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.

Gregory L. Parham,

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

[FR Doc. 2014–25418 Filed 10–24–14; 8:45 am]

BILLING CODE 3410–93–P

DEPARTMENT OF AGRICULTURE

7 CFR Part 3202

RIN 0599–AA22

Voluntary Labeling Program for Biobased Products

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 the Voluntary Labeling Program for Biobased Products, 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 December 26, 2014.

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–AA22. Also, please identify submittals as pertaining to the ''Proposed Amendments to Voluntary Labeling Program for Biobased Products.''

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: biopreferred@usda.gov.* Include RIN number 0599–AA22 and ''Proposed Amendments to the Voluntary Labeling Program for Biobased Products'' 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; email: *biopreferred@usda.gov;* phone (202) 205–4008. Information regarding the Voluntary Labeling Program for Biobased Products (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

The Voluntary Labeling Program for Biobased Products was 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

Section 9002 establishes a program for preferred procurement of biobased products by Federal agencies and a voluntary program for the labeling of biobased products. These two programs are referred to collectively by USDA as the BioPreferred® program.

Under the preferred procurement program, Federal agencies and their contractors are required to purchase biobased products, as defined in regulations implementing the statute, that are within designated product categories when the cumulative purchase price of the products to be procured is more than $10,000 or when the quantities of functionally equivalent items purchased over the preceding fiscal year equaled $10,000 or more. The final rules under which the preferred procurement program operates are found at 7 CFR part 3201, ''Guidelines for Designating Biobased Products for Federal Procurement.'' In a separate rulemaking, the provisions of the Guidelines are being amended to reflect the provisions of the 2014 Farm Bill.

The final rules for the voluntary labeling program, under which USDA authorizes manufacturers and vendors of biobased products to use a ''USDA Certified Biobased Product'' label (hereafter referred to in this preamble as ''the certification mark''), are found at 7 CFR part 3202. The voluntary labeling program is intended to encourage the purchase and use of biobased products by reaching beyond the Federal purchasing community and promoting the purchase of biobased products by commercial entities and the general public. In establishing this program, USDA identified the criteria to determine those products on which the certification mark may be used and developed specific requirements for how the mark can be used. It is USDA's intent that the presence of the certification mark on a product will mean that the labeled product is one for which credible factual information is available as to the biobased content, consistently measured across labeled products by use of the American Society of Testing and Materials (ASTM) radioisotope test D6866.

On July 31, 2009, USDA published a proposed rule for the voluntary labeling program under the authority of section 9002 (74 CFR 38295). The voluntary labeling program final rule was promulgated on January 20, 2011 (76 FR 3790).

On February 7, 2014, the 2014 Farm Bill was signed into law and included several provisions that amended the provisions of section 9002. The primary purpose of this proposed rule amendments is to revise the voluntary labeling program final rule to incorporate changes to section 9002 that were included in the 2014 Farm Bill. USDA is also proposing certain clarifying amendments to the program rules based on several years of operating experience. These proposed amendments will not affect the status of products that have already been certified by USDA to display the certification mark. However, when Stage 3 of the auditing program (7 CFR part 3202, section 3202.10) is conducted in 2016, manufacturers whose product certification is at least 5 years old will incur additional costs of about $400 per certified product for biobased content re-testing.

III. Executive Summary

USDA is proposing to amend 7 CFR part 3202 to incorporate the 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. USDA is also proposing amendments that clarify the rules under which the voluntary labeling program operates. The remainder of this section presents a brief summary of the proposed amendments to the existing voluntary labeling program rules 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 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 products.[a] 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 2014 Farm Bill.

2. Legal Authority for the Regulatory Action

Enactment of the Agricultural Act of 2014 (Pub. L. 113–79) on February 7, 2014 provides the legal authority for the proposed rule amendments.

B. Summary of Major Provisions of the Proposed Rule

The following paragraphs present a brief summary of the changes being proposed to the voluntary labeling program rules by this action. More detailed discussions of the proposed changes are presented in Section IV of this preamble.

1. Revisions to Section 3202.2 ''Definitions''

USDA is proposing to amend 7 CFR 3202.2 by deleting the definitions of ''BioPreferred Product,'' ''Designated item,'' and ''Mature market products.'' USDA is also proposing to revise the definitions of ''Biobased product,'' ''Certification mark artwork,'' and ''Intermediate ingredient or feedstock'' and to add new definitions for ''Designated product category,'' ''Forest product,'' ''Qualified biobased product,'' and ''Renewable chemical.'' These changes are proposed to bring the voluntary labeling rule up to date with the BioPreferred program Guidelines and the 2014 Farm Bill.

