



DEPARTMENT OF VETERANS AFFAIRS
DEPUTY ASSISTANT SECRETARY FOR ACQUISITION AND MATERIEL MANAGEMENT
WASHINGTON DC 20420

OCT 13 2006

Mr. Marvin Duncan
U.S. Department of Agriculture
Office of the Chief Economist
Office of Energy Policy and New Uses
Room 4059, South Building
1400 Independence Avenue (MS-3815)
Washington, DC 20250-3815

OCT 13 2006

Re: Proposed Designation of Items, Regulatory Information Numbers
(RINs) 0503-AA30 and 0503-AA31

Dear Mr. Duncan:

The Department of Veterans Affairs (VA) continues to support the overall objectives of section 9002 of the Farm Security and Rural Investment Act of 2002 which gives federal procurement preference for biobased products. VA appreciates the opportunity to comment on the second and third rounds of biobased items that the U.S. Department of Agriculture (USDA) is currently proposing to designate for such preference.

The VA mission is to serve our Nation's veterans and their families. High among the department's priorities is to provide veterans with high-quality health care. It is our duty to ensure that VA hospitals afford veterans, their families, employees, and visitors a safe, sanitary, healing, and healthy environment in a cost-effective and efficient manner. As such, our comments address several procurement, performance, and item-specific issues.

Federal Procurement and Performance Issues: The Federal Register (FR) notice states that it does not cover information on the availability, economic and technical feasibility, environmental and public health benefits, and life cycle costs for each of the designated items. The FR also states that USDA has not reached an agreement with manufacturers to publish their names in the FR. Without such information, especially as it relates to product performance and life cycle cost, federal agencies are not able to determine whether they are buying a product that will perform as intended at a reasonable cost. The biobased products should be fully tested to determine if they meet performance specifications prior to requiring federal agency purchase. Similarly, the effect of biobased product usage on equipment maintenance warranties (i.e., such use might void equipment warranties) remains a concern and should be fully addressed prior to final product designation.

Mr. Marvin Duncan

The USDA states that it considers an item economically and technology feasible for purposes of designation if the products are available and used in the marketplace. Unfortunately, there are many products in the marketplace that do not work as advertised. With regard to technological feasibility, as well as product performance, there are numerous industry and other recognized standard-setting groups that are responsible for setting standards for products used in various applications. From the standpoint of federal stewardship of taxpayer funds, it would be prudent for federal agencies to purchase biobased products that have been determined by an outside organization to meet minimal performance standards.

For the second and third rounds of proposals, the USDA has made supporting documentation available on its web site. VA appreciates the provision of this information. However, with regard to the "Performance Standards" document, the information listed in the "Standard Title" column does not appear to have much to do with performance. For example, in RIN 0503-AA30, the Office of Safety and Health Administration (OSHA) Hazard Communication Standard does not provide information as to whether the biobased adhesives or grease remover will work as intended. We raise this same concern about the item documentation provided for the products listed in RIN 0503-AA31.

RIN 0503-AA30

Hand Cleaners: In the absence of extensive testing to determine the efficacy of hand cleaners and sanitizers with regard to use in the health care industry, the USDA should exempt the health care industry from this requirement. This will ensure that health care professionals are able to obtain products that meet patient safety needs. The Environmental Protection Agency is responsible for determining whether or not a product can be considered a disinfectant. The question arises if the foregoing has been considered in the development of requirements to procure biobased hand cleaners and sanitizers.

Fluid-Filled Transformers: VA Master Specifications refer to American Society for Testing Materials (ASTM) D3487-00, Standard Specification for Mineral Insulating Oil Used in Electrical Apparatus, for Pad-Mounted Transformers and Unit Substation Secondary. Dielectric (non-conducting) fluid to be used in VA electrical transformers must meet ASTM D3487-00, which is not among the industry standards listed in the proposed rule.

Page 3.

Mr. Marvin Duncan

In order for VA facilities to use biobased products in lieu of traditional dielectric, the biobased fluid must meet original equipment manufacturer's specifications for existing equipment or performance standards related to electrical power generation and transmission for new transformers.

RIN 0503-AA31

Biodegradable Cutlery: In the technical information provided, it is stated that the biodegradable cutlery will, in fact, biodegrade. However, the "Standard Title" column in the "Performance Standards" document does not indicate that the cutlery will adequately perform when used for eating.

Carpet: The "Standard Title" column in the "Performance Standards" document for carpeting does not address how well the carpet will wear.

Dust Suppressants: The OSHA Hazard Communication Standard for dust suppressants does not convey whether the product does, in fact, suppress dust.

Lip Care Balm: There is no standard listed for lip care balm.

In accordance with Executive Order 13101, Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition, one year after a product is placed on the USDA Biobased Products List, agencies will be required to estimate their purchases of products on the list and report on their estimated purchases of such products to the Secretary of Agriculture. In developing the reporting mechanism, the USDA should consider the method that is least burdensome to federal agencies.

VA looks forward to receiving additional information and guidance that will enable us to effectively implement and meet the goals of the federal biobased procurement program.

Sincerely,


Jan R. Frye

25

From: <DJacques@clovernook.org>
To: <fb4p@oce.usda.gov>, <EGholson@clovernook.org>
Date: Tue, Oct 17, 2006 8:38 AM
Subject: Proposed Guidelines for Designating Biobased Products for Federal Procurement-
Round 2: RIN 0503-AA30

To Whom It May Concern:

I would like to comment concerning these proposed guidelines. As an NIB-affiliated agency that employs people who are blind or visually impaired, we were the first United States manufacturer to produce a biobased hot paper cup. The plastic lining is vegetable-based. The cups are packaged by dedicated employees who are visually impaired under the guidelines of the JWOD program.

It is proper for the USDA to implement the policies and procedures to designate products like ours and other manufacturers under section 9002 of FSRIA with Federal procurement preference; specifically pertaining to biodegradable containers. By reducing or eliminating the use of petroleum-based materials to produce perpetually-used products like cups, plates and containers, the USDA will help the Federal government improve our environment and reduce our dependency on oil.

I welcome the opportunity to discuss the details of our product line, along with other biodegradable containers, with all interested parties.

Best regards,

Douglas W. Jacques
Vice President-Business Operations
Clovernook Center for the Blind and Visually Impaired

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From: <MWeber@adriandominicans.org>
To: <fb4p@oce.usda.gov>
Date: Tue, Oct 17, 2006 8:29 AM
Subject: 0503-AA30 and 0503-AA31 Proposed Designation of Items

October 16, 2006

RIN numbers: 0503-AA30 and 0503-AA31
RE: Proposed Designation of Items

Marvin Duncan
USDA
Office of the Chief Economist
Office of Energy Policy and New Uses
Room 4059, South Building, 1400
Independence Avenue, SW, MS-3815
Washington, DC 20250-3815

Dear Mr. Duncan:

Thank you for the opportunity to comment on the proposed rules for designation of biobased items for federal procurement (RIN numbers 0503-AA30 and 0503-AA31).

The Adrian Dominican Sisters share the federal governments goal to increase demand for biobased products, spur rural economic development through value-added agricultural products; and enhance the nation's energy security by substituting biobased products for products derived from imported oil and natural gas. It is our perspective that these goals can be met better by substantially increasing the minimum biobased content levels for many of the 20 items designated in the proposed rules.

In particular, we urge USDA to more clearly establish a minimum threshold for all products to meet in order to qualify as a biobased product. Given that products are available in all categories with biobased content above 50 percent, we recommend the USDA consider a minimum threshold of 50 percent biobased content; that is, only products consisting of at least 50 percent biobased content would qualify for preferred procurement. This will increase demand for biobased products with higher biobased content and result in private sector development of new technologies to produce products meeting these higher levels.

Setting the biobased content bar too low for many of the 20 designated items will undermine motivation to produce products with higher levels of biobased content.

Additional comments:

1. The USDA chose to include almost all products submitted, no matter how low their biobased content, and established a biobased minimum level three percentage points below the lowest test product results. For most of the designated products, the USDA used the following boilerplate language: Because USDA does not have performance information to determine whether the products with biobased contents on the lower end of the range have unique or more desirable characteristics, USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled.

