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DEPARTMENT OF AGRICULTURE

7 CFR Part 3201 and 3202

Rural Business-Cooperative Service

7 CFR Part 4270

[Docket No. RBS–22–BUSINESS–0004]

RIN 0570–AB05

Biobased Markets Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBCS or the Agency), an agency of the Rural Development (RD) mission area within the U.S. Department of Agriculture (USDA), is issuing a final rule to adopt changes from the Agriculture Improvement Act of 2018 (2018 Farm Bill) that apply to the Biobased Markets (BioPreferred) Program. These changes include the merger of the Guidelines for Designating Biobased Products for Federal Procurement and the Voluntary Labeling Program for Biobased Products into one streamlined regulation, Biobased Markets (BioPreferred) Program.

DATES: This final rule is effective January 8, 2025.

ADDRESSES: Information regarding the BioPreferred® Program is available at *biopreferred.gov.*

FOR FURTHER INFORMATION CONTACT: Vernell Thompson, Procurement Analyst, USDA RD, 1400 Independence Avenue SW, Washington, DC 20250–1522, STOP 3250; email: *vernell.thompson@usda.gov;* phone (202) 720–4145.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Authority

The USDA Biobased Markets Program, called the BioPreferred® Program, is established under the authority of Section 9002 of the Farm Security and Rural Investment Act (FSRIA) of 2002 (Pub. L. 107–171) (the 2002 Farm Bill), as amended by the Food, Conservation, and Energy Act of 2008 (Pub. L. 10–246) (the 2008 Farm Bill), the Agricultural Act of 2014 (Pub. L. 113–79) (the 2014 Farm Bill), and the Agriculture Improvement Act of 2018 (Pub. L. 115–334) (the 2018 Farm Bill). Section 9002 of the 2002 Farm Bill, as amended by the 2008, 2014, and 2018 Farm Bills, is referred to in this rule as section 9002 of FSRIA.

II. Background

On January 24, 2024, the Agency published a proposed rule, 89 FR 4770, with request for comments for the purpose of implementing the amendments made to section 9002 of FSRIA by the 2018 Farm Bill by combining the Guidelines for Designating Biobased Products for Federal Procurement (7 CFR part 3201) and the Voluntary Labeling Program for Biobased Products (7 CFR part 3202), the legacy rules of the BioPreferred Program, into one regulation, 7 CFR part 4270, and making amendments to streamline and improve the BioPreferred Program's rules.

The legacy rules established the two core initiatives of the BioPreferred Program. Part 3201 of title 7 of the Code of Federal Regulations detailed the rules for the procurement of Biobased Products by Federal Agencies and their contractors, established the process for designating categories of Biobased Products for preferred Federal procurement, maintained the list of Designated Product Categories, and outlined the requirements for Biobased Products to qualify for preferred Federal procurement. Part 3202 of title 7 of the Code of Federal Regulations established the rules for manufacturers and vendors of Biobased Products to become certified to use the USDA Certified Biobased Product Label (Label) and provided rules for maintaining certification and utilizing the Label. With this rulemaking, the Agency is merging the legacy rules into one streamlined regulation that will facilitate the objective of the BioPreferred Program, which is to encourage the increased use of Biobased Products in all market sectors. Additionally, the Agency believes these changes will benefit BioPreferred Program Stakeholders by implementing process improvements and tying the two initiatives more closely together, making it easier to qualify for both initiatives.

III. Discussion of Public Comments

Sixteen respondents submitted comments on the proposed rule. The Agency reviewed the public comments in the development of the final rule. A discussion of the comments is provided as follows.

A. Definitions

a. Three respondents expressed support for the inclusion of Renewable Chemicals in the definition of the term Biobased Product.

Agency Response: The Agency thanks the respondents for their support of the change to the definition of Biobased Product.

b. One respondent recommended establishing the BioPreferred Program's definition of biobased as the uniform definition throughout the federal government.

Agency Response: The Agency agrees that it is important to have a uniform definition of biobased throughout the federal government. The requirements

established by the BioPreferred Program apply to all federal agencies, and therefore, the definitions established by the BioPreferred Program apply to all federal agencies as well. The Agency will continue efforts to educate federal agencies and their contractors about Biobased Products and the requirements associated with the BioPreferred Program.

B. Criteria for Eligibility

a. Three respondents expressed support for establishing a single participation process under which all products must undergo Biobased Content Testing using ASTM D6866.

Agency Response: The Agency thanks the respondents for their support in establishing a single participation process. For reader clarification, ASTM D6866 is the American Society for Testing and Materials (ASTM) International standard test methods for determining the Biobased Content of solid, liquid, and gaseous samples using radiocarbon analysis.

b. Two respondents expressed concern regarding the added requirements for all products to undergo Biobased Content Testing. The respondents noted that, through collaboration with USDA Forest Service Forest Products Lab (FPL), the Agency has established guidelines for testing wood products, under which specific types of wood and engineered wood products are exempt from testing. The respondents recommended that the Agency continue to uphold these guidelines under this final rule. The respondents asserted that changing the testing requirements for products that fall under the exemption guidelines established with FPL would add unnecessary cost to manufacturers (and therefore purchasers) and hinder the efficiency of the BioPreferred Program.

