

(c) CCC will prorate the available funds by a national factor to ensure that payments do not exceed \$15,000,000. CCC will prorate the payments in such manner as it, in its sole discretion, finds fair and reasonable.

(d) A reserve will be created to handle appeals and errors. Claims will not be payable once the available funding is expended. Any amount of funds reserved for such purposes that are not disbursed for the purpose of correcting errors or omissions, or for the payment of appeals, will not otherwise be distributed to any payment applicants and will be refunded to the U.S. Department of Treasury.

**§ 1429.111 Misrepresentation and scheme or device.**

(a) In addition to other penalties, sanctions, or remedies as may apply, an asparagus producer will be ineligible to receive assistance through the Asparagus Revenue Market Loss Assistance Payment Program if the asparagus producer is determined by CCC to have:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, must be refunded with interest together with such other sums as may become due and all charges including interest will run from the date of the disbursement of the CCC funds.

Any asparagus farm operation, asparagus producer, or person engaged in acts prohibited by this section and any asparagus farm operation, asparagus producer, or person receiving payment as specified in this part will be jointly and severally liable with other persons or operations involved in such claim for payment for any refund due as specified in this section and for related charges. The remedies provided in this part will be in addition to other civil, criminal, or administrative remedies that may apply.

**§ 1429.112 Death, incompetence, or disappearance.**

(a) In the case of death, incompetency, disappearance, or dissolution of a person or an entity that is eligible to receive payment as specified in this part, an alternate person or persons as specified in part 707 of this title may receive such payment, as determined appropriate by CCC.

(b) Payment may be made for asparagus market losses suffered by an

otherwise eligible asparagus producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into an application for the producer or the producer's estate signs the application for payment. Proof of authority to sign for the deceased producer's estate or a dissolved entity must be provided. If an asparagus producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly-authorized representatives must sign the application for payment.

**§ 1429.113 Maintaining records.**

Producers applying for payment through the Asparagus Revenue Market Loss Assistance Payment Program must maintain records and accounts to document all eligibility requirements specified in this part. Such records and accounts must be retained for 3 years after the date of payment.

**§ 1429.114 Refunds; joint and several liability.**

(a) Excess payments, payments provided as the result of erroneous information provided by any person, or payments resulting from a failure to comply with any requirement or condition for payment in the application or this part, must be refunded to CCC.

(b) A refund required as specified in this section will be due with interest from the date of CCC disbursement and determined in accordance with paragraph (d) of this section and late payment charges as provided in part 1403 of this chapter.

(c) Persons signing an ALAP Program application as having an interest in the asparagus farm operation will be jointly and severally liable for any refund and related charges found to be due as specified in this section.

(d) Interest will be applicable to any refunds required as specified in parts 792 and 1403 of this title. Such interest will be charged at the rate that the U.S. Department of the Treasury charges CCC for funds, and will accrue from the date CCC made the erroneous payment to the date of repayment.

(e) CCC may waive the accrual of interest if it determines that the cause of the erroneous determination was not due to any action of the person, or was beyond the control of the person committing the violation. Any waiver is at the discretion of CCC alone.

**§ 1429.115 Miscellaneous provisions and appeals.**

(a) *Offset.* CCC may offset or withhold any amount due CCC as specified in this

part in accordance with the provisions of part 1403 of this chapter.

(b) *Claims.* Claims or debts will be settled in accordance with the provisions of part 1403 of this chapter.

(c) *Other interests.* Payments or any portion thereof due under this part will be made without regard to questions of title under State law and without regard to any claim or lien against the asparagus crop, or proceeds thereof, in favor of the owner or any other creditor except agencies and instrumentalities of the U.S. Government.

(d) *Assignments.* Any asparagus producer entitled to any payment as specified in this part may assign any payment in accordance with the provisions of part 1404 of this chapter.

(e) *Appeals.* Appeals will be handled as specified in parts 11 and 780 of this title.

Signed in Washington, DC, on January 30, 2011.

**Jonathan W. Coppess,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 2011-2506 Filed 2-3-11; 8:45 am]

**BILLING CODE 3410-05-P**

**DEPARTMENT OF AGRICULTURE**

**7 CFR Part 2902**

**RIN 0503-AA39**

**Designation of Biobased Items for Federal Procurement**

**AGENCY:** Departmental Management, USDA.

**ACTION:** Direct final rule.

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

**DATES:** This rule is effective June 6, 2011. Submit comments on the direct final rule by April 5, 2011. If we receive any timely significant adverse comment,

we will withdraw this final rule in part or in whole by publication of a document in the **Federal Register** within 30 days after the comment period ends.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* [biopreferred@usda.gov](mailto:biopreferred@usda.gov). Include RIN number 0503-AA39 and “Proposed Technical Amendments to BioPreferred Program Guidelines” on the subject line. Please include your name and address in your message.