We recommend that if the lower biobased content products cannot prove they offer better performance properties or meet certain application requirements, USDA should recommend higher biobased content products to stimulate product innovations that contain higher biobased levels. This holds particularly true for the following designated items: hand cleaners and sanitizers, composite panels, graffiti and grease removers, metalworking fluids, glass cleaners, food grade greases, and biodegradable cutlery. Given the lack of information on exceptional performance properties of the lower biobased content products in these categories, we recommend establishing a minimum biobased content at 50 percent for these products.

It would be helpful to know the biobased content for each product tested, rather than the range, to better evaluate the minimum biobased content level recommended by USDA. For instance, the biobased content of ten of the 30 biobased fertilizers ranged from 74 to 100 percent. If nine of these tested at 100 percent, the USDA should consider setting the minimum content close to 100 percent rather than near the lowest biobased content tested product. We question the USDA strategy setoff setting the recommended minimum level for each product at three percentage points below the lowest biobased content level of the products tested. This seems a prescription for minimizing, not maximizing, biobased content.

2. Do not indirectly create a preferential procurement policy for products with nanoparticles. Given the many outstanding public and environmental health issues surrounding the use of nanotechnology, we urge the USDA to exclude any biobased product containing nanoparticles from its preferential purchasing program. There are no manufacturing standards, labeling regulations, safety guidelines for nanoparticle use and we do not yet understand what nanoparticles can do to our health and to the environment.

3. We urge USDA not to exclude biobased or natural-fiber products for which there was a mature market in 1972. This might give an unfair preference for synthetic products with a lower biobased content. Biodegradable films for use as leaf collection bags offer a good example. The proposed minimum biobased content for biodegradable films is 22 percent. For leaf collection bags, this will give a procurement preference to products that have 78 percent fossil-fuel based carbon over say a kraft paper leaf collection bag made from 100 percent plant matter.

Comments on Specific Items

1. Biodegradable Containers: At this time, we urge USDA's definition for biodegradable containers to specifically exclude beverage bottles. Currently the infrastructure to compost biodegradable containers and other biodegradable products is not yet developed and available in most US communities. Biodegradable beverage bottles that replace PET or HDPE bottles are not necessarily preferable as these displace a product for which an established recycling infrastructure exists. Biodegradable beverage bottles in today's recycling infrastructure would end up neither composted nor recycled but in the reject stream of almost all recycling facilities in the US. If the USDA procurement program were to increase demand for biodegradable beverage bottles, this would have severe negative economic repercussions for well-established plastic bottle recyclers.

Biodegradable containers that replace single-use disposal containers that are not now recycled (such as polystyrene take-out containers) are preferable and deserve to be given procurement preference.

2. Carpets: We recommend that the USDA set separate minimum biobased levels for carpet faces as compared to carpet backings. As noted in the proposed rulemaking, it is the backing that is biobased not the face of the products submitted. In keeping with our above recommendation for the USDA to set a minimum of 50 percent biobased content in order to qualify as a biobased product, carpet backing would qualify.

Carpet is one designated item where the overlap with the federal recycled-content preferable purchasing program could cause problems. The rulemaking indicates that recycled content trumps biobased content. Some carpet backing is made from recycled polyvinyl chloride (PVC). As the production of PVC has serious environmental health impacts that are not captured in the BEES analysis (such as dioxin production, reproductive toxicity and neurotoxicity), we urge the USDA to have the biobased procurement preference take priority over the recycled-content preference in this category. This is one clear case where using a biobased material is preferable to recycled-content.

3. Biodegradable Cutlery: Given the availability of biodegradable cutlery products containing 100 percent biobased content, we urge the USDA to set the minimum content near 100 percent.

Thank you for considering these recommendations and comments.

Sincerely,

Margaret Weber
Coordinator of Corporate Responsibility
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From: "Carl F Muska" <Carl.F.Muska@usa.dupont.com>
To: <fb4p@oce.usda.gov>
Date: Tue, Oct 17, 2006 7:49 AM
Subject: Dupont Comments on RIN # 0503-AA30 and 0503-AA31- Proposed Rulemakings on Designation of Biobased Items for Federal Procurement-Part II and Part III

Please find attached DuPont comments on the Designation of Biobased Items for Federal Procurement - Part II and Part III.

If you have any further questions, or need additional information regarding these comments, please do not hesitate to contact me.

Carl Muska

(See attached file: Comments for USDA Proposed Rule Oct 16, 2006.doc)

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http://www.DuPont.com/corp/email_disclaimer.html



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October 16, 2006

Marvin Duncan
United States Department of Agriculture
Office of Chief Economist
Office Energy Policy and New Uses
Room 4059, South Building
1400 Independence Avenue SW, MS-3815
Washington, DC 20250-3815

Subject: Comments on Proposed Rule for "Designation of Biobased Items for Federal Procurement" (71 FR 47566; August 17, 2006 & 71 FR 47590; August 17, 2006) (RIN 0503-AA30 & RIN-0503-AA31)

Dear Mr. Duncan:

DuPont Bio-Based Materials welcomes the opportunity to provide comments on USDA's proposed rule for the "Designation of Biobased Items for Federal Procurement" as referenced above. Dupont is a science company. Founded in 1802, DuPont puts science to work by solving problems and creating solutions that make peoples lives better, safer and easier. Operating in more than 70 countries, the company offers a wide range of products and services to markets including agriculture, nutrition, electronics, communications, safety and protection, home and construction, transportation and apparel.

Before discussing our specific comments, DuPont would like to reaffirm its support of the overall intent of the preferential procurement provisions of Section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA 7 U.S.C. (referred to in this document as Section 9002) for biobased products.

As a science company, DuPont has a major research focus and investment in materials science. One of the products of this investment is the discovery and development of a biological process to make 1,3-propanediol (Bio-PDO™), a key ingredient to Sorona® polymer. The U.S. Environmental Protection Agency presented DuPont with its annual

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DuPont Comments on Proposed Rule (RIN 0503 AA-26)

Marvin Duncan

“Presidential Green Chemistry Award” in 2003 for the company’s research leading to the development of the Bio-PDO™ process. We are currently starting up with Tate & Lyle, our joint-venture partner, a \$100 million dollar plant in Loudon, Tennessee, with a capacity to produce 100 million pounds of Bio-PDO™ per year. Bio-PDO™ is a platform chemical with many applications.

The Integrated Corn Biorefinery Program (ICBR) is another excellent example of DuPont’s alignment with and support for the intent of Section 9002. The Department of Energy and DuPont are co-funding a program to develop, along with our development partners, a biorefinery to turn corn grain and corn stover into ethanol and value-adding biopolymer intermediates. For this program, DuPont (including Pioneer) is partnering with John Deere, Diversa, DOE’s National Research Energy Laboratory (NREL), and Michigan State University. DuPont is a stakeholder, and we have a vested interest in both Section 9002 and its successful implementation.

The following comments and recommendations are intended to be supportive to USDA in fulfillment of its responsibility to implement the provisions of Section 9002:

Comment #1: Including provisions for qualifying/designating biobased materials will accelerate the introduction of biobased products into the marketplace

The current USDA approach of designating final products for preferential procurement requires that individual products be tested for biobased content on a generic “item by item” basis. This process, by its design, requires a considerable amount time and resources.

Biobased products are made from biobased materials. Testing and qualifying biobased materials, the components and/or ingredients of biobased products, will greatly accelerate the designation process for preferential procurement. If a product is made from a prequalified biobased material, it is then a simple matter for the manufacturing of the bioproduct to provide information to USDA on its biobased composition. If verification of manufacturer’supplied compositional information is needed, the ASTM biobased content test can always be conducted as needed.

DuPont and other material suppliers are making biobased materials. that will literally be going into thousands of biobased products. As more and more of these materials are introduced into the marketplace, the current designation process could become a bottleneck. To simplify and expedite the designation process, it is recommended that USDA develop a program for prequalifying the biobased materials that will form the basis of the biobased products.

USDA has an opportunity to do this as part of the "USDA Certified" labeling program.