Agency Response: The Agency agrees that the guidelines for testing wood products that have been established in collaboration with FPL should be maintained. The Agency is not intending to change these guidelines with the implementation of this final rule. Products that are eligible to be exempt from testing under the guidelines established in collaboration with FPL will be exempt from testing as described by § 4270.7(d)(1) in this final rule.

c. Two respondents expressed support for maintaining the raw material sourcing innovative criterion that allows participants to demonstrate that their Biobased Product is innovative if the raw material is sourced from responsible sources according to standards such as ASTM Standard D7612—Standard Practice for Categorizing Wood and Wood-Based Products According to Their Fiber Sources.

Agency Response: The Agency thanks the respondents for their support.

d. One respondent expressed support for the addition of the raw material sourcing innovative criterion that allows participants to demonstrate that their Biobased Product is innovative if the raw material is grown, harvested, manufactured, processed, sourced, or applied in other sustainable and ethically sourced ways as determined by the Agency.

Agency Response: The Agency thanks the respondent for their support.

e. One respondent recommended that Biobased Products should never be grown, sold, or used as an energy source and strongly recommended against establishing any rules, requirements, or funding opportunities related to biofuels.

Agency Response: The Agency notes that biofuels, including motor vehicle fuels, heating oil, and electricity, are specifically excluded from the BioPreferred Program as mandated by section 9002 of FSRIA, and as such, this is outside the scope of the request for comment on the proposed rule.

C. Procurement Programs

a. One respondent would like to see increased enforcement of the requirements for federal agencies and their contractors to purchase Qualified Biobased Products. The respondent noted that the U.S. Government is the single largest purchaser of consumer goods in the world, yet this is not reflected in the reported levels of Biobased Products purchases.

Agency Response: The Agency appreciates this comment and agrees that increased education and enforcement of the requirements to purchase Qualified Biobased Products is needed. The Agency is actively trying to increase awareness of these requirements through outreach efforts such as hosting trainings for federal agencies as requested, reminding federal agencies and their contractors about reporting requirements near the end of each fiscal year, and reviewing solicitations for compliance. These efforts have led to an increase of 1,000% in reporting of Biobased Product purchases in recent years. While this increase is encouraging, the Agency acknowledges that more is needed and hopes to see this trend continue with the implementation of Executive Order (E.O.) 14081, which requires federal agencies to report their Biobased Product purchasing to the Office of Management and Budget.

b. One respondent expressed concerns with section 6 of E.O. 14081, Executive Order on Advancing Biotechnology and Biomanufacturing Innovation for a Sustainable, Safe, and Secure American Bioeconomy. The respondent asserted that E.O. 14081 has a very narrow window of improving the procurement by federal agencies for Renewable Chemicals and Biobased Products by 2024, and by the time staff are trained on the E.O., it may be rescinded by the next administration. The respondent requested that the concepts described in section 6 of E.O. 14081 be incorporated in the reauthorization of the next Farm Bill. The respondent asserted that the guidelines on procuring Biobased Products provided in section 6 of E.O. 14081 need to be codified in legislation as agencies have not been given direction in the implementation of the BioPreferred Program since its inception in the 2002 Farm Bill.

Agency Response: While the contents of E.O. 14081 and legislative changes to the Farm Bill are outside the scope of the request for comment on the proposed rule, the Agency agrees that efforts are needed to ensure federal agencies and their contractors are aware of and understand the requirements for purchasing Qualified Biobased Products.

D. Category Designation

a. Two respondents expressed support for the revised category designation process included in the proposed rule. The respondents noted that the revised process will encourage transparency and timeliness in the procurement of Biobased Products by federal agencies. One of the respondents further noted that the rapid advancement of sophisticated fermentation techniques is leading to the development of Biobased Products and Renewable Chemicals at an increasing rate and a timely response to these advancements will be necessary for the BioPreferred Program to keep pace with industry advancements. Thus, the respondent supported the changes to the category designation process.

Agency Response: The Agency thanks the respondents for their support for the revised category designation process.

b. Two respondents recommended maintaining the category designation process established in the legacy rules. The respondents noted that the process established in the legacy rules is transparent and provides clear guardrails regarding procedural steps for designating product categories. Specifically, the respondents were concerned that without going through

the regulatory process, the revised process may not allow for the collection and evaluation of Stakeholder feedback on category additions and updates. Further, the respondents were concerned that the revised process would lead to a loss of clear requirements to provide Stakeholders with adequate notice and opportunity to comment, and in turn, the requirement for the Agency to consider and respond to all comments would be lost. The respondents strongly encouraged the Agency to establish similar, robust procedures for notice, comment, and Stakeholder feedback should the Agency move forward with the revised process.

