Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

7 CFR Part 2902

RIN 0503–AA39

Designation of Biobased Items for Federal Procurement

AGENCY: Departmental Management, USDA.

ACTION: Proposed rule; amendments.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to amend its Guidelines for Designating Biobased Products for Federal Procurement, to be consistent with certain statutory changes to section 9002 of the Farm Security and Rural Investment Act (FSRIA) that were effected when the Food, Conservation, and Energy Act (FCEA) of 2008 was signed into law on June 18, 2008. Elsewhere in this issue of the **Federal Register**, we are publishing a companion direct final rule. This proposed rule will provide a procedural framework to finalize the rule in the event we receive significant adverse comment and withdraw the direct final rule.

DATES: USDA will accept public comments on these proposed rule amendments until April 5, 2011.

ADDRESSES: Please submit any comments, or a notice of intent to submit comments, identified by "Proposed Technical Amendments to BioPreferred Program Guidelines" or Regulatory Information Number (RIN) 0503–AA39, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: biopreferred@usda.gov.* Include RIN number 0503–AA39 and "Proposed Technical Amendments to BioPreferred Program Guidelines" on the subject line. Please include your name and address in your message.
- *Mail/commercial/hand delivery:* Mail or deliver your comments to: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St., SW., Washington, DC 20024.
- Persons with disabilities who require alternative means for communication for regulatory information (Braille, large print, audiotape, etc.) should contact the USDA TARGET Center at (202) 720–2600 (voice) and (202) 690–0942 (TTY).

FOR FURTHER INFORMATION CONTACT: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St., SW., Washington, DC 20024; e-mail: *biopreferred@usda.gov;* phone (202) 205–4008. Information regarding the preferred procurement program (one part of the BioPreferred Program) is available on the Internet at *http://www.biopreferred.gov*.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Authority
II. Background
III. Summary of Changes
IV. Regulatory Information
A. Executive Order 12866: Regulatory Planning and Review
B. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights
C. Executive Order 12988: Civil Justice Reform
D. Executive Order 13132: Federalism
E. Unfunded Mandates Reform Act of 1995
F. Executive Order 12372: Intergovernmental Review of Federal Programs
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Paperwork Reduction Act

I. Authority

The Guidelines for Designating Biobased Products for Federal Procurement (the Guidelines) are established under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102, as amended by the Food, Conservation, and Energy Act of 2008 (FCEA). (Section 9002 of FSRIA, as amended by the FCEA, is referred to in this document as "section 9002".)

II. Background

As originally enacted, section 9002 provides for the preferred procurement of biobased products by Federal agencies. USDA proposed guidelines for implementing this preferred procurement program on December 19, 2003 (68 FR 70730–70746). The Guidelines were promulgated on January 11, 2005 (70 FR 1792), and are contained in 7 CFR part 2902, "Guidelines for Designating Biobased Products for Federal Procurement."

The Guidelines identify various procedures Federal agencies are required to follow in implementing the requirements of section 9002. They were modeled in part on the "Comprehensive Procurement Guidelines for Products Containing Recovered Materials" (40 CFR part 247), which the Environmental Protection Agency (EPA) issued pursuant to the Resource Conservation Recovery Act ("RCRA"), 40 U.S.C. 6962.

On June 18, 2008, the FCEA was signed into law. Section 9001 of the FCEA includes several provisions that amend section 9002 of FSRIA. Some of these provisions require programmatic changes to the preferred procurement program. Other provisions of the FCEA simply clarify terminology and requirements for the preferred procurement program. USDA is continuing to resolve issues related to implementing the programmatic changes and will propose additional amendments to the Guidelines at a later date. For example, the Guidelines' definition of "biobased product" will be later revised to include intermediate ingredients and feedstocks, pending such programmatic changes. The purpose of today's proposed rule amendments is to revise the Guidelines (*i.e.,* 7 CFR part 2902) to make them consistent with certain technical changes to section 9002 of FSRIA as required by the FCEA.

This proposed rule is a companion to a direct final rule published in the final rules section of this issue of the **Federal Register**. The direct final rule and this companion proposed rule are substantively identical. This companion proposed rule provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of any significant adverse comment. The comment period for the direct final rule runs concurrently with the comment period of this companion proposed rule. Any comments received in response to this companion proposed rule will also be considered as comments regarding the direct final rule and vice versa. We

will not provide additional opportunity for comment.

