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DEPARTMENT OF AGRICULTURE

7 CFR Part 3201

RIN 0599-AA23

Guidelines for Designating Biobased Products for Federal Procurement

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to amend its regulations concerning guidelines for designating biobased products for Federal procurement, to incorporate statutory changes to section 9002 of the Farm Security and Rural Investment Act (the 2002 Farm Bill) that went into effect when the Agricultural Act of 2014 (the 2014 Farm Bill) was signed into law on February 7, 2014.

DATES: USDA will accept public comments on these proposed rule amendments until **[insert date 60 days after publication in the FEDERAL REGISTER]**.

ADDRESSES: You may submit comments by any of the following methods. All submissions received must include the agency name and Regulatory Information Number (RIN). The RIN for this rulemaking is 0599-AA23. Also, please identify

submittals as pertaining to the "Proposed Amendments to BioPreferred Program Guidelines."

- Federal eRulemaking Portal:  
<http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: [biopREFERRED@usda.gov](mailto:biopREFERRED@usda.gov). Include RIN number 0599-AA23 and "Proposed 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](mailto:biopREFERRED@usda.gov); phone (202) 205-4008.

Information regarding the Federal biobased 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:

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**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 (the 2002 Farm Bill), as

amended by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill), and further amended by the Agricultural Act of 2014 (the 2014 Farm Bill), 7 U.S.C. 8102. (Section 9002 of the 2002 Farm Bill, as amended by the 2008 and the 2014 Farm Bills, 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 the 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 3201, "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 2008 Farm Bill was signed into

law. Section 9001 of the 2008 Farm Bill included several provisions that amended the provisions of section 9002. USDA subsequently amended the Guidelines to incorporate those provisions of the 2008 Farm Bill (79 FR 44641).

The purpose of these proposed rule amendments is to further revise the Guidelines to incorporate additional changes to section 9002 that were included in the 2014 Farm Bill. These proposed guidelines will not affect products that have already been designated for Federal procurement preference. Any changes necessary to the existing designation status of products will be established by future rule-makings.

### III. Executive Summary

USDA is proposing to amend 7 CFR part 3201 to incorporate statutory changes to section 9002 of the Farm Security and Rural Investment Act made by enactment of the Agricultural Act of 2014 on February 7, 2014. The remainder of this section presents a brief summary of the proposed amendments to the existing Guidelines and Section IV of this preamble presents more detailed discussions.

#### A. Purpose of the Regulatory Action

##### 1. Need for the Regulatory Action

The 2014 Farm Bill contains legislative requirements related to the Biobased Markets Program that cannot be

implemented without the establishment of further guidance. For example, the proposed amendments provide the framework for implementing the requirement that USDA promote biobased products regardless of the date of entry into the marketplace, thus overriding previous regulatory provisions excluding "mature market"<sup>a</sup> products. The proposed action also responds to Congressional direction that USDA promote biobased products, including forest products, that apply an innovative approach to growing, harvesting, sourcing, procuring, processing, manufacturing, or application of biobased products regardless of the date of entry into the marketplace. This proposed regulatory action revises the definition of "biobased product" to state that the term includes forest products that meet biobased content requirements, notwithstanding the market share the product holds, the age of the product, or whether the market for the product is new or emerging. This proposed rule establishes procedures to carry out this and other provisions of the Agricultural Act of 2014.

## 2. Legal Authority for the Regulatory Action

Enactment of the Agricultural Act of 2014 (P.L. 113-

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<sup>a</sup>Mature market products previously were defined as those that had a significant market share prior to 1972. USDA developed this exclusion based on the legislative history of the 2002 Farm Bill.

79) on February 7, 2014 provides the legal authority for the proposed rule.

B. Summary of Major Provisions of the Proposed Rule

1. Revisions to the BioPreferred Program Definitions

USDA is proposing to amend 7 CFR 3201.2 by revising one definition and adding two new definitions for terms that are used in the Guidelines as a result of revisions to section 9002 made by the 2014 Farm Bill. USDA is proposing to revise the definition of "biobased product" to state that the term includes forest products that meet biobased content requirements, notwithstanding the market share the product holds, the age of the product, or whether the market for the product is new or emerging.

USDA is adding definitions for the terms "forest product" and "renewable chemical." These terms were defined in the text of the 2014 Farm Bill and USDA is proposing to add them verbatim to the BioPreferred Program Guidelines.

USDA is also proposing to delete the current definition of "forestry materials" from section 3201.2. USDA is proposing to delete the existing definition of the term "forestry materials" because the newly defined term "forest product" is more appropriate and, thus, will generally replace the existing term.