Agency Response: The Agency strongly agrees with maintaining the transparency and robustness of the category designation process, and the Agency intends to ensure that the revised designation process provides Stakeholders with opportunities to review and provide input equal to those provided by the process established by the legacy rules. Under the revised category designation process, the Agency intends to notify Stakeholders of potential updates and additions to designated product categories. While these updates will no longer be made through the formal rulemaking process, the Agency acknowledges that many Stakeholders have become accustomed to learning about designated category changes through **Federal Register** notices. As such, the Agency intends to notify Stakeholders of changes to designated product categories through **Federal Register** notices that will direct them to view and submit comments on the changes through the BioPreferred Program's website. Similarly, the Agency intends to maintain the process for considering and responding to public comments on designated product categories; this process will take place on the BioPreferred Program's website rather than as a step in the formal rulemaking process. The Agency believes that the revised process will create a balance between proposing and implementing changes in a timely manner and maintaining the transparency of the process established by the legacy rules.

E. Determining Biobased Content

a. One respondent urged the Agency to require Biobased Content Testing for products to qualify for the federal procurement preference. The respondent asserted that without required testing, there is a heightened risk for greenwashing and fraud. The respondent also recommended establishing Biobased Content audit procedures for products that are qualified to receive the federal procurement preference.

Agency Response: The Agency appreciates these comments. The Agency notes that under section 9002 of FSRIA, any Biobased Product that meets the requirement of one or more designated product category is qualified to receive a federal procurement preference. This means that Biobased Products may be qualified to receive a federal procurement preference even if they do not participate in the BioPreferred Program. Qualified Biobased Products that participate in the BioPreferred Program will be required to undergo the same Biobased Content Testing and auditing procedures as certified products according to this final rule. While the Agency is unable to establish requirements for products that do not participate in the BioPreferred Program, the Agency believes it is important for federal buyers to be aware of Biobased Content requirements and ask for validation of Biobased Content claims when making purchasing decisions. To that end, the legacy rules included a stipulation that required manufacturers and vendors to provide federal agencies information to verify Biobased Content claims for Qualified Biobased Products upon request. The Agency realized this stipulation was unintentionally left out of the proposed rule language and is revising the final rule to include it.

b. One respondent strongly supported the continued use of ASTM D6866 to measure Biobased Content. The respondent also recommended specifying the use of ASTM D6866 Method B when conducting Biobased Content Testing, rather than also allowing the use of ASTM D6866 Method C as the instruments used for Method C tend to be less accurate than those used in Method B. The respondent stated that the results produced by ASTM D6866 Method B are easily understood by regulators, policy makers, corporate officers, and the public, and the overwhelming advantage of this test method is that it is an independent and standardized laboratory measurement that produces highly accurate and precise values. This means that the test results can be easily reproduced to verify the value if the results are challenged. The respondent specifically supported the use of ASTM D6866 Method B over the test method EN 16785–2 and mass balance measurements. The respondent asserted that calculation-based approaches, such as mass balance calculations, are difficult to audit and could lead to greenwashing of Biobased Content claims.

Agency Response: The Agency thanks the respondent for their support of the continued use of ASTM D6866 to validate Biobased Content claims. The Agency agrees with the use of ASTM D6866 Method B when products undergo Biobased Content Testing for certification and notes that this is current practice. The Agency feels that specifying the use of Method B in the final rule is unnecessary but will refer to Method B in informational materials on the BioPreferred Program's website and in information sent to participants prior to testing.

c. Two respondents strongly encouraged the Agency to include an additional certification pathway that utilizes mass balance methods to verify content claims, a recommendation that was included in the Conference Report that accompanied the 2018 Farm Bill. The respondents stated that while the ASTM D6866 test method is adequate for determining the amount of traceable Biobased Content present in a finished product, it is unable to account for renewable feedstocks attributed under the mass balance approach. The respondents asserted that modernizing the BioPreferred Program to include the mass balance approach as one of the approved methods to qualify for the BioPreferred Program would advance the program's goals of furthering the bioeconomy and providing new markets for farm commodities. The respondents also stated that incorporating the mass balance method to approve products to qualify for the BioPreferred Program would substantially lower the barrier to entry for Participating Organizations and further incentivize U.S. production of mass balance Biobased Products and their related markets.

Agency Response: The Agency appreciates the comments. The Agency notes that it is required to follow the specifications included within the 2018 Farm Bill itself; some of the recommendations in the accompanying Conference Report were not included in the 2018 Farm Bill, and establishing a certification pathway using mass balance approaches is one such recommendation. The Agency acknowledges that industry use of the mass balance approach can help advance the BioPreferred Program's goals of furthering the bioeconomy and providing new markets for farm commodities. However, the Agency believes that further consideration is needed before including an additional certification pathway that utilizes mass balance methods to verify content claims. The Agency also acknowledges

that the mass balance process may make it easier for manufacturers to transition to more sustainable feedstocks because segregated production pathways are not needed. The Agency notes that products produced by mass balance methods are not Biobased Products as defined by this final rule. To maintain the integrity of the Label and to prevent diluting public understanding of what the Label means, it is important that the Agency maintain a consistent definition of what it means for a product to be biobased. The Agency feels that allowing alternative methods that certify claims other than Biobased Content as defined by this final rule would cause confusion about what the Label is reporting. The Agency believes that including the mass balance approach as one of the approved methods to participate in the BioPreferred Program would require establishing a separate Label and certification process with separate requirements to those established for Biobased Products, which would require significant resources. The Agency will continue to stay informed of any advancements in the use of the mass balance approach and will coordinate with program Stakeholders and the program's Technical Advisory Committee to evaluate these advancements as resources allow.