If we receive any significant adverse comment, we intend to withdraw the final rule before its effective date by publishing a notice in the **Federal Register** within 30 days after the comment period ends. If we withdraw the direct final rule, all comments received will be considered under this companion proposed rule in developing a final rule under the usual notice-and-comment procedures.

III. Summary of Changes

USDA is proposing to amend eight sections of 7 CFR part 2902, as described below.

A. 7 CFR 2902.1—Purpose and Scope

In response to the promulgation of the FCEA, USDA is proposing to amend 7 CFR 2902.1(a) to refer to compliance with that law's requirements.

B. 7 CFR 2902.2—Definitions

In response to section 9001 of the FCEA, USDA is proposing to amend 7 CFR 2902.2 by revising the definition of "biobased product" to add the word "including." This is to ensure that the Guidelines do not violate U.S. trade agreements by applying exclusively to domestic agricultural materials. Additionally, a definition for "FCEA" has been added.

C. 7 CFR 2902.3—Applicability to Federal Procurements

USDA is proposing to amend 7 CFR 2902.3(c) to state that procuring agencies must comply with section 9002(a)(2) regarding the procuring of products composed of the highest percentage of biobased *content* practicable. Section 2902.3(c) now incorrectly includes the phrase "highest percentage of biobased *products*."

D. 7 CFR 2902.4—Procurement Programs

USDA has revised paragraph (b)(2)(ii) to read "section 9002" as it refers to both FSRIA and the FCEA.

E. 7 CFR 2902.5—Item Designation

USDA is proposing to amend 7 CFR 2905.5(c) by adding heating oil to the list of exclusions to this program, because it was added to the list pursuant to section 9001 of the FCEA.

F. 7 CFR 2902.6—Providing Product Information to Federal Agencies

In response to a name change, USDA is proposing to amend 7 CFR 2902.6(a) to refer to the USDA information Web site at "*http://www.biopreferred.gov*" rather than to "*http://www.biobased.oce.usda.gov*."

Additionally, USDA is proposing to amend 7 CFR 2902.6(b) to include a reference to the BioPreferred "Guidelines for Marketing the BioPreferred Program," and a link to the Federal Trade Commission "Guides for the Use of Environmental Marketing Claims."

G. 7 CFR 2902.8—Determining Life Cycle Costs, Environmental and Health Benefits, and Performance

USDA is proposing to revise 7 CFR 2902.8 to comply with section 9002(a)(3)(D), which states that guidelines issued under this paragraph may not require a manufacturer or vendor of biobased products, as a condition of the purchase of biobased products from the manufacturer or vendor, to provide to procuring agencies more data than would be required to be provided by manufacturers or vendors offering products for sale to a procuring agency, other than data confirming the biobased content of a product.

H. 7 CFR 2902.9—Funding for Testing

In response to a name change, USDA is proposing to amend 7 CFR 2902.9(b) to refer to the USDA information Web site at "*http://www.biopreferred.gov*" rather than to "*http://www.biobased.oce.usda.gov*."

IV. Regulatory Information

A. Executive Order 12866: Regulatory Planning and Review

This proposed rule has been reviewed under Executive Order 12866. It has been determined that this proposed rule, which amends the Guidelines, is not a "significant regulatory action" under the terms of Executive Order 12866, because its purpose is only to implement statutory amendments to section 9002. Therefore, this proposed rule has not been reviewed by the Office of Management and Budget (OMB).

B. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This proposed rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

C. Executive Order 12988: Civil Justice Reform

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This proposed rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

D. Executive Order 13132: Federalism

This proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

E. Unfunded Mandates Reform Act of 1995

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

F. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Today's proposed rule does not significantly or uniquely affect "one or more Indian tribes, * * * the relationship between the Federal Government and Indian tribes, or * * * the distribution of power and responsibilities between the Federal Government and Indian tribes." Thus, no further action is required under Executive Order 13175.

H. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under the Guidelines is currently approved under OMB control number 0503–0011.

List of Subjects in 7 CFR Part 2902

Biobased products, Procurement.

For the reasons stated in the preamble, the Department of Agriculture is proposing to amend 7 CFR chapter XXIX as follows:

CHAPTER XXIX—OFFICE OF ENERGY

PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

1. The authority citation for part 2902 continues to read as follows:

Authority: 7 U.S.C. 8102.

2. Section 2902.1 is revised to read as follows:

§ 2902.1 Purpose and scope.