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DuPont Comments on Proposed Rule (RIN 0503 AA-26)

Marvin Duncan

By including biobased materials in the labeling program, biobased materials can be tested and certified as to their biobased content. With a list of prequalified biobased materials, manufacturers of final biobased products can select and use biobased materials based on their previously quantified biobased content and environmental profile. In addition, manufacturers will be able to identify and contact biomaterial suppliers for information on the performance characteristics and other information to determine the most appropriate biomaterials for their particular application. USDA can thus use the labeling program to expedite the development of biobased products consistent with the Congressional intent of the 2002 Farm Security and Rural Investment Act.

Recommendation #1: USDA should include biobased materials as part of the labeling program.

Comment #2: The provision for handling the “overlap with EPA Comprehensive Procurement Guidelines program fo recovered content products” is reasonable

The procurement decision to buy a “recycled content product” or a biobased product should be based on the application and the respective performances of the products in fulfilling the specific requirements of the application. There is a provision in the Farm Bill that “recycled content products “ have priority in Federal procurement over the qualifying biobased product. USDA has appropriately proposed in this FR notice that additional information should be sought from manufacturers before procurement decisions are made. This information will enable the procurement process to determine “whether the biobased products in question are, or are not, the same products as the recovered content products”.

A good example is the use of recycled carpet vs carpet with biobased content. Carpets made with different materials will have different performance attributes. The desired performance characteristics should be developed first and then compared against the available products. A purchasing decision made strictly in favor of recycled carpet without evaluating performance information is not in the best interest of either the “recovered content” or the “biobased products” programs. An arbitrary decision that results in the purchase of the wrong product for an application will only impede its acceptance and reputation in the marketplace.

Recommendation #2: The USDA Preferential Procurment Guidelines for Biobased Products should be upgraded to include the proposal in this rulemaking for handling the "overlap" between the recycled content and biobased content programs.

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DuPont Comments on Proposed Rule (RIN 0503 AA-26)

Marvin Duncan

Comment #3: The USDA proposal to encourage “Federal procurement agencies to examine all available information on the environmental and human health effects “ is commendable

The above USDA proposed statement, which was specifically directed to cleaning products, should be extended to all “green purchasing” decisions. To fully compare products, it is imperative to take a life cycle assessment approach which quantifies “cradle to grave” impacts of the manufacture, use and disposal of products. One of the key environmental impact categories is green house gas emissions. The potential for a product to contribute to GHG emissions should be assessed along with other key environmental impact categories. USDA's statement that “qualifying biobased products offer the user the opportunity to manage the carbon cycle and limit the introduction of new fossil carbon into the atmosphere while non-biobased products derived from fossil fuels add new fossil carbon to the atmosphere” is an important differentiation that should be part of the preferential procurement process.

Recommendation #3: The potential for reduced greenhouse gas emissions is a key differentiation for biobased products and USDA should continue to emphasize this point as part of the preferential procurement program.

Comment #4: USDA’s proposed exemptions for critical applications should be unnecessary given the provisions of the current Guidelines.

No product, biobased or not, should be used in any critical application if it does not meet performance requirements. One of the existing procurement criteria in the USDA Guidelines for Preferential Procurement of Biobased Products is performance. Today, Federal agencies are not required to purchase biobased products if they do not meet their performance specifications. The problem with proposing an exemption that limits the use of biobased products to “more conventional applications” is that it carries the implication that biobased products are inferior in their performance characteristics to the incumbent product. Not only is this not the case but it sends the wrong message regarding the potential benefits of and uses for biobased products. For example, DuPont is making 1,3, propanediol from a renewable feedstock by a biological process. This material is 100% biobased and is of extremely high purity. High purity 1,3-propanediol, whether from a fossil feedstock or a renewable feedstock, is still 1,3-propanediol. The suitability of this chemical or others, regardless of the source, needs to be performance tested for the specific application, particularly if it is a critical application. Proposing an exemption from the use of biobased materials and products in critical applications, is unnecessary per the current USDA Guidelines

Comment #5: USDA’s proposal to set the minimum biobased content of carpet at 7 % is reasonable at this time.

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DuPont Comments on Proposed Rule (RIN 0503 AA-26)

Marvin Duncan

Setting the initial minimum biobased content based on the lower end of the samples tested to date will provide more potential products and will encourage more widespread use of biobased products. Carpet containing biobased material is still very much in a development stage. The proposed level should help stimulate more development of biobased carpets.

The carpet testing reported in the proposed rule was on the entire carpet (face and backing). Of the carpets tested, all of the biobased material was in the backing. However, carpets will be introduced to the marketplace in the near future that contain biobased face fiber as well. USDA requested comments on "whether separate minimum biobased content should be set for the face and the backing." Dupont suggests that USDA start with the proposed biobased content for the entire carpet and collect additional biobased content data on carpet backing and carpet face fiber as these products become available. Because carpet fiber and carpet backing can come from very different biobased material sources, it may make sense in the future to treat them separately. Obtaining more data on both of these carpet components will help USDA determine how best to set minimum biobased contents for this product. As a supplier of materials to the carpet industry, DuPont welcomes the opportunity to work with USDA on this issue.

We thank you for the opportunity to participate in this proposed rulemaking, and we look forward to working proactively with the USDA on these and on future proposed rules associated with the Federal Biobased Products Preferred Procurement Program.

Sincerely,

Carl F. Muska, PhD
Safety, Health, Environment and Regulatory Affairs Manager
DuPont Bio-Based Materials

CFM:jeg
atch

AF&PA®



AMERICAN FOREST & PAPER ASSOCIATION

GROWING WITH AMERICA SINCE 1861

October 16, 2006

(Via E-Mail)

U.S. Department of Agriculture Docket
1400 Independence Ave., S.W.
Washington, D.C. 20250

Re: AF&PA Comments on U.S. Department of Agriculture (USDA) Proposed Designation of Biobased Items, RIN 0503-AA30 and RIN 0503-AA31, (71 Fed. Reg., 4756 and 71 Fed. Reg. 47590 (August 17, 2006)); and RIN 0503-AA32 (71 Fed. Reg., 4756 (October 11, 2006))

To Whom It May Concern:

AF&PA is pleased to submit these comments on three USDA proposed rules identifying a total of 30 items for designation as biobased materials for preferred procurement by federal agencies. AF&PA is the national trade association of the forest, paper and wood products industry. Our organization represents approximately 250 member companies and related trade associations that grow, harvest, and process wood and wood fiber; manufacture pulp, paper and paperboard from both virgin and recycled fiber; and produce solid wood products.

AF&PA is commenting on only a few provisions of concern in the proposals and submitting this same set of comments in the docket for all three rulemakings, because the three rulemakings contain those provisions. Our comments also address a provision on composite panels that only is discussed in RIN 0503-AA30. Page number citations below also only refer to RIN 0503-AA30.

Discussion of "Cradle-to Grave" Impacts

The Federal Register indicates that "some biobased products may be better for the environment than some products that meet Green Seal standards for institutional cleaning products...." The notice goes on to state that to "fully compare products, one must look at the "cradle-to-grave" impacts" of the entire life cycle of the product. 71 Fed. Reg. 47567. The notice also indicates that the BEES analytical tool uses an "internationally-standardized ...life cycle assessment approach" specified by ISO. 71 Fed. Reg. 47569.

AF&PA supports USDA's recognition that a life cycle assessment (LCA) is necessary to undertake an objective, scientific comparison of the environmental performance of various products. We also support the recognition of BEES, a tool that uses LCA. AF&PA and its members have contributed data to the BEES databases and support its use.

We also note that aside from not being based on an LCA approach, some Green Seal standards are several years old and were not developed using a true consensus based approach. We urge USDA to be cautious in its endorsement of Green Seal.

U.S. Green Building Council (USGBC) and Rapidly Renewable Materials.

USDA discusses several aspects of the USGBC LEED green building rating system and notes that some federal agencies use the system. LEED awards one point for “rapidly renewable materials” and USDA states that this can help agencies obtain LEED certification for their buildings. 71 *Fed. Reg.* 47567. AF&PA has several concerns with these provisions.