2. Revisions to Section 3202.4 ''Criteria for Product Eligibility To Use the Certification Mark''

USDA is proposing to add a paragraph and subparagraphs to section 3202.4 that describe the biobased content criteria for complex assemblies. Procedures for designating complex assemblies for the Federal preferred procurement initiative have been added to the BioPreferred program Guidelines and this proposed action would update

[a] 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.

the voluntary labeling program rules to include these products.

USDA is also proposing to add paragraphs to section 3202.4 to present the criteria for evaluating whether products use ''innovative approaches.'' The Conference Report on the 2014 Farm Bill states that ''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.''

3. Revisions to Section 3202.5 ''Initial Approval Process''

USDA is proposing to amend paragraph (a)(1) to specifically address situations where a manufacturer seeks certification for a new product that is composed of the same biobased ingredients and has the same biobased content as a previously certified product. In these cases, where a new product for which certification is sought is composed of the same biobased ingredients and has the same biobased content as a product that has already been certified, the manufacturer may, in lieu of having the new product tested, self-declare the biobased content of the new product by referencing the tested biobased content of the certified product. Certification of the original product must have been obtained by either the manufacturer of the new product or by the supplier of the biobased ingredients used in the new product. This proposed provision would result in reduced biobased content testing, and thus a cost savings, for manufacturers who use the same biobased ingredients to formulate products that differ in size or shape or that are marketed for different applications.

USDA is also proposing to amend paragraph (c)(5) to state that manufacturers wishing to change the name of their company or the name of a certified product must notify USDA in writing within 30 days of making such changes.

USDA is also proposing to amend paragraph (d)(2) to clarify that, although certifications do not have a predetermined expiration date, they are subject to mandatory periodic auditing activities and to suspension or revocation if biobased content violations are identified. USDA is also amending this paragraph to allow for the revocation of a certification if it is discovered that certification was issued as a result of error(s) on the part of USDA during the approval process.

4. Revisions to Section 3202.8 ''Violations''

USDA is proposing to amend paragraph 3202.8(c)(3) to correct an error in a reference cited in the paragraph. The reference to 7 CFR part 3017 is incorrect. The appropriate references are 2 CFR part 417 and 48 CFR subpart 9.4.

5. Revisions to Section 3202.10 ''Oversight and Monitoring''

USDA is proposing to add a new section 3202.10(d) that identifies three auditing efforts that will be ongoing for the voluntary labeling program. The 2014 Farm Bill contained specific language authorizing USDA to perform auditing and compliance activities necessary to ensure that the label is used only on products that meet the established eligibility criteria.

USDA expects to conduct audits of the voluntary labeling program on an ongoing basis with audit activities conducted every other calendar year (bi-annually). Audit activities will include three stages and will be conducted in sequential order. Stage 1 was conducted in 2012, Stage 2 will be conducted in 2014, and Stage 3 will be conducted in 2016. In 2018, the sequence will start over with Stage 1.

Stage 1 auditing includes contacting all participants via email and requesting that they complete a ''Declaration of Conformance Form.'' Program participants are asked to confirm that they still manufacture the product and that the formulation and manufacturing processes remain the same.

Stage 2 auditing consists of a random sampling of certified products to confirm the accuracy of biobased content percentages claimed. The participants whose products are selected will be required to submit product samples to be tested by independent testing labs at USDA expense.

Stage 3 auditing requires manufacturers of products that have been certified for 5 years or more to have their products re-tested at their expense to confirm that the biobased content remains at or above the level at which the product was originally certified.

USDA believes that the audit program outlined above will be a valuable tool in ensuring the integrity of the program and compliance with the voluntary labeling program rules.

C. Costs, Benefits, and Transfers

Type	Costs	Benefits	Transfers
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 BioPreferred Web site;	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 products to be publicized via BioPreferred Web site. 3. Loss of market share by manufacturers who choose not to offer biobased versions of products.

IV. Discussion of This Proposed Rule

USDA is proposing to amend five sections of 7 CFR part 3202, as described below.