d. Two respondents recommended allowing alternative test methods in addition to the use of ASTM D6866 to validate Biobased Content claims. The respondents stated that the ASTM D6866 test method essentially discounts the relative weight of the non-carbon biobased components in products as ASTM D6866 only measures the weight of carbon content in a product. The respondents noted that certain types of products, such as wood products, contain a significant amount of molecular oxygen, and failing to account for molecular oxygen substantially underrepresents the proportion of ''biobased'' materials. The respondents recommended amending the final rule to allow for the use of alternative, more accurate methodologies for measuring Biobased Content as future industry consensus standards are developed and adopted.

Agency Response: The Agency appreciates the comments. The Agency believes it is important to maintain a consistent definition of Biobased Content across all types of materials to maximize understanding of what the Label means. At this time, the Agency defines Biobased Content as the amount of recent, biologically derived organic carbon in the material or product expressed as a percent of weight (mass) of the total organic carbon in the material or product. The Agency feels that allowing alternative test methods that measure attributes other than Biobased Content as defined by this final rule would cause confusion about what the Label is reporting.

e. One respondent recommended adding a certification attribute that quantifies the carbon intensity of a given product.

Agency Response: This is outside the scope of the request for comment on the proposed rule, which seeks to implement the amendments made to section 9002 of FSRIA by the 2018 Farm Bill.

f. Two respondents recommended allowing testing exemptions for products that have been certified to industry consensus standards that are substantively equivalent to the third-party requirements set out in the proposed rule. The respondents noted that doing so would avoid duplicative costs and compliance burdens.

Agency Response: The Agency appreciates these comments. The Agency agrees that, where possible, efforts should be made to minimize burdens associated with participating in the BioPreferred Program. To that end, the Agency allows testing exemptions in specific situations where the Biobased Content of an exempt product has been demonstrated using the alternative methods specified in § 4270.7(d)(1) of this final rule. Maintaining the integrity of the BioPreferred Program and the Label is of upmost importance, and the Agency believes that accepting testing that has been done outside of the Agency's oversight could erode that integrity.

g. One respondent expressed support for allowing testing exemptions for Biobased Product Ingredients with the same formulation as other, already-approved products. The respondent noted that allowing these exemptions reduces the cost and time burdens associated with participating in the BioPreferred Program, which is important as many potential participants already have tight margins as they work to scale their operations.

Agency Response: The Agency thanks the respondent for their support.

h. Two respondents recommended specifying that Biobased Content Testing must be done by a laboratory that is ISO/IEC 17025 accredited by an International Laboratory Accreditation Cooperation (ILAC) recognized accreditation body.

Agency Response: For reader clarity, International Organization for Standardization (ISO) is an independent, non-governmental, international standard development organization composed of representatives from the national standards organizations of member countries. International Electrotechnical Commission (IEC) is an organization that prepares and publishes international standards for all electrical, electronic, and related technologies.

The Agency agrees that ISO accreditation is important to maintain the integrity of the certification process. While the final rule does not specify that testing facilities must be ISO/IEC 17025 accredited, the Agency does require laboratories that are approved to perform testing for the BioPreferred Program to maintain ISO/IEC 17025 accreditation. The Agency believes it is not necessary to specify in the final rule that laboratories must be ISO/IEC 17025 accredited since the Agency verifies accreditation before laboratories are approved to perform testing for the BioPreferred Program.

i. One respondent recommended specifying that laboratories that are approved to perform testing for the BioPreferred Program be carbon-14 tracer-free facilities.

Agency Response: The Agency agrees that it is important for laboratories that are approved to perform testing for the BioPreferred Program be carbon-14 tracer-free facilities to minimize the potential for contamination of certification samples. Laboratories that are approved to perform testing for the BioPreferred Program sign an agreement with the Agency; the Agency believes the tracer-free stipulation would be better suited to be included in the laboratory agreement rather than in this final rule.

F. Initial Approval Process/Oversight and Monitoring

a. One respondent recommended reducing the time period between recertification requirements (referred to by the respondent as audits) from every 5 years to every 2 to 3 years. The respondent emphasized that these requirements must include retesting using ASTM D6866 rather than allowing a self-declaration attesting that the formulation has not been altered. The respondent asserted that, given the frequency of supply chain and formulation changes required in the Biobased Products industry, a 5-year sampling period does not guarantee that products displaying the USDA Certified Biobased Product Label will contain the Biobased Content their companies receive certification for. The respondent also recommended establishing a blind auditing procedure to randomly select products for testing in between recertification periods. The respondent

stated that coupling blind audits with more frequent recertification requirements is the best way to ensure accurate, fair validation.