(a) *Purpose.* The purpose of the guidelines in this part is to assist procuring agencies in complying with the requirements of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), Public Law 107–171, 116 Stat. 476 (7 U.S.C. 8102), as amended by the Food, Conservation, and Energy Act of 2008, Public Law 110–246, 122 Stat. 1651, as they apply to the procurement of the products designated in subpart B of this part.

(b) *Scope.* The guidelines in this part designate items that are or can be produced with biobased products and whose procurement by procuring agencies will carry out the objectives of section 9002.

3. Section 2902.2 is amended by revising the definition of "biobased product" and adding a definition for "FCEA" to read as follows:

§ 2902.2 Definitions.

* * * * *

Biobased product. A product determined by 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, including renewable domestic agricultural materials and forestry materials.

* * * * *

FCEA. The Food, Conservation and Energy Act of 2008, Public Law 110–246.

* * * * *

4. Section 2902.3 is amended by revising paragraph (c) to read as follows:

§ 2902.3 Applicability to Federal procurements.

* * * * *

(c) *Procuring products composed of the highest percentage of biobased content.* Section 9002(a)(2) requires procuring agencies to procure designated items composed of the highest percentage of biobased content practicable or such products that comply with the regulations issued under section 103 of Public Law 100–556 (42 U.S.C. 6914b–1), consistent with maintaining a satisfactory level of competition, considering these guidelines. Procuring agencies may decide not to procure such products if they are not reasonably priced or readily available or do not meet specified or reasonable performance standards.

* * * * *

5. Section 2902.4 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 2902.4 Procurement programs.

* * * * *

(b) * * *

(2) * * *

(ii) A policy of setting minimum biobased products content specifications in such a way as to assure that the biobased products content required is consistent with section 9002 and the requirements of the guidelines in this part except when such items:

(A) Are not available within a reasonable time;

(B) Fail to meet performance standards for the use to which they will be put, or the reasonable performance standards of the Federal agency; or

(C) Are available only at an unreasonable price.

* * * * *

6. Section 2902.5 is amended by revising paragraph (c)(1) to read as follows:

§ 2902.5 Item designation.

* * * * *

(c) *Exclusions.* (1) Motor vehicle fuels, heating oil, and electricity are excluded by statute from this program.

* * * * *

7. Section 2902.6 is amended by revising the first sentence of paragraph (a) and by revising paragraph (b) to read as follows:

§ 2902.6 Providing product information to Federal agencies.

(a) *Informational Web site.* An informational USDA Web site implementing section 9002 can be found at: *http://www.biopreferred.gov.*

* * *

(b) *Advertising, labeling and marketing claims.* Manufacturers and vendors are reminded that their advertising, labeling, and other marketing claims, including claims regarding health and environmental benefits of the product, must conform to the Federal Trade Commission "Guides for the Use of Environmental Marketing Claims," 16 CFR part 260 (see: *http://www.access.gpo.gov/nara/cfr/waisidx_08/16cfr260_08.html*). For further requirements, click on the link to the "Guidelines for Marketing the BioPreferred Program."

8. Section 2902.8 is amended by revising paragraph (a) to read as follows:

§ 2902.8 Determining life cycle costs, environmental and health benefits, and performance.

(a) *Providing information on life cycle costs and environmental and health benefits.* Federal agencies may not require manufacturers or vendors of biobased products to provide to procuring agencies more data than would be required to be provided by other manufacturers or vendors offering products for sale to a procuring agency, other than data confirming the biobased contents of the products, as a condition of the purchase of biobased products from the manufacturer or vendor.

* * * * *

9. Section 2902.9 is amended by revising paragraph (b)(1) to read as follows:

§ 2902.9 Funding for testing.

* * * * *

(b) * * *

(1) Subject to the availability of funds and paragraph (a) of this section, USDA will announce annually the solicitation of proposals for cost sharing for life cycle costs, environmental and health benefits, and performance testing of biobased products in accordance with the standards set forth in § 2902.8 to carry out this program. Information regarding the submission of proposals for cost sharing also will be posted on the USDA informational Web site, *http://www.biopreferred.gov.*

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Dated: January 25, 2011.

Pearlie S. Reed,

Assistant Secretary for Administration, U.S. Department of Agriculture.

[FR Doc. 2011–2012 Filed 2–3–11; 8:45 am]

BILLING CODE 3410–93–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 100827401–0619–01]

RIN 0648–BA20

Olympic Coast National Marine Sanctuary Regulations Revisions

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Extension of public comment period.

SUMMARY: On January 14, 2011, NOAA published a proposed rule in the