A. 7 CFR 3202.2—Definitions

USDA is proposing to amend 7 CFR 3202.2 by revising three existing definitions and adding four new definitions for terms that are used in the voluntary labeling program rules as a result of revisions to section 9002 made by the 2014 Farm Bill. USDA is also proposing to delete three definitions that are no longer applicable. The proposed changes to section 3202.2 are

discussed in more detail in the following paragraphs.

USDA is proposing to revise the existing definition of the term ''biobased product'' to add 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 forest products be accepted into the BioPreferred program.

USDA is proposing to revise the definition of the term ''certification mark artwork'' by replacing the graphic images of the three variations of the certification mark with slightly updated images. In the updated images, the ''FP'' letters indicating that the product is eligible for Federal preferred procurement have been moved so that they show up better and a solid line has been added between the text ''USDA Certified Biobased Product'' and the text that presents the product's biobased content. These changes in the certification mark graphics were made by the BioPreferred program after the current rule was finalized but before the voluntary labeling program began certifying products to display the mark. Therefore, this proposed update will merely bring the graphics presented in the rule in line with the graphics currently being issued and will not require any participants to revise their label graphics.

USDA is proposing to revise the definition of the term ''intermediate ingredient or feedstock'' to align the definition with the one presented in subpart A of 7 CFR 3201 (the BioPreferred program Guidelines). The definition presented in the Guidelines was revised in response to the language in the 2008 Farm Bill (79 FR 44641; August 1, 2014).

USDA is proposing to add a new definition for the term ''designated product category.'' This term has been adopted in the Guidelines as a replacement for the term ''designated item'' because of confusion caused by the inconsistent use of the word ''item.'' This proposal would bring the terminology used in the voluntary labeling rules in line with the existing Guidelines.

USDA is proposing to add a new definition for the term ''qualified biobased product'' to indicate a biobased product that is eligible for Federal preferred procurement. This term is used in the Guidelines and adding it to the voluntary labeling rule would help in understanding the difference between a ''qualified biobased product'' and a ''certified biobased product'' (one that has been certified to display the certification mark).

USDA is also proposing to add 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 voluntary labeling rule. 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 Federal preferred procurement and for the voluntary 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 voluntary labeling program rules. 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 terms ''BioPreferred product'' and ''Designated item'' because the use of the terms has led to confusion and the terms have been replaced with other, more accurate terms. The term ''BioPreferred product'' is being replaced with the terms ''certified biobased product'' and ''qualified biobased product'' because these terms account for the fact that the BioPreferred program has two initiatives, the voluntary labeling program and the Federal preferred procurement program, and products may be eligible for either initiative.

USDA is proposing to delete the term ''Designated item'' and replace it with the term ''Designated product category,'' as discussed above. This change has already been made in the Guidelines and is being proposed to make the voluntary labeling rule consistent.

USDA is proposing to delete the definition of the term ''Mature market products.'' The 2014 Farm Bill clearly stated Congress' intent that the BioPreferred program should ''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. Therefore, the use of the term ''mature market products'' is no longer applicable for the BioPreferred program and the definition of the term is not needed.

B. 7 CFR 3202.4—Criteria for Product Eligibility To Use the Certification Mark

Two significant changes to this section are being proposed in this action. The first proposed change is to add a paragraph (b)(4) that presents the minimum biobased content requirement for a product that would be considered a ''complex assembly'' (a multi-component assembled product with one or more component(s) being made with biobased material). A key feature of complex assemblies is that their biobased content cannot be determined using ASTM D6866 because of their size and/or shape. USDA has incorporated into the BioPreferred program Guidelines a procedure for determining the biobased content of a complex assembly using an equation that yields the ratio of the mass of biobased carbon in the assembly to the mass of total organic carbon in the assembly. USDA has also added procedures to the Guidelines for incorporating complex assemblies into the Federal preferred procurement initiative of the BioPreferred program. This proposal incorporating a minimum biobased content requirement into the voluntary labeling rule is consistent with the Guidelines and language in the 2014 Farm Bill that directs USDA to ''begin issuing criteria for determining which assembled and finished products may qualify to receive the label'' within one year of enactment of the Farm Bill.

The text of the 2014 Farm Bill includes a statement that 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 a biobased product is eligible for the voluntary labeling program because it uses ''innovative approaches.'' USDA is proposing that any one or more of four possible criteria must be met to demonstrate that a biobased product uses ''innovative approaches.'' This proposal to incorporate criteria for determining ''innovative approaches'' is consistent with the 2014 Farm Bill language and, in a separate rulemaking, USDA is also proposing to add the criteria to the BioPreferred program Guidelines.