Agency Response: The Agency appreciates these comments. The Agency notes that under the revised requirements, participants will be required to participate in an annual informational audit, during which they will self-verify that their company and product information remains up to date, as well as have their products recertified by undergoing ASTM D6866 testing every 5 years. Under the legacy rules, informational audits and retesting audits both took place every 6 years. The Agency believes that establishing an annual information audit during which participants must confirm or update their company and product information will be frequent enough to remind participants to notify the Agency of supply chain changes that may affect their product formulations. While the Agency agrees that more frequent retesting requirements, including the addition of a blind auditing procedure, would better ensure that the Biobased Content of certified products remain valid, the Agency must consider the burden associated with maintaining certification on program participants. The Agency believes that combining annual informational audits with 5-year recertification requirements balances the need to obtain updated information from participants while minimizing the burdens associated with retesting. However, the final rule does allow the Agency to request that a product be retested outside of the 5-year certification period if concerns about the validity of the product's Biobased Content are raised.

b. One respondent recommended reducing the window of time allowed to conform to the updated requirements for participants with products that are qualified but not certified or products that have been certified for more than 5 years. The respondent asserted that a 3-year window to conform to the final rule is too much time and recommended reducing this to 6 months to a year maximum and any product that does not conform within that timeframe should be removed from the BioPreferred Program.

Agency Response: The Agency appreciates these comments. The Agency agrees that allowing a 3-year window to conform to the final rule is a generous amount of time. However, given the large number of products that will be required to undergo Biobased Content Testing to conform to the updated requirements, the Agency believes that a grace period of this length is needed to minimize the burden that may be placed on program resources in undertaking these activities. The Agency notes that all participants will be required to participate in annual informational audits during the grace period and may be removed from the BioPreferred Program's website if they fail to participate in such audits.

c. One respondent noted that the success for this type of certification is dependent on its universality and flexibility.

Agency Response: The Agency thanks the respondent for their comment.

G. Miscellaneous/General

a. Five respondents expressed support for the Agency's efforts to streamline the BioPreferred Program's rules.

Agency Response: The Agency thanks the respondents for their support.

b. One respondent expressed support for streamlining the BioPreferred Program's rules but expressed concern that this final rule does not do enough to streamline the program for participants. The respondent stated that streamlining does not improve important issues within the BioPreferred Program, such as improving the procurement initiative. To further assist in the implementation and enforcement of Biobased Product purchasing and reporting requirements, the respondent requested that procurement officers be identified for the BioPreferred Program.

Agency Response: The Agency appreciates the comments. The Agency believes the efforts to streamline the BioPreferred Program will have positive impacts for participants and potential participants by establishing a single, efficient process through which products are determined to be qualified for a federal procurement preference and eligible to use the Label. The changes to the category designation process will also streamline the program for participants by making it quicker and easier to designate new categories, allowing more products to qualify for the federal procurement preference. The Agency notes that the BioPreferred Program does not itself procure products, and therefore, procurement officers are not needed within the BioPreferred Program. The Agency will continue its efforts to educate federal agencies (including procurement officers) and their contractors on the requirements for purchasing Qualified Biobased Products and reporting such purchases.

c. One respondent expressed general support for the BioPreferred Program. The respondent noted that the BioPreferred Program presents a significant opportunity to promote sustainability, innovation, and economic growth. The respondent also noted that the BioPreferred Program parallels the success of the National Organic Program, and by providing a clear framework for the certification and labeling of Biobased Products, the final rule will enhance consumer awareness of and confidence in Biobased Products in a similar manner to what the National Organic Program has done for organic products. The respondent further noted that the BioPreferred Program has the potential to create new avenues for job growth and economic development, particularly in rural communities. Additionally, the respondent noted that by incentivizing investment in Biobased Product research, production, and manufacturing, the BioPreferred Program can help bolster rural economies.

Agency Response: The Agency thanks the respondent for their support.

d. Three respondents recommended establishing North American Industry Classification System (NAICS) codes for Biobased Products with this final rule.

Agency Response: While establishing NAICS codes are outside the scope of the request for comment on the proposed rule, the Agency strongly agrees that it is necessary to establish NAICS codes for Biobased Products and will share these comments with the Department of Commerce. The Agency will continue its efforts to encourage the Department of Commerce to establish NAICS codes for Biobased Products and will continue to offer support as needed to advance these efforts.

e. One respondent recommended making updates to the BioPreferred Program website to make it more consumer friendly.

Agency Response: The Agency appreciates this comment. While this is outside the scope for the proposed rule request for comment, the Agency agrees that the BioPreferred Program's website is in need of updates to make information easier to find and understand. The Agency is currently working to refresh the BioPreferred Program's website to make these changes.

f. One respondent recommended that the BioPreferred Program be incorporated into the Coordinated Framework established by section 8 of E.O. 14081.

Agency Response: This is outside the scope of the proposed rule request for comment.

g. One respondent requested the proposed rule plain language summary.

