:

- Give a procurement preference, with certain exceptions, to designated items with the highest percentage of biobased products practicable, consistent with the guidelines and with maintaining sufficient competition;
- Incorporate in procurement specifications biobased item preferences consistent with the guidelines and the requirements of section 9002; and
- Establish an agency affirmative procurement program that includes a biobased products preference program, an agency promotion program to promote the preference program, and an annual review to monitor the effectiveness of the agency's procurement program.

C. Office of Federal Procurement Policy Responsibilities and Implementation Strategies

Following the issuance of final guidelines and subsequent regulatory action to designate items eligible for preferred procurement, the OFPP would:

- Work in cooperation with USDA to implement the biobased product procurement preference program;
- Coordinate the biobased products procurement policy with other Federal procurement policies; and
- Report to Congress every 2 years on the actions taken by Federal agencies in the implementation of the biobased product procurement program.

D. Manufacturers' and Vendors' Responsibilities and Implementation Strategies

Following the issuance of final guidelines and designation of items eligible for preferred procurement, firms desiring to participate in the program would:

- Determine whether products they intend to offer for Federal agency procurement qualify under the guidelines and fall within items designated by USDA for preferred procurement;
- Certify the percentage of biobased content in the commercial or industrial products that fall within designated items and are proposed by the manufacturer or vendor to be used in the performance of a contract; and
- When offering biobased products from an item that has been designated by the Secretary for preferred procurement by Federal agencies, certify that the biobased products to be used in the performance of the contract will comply with the applicable specifications or other contractual requirements.

V. Proposed Guidelines

The proposed guidelines would be contained in a new 7 CFR part 2902, "Guidelines for Designating Biobased Products for Federal Procurement." The new part would be divided into two subparts, "Subpart A—General," and "Subpart B—Biobased Product Eligibility for Federal Preference." Subpart A would address the purpose and scope of the guidelines and their applicability, provide guidance on product availability and procurement, define terms used in the part, and address affirmative procurement programs and USDA funding for testing. Subpart B would address communicating information on qualifying biobased products and

characteristics required for obtaining designated item status, and would set out the initial categories of designated items and minimum content. The proposed guidelines are discussed in detail below.

Proposed § 2902.1: Purpose and Scope

This section would introduce the guidelines by explaining that their purpose is to assist Federal agencies in complying with the requirements of section 9002 as they apply to the procurement of designated items. This section would also note that items designated in the guidelines are those items that are or can be produced with biobased products and whose procurement by Federal agencies will carry out the objectives of section 9002.

Proposed § 2902.2: Applicability to Federal Agencies and Exceptions to Procurement of Biobased Items

The procurement preference applies to all Federal agencies (as defined in this document) with respect to all procurement actions where the purchase price of the item exceeds \$10,000 or where the quantity of such items (or of functionally equivalent items) purchased during the preceding fiscal year cost a total of \$10,000 or more. Unlike the EPA program for procurement of items with recovered materials, section 9002 affords a procurement preference for biobased products only for procurement by Federal agencies. Thus, unlike RCRA (42 U.S.C. 6903(17)), the guidelines do not apply to State and local agencies using appropriated Federal funds to procure qualifying biobased items, and persons contracting with such agencies with respect to work performed under such contracts. USDA proposes to apply the \$10,000 threshold as applicable to Federal agencies as a whole, rather than to agency subgroups such as regional offices or subagencies of a larger department or agency.

As noted previously, the proposed guidelines would not apply to any procurement by any Federal agency that is subject to the regulations issued by the EPA under section 6002 of the Solid Waste Disposal Act (40 CFR part 247), to the extent that the requirements of the guidelines are inconsistent with those regulations. Further, as provided by paragraph (i) of section 9002, these guidelines do not apply to the procurement of motor vehicle fuels or electricity.

Section 9002 requires Federal agencies to purchase designated biobased items unless the agency determines the items to be procured are not readily available within a reasonable