First, the LEED system and its point structure were not developed using an LCA approach. As a result, the LEED point structure is not grounded in good science and is viewed as biased in its approach, favoring products that are not bio-based at all. USGBC has recognized this deficiency and currently is undertaking a process to incorporate LCA into LEED. However, it is likely that this process will take several years before it is completed.

Second, USGBC itself recognized that the rapidly renewable credit is flawed and is not supportable, based on an LCA. USGBC has proposed changes to the LEED system regarding bio-based materials and specifically has proposed to remove the rapidly renewable credit (see attached file).

Third, there are other green building rating systems that already incorporate aspects of life cycle assessment. For example, the Green Globes system is an interactive and flexible green building management tool that includes an assessment protocol, rating system and guide for integrating environmentally friendly design into commercial buildings. Several U.S. federal agencies are examining Green Globes for potential application and the U.S. Department of Health and Human Services (HHS) recently issued its policy for Sustainable and High Performance Buildings. This new policy indicates that all new or significantly renovated HHS buildings will be certified under either the LEED or Green Globes systems. Furthermore, HHS will soon undertake a pilot project to certify a new building to the Green Globes system.

Based on the foregoing concern, we request that USDA remove references to LEED in the final rules. If USDA retains the reference, it should indicate the lack of an LCA approach in LEED, and that USGBC has proposed to its membership that the rapidly renewable credit be removed. USDA also should discuss and incorporate Green Globes into the rule, based on the fact that it already incorporates aspects of LCA.

Composite Panels and Other Engineered Wood Products

In the rule, USDA has proposed to identify “composite panels” as one of the categories of biobased products that should be afforded Federal procurement preference. The notice goes on to state that these products are “typically formulated from natural wheat or rice straw, recycled or forest clean-up wood, and paper industry wastes.” 71 *Fed. Reg.* 47574. This description incorrectly implies that biobased wood composite panels are made only from these materials. In fact, biobased wood composite panels may be manufactured from a variety of raw material sources, including wood and/or wood fibers. USDA should revise the description to include those raw materials, as well.

USDA also should be aware that composite panels are but one example of a larger category of

forest products called “engineered wood products” or “EWPs.” It would be appropriate for USDA also to designate many of those other EWPs as biobased products under this or a subsequent rulemaking as these products also are manufactured from biobased materials. For example, oriented strand board (OSB) panels can be manufactured from a wide range of fast-growing species and from relatively small trees that do not have significant commercial value. The production process of this and other engineered wood products utilizes a maximum amount of wood fiber from each tree that is harvested.

Thank you for your consideration of this matter and please call me at (202) 463-2581, if additional information is needed.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Schwartz", with a stylized flourish at the end.

Jerry Schwartz
Senior Director

cc: Marvin Duncan, USDA

29

From: "Tom Lent" <tlent@healthybuilding.net>
To: <fb4p@oce.usda.gov>
Date: Mon, Oct 16, 2006 9:03 PM
Subject: Comments RE: RIN numbers: 0503-AA30 and 0503-AA31

I am pleased to submit comments on the above reference rulemaking. Please provide acknowledgement so that I will know that these comments were received. Thank you.

Tom

Tom Lent

Healthy Building Network

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Marvin Duncan
USDA
Office of the Chief Economist
Office of Energy Policy and New Uses
Room 4059, South Building, 1400
Independence Avenue, SW, MS-3815
Washington, DC 20250-3815

DT: October 16, 2006
RE: **RIN numbers: 0503-AA30 and 0503-AA31**
"Designation of Biobased Items for Federal Procurement"

Dear Mr. Duncan:

I've just become aware of the opportunity to comment on the proposed rules for designation of biobased items for federal procurement (RIN numbers 0503-AA30 and 0503-AA31) on the closing day of the comment period so will not be able to do the full review this warrants. I do, however, have some comments based on certain issues that emerge in first look.

The Healthy Building Network is concerned about both the material unsustainability of our growing reliance on petroleum based products and on the toxic impacts of that use. We see biobased products as having strong potential to help relieve these problems as well as providing many other benefits. We therefore support the goal of these proposed regulations to increase demand for biobased products,

Set a strong minimum threshold for biobased content that will drive the market. Based upon our analysis of this rapidly developing market, we think that the individual levels proposed for most of the products you evaluated can be raised. High performance products are being introduced with high biobased content levels at a rapid pace. Federal procurement guidelines should reward this, not open the door to those providing only token amounts of biobased content just to get approval. Rather than setting the threshold level below the lowest percentage you observed in the lowest end product in your survey, we suggest that you reward the top half or top two thirds of the respondents, at least where the spread is more than 20 percentage points.

This will focus demand on the products with higher biobased content, encouraging development by the private sector of higher biobased content products. This will in turn have a multiplier effect on biobased input use even larger than the government purchases themselves,

Mature markets: Do not exclude natural-fiber and other biobased products with mature markets in 1972. We share the concern expressed by others that biobased - petroleum plastic blends should not get an unfair advantage over entirely natural fiber/biobased products.

Split consideration of face and backing on carpets: As the technology to produce biobased backings is considerably advanced over that of face fiber, we suggest that the USDA set separate minimum biobased levels for carpet backings along. In some situation, of course, a federal buyer may be able to use a natural fiber faced carpet product. This should be separately encouraged.

We also encourage prioritization of biobased content over recycled polyvinyl chloride (PVC) content backing for carpet backing. PVC has serious health impact throughout its lifecycle – notably the production of dioxin in manufacture and disposal and release of phthalates. Dioxin reduction is a goal that the US government has committed to through its signing of the Stockholm Treaty on Persistent Organic Pollutants. Neither of these issues is captured and compared by BEES analyses¹

Sustainability Biopolymer Guidelines: Finally, it is important to note that biobased products are not automatically better for the environment than the items they replace, depending upon the way the feedstock is grown, the product manufactured and the product handled at the end of its life. A group of NGOs are now working with companies interested in manufacturing and using biobased products to develop sustainability guidelines for biopolymers (see www.healthybuilding.net/biopolymer). We urge the federal government to engage in this process and consider how it can in future rulemakings encourage the biopolymer industry to move toward truly sustainable products.

Thank you for considering these comments and recommendations.

Please have my name and email address added to the appropriate lists for future notifications.

Sincerely,

Tom Lent
Technical Policy Director
Healthy Building Network
2446 West St
Berkeley, CA 94702

¹ Lent, Tom "Toxic Data Bias and the Challenges of Using LCA in the Design Community", [Proceedings of GreenBuild 2003](http://www.healthybuilding.net/pvc/Toxic_Data_Bias_2003.html) – Pittsburgh PA 2003. http://www.healthybuilding.net/pvc/Toxic_Data_Bias_2003.html

30

From: "Jocelyne Modine" <jmodine@bio.org>
To: <fb4p@oce.usda.gov>
Date: Mon, Oct 16, 2006 6:32 PM
Subject: BIO Comments on RIN # 0503-AA30 and 0503-AA31- Proposed Rulemakings on Designation of Biobased Items for Federal Procurement-Part II and Part III

Dear Sir or Madam,

0503-AA30
0503-AA31

Please find attached the Biotechnology Industry Organization's (BIO) comments on the Designation of Biobased Items for Federal Procurement - Part II and Part III.

If you have any further questions, or need additional information regarding these comments, please do not hesitate to contact me.

Sincerely,

Jocelyne Modine

Manager, Industrial and Environmental Section

Biotechnology Industry Organization (BIO)
1225 Eye Street, N.W.

Suite 400

Washington, D.C. 20005

Phone: 202-962-6641

Fax: 202-962-9201

CC: "Brent Erickson" <berickson@bio.org>, "Alice Caddow" <alice.caddow@danisco.com>, <JOHN@novozymes.com>, "Carl F Muska" <Carl.F.Muska@usa.dupont.com>, <dshanahan@diversa.com>, <Glenn_Johnston@natureworksllc.com>, <locke@metabolix.com>, "Matthew Carr" <mcarr@bio.org>



VIA EMAIL

October 16, 2006

Mr. Marvin Duncan
USDA Office of the Chief Economist
Office of Energy Policy and New Uses
Room 4059, South Building
1400 Independence Avenue, SW, MS-3815
Washington, DC 20250

**RE: Docket ID No. OEPNU-2006-0002 and OEPNU-2006-0003
Proposed Designation of Biobased Items for Federal Procurement
Parts 2 and 3 (RIN # 0503-AA30 and 0503-AA31)
Comments from the Industrial & Environmental Section of
the Biotechnology Industry Organization**

Dear Mr. Duncan:

The Biotechnology Industry Organization (BIO) is the world's largest biotechnology trade association of companies and laboratories that use biological systems and methods for the production of medical, agricultural and industrial products. We wish to add our comments to the docket on USDA's Proposed Rulemakings for Rounds 2 and 3 of designated items for federal procurement. BIO has over 1,000 members in all 50 states and 37 foreign nations. BIO has taken an active role in assisting in the development of regulations and policies that affect the biotech industry both internationally and in the US. Its membership is global and represents a majority of the US biotechnology industry.