Agency Response: The Agency provided the appropriate information for locating the plain language summary at *regulations.gov*.

h. One respondent inquired whether there would be an interagency review of the proposed rule.

Agency Response: The proposed rule did not require official interagency review because the rulemaking was designated as non-significant.

IV. Summary of Changes

The final rule will not include revisions based on the public comments received in response to the proposed rule. The final rule will include two technical amendments summarized below.

a. In the final rule, § 4270.7(a) is being revised to include the last sentence from 7 CFR 3201.7(a). While reviewing the public comments, the Agency determined that this stipulation was unintentionally excluded from the proposed rule language. This requirement is being added to the final rule language to clarify that manufacturers and vendors of Qualified Biobased Products may be asked to prove their Biobased Content claims regardless of whether they participate in the BioPreferred Program.

b. In addition, § 4270.7(c)(2)(i) is being revised to correct the notation used in the Complex Assemblies equation. The proposed rule used ''of the nth component'' and the final rule is being revised to correct this to ''of the ith component.''

V. Executive Orders/Acts

A. Executive Order 12866—Classification

This final 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 (OMB).

B. Executive Order 12372—Intergovernmental Consultation

This program is not subject to the requirements of Executive Order 12372, Intergovernmental Review of Federal Programs, as implemented under 2 CFR part 415.

C. Paperwork Reduction Act

The information collection and recordkeeping requirements contained in this final rule will not be effective until approved by OMB, subject to the submission of a paperwork package submitted to OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

D. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this final rule has been reviewed in accordance with 7 CFR part 1970. The Agency has determined that (i) this action meets the criteria established in 7 CFR 1970.53(f); (ii) no extraordinary circumstances exist; and (iii) the action is not ''connected'' to other actions with potentially significant impacts, is not considered a ''cumulative action,'' and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

E. Regulatory Flexibility Act

The final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature on this document that this final rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

F. Administrative Pay-As-You-Go-Act of 2023

The Administrative Pay-As-You-Go-Act of 2023 (Act) (See Fiscal Responsibility Act of 2023, Pub. L. 118–5, 137 Stat 31, div. B, title III) requires the U.S. Government Accountability Office (GAO) to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO's major rule reports. The Act does not apply to this final rule because it does not increase direct spending.

G. Executive Order 12988—Civil Justice Reform

This final rule has been reviewed under Executive Order 12988. In accordance with this final rule: (1) unless otherwise specifically provided, all State and local laws that conflict with this final rule will be preempted; (2) no retroactive effect will be given to this final rule except as specifically prescribed in the final rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this final rule.

H. Unfunded Mandates Reform Act (UMRA)

Title II of the UMRA, Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and Tribal Governments and on the private sector. Under section 202 of the UMRA, Federal Agencies generally must prepare a written statement, including cost-benefit analysis, for proposed and Final Rules with ''Federal mandates'' that may result in expenditures to State, local, or Tribal Governments, in the aggregate, or to the private sector, of $100 million or more in any year. When such a statement is needed for a final rule, section 205 of the UMRA generally requires a Federal Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the final rule.

This final rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and Tribal Governments or for the private sector. Therefore, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

I. Executive Order 13132—Federalism

The policies contained in this final rule do not have any substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

J. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the

Federal Government and Indian tribes. Consultation is also required for any regulation that preempts Tribal law or that imposes substantial direct compliance costs on Indian Tribal governments and that is not required by statute.

The Agency has determined that this final rule does not, to our knowledge, have Tribal implications that require formal Tribal consultation under Executive Order 13175. If a Tribe requests consultation, the Agency will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

K. E-Government Act Compliance

RD is committed to 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 and to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

L. Civil Rights Impact Analysis

RD has reviewed this final rule in accordance with USDA Regulation 4300–4, Civil Rights Impact Analysis, to identify any major civil rights impacts the final rule might have on program participants on the basis of age, race, color, national origin, sex, disability, marital or familial status. Based on the review and analysis of the final rule and all available data, issuance of this final rule is not likely to negatively impact low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their age, race, color, national origin, sex, disability, or marital or familial status. No major civil rights impact is likely to result from this final rule.

M. USDA Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, USDA Program Discrimination Complaint Form, which can be obtained online at *usda.gov/sites/default/files/documents/ad-3027.pdf* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

a. *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

b. *Fax:* (833) 256–1665 or (202) 690–7442; or

c. *Email: program.intake@usda.gov.*

N. Severability

It is USDA's intention that the provisions of this final rule shall operate independently of each other. In the event that this final rule or any portion of this final rule is ultimately declared invalid or stayed as to a particular provision, it is USDA's intent that the final rule nonetheless be severable and remain valid with respect to those provisions not affected by a declaration of invalidity or stayed. USDA concludes it would separately adopt all of the provisions contained in this final rule.

List of Subjects in 7 CFR Parts 3201, 3202, and 4270

Biobased products, Business and industry, and Government procurement.

