



US Army Corps of Engineers

HTRW Center of Expertise Information - Fact Sheets

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HTRW Center of Expertise Fact Sheet FY 06-06

Title: Office of Energy Policy and New Uses; Designation of Biobased Items for Federal Procurement		Date: July 27, 2006
SARS RIN #: 0503-AA26	Action Type: Interim final rule with comment period	Cite: 71 FR 42572

Applicability: This applies to Federal agencies and their contractors purchasing \$10,000 or more worth of a designated biobased product during a fiscal year, or where the quantity of such items or of functionally equivalent items purchased during the preceding fiscal year was \$10,000 or more. The \$10,000 threshold applies to the procuring agency and their contractors as a whole, not to agency subgroups.

Background

To improve demand for biobased products and to enhance the Nation's energy security, the Farm Security and Rural Investment Act (FSRIA) of 2002, Section 9002, required the U.S. Department of Agriculture (USDA) to designate items which are or can be produced with "biobased products" and required Federal agencies to develop preferred procurement programs for purchasing those designated items. By substituting biobased products for fossil energy-based products, dependence on imported oil and gas is reduced.

Biobased products are defined as "products determined by the United States Department of Agriculture (USDA) to be a commercial or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products or renewable domestic agricultural materials (including plant, animal, and marine materials) or forestry materials."

As USDA designates items, they are listed in 7 CFR 2902, Subpart B. Thus far, only a small number of items have been designated. The first round of designations were finalized in the March 16, 2006 Federal Register, 71 FR 13686. For additional information, refer to USDA website at http://www.biobased.oce.usda.gov/public/bio_items.cfm.

Agencies which purchase \$10,000 or more worth of one of the designated biobased items during a fiscal year or that purchased \$10,000 or more worth of such items or functionally equivalent items in the preceding fiscal year, are required to procure designated items composed of the highest percentage of biobased products practicable unless the items are not reasonably priced, readily available, or do not meet specified or reasonable performance standards.

Summary of Rule

This rule amends 7 CFR 2902, Guidelines for Designating Biobased Products for Federal Procurement, to be consistent with statutory changes made by the Energy and Policy Act of 2005. Amendments are summarized as follows:

- The purpose and scope of the procurement program is broadened to apply to "procuring

agencies" rather than to Federal agencies. A "procuring agency" includes both the Federal agency and its contractors. The rule defines "procuring agency" as "any Federal agency that is using Federal funds for procurement or any person contracting with any Federal agency with respect to work performed under the contract".

- Recognizing there are similar but potentially inconsistent procurement requirements under the Solid Waste Disposal Act (SWDA) and FSRIA, the rule is modified to expand the exception for federal agencies to except "procuring agencies". Thus both Federal agencies and their contractors are excepted from the 7 CFR Guidelines if they are inconsistent with procurement requirements under SWDA.
- The rule clarifies that biobased products from certain "designated countries" as defined in section 25.003 of the Federal Acquisition Regulation must be treated by procuring agencies as eligible for the procurement preference.
- The rule clarifies that the guidelines do not apply to purchases of designated items that are unrelated to or incidental to Federal funding; i.e., not the direct result of a contract or agreement with persons supplying items to the procuring agency or providing support services that include the supply or use of the items.

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Reference:

<http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/E6-12018.pdf>