## 2. Addition of Reporting Requirements

USDA is also proposing to add a new paragraph (b) (1) (iv) to section 3201.4 to require Federal agencies to report the quantities and types of biobased products purchased. This proposed new paragraph responds to specific language included in the 2014 Farm Bill and is intended to provide a means by which the effectiveness of the BioPreferred program can be measured.

## 3. Addition of Targeted, Biobased-only Purchasing Requirement

USDA is also proposing to add a new paragraph (b) (4) to section 3201.4 "Procurement programs." This new paragraph would add the 2014 Farm Bill requirement that Federal procuring agencies establish a targeted biobased-only procurement requirement under which the procuring agency must issue a certain number of biobased-only contracts when the agency is purchasing products, or purchasing services that include the use of products, that are included in a biobased product category designated by the Secretary.

## 4. Addition of Criteria for Evaluating "Innovative Approaches"

USDA is also proposing to add paragraphs to section 3201.5 "Category designation" to expand the description of

the procedures and considerations for designating product categories, including those product categories that were excluded from the BioPreferred program under the previous mature market products exclusion. The Conference Report on the 2014 Farm Bill states: "It is the Managers' intention that all products in the program use innovative approaches in the growing, harvesting, sourcing, procuring, processing, manufacturing, or application of the biobased product." USDA is, therefore, proposing criteria to be used when evaluating whether biobased products meet the requirement to use "innovative approaches."

C. Costs, Benefits, and Transfers

<b>Type</b>	<b>Costs</b>	<b>Benefits</b>	<b>Transfers</b>
Quantitative	Unable to quantify at this time; USDA seeks comments that would help to inform a quantitative estimate of impacts.	Unable to quantify at this time; USDA seeks comments that would help to inform a quantitative estimate of impacts.	Unable to quantify at this time; USDA seeks comments that would help to inform a quantitative estimate of impacts.
Qualitative	1. Costs of developing biobased alternative products; 2. Costs to gather and submit biobased product information for	Advances the objectives of the BioPreferred program, as envisioned by Congress in developing the 2002, 2008, and 2014 Farm Bills.	1. Opens new (Federal) market for biobased products that USDA newly designates. 2. Opportunity for newly developed biobased

	BioPreferred Web site;		products to be publicized via BioPreferred Web site. 3. Loss of market share by manufacturers who choose not to offer biobased versions of products.
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**IV. Discussion of This Proposed Rule**

USDA is proposing to amend four sections of 7 CFR part 3201, as described below.

A. 7 CFR 3201.2 - Definitions.

USDA is proposing to amend 7 CFR 3201.2 by revising one existing definition and adding two new definitions for terms that are used in the Guidelines as a result of revisions to section 9002 made by the 2014 Farm Bill.

USDA is proposing to revise the existing definition of the term "biobased product" to include a statement that the term includes forest products that meet biobased content requirements, notwithstanding the market share the product holds, the age of the product, or whether the market for the product is new or emerging. The addition of this statement to the definition of "biobased product" is taken directly from the language in the 2014 Farm Bill and

emphasizes Congress' intention that the mature market exclusion be removed and that most forest products be accepted into the BioPreferred program.

USDA is adding definitions for the terms "forest product" and "renewable chemicals." These terms were defined in the text of the 2014 Farm Bill and USDA is proposing to add them verbatim to the BioPreferred Program Guidelines. The term "forest product" is used in language clarifying Congress' intent that these products, regardless of the market share the product holds, the age of the product, or whether the product's market is new or emerging, are eligible for the procurement and labeling program as long as the product meets biobased content requirements and use innovative approaches in the growing, harvesting, sourcing, procuring, processing, manufacturing, or application of the biobased product.

The term "renewable chemical" is also defined in the 2014 Farm Bill and USDA is proposing to add this definition to the BioPreferred Program Guidelines. Both the 2008 and 2014 Farm Bills emphasize Congress' intent that USDA include intermediate ingredients and feedstock materials in the BioPreferred program and renewable chemicals make up a significant portion of these biobased materials. USDA believes that having a clear definition of the term

"renewable chemicals" will be useful as intermediate ingredients and feedstock materials are incorporated into the BioPreferred program.

USDA is proposing to delete the existing definition of the term "forestry materials" because it is no longer needed. The term "forest product" is more appropriate and, thus, will essentially replace the existing term.

B. 7 CFR 3201.4 - Procurement Programs.

USDA is proposing to add a new paragraph (b) (1) (iv) to section 3201.4 to address the language in the 2014 Farm Bill that requires Federal agencies to report the quantities and types of biobased products purchased. This proposed reporting requirement is intended to provide a means by which the effectiveness of the BioPreferred program can be measured.

