

Biobased content on items procured should be maximized subject to additional considerations. Section 9002(c) requires, with certain exceptions discussed above, that Federal agencies, when making procurement decisions on items designated in the guidelines, give preference to items composed of the highest percentage of biobased products practicable, consistent with maintaining a satisfactory level of competition. These guidelines propose minimum content levels of biobased products in designated items. It is recognized that the highest percentage of biobased content may not always result in the best item for Federal agencies, since other characteristics, such as performance, may not, in all cases, be positively correlated with higher content. Therefore, Federal agencies should interpret the requirement to mean procuring items with the highest biobased content consistent with other desired attributes such as availability, price, and performance.

Performance of designated items is important. USDA believes that evidence of performance by a qualifying biobased item in its intended use will be a very important factor in Federal agencies' decisions to procure that item. In most circumstances, biobased items can be manufactured with a blend of components that enable them to meet required performance standards. In some circumstances, prior experience with product performance or observation of its widespread use elsewhere will be sufficient evidence of performance to cause Federal agencies to procure the qualifying biobased item. In most other cases, especially for new items in the marketplace or for certain users of high performance items in Federal agencies, more formal evidence of performance may be required. When Federal agencies require more formal performance related information for their procurement decision, USDA encourages these agencies to request this information from manufacturers or vendors of designated items, focusing on performance against ASTM, ISO, Federal or military specifications, or other industry performance standards.

It is also important to set minimum requirements for biobased content of items at levels which are low enough to allow items produced with biobased products to compete with fossil energy based products in performance and economics, using current technology. While the statute requires Federal agencies, when purchasing designated items, to give preference to those that have the highest percentage of biobased content, that requirement must be

considered in the context of whether the product meets required performance standards for the application in which it will be used.

USDA has statutory requirements to meet in designating items for preferred procurement. Section 9002 requires USDA to designate items that are or can be made with biobased products. In making the designation, the Secretary is required to consider, at a minimum, the availability of such items and the economic and technological feasibility of using such items, including life cycle costs. In addition, section 9002 requires the Secretary to provide information on availability, relative price, performance, and environmental and public health benefits to Federal agencies. No designation of items will be made until the above noted requirements are met. Only upon publication of a final rule in the **Federal Register** of designation of an item for preferred procurement will manufacturers and vendors of commercial products with biobased content that fall within the item definition be able to assert preferred procurement status for those products to Federal agencies.

USDA also will utilize the data entered by manufacturers and vendors on its Web site, on individual commercial products with biobased content, to develop information on availability, relative price, performance, and environmental and public health benefits that can be extrapolated to the generic item, the scope of which embraces those individual commercial products, prior to designating that item. This information will be made available to Federal agencies to satisfy the additional statutory information requirements (section 9002(e)(1)(C)) the Secretary is required to provide Federal agencies on designated items. Because the primary value of this information to Federal agencies is at the specific product level and in the ability to compare data across products within a designated item, USDA will encourage manufacturers and vendors to voluntarily post this product specific information on those products they are offering for preferred procurement.

USDA plans to rely on information from the previously discussed CTC study to determine the availability of items. USDA will evaluate information on relative price and performance of individual commercial products with biobased content, from the voluntary Web site, to develop the information on items and products the Secretary must consider in designating items and must make available to Federal agencies.

Information on environmental and public health benefits will be developed

from voluntary information manufacturers and vendors provide on individual products. When voluntarily providing such information to USDA, this information must be based on a National Institute of Standards and Technology BEES (Building for Environmental and Economic Sustainability) analytical tool analysis of the product.

No designation of an item will be made by USDA until USDA has sufficient information to reasonably meet the information requirements the Secretary must address, as specified in the statute, and to provide the required information to Federal agencies about items designated in subsequent regulations. Based on the information considered, USDA will publish regulations in the **Federal Register** designating an item(s) under these guidelines. USDA will work to first designate items in categories having greatest likelihood of sale to Federal agencies.

Proposed § 2902.6: Funding for Testing

As explained above, section 9002 requires the Secretary to consider specific types of information in determining whether to designate an item under these guidelines. Also as explained above, section 9002 requires that the Secretary provide specific types of information to Federal agencies regarding designated items. As a means of obtaining some of the required information, section 9002(j) provides to the Secretary \$1 million per year for each of the fiscal years 2002 through 2007 to support the testing of biobased products to carry out the provisions of the section. Section 9002(j) further provides that the Secretary, at her discretion, may "give priority to the testing of products for which private sector firms provide cost sharing for the testing." 7 U.S.C. 8102(j)(2)(C).

For the first few years of this program, the Secretary is exercising her discretion to test products based on the USDA assessment of the best use of these funds to designate items most expeditiously under this program. USDA will work first to designate items in categories having the greatest likelihood of sale to Federal agencies. Additionally, should USDA obtain sufficient data from manufacturers' voluntary submissions or from other sources that very limited informational gaps exist to delay designation, USDA may target the use of these funds to fill in the limited data gaps to expedite designation of that item. USDA will enter into arrangements with entities capable of conducting tests to conduct tests of biobased content and BEES Analyses on