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.

C. 7 CFR 3202.5—Initial Approval Process

USDA is proposing to amend paragraph (a)(1) to specifically address situations where a manufacturer seeks certification for a new product that is composed of the same biobased ingredients and has the same biobased content as a previously certified product. In these cases, where a new product for which certification is sought is composed of the same biobased raw materials and has the same biobased content as a product that has already been certified, the manufacturer may, in lieu of having the new product tested, self-declare the biobased content of the new product by referencing the tested biobased content of the certified product. This proposed provision would result in reduced biobased content testing, and thus a cost savings, for manufacturers who use the same biobased raw materials to formulate different products.

USDA is proposing to amend paragraph (c)(5) to state that manufacturers wishing to change the name of their company or the name of a certified product must notify USDA in writing within 30 days of making such changes.

USDA is also proposing to amend paragraph (d)(2) to clarify that, although certifications do not have a predetermined expiration date, they are subject to mandatory periodic auditing activities and to suspension or revocation if biobased content violations are identified. USDA is also amending this paragraph to allow for the revocation of a certification if it is discovered that certification was issued as a result of error(s) on the part of USDA during the approval process.

D. 7 CFR 3202.8—Violations

USDA is proposing to correct a reference in paragraph (c)(3). The original reference to 7 CFR part 3017 is incorrect and should refer instead to 2 CFR part 417 and 48 CFR subpart 9.4.

E. 7 CFR 3202.10—Oversight and Monitoring

USDA is proposing to add a new section 3202.10(d) that identifies three auditing efforts that will be ongoing for the voluntary labeling program. The 2014 Farm Bill contained specific language authorizing USDA to perform auditing and compliance activities necessary to ensure that the label is used only on products that meet the established eligibility criteria.

USDA expects to conduct audits of the voluntary labeling program on an ongoing basis with audit activities conducted every other calendar year (bi-annually). Audit activities will include three stages and will be conducted in sequential order. Stage 1 was conducted in 2012, Stage 2 will be conducted in 2014, and Stage 3 will be conducted in 2016. In 2018, the sequence will start over with Stage 1.

Stage 1 auditing includes contacting all participants via email and requesting that they complete a ''Declaration of Conformance Form.'' Program participants are asked to confirm that they still manufacture the product and that the formulation and manufacturing processes remain the same. Participants are also asked to list all active products and advise the USDA of any complaints regarding the claim of the biobased content. The first Stage 1 auditing activity was completed in 2012 and the second Stage 1 audit will be conducted in 2018.

Stage 2 auditing consists of a random sampling of certified products to confirm the accuracy of biobased

content percentages claimed. The participants whose products are selected will be required to submit product samples to be tested by independent testing labs at USDA expense. The first Stage 2 auditing activity is scheduled to be completed during 2014 and includes the re-testing of 50 randomly selected products. The second Stage 2 audit will be conducted in 2020.

USDA chose to re-test 50 products during the initial Stage 2 audit because that number was believed to be sufficient to meet the objective of preserving the integrity of the labeling program. In addition, ASTM Standard E2234 Standard Practice for Sampling a Stream of Product by Attributes Indexed by AQL (acceptance quality limit) calls for 50 samples when the total lot size is between 1,201 and 3,200 and following general inspection level 1. At the time the audit Stage 2 plans were developed there were slightly less than 1,500 certified products.

Stage 3 auditing requires manufacturers of products that have been certified for 5 years or more to have their products re-tested at their expense to confirm that the biobased content remains at or above the level at which the product was originally certified. The first Stage 3 auditing activity is scheduled to be completed during 2016 and the second Stage 3 audit will be conducted in 2022. The voluntary labeling program was initiated in 2011 and, at the time of the first Stage 3 audit, only those products certified during the first year of the program will require re-testing.

USDA believes that the audit program outlined above will be a valuable tool in ensuring the integrity of the program and compliance with the voluntary labeling program rules.

V. Request for Comment

USDA is requesting comment on all aspects of these proposed amendments to the voluntary labeling program rules. 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.

