

composed of the highest percentage of biobased product practicable except when such items:

- (i) Are not available within a reasonable time;
 - (ii) Fail to meet performance standards set forth in the applicable specifications, or the reasonable performance standards of the Federal agency; or
 - (iii) Are available only at an unreasonable price.
- (2) A policy of setting minimum biobased products content specifications in such a way as to assure that the biobased products content required is consistent with section 9002 of FSRIA and the requirements of the guidelines in this part except when such items:
- (i) Are not available within a reasonable time;
 - (ii) Fail to meet performance standards for the use to which they will be put, or the reasonable performance standards of the Federal agency; or
 - (iii) Are available only at an unreasonable price.

§ 2902.6 Funding for testing.

(a) USDA will use funds to support testing for biobased content and conduct of the BEES Analysis for products within items USDA has selected to designate for preferred procurement through early regulatory action. USDA initially will focus on gathering the necessary test information on a sufficient number of products within an item (generic grouping of products) to support regulations to be promulgated to designate an item or items for preferred procurement under this program. USDA may accept cost sharing for such testing to the extent consistent with USDA product testing decisions. During this period USDA will not consider cost sharing in deciding what products to test. When USDA has concluded that a critical mass of items have been designated, USDA will exercise its discretion, in accordance with the competitive procedures outlined in paragraph (b) of this section, to allocate a portion of the available USDA testing funds to give priority to testing of products for which private sector firms provide cost sharing for the testing.

(b)(1) Subject to the availability of funds and paragraph (a) of this section, USDA will announce annually the solicitation of proposals for cost-sharing for the testing of biobased products to carry out this program. Information regarding the submission of proposals for cost sharing also will be posted on the USDA informational Web site, <http://www.biobased.oce.usda.gov>.

(2) Cost-sharing proposals 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 may 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:

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

(3) Proposals will be selected in order of declining priority ratings (from highest to lowest) until available funds for the fiscal year are committed.

(4)(i) For products selected for BEES Analysis testing under this paragraph, 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.

(ii) For products selected for performance testing under this paragraph, 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.

(5) For selected proposals, USDA will enter into agreements with and provide the funds directly to the testing entities.

(6) Proposals submitted in one fiscal year, but not selected for cost-sharing of testing in that year, may be resubmitted to be considered for cost-sharing in the following year.

Subpart B—Biobased Product Eligibility for Federal Preference

§ 2902.10 Communicating information on qualifying biobased products.

(a) Manufacturers and vendors are expected to provide relevant information to Federal agencies, upon request, with respect to product characteristics. USDA recommends that Federal agencies affirmatively seek this information. Manufacturers must be able to verify the biobased content in

their products. The level of biobased content in the product is to be determined using the ASTM International standard that is a Radioisotope Standard Method to distinguish between carbon from fossil resources and that from renewable sources.

(b) Manufacturers and vendors must use the National Institute of Standards and Technology BEES (Building for Environmental and Economic Sustainability) analytical tool to provide information on life cycle costs and environmental and health benefits to Federal agencies, when asked.

(c) In assessing performance of qualifying biobased products, USDA requires that Federal agencies rely on results of performance tests using applicable ASTM International, International Organization for Standardization (ISO), Federal or military specifications, or other similarly authoritative industry test standards. Such testing must be conducted by a third party ASTM/ISO compliant laboratory.

(d) Manufacturers and vendors are reminded that their advertising, labeling, and other marketing claims, including claims regarding health and environmental benefits of the product, must conform to the Federal Trade Commission Guides for the Use of Environmental Marketing Claims, 16 CFR part 260.

§ 2902.11 Characteristics required for obtaining designated item status.

(a) All qualifying items under this program must have at least 5 percent of their total manufactured value (measured after manufacture at the location of manufacture) made up of biobased product(s).

(b) Minimum biobased content requirements in § 2902.12 refer to the biobased portion of the product, and not the entire item. These requirements are in addition to the 5 percent total manufactured value requirement in paragraph (a) of this section.

(c) Manufacturers and vendors must utilize third party ASTM/ISO compliant test facilities using the ASTM International Radioisotope Standard Method to determine and certify 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.

(d)(1) Biobased content shall be determined based on the weight of the biobased material (exclusive of water and other non-active ingredients, fillers,