For the reasons stated in the preamble, USDA amends chapters XXXII and XLII of title 7 of the Code of Federal Regulations as follows:

CHAPTER XXXII—OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT

PART 3201 [REMOVED AND RESERVED]

■ 1. Under the authority of 7 U.S.C. 8102, remove and reserve part 3201.

PART 3202 [REMOVED AND RESERVED]

■ 2. Under the authority of 7 U.S.C. 8102, remove and reserve part 3202.

CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE

■ 3. Add part 4270, consisting of §§ 4270.1 through 4270.99, to read as follows:

PART 4270—USDA BIOBASED MARKETS PROGRAM: FEDERAL PROCUREMENT AND VOLUNTARY LABELING

Sec.

Authority: 7 U.S.C. 8102.

§ 4270.1 Purpose and scope.

(a) This part sets forth the procedures and guidelines for the implementation of the USDA Biobased Markets Program, called the BioPreferred® Program, established by section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA) as amended by the Food, Conservation, and Energy Act of 2008, and further amended by the Agricultural Act of 2014, and the Agriculture Improvement Act of 2018 (Pub. L. 107–171, 116 Stat. 476, 7 U.S.C. 8102).

(b) The guidelines in this part establish:

(1) A process for designating categories of products that are, or can be, produced with biobased Intermediate Ingredients or feedstocks and whose procurement by procuring agencies and other relevant Stakeholders will carry out the objectives of section 9002 of FSRIA;

(2) The criteria for eligibility and the process through which Biobased Products can participate in the BioPreferred Program, be subject to preferred Federal procurement, and be eligible to display the USDA Certified Biobased Product Label;

(3) Specifications for the correct and incorrect uses of the USDA Certified Biobased Product Label and Certification Icon, which apply to Participating Organizations and Other Entities; and

(4) Actions that constitute noncompliance with this part.

§ 4270.2 Definitions

Agricultural materials. Plant, animal, and marine matter, raw materials or residues used in the manufacturing of a commercial or industrial product excluding food, feed, motor vehicle fuel, heating oil, and electricity.

Applicable minimum biobased content. The required Biobased Content level set by USDA that a product must meet or exceed to qualify for the Federal procurement preference and use of the USDA Certified Biobased Product Label.

ASTM International (ASTM). A nonprofit organization, formerly known as American Society for Testing and Materials, that provides an international forum for the development and publication of voluntary consensus standards for materials, products, systems, and services.

Biobased content. The amount of recent, biologically derived organic carbon in the material or product expressed as a percent of weight (mass) of the total organic carbon in the material or product.

Biobased content testing. The testing that is performed to verify a product's Biobased Content. For products participating in the BioPreferred Program, the Biobased Content is to be determined using ASTM Method D6866, Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis.

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

(i) Composed, in whole or in significant part, of Biological Products, including renewable domestic Agricultural Materials, Renewable Chemicals, and forestry materials; or

(ii) An Intermediate Ingredient or Feedstock.

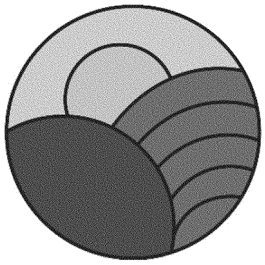
(2) The term Biobased Product includes, with respect to forestry materials, Forest Products that meet Biobased Content requirements, notwithstanding the market share the product holds, the age of the product, or whether the market for the product is new or emerging. For the purposes of the BioPreferred Program, the term Biobased Product does not include motor vehicle fuels, heating oils, or electricity.

Biodegradability. A quantitative measure of the extent to which a material is capable of being decomposed by biological agents, especially bacteria.

Biological products. Products derived from living materials.

Certification icon. The distinctive image, as shown in figure 1 (note that actual size will vary depending on application), that depicts the symbols of the sun, the soil, and the aquatic environments to be used with USDA's permission to identify Certified Biobased Products. The icon will be used in materials including, but not limited to, advertisements, catalogs, procurement databases, websites, and promotional and educational materials. The colors used in the Certification Icon can be found in the USDA BioPreferred Program Brand and Marketing Guidelines available on the BioPreferred Program website (*biopreferred.gov*).

Figure 1 to Definition of Certified Icon—Certification Icon



Certified application. An application for a Biobased Product to participate in the BioPreferred Program that has completed all steps of the certification process, including an initial Prequalification review and Biobased Content Testing as required, and has received a notice of certification.

Certified biobased product. A Biobased Product that is eligible for preferred Federal procurement because it meets the definition and Applicable Minimum Biobased Content criteria for one or more Designated Product Categories as specified in the Register of Designated Categories, and for which the Participating Organization has received approval from USDA to utilize the USDA Certified Biobased Product Label.

Complex assembly. A system of distinct materials and components assembled to create a finished product with specific functional intent where some or all of the system components contain some amount of biobased material or feedstock.

Days. As used in this part means calendar Days.

Defined product category. Any product category that has been established for a specified grouping of Biobased Products with similar characteristics and intended uses. A Defined Product Category includes a description of the product characteristics that fall within the category. The other product category is not a Defined Product Category.