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 voluntary labeling program rules to establish the regulatory framework for the labeling of products that were previously excluded from the program 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. Costs, Benefits and 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 certified to display the USDA Certified Biobased Product certification mark. The entry into the voluntary labeling program of biobased products that were previously considered to be mature market products provides newly developed biobased products the opportunity to be publicized via the BioPreferred Web site. Thus, the rule is expected to increase demand for these products, which, in turn, is expected to increase demand for those agricultural products that can serve as ingredients and feedstocks. This expansion of the voluntary labeling program will, thus, yield private benefits for businesses producing these ingredients and feedstocks.

Simultaneously, this action would reduce demand for competing products that are not eligible for the voluntary labeling program. Producers of biobased products, including intermediate ingredients and feedstocks, that are not certified for labeling or producers of non-biobased products could face a loss of market share within both the public and Federal agencies. USDA does not have sufficient information on the expected extent of this potential loss of market share to assign a dollar value to this impact.

As part of the proposed Stage 3 auditing process to be conducted during calendar year 2016, manufacturers of biobased products that have been certified for five or more years will be required to have their products biobased content re-tested. We estimate that the cost for product re-testing is about $300 to $400 per product. The labeling program was implemented in 2011 and only those products that were certified during 2011 will incur the re-testing cost of the Stage 3 audit to be conducted during 2016. There were 1,338 applications for certification received during 2011 and USDA estimates that 1,000 of the products represented by those applications continue to display the label under the original certification. Thus, the total estimated cost of the auditing effort to all manufacturers would be, at most, $400,000 (1,000 products × $400 per test) during 2016. Considering that this total cost would be spread over several hundred manufacturers making these products and that no additional re-testing costs are expected until the year 2022, USDA believes that the cost to any one manufacturer is reasonable.

We request information that would help us quantify the shift in product sales potentially resulting from this action.

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 voluntary labeling 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. 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 in the voluntary labeling program. USDA anticipates that this program will positively impact small entities which manufacture or sell biobased products by allowing them to display the certification mark and to list their products in the BioPreferred program Web site catalog. However, 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, however, not possible for USDA to definitively assess these anticipated impacts on small entities.

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 voluntary labeling program is currently approved under OMB control number 0503–0020.

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 for which they intend to seek certification to display the label or which 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

Labeling, Procurement, USDA Certified Biobased Product.

For the reasons stated in the preamble, the Department of Agriculture is proposing to amend 7 CFR part 3202 as follows:

PART 3202—VOLUNTARY LABELING PROGRAM FOR BIOBASED PRODUCTS

■ 1. The authority citation for part 3202 continues to read as follows:

Authority: 7 U.S.C. 8102.

■ 2. Section 3202.2 is amended by:

■ a. Removing the definitions of ''BioPreferred Product,'' ''Designated item,'' and ''Mature market products''; and

■ b. Revising the definitions of ''Biobased product,'' ''Certification mark artwork,'' ''Intermediate ingredient or feedstock''; and

■ c. Adding, in alphabetical order, definitions for ''Designated product category,'' ''Forest product,'' ''Qualified biobased product,'' and ''Renewable chemical.''

The revisions and additions read as follows:

§ 3202.2 Definitions.

* * * * *

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

(1) Composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or

(2) An intermediate ingredient or feedstock.

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.

* * * * *

Certification mark artwork. The distinctive image, as shown in Figures 1–3, that identifies products as USDA Certified.

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Figure 1. USDA Certified Biobased Product Certification Mark
(Note: actual size will vary depending on application)

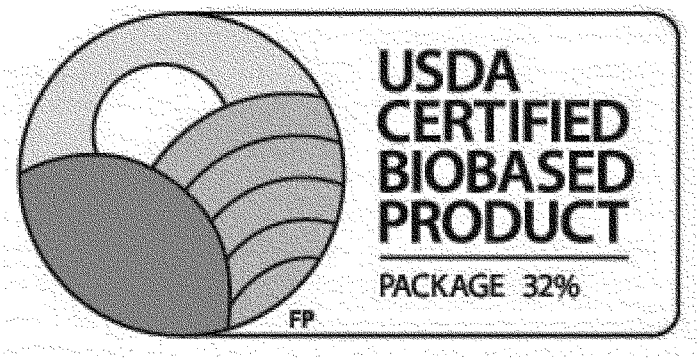

Figure 2. USDA Certified Biobased Product: Package Certification Mark
(Note: actual size will vary depending on application)