USDA is also proposing to add a new paragraph (b) (4) that specifies that Federal procuring agencies must establish a targeted biobased-only procurement requirement under which the procuring agency shall issue a certain number of biobased-only contracts when the procuring agency is purchasing products, or purchasing services that include the use of products, that are included in a biobased product category designated by the Secretary. This requirement is specified in the text of the 2014 Farm Bill

and USDA is proposing to incorporate it into the Guidelines using the language as it appears there. The targeted biobased-only procurement requirement will result in increased opportunities for biobased product manufacturers to market their products.

C. 7 CFR 3201.5 - Category Designation.

The text of the 2014 Farm Bill includes a statement that the Guidelines for the BioPreferred program shall "promote biobased products, including forest products, that apply an innovative approach to growing, harvesting, sourcing, procuring, processing, manufacturing, or application of biobased products regardless of the date of entry into the marketplace." Product categories that were previously considered to be mature market products and, thus, ineligible for the BioPreferred program will now be included in the program if manufacturers demonstrate that they apply an "innovative approach" in the life cycle of their product. Working in conjunction with the USDA Forest Products Laboratory, as required by the 2014 Farm Bill (Section 9002(h)), USDA has developed proposed criteria that would be used in evaluating whether the "innovative approach" requirement has been met for a product category under consideration for designation. USDA is proposing that reserved paragraph (b)(2) of section 3201.5 now be

used to present the criteria for evaluating products that were excluded under the mature markets exclusion.

USDA is proposing that any one or more of four possible criteria must be met to demonstrate that a biobased product uses "innovative approaches." The first possible criterion would require that the product or material is either used or applied in applications that differ from historical applications or that the product or material is grown, harvested, manufactured, processed, sourced, or applied in other innovative ways. There is an unknown, ever changing, and potentially very large number of innovative approaches that may be used in the manufacturing and/or application of biobased products. Therefore, USDA will review information supporting claims of meeting criterion number one and will approve the claims on a case-by-case basis.

The second possible criterion would require that the product or material is manufactured or processed using renewable, biomass energy or using technology that is demonstrated to increase energy efficiency or reduce reliance on fossil fuel based energy sources or that the product or material is manufactured or processed with technologies that ensure high feedstock material recovery and use.

The third possible criterion would require that the product or material has a current Environmental Product Declaration as defined by International Standard ISO 14025, Environmental Labels and Declarations - Type III Environmental Declarations - Principles and Procedures.

The fourth possible criterion would require that the product or material is either:

1. sourced from a Legal Source (see Note below), a Responsible Source, or a Certified Source as designated by ASTM D7612 - 10, Standard Practice for Categorizing Wood and Wood-Based Products According to Their Fiber Sources, or

2. 100% resourced or recycled (such as material obtained from building deconstruction), or

3. from an urban environment and is acquired as a result of activities related to a natural disaster, land clearing, right-of-way maintenance, tree health improvement, or public safety.

NOTE: In item 1 above, the term "legal source" (also referred to as a "non-controversial source") means that the wood fibers are from jurisdictions with a low risk of illegal activity or from controlled wood standards, stair-step standards, legality assessments, or other proprietary standards. Products from non-controversial sources are traceable to the applicable jurisdiction, or chain of custody.

"Responsible source" means that the wood fibers are acquired from a legal source utilizing independently

certified procurement standards or are from a proprietary forestry standard or from jurisdictions with regulatory or quasi-regulatory programs to implement best management practices.

"Certified sources" means wood fiber acquired in accordance with, and independently certified to, an internationally recognized voluntary forest certification standard or equivalent.

USDA believes that meeting any one or more of these four criteria would be an acceptable demonstration that a biobased product uses innovative approaches in either the growing, harvesting, sourcing, procuring, processing, manufacturing, or application of the product.

D. 7 CFR 3201.6 - Providing product information to Federal agencies.

USDA is proposing to revise paragraph (a)(1) to read "The Web site will, as determined to be necessary by the Secretary based on the availability of data, provide information as to the availability, price, biobased content, performance and environmental and public health benefits of the designated product categories and designated intermediate ingredient or feedstock categories. The 2014 Farm Bill added the phrase "as determined to be necessary by the Secretary based on the availability of data" to the description of the types of data to be provided by USDA.

**V. Request for Comment**

USDA is requesting comment on all aspects of these proposed amendments to the Guidelines. In particular, USDA requests that stakeholders provide comment on the following topics:

1. Whether the proposed definitions are clear, complete, and appropriate.

2. Whether the criteria that are being proposed for use in determining if biobased products meet the requirement to apply an "innovative approach" are appropriate and, if not, specific recommendations on alternative criteria. USDA is particularly interested in expanding the criteria to apply to products made from traditional materials such as cotton, wool, leather, or other biobased materials.