BIO's Industrial and Environmental Section (IES) was started in 1998 and this section represents life science, biotechnology and bio-industrial companies who apply biological solutions to help resolve important challenges in manufacturing and sustainable development. IES companies use enzymes, whole cell systems and other biologic processes to improve all types of manufacturing and chemical synthesis.

The BIO IES hereby submits comments on USDA's Proposed Rulemakings for Parts 2 and 3 of designated items for federal procurement (RIN # 0503-AA30 and 0503-AA31). As detailed below:

o **Including provisions for qualifying and designating biobased materials will accelerate the introduction of biobased products into the marketplace.** The current USDA approach of designating final products for preferential procurement requires that individual products are tested for biobased content on a generic "item by item" basis. This process, by its design, requires a considerable amount of time and resources. Biobased products are made from biobased materials. Testing and qualifying biobased materials, the components and/or ingredients

RE: Docket ID No: OEPNU-2006-0002-002 and OEPNU-2006-0003
Comments from the Biotechnology Industry Organization

of biobased products, will greatly accelerate the designation process for preferential procurement. If a product is made from a prequalified biobased material, it is then a simple matter for the manufacturer of the bioproduct to provide information to USDA on its biobased composition. If verification of manufacturer-supplied compositional information is needed, the ASTM biobased content test can always be conducted as needed.

For example, DuPont and other material suppliers are making biobased materials that will literally be going into thousands of biobased products. As more and more of these materials are introduced into the marketplace, the current designation process could become a bottleneck for stimulating market acceptance through Federal preferential procurement. To simplify and expedite the designation process, BIO recommends that that USDA develop a program for prequalifying the biobased materials that will form the basis of the biobased products.

USDA has an opportunity to do this as part of the "USDA Certified" labeling program. By including biobased materials in the labeling program, these items can be tested and certified as to their biobased content. With a list of prequalified biobased materials, manufacturers of final biobased products can select and use biobased materials based on their previously quantified biobased content and environmental profile. In addition, manufacturers will be able to identify and contact biomaterial suppliers for performance characteristics and other information to determine the most appropriate biomaterials for their particular application. USDA can thus use the labeling program to expedite the development of biobased products consistent with the Congressional intent of the 2002 Farm Security and Rural Investment Act.

o **The provision for handling the "overlap with EPA Comprehensive Procurement Guidelines program for recovered content products" is reasonable.** The procurement decision to buy a "recycled content product" or a biobased product should be based on the application and the respective performances of the products in fulfilling the specific requirements of the application. There is a provision in the 2002 Farm Bill that "recycled content products" have priority in Federal procurement over the qualifying biobased product. In these proposed rulemakings, USDA has appropriately stated that in cases where recycled content and biobased materials products are both being considered for the same application, additional information should be sought first from manufacturers prior to procurement decisions.

This information will enable the procurement process to determine, as stated in the proposed rulemaking, "whether the biobased products in question are, or are not, the same products as the recovered content products" relative to the application.

One example is the use of recycled carpet vs. carpet with biobased content. Carpets made with different materials will have different performance attributes. The desired performance characteristics should be developed first and then compared against the available products. A purchasing decision made strictly in favor of recycled carpet without comparing the performance information with alternative products is not in the best interest of either the "recovered content" or the "biobased products" programs. An arbitrary decision that results in the purchase the wrong or an inferior product for a specific application will only impede its acceptance and reputation in the marketplace.

BIO recommends that the USDA Preferential Procurement Guidelines for Biobased Products should be upgraded to include the proposal in this rulemaking for handling the "overlap" between the recycled content and biobased content programs.

RE: Docket ID No: OEPNU-2006-0002- 002 and OEPNU-2006-0003
Comments from the Biotechnology Industry Organization

o The USDA proposal to encourage "Federal procurement agencies to examine all available information on the environmental and human health effects" is commendable. This USDA proposed statement, which was specifically directed to cleaning products, should be extended to all "green purchasing" decisions. To fully compare products, it is imperative to take a life cycle assessment approach which quantifies "cradle to grave" impacts of the manufacture, use and disposal of products. One of the key environmental impact categories is greenhouse gas emissions. The potential for a product to contribute to GHG emissions should be assessed along with other key environmental impact categories. USDA's statement that "qualifying biobased products offer the user the opportunity to manage the carbon cycle and limit the introduction of new fossil carbon into the atmosphere while non-biobased products derived from fossil fuels add new fossil carbon to the atmosphere" is an important differentiator that should be part of the preferential procurement process.

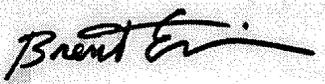
The potential for reduced greenhouse gas emissions is a key differentiator for biobased products, and BIO IES supports that USDA should continue to emphasize this point as part of the preferential procurement program.

Conclusion

The BIO IES supports USDA's efforts in Parts 2 and 3 of the proposed rulemakings designating biobased items for Federal procurement. Addressing the abovementioned comments will serve to further carry out the objectives for this program, specifically, to increase the demand for biobased products, to spur development of the industrial base through value-added agricultural processing, and to enhance the nation's energy security by substituting biobased products for products derived from imported oil and natural gas.

The BIO IES appreciates the opportunity to comment on these proposed rulemakings. If you have any further questions or need additional information regarding these comments, please contact Jocelyne Modine at 202-962-6641 or jmodine@bio.org.

Sincerely,


Brent Erickson
Vice President, BIO IES

31

From: "Dunbar, Judith" <Judith_Dunbar@plastics.org>
To: <fb4p@oce.usda.gov>
Date: Mon, Oct 16, 2006 5:44 PM
Subject: Comments on Proposed Designation of Biobased Items for Federal Procurement

Dear Mr. Duncan:

Attached please find comments to the above subject matter from the American Plastics Council.

Regards,

Judith Dunbar
American Plastics Council
Judith_dunbar@plastics.org

0503 - AA 30

0503 - AA 31



American
Plastics
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October 16, 2006

Mr. Marvin Duncan
U. S. Department of Agriculture
Office of the Chief Economist
Office of Energy Policy and New Uses
Room 4059, South Building
1400 Independence Avenue, SW
MS-3815
Washington, DC 20250-3815

Dear Mr. Duncan:

Re: RIN 0503-AA30 and RIN 0503-AA31, Proposed Designation of Biobased Items for Federal Procurement

The American Plastics Council appreciates the opportunity to comment on the USDA proposed rules, Designation of Biobased Items for Federal Procurement, published in the August 17, 2006 *Federal Register*. The American Plastics Council (APC) is a major trade association for the United States plastics industry. APC demonstrates that plastics are an efficient use of natural resources and that plastics and the industry are part of the solution to the public's environmental performance expectations. The American Plastics Council is comprised of 12 of the leading resin manufacturers, plus one affiliated trade association representing the vinyl industry.

The American Plastics Council (APC) is supportive of USDA's recognition that the performance needs for a given application are important criteria in making procurement decisions. APC is also supportive of USDA's position that products designated under the U. S. Environmental Protection Agency's RCRA Comprehensive Procurement Guidelines program for recovered content products have priority in Federal procurement over the qualifying biobased product. APC has worked with U. S. EPA over the past decade to list a large number of products with recycled plastic content in the Comprehensive Procurement Guidelines program. We consider this program a success.

