

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
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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.

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