3. Whether the requirement that Federal procuring agencies establish a targeted biobased-only procurement requirement under which the procuring agency must issue a certain number of biobased-only contracts when the agency is purchasing products, or purchasing services that include the use of products should be more specific (i.e., establish a minimum percentage to define the "certain number of biobased-only contracts").

## **VI. Regulatory Information**

### **A. Executive Orders 12866 and 13563: Regulatory Planning**

## and Review

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

### 1. Need for the Rule

This proposed rule would amend the BioPreferred Program Guidelines to establish the regulatory framework for the designation of product categories that were previously excluded from the Federal procurement preference because they were mature market products. The designation of such products is specifically required under the Agricultural Act of 2014, which states that the Guidelines shall: "(vi) promote biobased products, including forest products, that apply an innovative approach to growing, harvesting, sourcing, procuring, processing, manufacturing,

or application of biobased products regardless of the date of entry into the marketplace.”

## 2. Transfers

This rule advances the objectives of the BioPreferred program, as envisioned by Congress in the 2002, 2008 and 2014 Farm Bills, by expanding the scope of products that may be considered for Federal procurement preference. The entry into the BioPreferred program of biobased products that were previously considered to be mature market products will open a new Federal market for biobased products that are designated by USDA and also provides newly developed biobased products to be publicized via the BioPreferred Web site. Thus, the rule is expected to increase demand for these products once designated, which, in turn, is expected to increase demand for those agricultural products that can serve as ingredients and feedstocks. This Federal procurement preference will thus yield private benefits for businesses producing these ingredients and feedstocks.

Simultaneously, this action would reduce demand for products that do not receive Federal Procurement Preference designation. Producers of biobased products, including intermediate ingredients and feedstocks, that are not so designated or producers of non-biobased products could face

a loss of market share within Federal procurement. We request information that would help us quantify the shift in product sales resulting from this action.

### 3. Costs

Manufacturers of biobased products will incur the actual costs of developing the biobased products as well as the costs to gather and submit the biobased product information for the BioPreferred Web site. The costs of developing and marketing new products is, in this case, a voluntary expense if manufacturers choose to pursue a share of the biobased product market.

Although this proposed rule would amend or establish procedures for designating qualifying biobased product categories, no product categories are proposed to be designated today. The actual designation of biobased product categories under this program will be accomplished through future rulemaking actions and the effect of those rulemakings on the economy will be addressed at that time.

#### B. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601-602, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a

significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

Although the BioPreferred program ultimately may have a direct impact on a substantial number of small entities, USDA has determined that this proposed rule itself will not have a direct significant economic impact on a substantial number of small entities. This rule will directly affect Federal agencies, which will be required to consider designated products for purchase. In addition, private sector manufacturers and vendors of biobased products voluntarily may provide information to USDA through the means set forth in this rule. However, the rule imposes no requirement on manufacturers and vendors to do so, and does not differentiate between manufacturers and vendors based on size. USDA does not know how many small manufacturers and vendors may opt to participate at this stage of the program.

As explained above, when USDA issues a proposed rulemaking to designate product categories for preferred procurement under this program, USDA will assess the anticipated impact of such designations, including the impact on small entities. USDA anticipates that this program will positively impact small entities that

manufacture or sell biobased products. For example, once product categories are designated, this program will provide additional opportunities for small businesses to manufacture and sell biobased products to Federal agencies. This program also will impact indirectly small entities that supply biobased materials to manufacturers. Additionally, this program may decrease opportunities for small businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. It is difficult for USDA to definitively assess these anticipated impacts on small entities until USDA proposes product categories for designation. This rule does not designate any product categories.

C. 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.

D. Executive Order 12988: Civil Justice Reform

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This

rule would not preempt State or local laws, is not intended to have retroactive effect, and would not involve administrative appeals.

E. Executive Order 13132: Federalism

This proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this rule would 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.

F. 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.

G. 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.

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

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this proposed regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

I. 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.

J. E-Government Act Compliance

USDA is committed to compliance with the E-Government Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for Federal preferred procurement under each

designated item. For information pertinent to E-Government Act compliance related to this rule, please contact Ron Buckhalt at (202) 205-4008.

List of Subjects in 7 CFR Part 3201

Biobased products, Procurement

For the reasons stated in the preamble, the Department of Agriculture is proposing to amend 7 CFR part 3201 as follows:

PART 3201 - GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

1. The authority citation for part 3201 continues to read as follows:

Authority: 7 U.S.C. 8102.