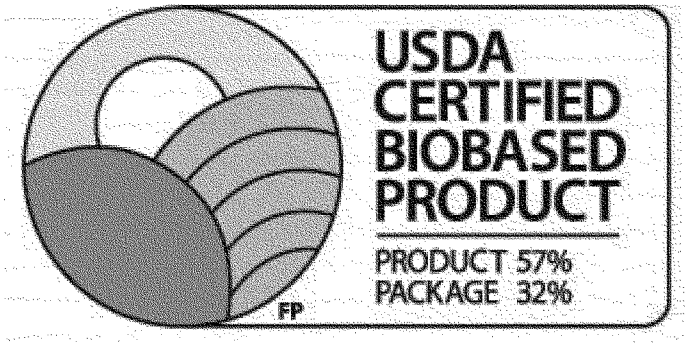

Figure 3. USDA Certified Biobased Product & Package Certification Mark
(Note: actual size will vary depending on application)

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* * * * *

Designated product category. A generic grouping of biobased products, including those final products made from designated intermediate ingredients or feedstocks, or complex assemblies identified in subpart B of 7 CFR part 3201, that is eligible for the procurement preference established under section 9002 of FSRIA.

* * * * *

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.

* * * * *

Intermediate ingredient or feedstock. A material or compound made in whole or in significant part from biological products, including renewable agricultural materials (including plant, animal, and marine materials) or forestry materials that have undergone value added processing (including thermal, chemical, biological, or a significant amount of mechanical processing), excluding harvesting operations, offered for sale by a manufacturer or vendor and that is subsequently used to make a more complex compound or product.

* * * * *

Qualified biobased product. A product that is eligible for Federal preferred procurement because it meets the definition and minimum biobased content criteria for one or more designated product categories, or one or more designated intermediate ingredient or feedstock categories, as specified in subpart B of 7 CFR part 3201.

* * * * *

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

* * * * *

■ 3. Section 3202.4 is amended by revising the introductory text and the headings for paragraphs (b)(1) and (2) and adding paragraphs (b)(4) and (c) to read as follows:

§ 3202.4 Criteria for product eligibility to use the certification mark.

A product must meet each of the criteria specified in paragraphs (a) through (c) of this section in order to be eligible to receive biobased product certification.

* * * * *

(b) * * *

(1) *Qualified Biobased Products.*

* * *

(2) *Finished biobased products that are not Qualified Biobased Products.*

* * *

* * * * *

(4) *Finished products that are complex assemblies.*

(i) If the product is a complex assembly, as defined in subpart A of 7 CFR part 3201, that is not eligible for Federal preferred procurement at the time the application for certification is submitted, the applicable minimum biobased content is 25 percent. The biobased content shall be determined using the procedures specified in § 3201.7(c)(3) of this chapter. Manufacturers, vendors, groups of manufacturers and/or vendors, and trade associations may propose an alternative applicable minimum biobased content for the product by developing, in consultation with USDA, and conducting an analysis to support the proposed alternative applicable minimum biobased content. If approved by USDA, the proposed alternative applicable minimum biobased content would become the applicable minimum biobased content for the complex assembly to be labeled.

(ii) If a product certified under paragraph (b)(4)(i) of this section is within a category that USDA subsequently designates for Federal preferred procurement, the applicable minimum biobased content shall become, as of the effective date of the final designation rule, the minimum biobased content specified for the item as found in subpart B of 7 CFR part 3201.

(c) *Innovative approach.* In determining eligibility for certification under 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 (c)(1) through (4) of this section to be eligible for certification. USDA may deny certification for 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.

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

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

(2) *Manufacturing and processing.* (i) 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

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

(3) *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.

(4) *Raw material sourcing.* (i) 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:

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

(iii) 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.

■ 4. Section 3202.5 is amended by:

■ a. Revising paragraph (a)(1);

■ b. Adding a sentence to the end paragraph (c) introductory text;

■ c. Adding paragraph (c)(5);

■ d. Revising paragraph (d)(1); and

■ e. Adding paragraphs (d)(2)(iv) and (v).

The revisions and additions read as follows:

§ 3202.5 Initial approval process.

(a) * * *

(1) *General content.* The applicant must provide contact information and product information including all brand names or other identifying information, intended uses of the product, information to document that one or more of the innovative approach criteria specified in section 3202.4(c) has been met, and, if applicable, the corresponding product category classification for Federal preferred procurement. The applicant must also provide a sample of the product to be analyzed by a third-party, ISO 9001 conformant, testing entity for

determination of the biobased content. In situations where a new product for which certification is sought is composed of the same biobased ingredients and has the same biobased content as a product that has already been certified, the manufacturer may, in lieu of having the new product tested, self-declare the biobased content of the new product by referencing the tested biobased content of the original certified product. Certification of the original product must have been obtained by either the manufacturer of the new product or by the supplier of the biobased ingredients used in the new product.

