

designated item, such as in the case of biobased adhesives used in the manufacture of furniture, it is recognized that the biobased content in the finished item may be relatively small, measured on a content basis. In these guidelines, USDA proposes that all qualifying items under this program must have at least 5 percent of its total manufactured value (measured after manufacture at the location of manufacture) made up of biobased product(s). USDA proposes that manufacturers and vendors self certify to Federal agencies that designated items meet this requirement. Moreover, manufacturers and vendors must be able to verify that certification from a third party test if asked to do so by Federal agencies or by USDA.

ASTM International is in the process of finalizing and adopting a method for determining biobased content. USDA anticipates that ASTM International will adopt a standard prior to USDA publishing its final rule. The method under consideration by ASTM International is a Radioisotope Standard Method to discriminate between "old carbon" from fossil resources and "new carbon" from renewable resources. A measurement of a product's contemporary  $^{14}\text{C}/^{12}\text{C}$  content is determined relative to a standard reference material. Thus, in paragraph (c) of proposed § 2902.11, we would identify that ASTM method as the standard to be used by manufacturers and vendors in certifying biobased content.

Further, USDA proposes that manufacturers and vendors must utilize third party ASTM/ISO compliant test facilities using that testing standard method to determine the biobased content of their products offered for preferred procurement. Federal agencies and USDA may request verification of biobased content from manufacturers and vendors for products certified to qualify for preferred procurement.

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 biobased content test data as the basis to demonstrate the biobased content, rather than conducting a biobased content test on each branded item.

USDA is proposing that biobased content be determined based on the weight of the biobased material (exclusive of water and other non-active ingredients, fillers, and diluents) divided by the total weight of the product and expressed as a percentage by weight.

Minimum biobased content requirements used in the proposed guidelines refer to the biobased portion of the product itself. For example, in a carpet using a biobased material as a carpet backing, the minimum biobased content indicated for the carpet refers only to the biobased backing. It is understood that the completed carpet, made up of several different materials, would have a lower biobased content than is specified in these guidelines for the biobased product (the carpet backing) itself. Minimum percentages used for various products in these guidelines refer to the biobased content of the product (such as carpet backing) itself, not to a finished product (the carpet) that might be fabricated using both a biobased product and other inputs, unless that is otherwise specified.

Section 2902.11 also would incorporate the filters discussed earlier in this preamble to exclude from this program those products having mature markets.

#### *Proposed § 2902.12: Items and Minimum Biobased Content*

The biobased products listed in the proposed guidelines would be grouped according to category, with each category consisting of one or more items; an item developed by a particular manufacturer is referred to as a product. That is, an item is made up of individual products and a category consists of items. For instance, "Lubricants and Functional Fluids" is a category. Hydraulic fluids is an item within that category, and "ABC Hydraulic Fluid" made by the ABC Company is a product.

As noted previously, the items and the indicated biobased content of items contained within the categories discussed in this preamble are based on the study conducted in 2002 for the USDA Agricultural Research Service by CTC. The final report of the study can be viewed at the Office of Energy Policy and New Uses, Reporters Building, Room 361, 300 7th Street, SW., Washington, DC 20024. To arrange for viewing, contact Marvin Duncan at 202-401-0532. USDA also has posted the study on its informational Web site, <http://www.biobased.oce.usda.gov>.

The items discussed below are intended to be the items that will be proposed for designation for preferred procurement by Federal agencies after the Secretary has sufficient information on availability of the items and the economic and technological feasibility of using such items, including life cycle costs. The information on availability of the items is determined from the CTC

study from which the categories, items, and proposed minimum biobased content data were developed. However, items will not be designated for preferred procurement until the additional information required by section 9002 is considered by the Secretary. As items are designated for procurement preference, they would be added to § 2902.12 of the guidelines.

Comments proposing a new item should include information similar to that found in USDA's initial survey of the industry, including biobased products from which the items are derived, item characteristics, likely uses of the item, and percentage of biobased content of the items. In addition to new items proposed for inclusion in the guidelines, USDA is seeking comment on procedural issues, such as a process for proposing additional items, the review of such proposals, and what market information should be necessary to support the addition or deletion of an item. USDA particularly seeks public comment on the proposed categories and items, and the reasonableness of the biobased content percentages, discussed below.

Proposed § 2902.12 would contain items, grouped according to category, that are or can be produced with biobased products and provide the minimum biobased content for each listed item. It is anticipated that as the biobased product industry develops, new products will enter the market. As necessary, new items will be designated. USDA intends to periodically survey the industry to learn of new products entering the marketplace and to determine new items for designation. While § 2902.12 in these proposed guidelines contains no categories or items, given that none have yet been designated for procurement preference, the following paragraphs contain a discussion of future proposed categories and minimum content levels thus far identified. USDA seeks comments on the following categories, items (subcategories), minimum content levels based on manufactured value, and the minimum biobased content levels.

#### *Adhesives Category*

Biobased adhesives are chemical products used to join or bond two or more other materials together. A wide range of agricultural materials can be used to make biobased adhesives, including but not limited to starch from corn, potatoes, wheat, tapioca, and other plants; casein from skimmed milk; soy protein; soybean oil; vegetable gums; gelatin; livestock derivatives; tannins from woody biomass; and marine animal derivatives.