- *Mail/commercial/hand delivery:* Mail or deliver your comments to: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St., SW., Washington, DC 20024.

Persons with disabilities who require alternative means for communication for regulatory information (Braille, large print, audiotope, 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 preferred procurement program (one part of the BioPreferred Program) is available on the Internet at <http://www.biopreferred.gov>.

**SUPPLEMENTARY INFORMATION:**

The information presented in this preamble is organized as follows:

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

**I. Authority**

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

**II. Background**

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

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

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

USDA believes that this rule is appropriate for direct final rulemaking because it responds to a statutory amendment that became effective June 18, 2008, and because it codifies USDA policy as already stated in the first final rule designating biobased products.

Elsewhere in this issue of the **Federal Register**, however, USDA is publishing a companion proposed rule that is identical in substance to this direct final rule. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of any significant adverse comment. The comment period for this direct final rule runs concurrently with the comment period of the companion proposed rule. Any comments received in response to the companion proposed rule will also be considered as comments regarding this direct final rule.

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

**III. Summary of Changes**

USDA is amending eight sections of 7 CFR part 2902, as described below.

*A. 7 CFR 2902.1—Purpose and Scope*

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

*B. 7 CFR 2902.2—Definitions*

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

*C. 7 CFR 2902.3—Applicability to Federal Procurements*

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

*D. 7 CFR 2902.4—Procurement Programs*

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

*E. 7 CFR 2902.5—Item Designation*

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

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

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

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

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

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

*H. 7 CFR 2902.9—Funding for Testing*

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

**IV. Regulatory Information***A. Executive Order 12866: Regulatory Planning and Review*

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

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

This rule has been reviewed in accordance with Executive Order 12630,

Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

*C. Executive Order 12988: Civil Justice Reform*

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

*D. Executive Order 13132: Federalism*

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

*E. Unfunded Mandates Reform Act of 1995*

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

*F. Executive Order 12372: Intergovernmental Review of Federal Programs*

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

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

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

*H. Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under the Guidelines is

currently approved under OMB control number 0503–0011.

**List of Subjects in 7 CFR Part 2902**

Biobased products, Procurement.

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

**CHAPTER XXIX—OFFICE OF ENERGY****PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT**

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

**Authority:** 7 U.S.C. 8102.

■ 2. Section 2902.1 is revised to read as follows:

**§ 2902.1 Purpose and scope.**

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

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

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

**§ 2902.2 Definitions.**

\* \* \* \* \*

*Biobased product.* A product determined by USDA to be a commercial or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials.

\* \* \* \* \*

*FCEA.* The Food, Conservation and Energy Act of 2008, Pub. L. 110–246.

\* \* \* \* \*

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

**§ 2902.3 Applicability to Federal procurements.**

\* \* \* \* \*

(c) *Procuring products composed of the highest percentage of biobased content.* Section 9002(a)(2) requires

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

\* \* \* \* \*

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

§ 2902.4 Procurement programs.

\* \* \* \* \*

(b) \* \* \*  
(2) \* \* \*

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

- (A) Are not available within a reasonable time;
(B) Fail to meet performance standards for the use to which they will be put, or the reasonable performance standards of the Federal agency; or
(C) Are available only at an unreasonable price.

\* \* \* \* \*

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

§ 2902.5 Item designation.

\* \* \* \* \*

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

\* \* \* \* \*

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

§ 2902.6 Providing product information to Federal agencies.

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

\* \* \*

(b) Advertising, labeling and marketing claims. Manufacturers and vendors are reminded that their advertising, labeling, and other marketing claims, including claims regarding health and environmental benefits of the product, must conform to

the Federal Trade Commission “Guides for the Use of Environmental Marketing Claims,” 16 CFR part 260 (see: http://www.access.gpo.gov/nara/cfr/waisidx\_08/16cfr260\_08.html). For further requirements, click on the link to the “Guidelines for Marketing the BioPreferred Program.”

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

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

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

\* \* \* \* \*

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

§ 2902.9 Funding for testing.

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

Dated: January 25, 2011.

Pearlie S. Reed, Assistant Secretary for Administration, U.S. Department of Agriculture. [FR Doc. 2011–2017 Filed 2–3–11; 8:45 am]

BILLING CODE 3410–93–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. APHIS–2009–0083]

RIN 0579–AD22

Brucellosis Class Free States and Certified Brucellosis-Free Herds; Revisions to Testing and Certification Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule; extension of comment period.

SUMMARY: We are extending the comment period for an interim rule modifying brucellosis testing, classification, and certification requirements for certain Class Free States. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before March 11, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0083 to submit or view comments and to view supporting and related materials available electronically.
Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS–2009–0083, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0083.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at http://www.aphis.usda.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Debbi Donch, National Brucellosis Program Staff, National Center for Animal Health Programs, VS, APHIS,