APC believes the success of preferential procurement programs is in large part based on their simplicity and clarity of purpose. The biobased products procurement program, as proposed, creates a confusing picture of what the program is intended to cover. The terms "biobased", "biodegradable" and "compostable" are used at times interchangeably. Do Federal purchasing agents understand the term "biobased"? A biobased product is not

Plastics Make It Possible

necessarily biodegradable. Compostability most often only occurs when a product that is

Page 2

designed to be compostable is properly managed in a composting facility. There are very limited numbers of commercial composting facilities in the U. S. Why are some of the biobased items designated as “biodegradable” and others are not?

APC has specific comments relating to individual sections of this proposed rule, as follows:

RIN 0503-AA30 Designated Item #6: Biodegradable containers: The definition of “containers” is vague and needs clarification. The proposed rule defines biodegradable containers as a “group of products capable of complying with the specifications established in the biodegradability standard ASTM D6400 ‘Standard Specifications for Compostable Plastics’ and designed to be used for temporary storage or transportation of materials, such as food items. Products in this item are typically used by quick-serve restaurants, food management companies, universities, and government organizations. Biobased biodegradable containers are typically produced from natural starch-based or synthetic corn-based feedstocks and are readily biodegradable through composting.” **APC recommends this item be retitled “disposable food serviceware” since “biodegradable containers” could be defined as encompassing boxes, pallets and packaging used to transport and store food products.**

In addition to the BEES analysis factors, food safety and product integrity needs to be incorporated in product choice. Biobased biodegradable containers produced from natural starch-based or synthetic corn-based feedstocks have their limits on what food products can be safely packaged in them. This item does not take variability of foods into account, such as hot coffee, high moisture foods, or acidic condiments when prescribing biodegradable containers under this rule. Food packaging made from biomass is still experimental and there remain considerable data gaps on its feasibility.

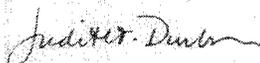
RIN 0503-AA31 Designated Item #3: Biodegradable Films: The definition of “films” is vague and needs clarification. You define this designated item as “biodegradable films are used in packaging, wrappings, linings, and other similar applications and are capable of meeting ASTM D6400 standards for biodegradability. For the purpose of defining this designated item, biodegradable films do not include films used for agricultural purposes and durable films.” APC assumes this designated item includes nondurable films intended to be used once then discarded. How will the “durable films” item to be proposed at a later date be differentiated from this item? **APC recommends this item be retitled “disposable bags, wrappings and liners.”**

RIN 0503-AA31 Designated Item #5: Biodegradable Cutlery: The definition of this group of products is clearer than the others. Again, why is this biobased item also “biodegradable”?

Page 3

The American Plastics Council appreciates the opportunity to comment on these proposed rules. Please let us know if you have any follow-up questions.

Sincerely,



Judith T. Dunbar
Director, Environmental and Technical Issues
American Plastics Council
Judith_dunbar@plastics.org

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From: "Johnston, Glenn" <Glenn_Johnston@natureworksllc.com>
To: <fb4p@oce.usda.gov>
Date: Mon, Oct 16, 2006 5:14 PM
Subject: Comments on Round 2 and 3 of FB4P Designated Items

Dear Marvin,

Please find attached comments on the proposed rulemakings on the USDA FB4P procurement process. Please feel free to contact me regarding any of comments contained in the attachment.

<<BIOBASED_USDA_RESPONSE_101606.pdf>>

Best Regards,

0503-AA30

Glenn Johnston
Director Regulatory Affairs
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CC: "McGrew, Dennis" <Dennis_McGrew@natureworksllc.com>, "Ryan, Chris" <Chris_M_Ryan@natureworksllc.com>, "Glassner, David" <David_Glassner@natureworksllc.com>, "Mills, Rich" <Rich_Mills@natureworksllc.com>, "Kunnemann, Doug" <Doug_Kunnemann@natureworksllc.com>, "Adelman, Jessica" <Jessica_Adelman@cargill.com>, "Fay, Elizabeth" <Elizabeth_Fay@cargill.com>, "Rosenthal, Mary E" <Mary_Rosenthal@natureworksllc.com>



October 16, 2006

Via Email Submission

Marvin Duncan
USDA, Office of the Chief Economist
Office of Energy Policy and New Uses
Room 4059, South Building
1400 Independence Avenue, SW
MS-3815
Washington, DC 20250-3815
fb4p@occe.usda.gov

Re: USDA Regulatory Information Number 0503-AA30 --Proposed Designation of Items

Dear Mr. Duncan:

Founded in 1997, NatureWorks LLC is based in Minnetonka, Minnesota, USA. It is the first company to offer its customers a family of bio-polymers derived entirely from annually renewable resources with the cost and performance necessary to compete with packaging materials and traditional fibers. The company has achieved this breakthrough by applying its unique technology to the processing of natural plant sugars to create a proprietary polylactide polymer. The process allows the company to "harvest" the carbon plants remove from the air during photosynthesis. Carbon is stored in plant starches, which can be broken down into natural sugars. The carbon and other elements in these natural sugars are then used to make the polylactide. This process relies on basic fermentation and distillation as its core.

In addition to the performance attributes of the resin, NatureWorks® PLA offers significant environmental benefits. The process to create NatureWorks® PLA potentially uses 20 percent to 50 percent less fossil resources than is required by conventional plastic resins. And, because carbon dioxide is removed from the atmosphere in growing corn, the overall carbon dioxide emissions are lower than comparable plastics. There are also a number of waste management options because the products are compatible with all standard waste and recycling management practices and are fully compostable in municipal and industrial facilities.

NatureWorks LLC applauds USDA's efforts in the Proposed Designation of Items. We are, however, very concerned that the current rule will fail to fully deliver its intended benefits. In the interest of constructive dialogue, we would like to make some comments and recommendations.

NatureWorks LLC recognizes the importance of the appropriate, scientific, consensus building organizations to develop and produce universally recognized technical standards for materials, products, systems and services respective to the plastics industry. Under such certification, biobased plastics technology and applicable test methods are defined appropriately by the performance of technologies that can be repeatedly proven for the applications for which they are intended. NatureWorks LLC commends USDA for using the following consensus standards for the definitions and test methods to determine both biobased content and biodegradability:

- ASTM D6400-04, Standard Specification for Compostable Plastics
- ASTM D6866, Standard Test Methods for Determining the Biobased Content of Natural Range Materials Using Radiocarbon and Isotope Ratio Mass Spectrometry Analysis
- ASTM D5338 Standard Test Method for Determining Aerobic Biodegradation of Plastic Materials Under Controlled Composting Conditions (additional test listed for RIN number 0503-AA31 letter only)



The current USDA approach of designating final products for preferential procurement requires that individual products are tested for biobased content on a generic "item by item" basis. This process, by its design, requires a considerable amount of time and resources. Biobased products are made from biobased materials. Testing and qualifying biobased materials, the components and/or ingredients of biobased products, will greatly accelerate the designation process for preferential procurement. If a product is made from a prequalified biobased material, it is then a simple matter for the manufacturer of the bioproduct to provide information to USDA on its biobased composition. If verification of manufacturer-supplied compositional information is needed, the ASTM biobased content test can always be conducted as needed.

NatureWorks LLC will be making biobased materials that will literally be going into thousands of biobased products. As more and more of these materials are introduced into the marketplace, the current designation process could become a bottleneck for stimulating market acceptance through Federal preferential procurement. To simplify and expedite the designation process, NatureWorks LLC recommends that the USDA develop a program for prequalifying the biobased materials that will form the basis of the biobased products.

USDA has an opportunity to do this as part of the "USDA Certified" labeling program. By including biobased materials in the labeling program, these items can be tested and certified as to their biobased content. With a list of prequalified biobased materials, manufacturers of final biobased products can select and use biobased materials based on their previously quantified biobased content and environmental profile. In addition, manufacturers will be able to identify and contact biomaterial suppliers for performance characteristics and other information to determine the most appropriate biomaterials for their particular application. USDA can thus use the labeling program to expedite the development of biobased products consistent with the Congressional intent of the 2002 Farm Security and Rural Investment Act.

