

(Building for Environmental and Economic Sustainability) analytical tool. This analysis would be conducted by NIST or by a third party authorized by NIST to conduct the BEES Analysis. Second, the product would have passed one or more tests against applicable ASTM, International Organization for Standardization (an international standards setting organization identified by the acronym ISO), Federal or military specifications, or industry performance standards by a third party ASTM/ISO compliant testing facility, and results of those tests would be available to Federal procurement officials.

USDA seeks comments on the potential direction of future regulation regarding a voluntary program for use of the label by manufacturers and vendors of biobased products and on the possibility of assessing a user fee to support the labeling program.

VII. Regulatory Information

A. Executive Order 12866, Regulatory Planning and Review

It is estimated the proposed rule, when finalized, will not have an annual effect on the economy of \$100 million or more. This program will have only a relatively small effect on the economy for the foreseeable future. This rule does not propose to designate any items. Successive items will be designated for preferred procurement through subsequent rulemakings over a period of at least several years. The industry, itself, is still very small. Although this program is intended to spur development of the industry, that is likely to occur only over many years. Each time an item is proposed for designation, USDA will evaluate the economic effect of that designation, as well as the cumulative effect of that and previous item designations.

For the above reasons, this rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

B. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” which will “describe the impact of the proposed rule on small entities.” 5 U.S.C. 603(a). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Although this program ultimately may have a direct impact on a substantial number of small entities, USDA has determined that this proposed rule will not have a direct significant economic impact on a substantial number of small entities. This rule will affect directly primarily Federal agencies. Private sector manufacturers and vendors of biobased products voluntarily may provide information to USDA through the means set forth in this proposed rule. However, the proposed 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 items 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 impact small entities which manufacture or sell biobased products. For example, once items 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 nonbiobased products or provide components for the manufacturing of such products. Again, USDA cannot assess these anticipated impacts on small entities until USDA proposes items for designation. This rule does not propose to designate any items.

The proposed rule will directly impact small entities by implementing a cost-sharing program which gives first consideration to proposals for products of “small and emerging business enterprises.” Submission of a proposal is voluntary and not limited to small entities. The direct impact would be beneficial for those entities whose products are selected for cost-sharing. Because of the limited amount of funds available for cost-sharing, the proposed ceilings on cost-sharing, and the anticipated breadth of any competition (not limited to a particular manufacturing sector and open to other than small entities), USDA does not anticipate that this cost-sharing competition would have a significant economic impact on a substantial number of small entities.

Accordingly, USDA hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. USDA invites comments from members of the public who believe that the proposed rule will have a significant economic impact on a substantial number of small entities.

C. Executive Order 12630

This 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

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

E. Executive Order 13132

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

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

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

The policies contained in this rulemaking do not have tribal implications and thus no further action is required under Executive Order 13175.