

Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Office of Energy Policy and New Uses

7 CFR Part 2902

RIN 0503-AA26

Guidelines for Designating Biobased Products for Federal Procurement

AGENCY: Office of Energy Policy and New Uses, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to establish guidelines for designating items made from biobased products that would be afforded Federal procurement preference, as required under Section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA).

DATES: Submit comments on or before February 17, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send your comments to: Marvin Duncan, USDA, Office of the Chief Economist, Office of Energy Policy and New Uses, Room 361, 300 Seventh Street SW., Washington, DC 20024. If you wish to use e-mail, go to the Web site <http://www.biobased.oce.usda.gov> for e-mail instructions or use the e-mail address fb4p@oce.usda.gov. Please include your name and address in your message and "Proposed Guidelines" on the subject line. Persons with disabilities who require alternative means for communication for regulatory information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice) and (202) 401-4133 (TDD).

FOR FURTHER INFORMATION CONTACT:

Marvin Duncan by e-mail at mduncan@oce.usda.gov or by phone at (202) 401-0532.

SUPPLEMENTARY INFORMATION:

I. Authority

These guidelines are proposed under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102 (referred to in this document as "section 9002").

II. Overview of Section 9002

Section 9002 provides for preferred procurement of biobased products by Federal agencies. Federal agencies are required to purchase biobased products, as defined in regulations to implement the statute, for all items costing over \$10,000 or when the quantities of functionally equivalent items purchased over the preceding fiscal year equaled \$10,000 or more. Procurements by a Federal agency subject to section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962) are not subject to the requirements under section 9002 to the extent that the requirements of the two programs are inconsistent. Federal agencies must procure biobased products unless the items are not reasonably available, fail to meet applicable performance standards, or are available only at an unreasonable price.

The Office of Federal Procurement Policy (OFPP) and the USDA will work in cooperation to implement the requirements of section 9002. In this document, we are proposing to establish guidelines for Federal agencies to follow in the procurement of items designated for preferred procurement. These guidelines also address the statutory requirement that Federal agencies have in place, within 1 year of the publication of final guidelines, a procurement program that assures items composed of biobased products will be purchased to the maximum extent practical. Those procurement programs would have to contain a biobased products preference program, an agency promotion program, and provisions for the annual review and monitoring of an agency's procurement program. USDA consulted with the Environmental Protection Agency (EPA), the General Services Administration (GSA), and the Department of Commerce National Institute of Standards and Technology (NIST) in preparing these proposed guidelines.

In designating items (generic groupings of specific products such as crankcase oils or synthetic fibers), the Secretary will consider the availability

of such items and the economic and technological feasibility of using such items, including life cycle costs. Federal agencies would be required to purchase products contained within an item only after that item has been designated for preferred procurement. In addition, the Secretary would provide information to Federal agencies on the availability, relative price, performance, and environmental and public health benefits of such items and, where appropriate, would recommend the level of biobased content to be contained in the procured product. Manufacturers and vendors would be able to offer their products to Federal agencies for preferred procurement under the proposed program when their commercial products fell within the definition of an item that had been designated for preferred procurement and the biobased content of the products met the standards set forth in the guidelines.

Paragraph (h) of section 9002 provides that the Secretary, in consultation with the Administrator of the Environmental Protection Agency (EPA), shall establish a voluntary program authorizing producers of biobased products to use a "U.S.D.A. Certified Biobased Product" label. In a subsequent rulemaking, we intend to establish that voluntary program and provide eligibility criteria and guidelines for the use of the "U.S.D.A. Certified Biobased Product" label.

Paragraph (j) of section 9002 provides funds to the Secretary to support the testing of biobased products to carry out the provisions of the section.

The legislative history of Title IX of FSRIA suggests that Congress had in mind three primary objectives that would apply to section 9002. The first objective is to improve demand for biobased products. This would have a number of salutary effects, one of which would be to increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products. Another important effect would be the substitution of products with a more benign or beneficial environmental impact, as compared to the use of fossil energy based products.

As a second objective, Congress wants to spur the development of value-added agricultural processing and manufacturing in rural communities.