The procurement decision to buy a "recycled content product" or a biobased product should be based on the application and the respective performances of the products in fulfilling the specific requirements of the application. There is a provision in the 2002 Farm Bill that "recycled content products" have priority in Federal procurement over the qualifying biobased product. In these proposed rulemakings, USDA has appropriately stated that in cases where recycled content and biobased materials products are both being considered for the same application, additional information should be sought first from manufacturers prior to procurement decisions.

This information will enable the procurement process to determine, as stated in the proposed rulemaking, "whether the biobased products in question are, or are not, the same products as the recovered content products" relative to the application.

This USDA proposed statement, which was specifically directed to cleaning products, should be extended to all "green purchasing" decisions. To fully compare products, it is imperative to take a life cycle assessment approach which quantifies "cradle to grave" impacts of the manufacture, use and disposal of products. One of the key environmental impact categories is greenhouse gas emissions. The potential for a product to contribute to GHG emissions should be assessed along with other key environmental impact categories. USDA's statement that "qualifying biobased products offer the user the opportunity to manage the carbon cycle and limit the introduction of new fossil carbon into the atmosphere while non-biobased products derived from fossil fuels add new fossil carbon to the atmosphere" is an important differentiator that should be part of the preferential procurement process.

The potential for reduced greenhouse gas emissions is a key differentiator for biobased products, and NatureWorks LLC supports that USDA should continue to emphasize this point as part of the preferential procurement program.



NatureWorks LLC supports USDA's efforts in Parts 2 and 3 of proposed rulemakings designating biobased items for Federal procurement.

We appreciate this opportunity to provide you with our views on this important issue and would be pleased to answer any further questions you may have. If you have any questions or require additional information, please contact me at (952) 742-0457.

Best Regards

A handwritten signature in black ink, appearing to read "Glenn Johnston", is written over a circular stamp.

Glenn Johnston
Director Regulatory Affairs
NatureWorks LLC

cc. File



October 16, 2006

Via Hand Delivery Submission

Marvin Duncan
USDA, Office of the Chief Economist
Office of Energy Policy and New Uses
Room 4059, South Building
1400 Independence Avenue, SW
MS-3815
Washington, DC 20250-3815

Re: USDA Regulatory Information Number 0503-AA30 – Proposed Designation of Items

Dear Dr. Duncan:

The Society of the Plastics Industry, Inc. (SPI) appreciates the opportunity to provide comments concerning the U.S. Department of Agriculture's (USDA's) Proposed Designation of Biobased Items for Federal Procurement (Regulatory Information Number 0503-AA30).

Founded in 1937, SPI is the trade association representing one of the largest manufacturing industries in the United States. SPI's members represent the entire plastics industry supply chain, including processors, machinery and equipment manufacturers and raw materials suppliers. The U.S. plastics industry employs 1.3 million workers and provides more than \$345 billion in annual shipments. In addition, the industry produces a wide variety of plastics, including both biobased and non-biobased plastics.

A. Background on the Proposed Rule

The Farm Security and Rural Investment Act of 2002 requires federal agencies to establish procurement programs for biobased products and to purchase these products if they are (1) reasonably available; (2) meet performance standards; and (3) are reasonably priced when the cost of a single item is greater than \$10,000 or when the quantities of functionally equivalent items purchased during the preceding fiscal year equaled \$10,000 or more. These materials include commercial or industrial products composed in whole or in part of biological products or renewable domestic agricultural materials (plant, animal or marine) or forestry materials (other than fuel or feed). Pursuant to this Act, USDA proposes rules to amend 7 C.F.R. Part 2902 ("Guidelines for Designating Biobased Products for Federal Procurement"), to designate biobased items, establish a labeling program, and to implement program improvements.

Specifically, USDA promulgated two Notices of Proposed Rulemaking on August 17, 2006 for twenty categories of biobased materials, including biodegradable containers, biodegradable cutlery, and biodegradable films. The USDA seeks comment on the proposed category designations including the definition, proposed minimum biobased content, and any relevant analyses performed during the selection of these items. Further, the USDA is soliciting comments and information to identify additional relevant and appropriate performance standards and measures for each of the proposed items and any environmental and human health attributes. For certain items, the USDA requests any unique performance attributes, environmental and human health effects, disposal costs, and other attributes that would distinguish biobased products from products containing recovered material.

B. SPI's Comments

In June 2006, SPI co-sponsored the International Degradable Plastics Symposium: Status of Biobased and Synthetic Polymer Technology. The symposium focused on the status of biobased and degradable materials, challenges to standards and regulatory communities, and future developments and market opportunities. This symposium provided a forum for individuals to discuss biobased plastics and related topics including USDA's Federal Biobased Products Preferred Procurement Program. A CD-ROM of the proceedings of the symposium is being submitted with these comments for your consideration in this rulemaking.

SPI acknowledges USDA's role in the Federal Biobased Products Preferred Procurement Program through the Farm Security and Rural Investment Act (FSRIA) of 2002. Although SPI does not support the use of mandates by any public policy body to influence markets for material specific plastics products, SPI supports the ongoing efforts of individual companies and institutions to open new markets for all of its members, including the development of biobased plastics where these products meet the desired commercial outcomes.

In addition, SPI recognizes the importance of the appropriate, scientific, consensus building organizations to develop and produce universally recognized technical standards for materials, products, systems and services respective to the plastics industry. Under such certification, biobased plastics technology and applicable test methods are defined appropriately by the performance of technologies that can be repeatedly proven for the applications for which they are intended. SPI commends USDA for using the following consensus standards for the definitions and test methods to determine both biobased content and biodegradability:

- ASTM D6400-04, Standard Specification for Compostable Plastics
- ASTM D6866, Standard Test Methods for Determining the Biobased Content of Natural Range Materials Using Radiocarbon and Isotope Ratio Mass Spectrometry Analysis

SPI respectfully requests that USDA evaluate and address the effect that biobased polymers will have on current recycling streams and markets. To the best of our knowledge no technology exists to screen out biobased products during the recycling process. The presence of a small fraction of biobased polymers in the recycling stream may result in unintended consequences to the recycling infrastructure.

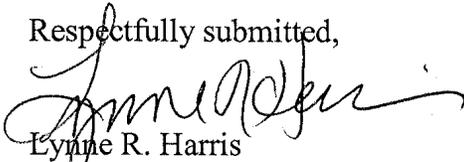
Because this is a mandatory preferential program, USDA must take great care to ensure that it emphasizes the collection and use of complete, technically-sound information on which to base its decisions. In this regard, SPI supports efforts by the USDA to continue to seek additional information on the markets for biobased products within the Federal government. In this proposed rule, USDA states that attempts to-date to gather these data were "largely unsuccessful." We urge USDA to re-examine and improve upon its prior attempts, and use the additional information that will be collected to further refine the program in the future. In our view, the process by which USDA goes about collecting information that forms the basis for its decisions needs to be carefully considered, and is a critical consideration to ensure accuracy. We would like to suggest that the data that form the basis for USDA's decisions and their source be available to the public. As one example, SPI notes that USDA intends to post public comments on the "positive environmental and human health attributes" of products on its website, and make the comments available to Federal procurement agencies to "...assist them in making 'best value' purchasing decisions." SPI respectfully suggests that USDA take reasonable steps to ensure that the information that is offered to

government agencies and that is provided on the government's web site be objective and accurate. The USDA's preference for using data and certifications that come from consensus standards organizations is commendable, but does not alleviate this concern. There appears to be no current mechanism to verify accuracy. USDA's request, "When possible, please provide appropriate documentation to support the environmental and human health attributes you describe" alone appears to be insufficient to ensure fairness.

Finally, we trust that this rule will not have the unintended consequence of severely limiting product selection and material selection options. In this regard, SPI respectfully urges USDA to clarify in the final rule that it is not requiring procuring agencies to limit their choices to biobased products that fall under the items for designation in this proposed rule. A product should be reasonably available, meets USDA's requirements for performance for the application intended and be available at a reasonable price.

In closing, SPI urges USDA to use sound science, to be fully transparent, and to ensure the use of complete and accurate information on which to base and implement this program. We appreciate this opportunity to provide you with our views on this important issue and would be pleased to answer any further questions you may have. If you have any questions or require additional information, please contact me at (202) 974-5217, lharris@socplas.org or Melissa Hockstad, Senior Director, New and Existing Technologies, at (202) 974-5258, mhockstad@socplas.org.