2. Section 3201.2 is amended by:

- a. Revising the definition of "Biobased product";
- b. Removing the definition of "Forestry materials";

and

- c. Adding, in alphabetical order, definitions for "Forest product" and "Renewable chemical".

The revision and additions read as follows:

**§ 3201.2 Definitions.**

\* \* \* \* \*

Biobased product. (1) A product determined by USDA to be a commercial or industrial product (other than food or feed) that is:

- (i) Composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or
- (ii) An intermediate ingredient or feedstock.

(2) The term "biobased product" includes, with respect to forestry materials, forest products that meet biobased content requirements, notwithstanding the market share the product holds, the age of the product, or whether the market for the product is new or emerging.

\* \* \* \* \*

Forest product. A product made from materials derived from the practice of forestry or the management of growing timber. The term "forest product" includes:

(1) Pulp, paper, paperboard, pellets, lumber, and other wood products; and

(2) Any recycled products derived from forest materials.

\* \* \* \* \*

Renewable chemical. A monomer, polymer, plastic, formulated product, or chemical substance produced from renewable biomass.

\* \* \* \* \*

3. Section 3201.4 is amended by revising paragraphs (b)(1)(i) through (iii) and adding paragraphs (b)(1)(iv) and (b)(4) to read as follows:

**§ 3201.4 Procurement programs.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) A preference program for purchasing qualified biobased products;

(ii) A promotion program to promote the preference program;

(iii) Provisions for the annual review and monitoring of the effectiveness of the procurement program; and

(iv) Provisions for reporting quantities and types of biobased products purchased by the Federal agency.

\* \* \* \* \*

(4) No later than [insert date 1 year after publication of final rule in the FEDERAL REGISTER], each Federal agency shall establish a targeted biobased-only procurement requirement under which the procuring agency shall issue a certain number of biobased-only contracts when the procuring agency is purchasing products, or purchasing services that include the use of products, that are included in a biobased product category designated by the Secretary.

\* \* \* \* \*

4. Section 3201.5 is amended by adding paragraph (b)(2) to read as follows:

**§ 3201.5 Category designation.**

(b) \* \* \*

(2) In designating product categories and intermediate ingredient or feedstock categories for the BioPreferred program, USDA will consider as eligible only those products that use innovative approaches in the growing, harvesting, sourcing, procuring, processing, manufacturing, or application of the biobased product. USDA will consider products that meet one or more of the criteria in paragraphs (b)(2)(i) through (iv) of this section to be eligible for the BioPreferred program. USDA may exclude from the BioPreferred program any products whose manufacturers are unable to provide USDA with the documentation necessary to verify claims that innovative approaches are used in the growing, harvesting, sourcing, procuring, processing, manufacturing, or application of their biobased products.

(i) *Product applications.* (A) The product or material is used or applied in applications that differ from historical applications; or

(B) The product or material is grown, harvested, manufactured, processed, sourced, or applied in other innovative ways.

(ii) *Manufacturing and processing.* (A) The product or material is manufactured or processed using renewable,

biomass energy or using technology that is demonstrated to increase energy efficiency or reduce reliance on fossil-fuel based energy sources; or

(B) The product or material is manufactured or processed with technologies that ensure high feedstock material recovery and use.

(iii) *Environmental Product Declaration.* The product has a current Environmental Product Declaration as defined by International Standard ISO 14025, Environmental Labels and Declarations - Type III Environmental Declarations - Principles and Procedures.

(iv) *Raw material sourcing.* (A) The raw material used in the product is sourced from a Legal Source, a Responsible Source, or a Certified Source as designated by ASTM D7612 - 10, Standard Practice for Categorizing Wood and Wood-Based Products According to Their Fiber Sources, or:

(B) The raw material used in the product is 100% resourced or recycled (such as material obtained from building deconstruction), or

(C) The raw material used in the product is from an urban environment and is acquired as a result of activities related to a natural disaster, land clearing, right-of-way maintenance, tree health improvement, or public safety.

\* \* \* \* \*

5. Section 3201.6 is amended by revising the first sentence of paragraph (a) (1) to read as follows:

**§ 3201.6 Providing product information to Federal agencies.**

(a)

(1) \* \* \* The Web site will, as determined to be necessary by the Secretary based on the availability of data, provide information as to the availability, price, biobased content, performance and environmental and public health benefits of the designated product categories and designated intermediate ingredient or feedstock categories.

\* \* \*

\* \* \* \* \*

Dated: October 15, 2014.

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Gregory L. Parham,  
Assistant Secretary  
For Administration,  
U.S. Department of Agriculture.

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