(c) * * * Paragraph (c)(5) of this section presents the procedures for revising the information provided under paragraphs (c)(1) through (4) of this section after a notice of certification has been issued.

* * * * *

(5) If at any time, during the application process or after a product has been certified, any of the information specified in paragraphs (c)(1) through (4) of this section changes, the applicant must notify USDA of the change within 30 days. Such notification must be provided in writing to USDA.

(d) * * *

(1) The effective date of certification is the date on which the applicant receives a notice of certification from USDA. Except as specified in paragraphs (d)(2)(i) through (d)(2)(v) of this section, certifications will remain in effect as long as the product is manufactured and marketed in accordance with the approved application and the requirements of this subpart.

(2) * * *

(iv) All certifications are subject to USDA periodic auditing activities, as described in § 3202.10(d). If a manufacturer or vendor of a certified biobased product fails to participate in such audit activities or if such audit activities reveal biobased content violations, as specified in § 3202.8(b)(1), the certification will be subject to suspension and revocation according to the procedures specified in § 3202.8(c).

(v) If USDA discovers that a certification has been issued for an ineligible biobased product as a result of errors on the part of USDA during the approval process, USDA will notify the product's manufacturer or vendor in writing that the certification is revoked effective 30 days from the date of the notice.

■ 5. Section 3202.8 is amended by revising paragraph (c)(3) to read as follows:

§ 3202.8 Violations.

* * * * *

(c) * * *

(3) *Other remedies.* In addition to the suspension or revocation of the certification to use the label, depending on the nature of the violation, USDA may pursue suspension or debarment of the entities involved in accordance with 2 CFR part 417 and 48 CFR subpart 9.4. USDA further reserves the right to pursue any other remedies available by law, including any civil or criminal remedies, against any entity that violates the provisions of this part.

■ 6. Section 3202.10 is amended by adding paragraph (d) to read as follows:

§ 3202.10 Oversight and monitoring.

* * * * *

(d) *Audits.* USDA expects to conduct audits of the voluntary labeling program on an ongoing basis with audit activities conducted every other calendar year (bi-annually). Audit activities will include three stages and will be conducted in sequential order as follows:

(1) Stage 1 auditing includes contacting all participants via email and requesting that they complete a ''Declaration of Conformance Form.'' Program participants are asked to confirm that they still manufacture the product and that the formulation and manufacturing processes remain the same. Participants are also asked to list all active products and advise the USDA of any complaints regarding the claim of the biobased content. The first Stage 1 auditing activity was completed in 2012 and the second Stage 1 audit will be conducted in 2018.

(2) Stage 2 auditing consists of a random sampling of certified products to confirm the accuracy of biobased content percentages claimed. The participants whose products are selected will be required to submit product samples to be tested by independent testing labs at USDA expense. The first Stage 2 auditing activity is scheduled to be completed during 2014 and the second Stage 2 audit will be conducted in 2020.

(3) Stage 3 auditing requires manufacturers of products that have been certified for 5 years or more to have their products re-tested at their expense to confirm that the biobased content remains at or above the level at which the product was originally certified. The first Stage 3 auditing activity is scheduled to be completed during 2016 and the second Stage 3 audit will be conducted in 2022.

Dated: October 15, 2014.

Gregory L. Parham,

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

[FR Doc. 2014–25427 Filed 10–24–14; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1088; Directorate Identifier 2008–SW–76–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to revise airworthiness directive (AD) 2014–12–11 for Sikorsky Aircraft Corporation (Sikorsky) Model S–92A helicopters. AD 2014–12–11 currently requires revising the Rotorcraft Flight Manual (RFM) to include the appropriate operating limitations for performing Class D external load-combination operations. As published, AD 2014–12–11 references an incorrect date for Revision No. 12 of Sikorsky RFM SA S92A–RFM–003, Part 1. This proposed AD would correct the error while retaining the requirements of AD 2014–12–11. These proposed actions are intended to require appropriate operating limitations to allow operators to perform Class D external load-combination operations, including human external cargo, in this model helicopter that now meets the Category A performance standard.

DATES: We must receive comments on this proposed AD by November 12, 2014.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.