Respectfully submitted,



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Enclosure



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October 16, 2006

Via Hand Delivery Submission

Marvin Duncan
USDA, Office of the Chief Economist
Office of Energy Policy and New Uses
Room 4059, South Building
1400 Independence Avenue, SW
MS-3815
Washington, DC 20250-3815

Re: USDA Regulatory Information Number 0503-AA31 – Proposed Designation of Items

Dear Dr. Duncan:

The Society of the Plastics Industry, Inc. (SPI) appreciates the opportunity to provide comments concerning the U.S. Department of Agriculture's (USDA's) Proposed Designation of Biobased Items for Federal Procurement (Regulatory Information Number 0503-AA31).

Founded in 1937, SPI is the trade association representing one of the largest manufacturing industries in the United States. SPI's members represent the entire plastics industry supply chain, including processors, machinery and equipment manufacturers and raw materials suppliers. The U.S. plastics industry employs 1.3 million workers and provides more than \$345 billion in annual shipments. In addition, the industry produces a wide variety of plastics, including both biobased and non-biobased plastics.

A. Background on the Proposed Rule

The Farm Security and Rural Investment Act of 2002 requires federal agencies to establish procurement programs for biobased products and to purchase these products if they are (1) reasonably available; (2) meet performance standards; and (3) are reasonably priced when the cost of a single item is greater than \$10,000 or when the quantities of functionally equivalent items purchased during the preceding fiscal year equaled \$10,000 or more. These materials include commercial or industrial products composed in whole or in part of biological products or renewable domestic agricultural materials (plant, animal or marine) or forestry materials (other than fuel or feed). Pursuant to this Act, USDA proposes rules to amend 7 C.F.R. Part 2902 ("Guidelines for Designating Biobased Products for Federal Procurement"), to designate biobased items, establish a labeling program, and to implement program improvements.

Specifically, USDA promulgated two Notices of Proposed Rulemaking on August 17, 2006 for twenty categories of biobased materials, including biodegradable containers, biodegradable cutlery, and biodegradable films. The USDA seeks comment on the proposed category designations including the definition, proposed minimum biobased content, and any relevant analyses performed during the selection of these items. Further, the USDA is soliciting comments and information to identify additional relevant and appropriate performance standards and measures for each of the proposed items and any environmental and human health attributes. For certain items, the USDA requests any unique

performance attributes, environmental and human health effects, disposal costs, and other attributes that would distinguish biobased products from products containing recovered material.

B. SPI's Comments

In June 2006, SPI co-sponsored the International Degradable Plastics Symposium: Status of Biobased and Synthetic Polymer Technology. The symposium focused on the status of biobased and degradable materials, challenges to standards and regulatory communities, and future developments and market opportunities. This symposium provided a forum for individuals to discuss biobased plastics and related topics including USDA's Federal Biobased Products Preferred Procurement Program. A CD-ROM of the proceedings of the symposium is being submitted with these comments for your consideration in this rulemaking.

SPI acknowledges USDA's role in the Federal Biobased Products Preferred Procurement Program through the Farm Security and Rural Investment Act (FSRIA) of 2002. Although SPI does not support the use of mandates by any public policy body to influence markets for material specific plastics products, SPI supports the ongoing efforts of individual companies and institutions to open new markets for all of its members, including the development of biobased plastics where these products meet the desired commercial outcomes.

In addition, SPI recognizes the importance of the appropriate, scientific, consensus building organizations to develop and produce universally recognized technical standards for materials, products, systems and services respective to the plastics industry. Under such certification, biobased plastics technology and applicable test methods are defined appropriately by the performance of technologies that can be repeatedly proven for the applications for which they are intended. SPI commends USDA for using the following consensus standards for the definitions and test methods to determine both biobased content and biodegradability:

- ASTM D6400-04, Standard Specification for Compostable Plastics
- ASTM D6866, Standard Test Methods for Determining the Biobased Content of Natural Range Materials Using Radiocarbon and Isotope Ratio Mass Spectrometry Analysis
- ASTM D5338 Standard Test Method for Determining Aerobic Biodegradation of Plastic Materials Under Controlled Composting Conditions

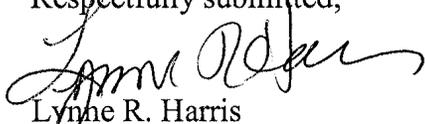
SPI respectfully requests that USDA evaluate and address the effect that biobased polymers will have on current recycling streams and markets. To the best of our knowledge no technology exists to screen out biobased products during the recycling process. The presence of a small fraction of biobased polymers in the recycling stream may result in unintended consequences to the recycling infrastructure.

Because this is a mandatory preferential program, USDA must take great care to ensure that it emphasizes the collection and use of complete, technically-sound information on which to base its decisions. In this regard, SPI supports efforts by the USDA to continue to seek additional information on the markets for biobased products within the Federal government. In this proposed rule, USDA states that attempts to-date to gather these data were "largely unsuccessful." We urge USDA to re-examine and improve upon its prior attempts, and use the additional information that will be collected to further refine the program in the future. In our view, the process by which USDA goes about collecting information that forms the basis for its decisions needs to be carefully considered, and is a critical consideration to ensure accuracy. We would like to suggest that the data that form the basis for USDA's decisions and their source be available to the public. As one example, SPI notes that USDA intends to post public comments on the "positive environmental and human health attributes" of products on its website, and make the comments available to Federal procurement agencies to "...assist them in making 'best value' purchasing decisions." SPI respectfully suggests that USDA take reasonable steps to ensure that the information that is offered to government agencies and that is provided on the government's web site be objective and accurate. The USDA's preference for using data and certifications that come from consensus standards organizations is commendable, but does not alleviate this concern. There appears to be no current mechanism to verify accuracy. USDA's request, "When possible, please provide appropriate documentation to support the environmental and human health attributes you describe" alone appears to be insufficient to ensure fairness.

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Respectfully submitted,



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Enclosure

Department of Defense Comments on the USDA Designation of Biobased Items for Federal Procurement Proposed Rule, Rounds II and III

12 October 2006

Comment 1: DoD requests that the rule reflect exemptions for all items used in products and systems designed or procured for combat or combat-related missions and that this exemption be extended to all services and products contracted for combat or combat-related missions."

Discussion: USDA has states that it is inappropriate to apply the requirement unless DOD has documented that such products can meet the performance requirements for such equipment and are available in sufficient supply to meet domestic and overseas deployment needs. DoD experiences to date have reinforced that it is not practical at this time to conduct the testing and evaluation necessary for such performance documentation for all products used in combat.

Recommendation: DoD suggests that the goals of the biobased preference program would be better served if DOD focus is on products used for more conventional purposes (similar to commercially available items), rather than extending the requirements to combat uses.

Comment 2: The Defense Supply Center Philadelphia may purchase biobased cutlery to replace the current petroleum-based plastic cutlery in the DLA supply chain for daily dining facilities on military bases, hospitals, Officer's clubs, MWR facilities, etc. It is also being considered for one of DLA's commercial-type group rations, the United Group Ration (UGR). These applications have parallels to commercial uses and can contribute significantly to increasing demand for the biobased product across the economy.

Discussion: However, biobased cutlery, if purchased, may not initially replace the combat tested utensil, heavy duty, long handled spoon in the Meal, Ready-To-Eat. This would not be an option for DoD without extensive review, testing, field test and approval from US Army Natick, ACES, Surgeon General and the Military Services. Applying the procurement preference rule to this combat related product would not result in the multiplied effect across the economy that DLA would expect in the cutlery similar to that used in restaurants across the nation. In other words, a lot of work for the DoD would be required for a relatively marginal gain in the product market.

Comment 3: DoD is concerned with direction on biobased content, based on DLA's experience with cutlery. DLA will most likely start procuring 50% biobased cutlery even though we are well aware that a superior 100% biobased utensil already exists.

Discussion: What are practical ways the Federal Government can find and place incentives in its policies for contractors to develop biobased products with the greatest degree (high %) of biobased content, and measure its success in this regard?