

products identified by USDA as part of the process of gathering such information on a sufficient number of products to enable USDA to extrapolate such information to the item level.

During this period, entities are welcome to propose cost-sharing for the testing of such items. However, USDA will not consider cost-sharing in deciding what products to test. Cost-sharing will be accepted to the extent consistent with USDA product testing decisions.

Once the program has achieved a critical mass of designated items, anticipated to occur within the next three years, USDA will exercise its discretion to make cost-sharing a more determinative factor in the selection of some products for testing. USDA will make some of the section 9002(j) funds available for testing of competitively-selected products for which private sector firms have offered cost sharing. USDA will make a public announcement to that effect at the time and solicit cost-sharing proposals. Paragraph 2902.7(b) sets forth how USDA proposes to exercise this discretion. USDA will consider cost-sharing proposals only for the BEES Analysis and performance testing of products. USDA does not intend to consider cost-sharing for testing to determine biobased content.

Cost sharing will be considered first for products of "small and emerging private business enterprises." If funds remain to support further testing, a second tranche of applicants could be drawn from all other producers of biobased items. Proposals will be evaluated and assigned a priority rating. Priority ratings will be based on the following criteria:

- A maximum of 25 points will be awarded a proposal based on the market readiness.
- A maximum of 20 points will be awarded a proposal based on the potential size of the market for that product in Federal agencies.
- A maximum of 25 points will be awarded based on the financial need, for testing assistance, of the manufacturer or vendor.
- A maximum of 20 points will be awarded a proposal based on the product's prospective competitiveness in the market place.
- A maximum of 10 points will be awarded a proposal based on its likely benefit to the environment.

Projects will be funded in order of declining priority ratings (from highest to lowest) until available funds are committed. USDA could provide up to 50 percent of the cost of determining the life cycle costs and environmental and health effects using the NIST's BEES

Analysis, up to a maximum of \$5,000 of assistance per product. USDA could provide up to 50 percent of cost for performance testing, up to \$100,000 of assistance per product for up to two performance tests (measures of performance) per product.

Pursuant to section 9002(j)(2)(B), USDA will enter into agreements with and provide the funds to entities that have the experience and special skills to conduct the testing. These entities will use the USDA and any private sector cost sharing funds to test the items. Products submitted in one year, but not funded for testing in that year, could be resubmitted to be considered for cost-sharing in the next year. USDA does not intend to provide financial assistance for testing to determine biobased content.

USDA seeks comments on possible methods of providing financial assistance for manufacturers and vendors for testing of individual commercial products with biobased content that are intended to qualify for preferred procurement by Federal agencies under this program.

Proposed § 2902.10: Communicating Information on Qualifying Biobased Products

Section 2902.10 of the proposed guidelines would provide general information applicable to the exchange of information regarding biobased products. In paragraph (a), we would reiterate that manufacturers and vendors of designated items have the responsibility to inform Federal procurement officials of items that comply with the guidelines, including the biobased content of the product, and recommend that Federal agencies, for their part, affirmatively seek this information. This paragraph would also point out the informational Web site referred to in § 2902.3 as a resource that can be utilized by both Federal agencies and manufacturers and vendors.

Manufacturers and vendors of biobased products that fall within an item (generic grouping) that has been designated by regulation for preferred procurement under the program are free to market those products to Federal agencies while claiming the preferred procurement status for the products under the program. Manufacturers and vendors must be able to certify to Federal agencies that their products are consistent with the definition of biobased product in section 2902.4. In addition manufacturers and vendors must be able to present third party test results that indicate the biobased products have at least the threshold amount of biobased feedstock content

specified in the designating regulations for the item under which the biobased products fit.

Manufacturers and vendors must use the BEES analytical tool to provide information on life cycle costs and environmental and health benefits when asked for such information by Federal Agencies. In the case of products which are essentially the same formulation, but marketed under a variety of brand names, the manufacturers and vendors can simply refer to the underlying BEES Analysis data as the basis to demonstrate the life cycle costs, rather than conducting a BEES Analysis on each branded item. USDA is adopting the BEES Analysis method in order to establish a uniform methodology and platform for analysis of environmental and health effects and life cycle costs; doing so will enable Federal agencies to evaluate BEES results (scores) and life cycle costs across biobased products within a designated item.

When asked for performance data by Federal agencies, manufacturers and vendors are required to use test results obtained, for the individual products they offer for preferred procurement, from testing against industry accepted performance standards, which may include a Federal or Military Specification (ASTM, ISO, Military Specifications, etc.) for the product, in the use for which it is intended. The test must be conducted by a third party in an ASTM/ISO compliant test facility.

In paragraph (d), we would remind manufacturers and vendors that any claims regarding health and environmental benefits of their products should conform to the Federal Trade Commission (FTC) Guides for the Use of Environmental Marketing Claims, 16 CFR part 260. A copy can be obtained through FTC's Web site: <http://www.ftc.gov/ftc/legal/htm>. As explained in 16 CFR 260.5, any party making a claim concerning a product's environmental attribute "must, at the time the claim is made, possess and rely upon a reasonable basis substantiating the claim."

Proposed § 2902.11: Characteristics Required for Obtaining Designated Item Status

Section 9002 envisions giving preference to items composed of the highest percentage of biobased products practicable. Hence, to further the purposes of section 9002, USDA believes it is important to guard against designating items for preferred procurement which contain only token amounts of biobased materials. However, for some uses of biobased products in the production of a