Designated product category. A grouping of Biobased Products, including finished products, Intermediate Ingredients or Feedstocks, and Complex Assemblies, identified in the Register of Designated Categories on the BioPreferred Program website (*biopreferred.gov*). Certified or Qualified Biobased Products that meet the criteria for at least one designated category are eligible for the procurement preference established under section 9002 of FSRIA.

Designated representative. An entity authorized by a Participating Organization to act on their behalf to obtain certification or to affix the USDA Certified Biobased Product Label to the Participating Organization's Certified Biobased Product or its packaging or perform other marketing functions.

Federal agency. Any executive agency or independent establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect's direction).

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.

Formulated product. A product that is prepared or mixed with other Ingredients, according to a specified formula and includes more than one Ingredient.

FSRIA. The Farm Security and Rural Investment Act of 2002, Public Law 107–171, 116 Stat. 134 (7 U.S.C. 8102).

Ingredient. A component, or a part of a compound or mixture, that may be active or inactive.

Innovative criteria. Benchmark for demonstrating new and emerging approaches in the growing, harvesting, sourcing, procuring, processing, manufacturing, or application of the Biobased Product. Biobased Products must meet one of the Innovative Criteria

as defined by USDA to be eligible for preferred Federal procurement and to display the USDA Certified Biobased Product Label.

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 Participating Organization and that is subsequently used to make a more complex compound or product.

ISO. The International Organization for Standardization, a network of national standards institutes working in partnership with international organizations, governments, industries, business, and consumer representatives.

ISO 9001 conformant. An entity that meets all the requirements of the ISO 9001 standard, but that is not required to be ISO 9001 certified. ISO 9001 refers to the ISO's standards and guidelines relating to quality management systems. Quality management is defined as what the manufacturer does to ensure that its products or services satisfy the customer's quality requirements and comply with any regulations applicable to those products or services.

Other entity. Any person, group, public or private organization, or business other than USDA or Participating Organizations that may wish to use the USDA Certified Biobased Product Label or Certification Icon in informational or promotional material related to a Certified Biobased Product.

Parent product. The Certified Biobased Product in a test exempt relationship that was originally tested for certification. A test exempt product references the Certified Application of its Parent Product.

Participating organization. An entity that has completed the steps required to have a Certified and/or Qualified Biobased Product under the BioPreferred Program. Participants can include entities that perform the necessary chemical and mechanical processes to make a Biobased Product, and entities that offer for sale Biobased Products that they do not manufacture but that are marketed and sold under their own brand.

Prequalification. The step during the certification process at which an application is conditionally approved pending the product undergoing Biobased Content Testing.

Procuring agency. Any Federal Agency that is using Federal funds for procurement or any business contracting with any Federal Agency with respect to work performed under the contract.

Qualified biobased product(s). A product that is eligible for preferred Federal procurement because it meets the definition and Applicable Minimum Biobased Content criteria for one or more Designated Product Categories as specified in the Register of Designated Categories.

Register of Designated Categories. The list of product categories that are eligible for the procurement preference established under section 9002 of FSRIA, including the category name, description, required minimum Biobased Content, and date of finalization. The Register of Designated Categories can be found on the BioPreferred Program website at *biopreferred.gov*.

Renewable chemical. A monomer, polymer, plastic, Formulated Product, or chemical substance produced from renewable biomass.

Secretary. The Secretary of the United States Department of Agriculture.

Stakeholder. Individuals or officers of State or local government organizations, private non-profit institutions, or organizations, and private businesses or consumers.

USDA. The United States Department of Agriculture.

USDA Certified Biobased Product label. A combination of the Certification Icon (as defined in this part); one of three statements identifying whether the USDA certification applies to the product, the package, or both the product and package; and the letters ''FP'' to indicate that the product is within a Designated Product Category and eligible for preferred Federal procurement. The distinctive image, as shown in figures 2, 3, and 4 (note that actual size will vary depending on application), identifies products as USDA Certified Biobased Products. The colors used in the USDA Certified Biobased Product Label can be found in the USDA BioPreferred Program Brand and Marketing Guidelines available on the BioPreferred Program website (*biopreferred.gov*). The USDA Certified Biobased Product Label is owned and its use is managed by USDA (standard trademark law definition applies).

Figure 2 to Definition of USDA Certified Biobased Product Label—USDA Certified Biobased Product Label

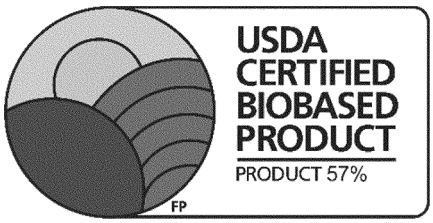


Figure 3 to Definition of USDA Certified Biobased Product Label—USDA Certified Biobased Package Label

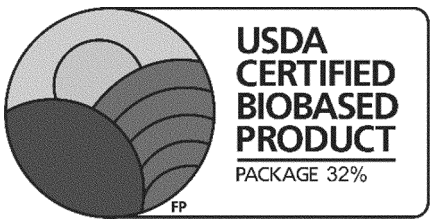
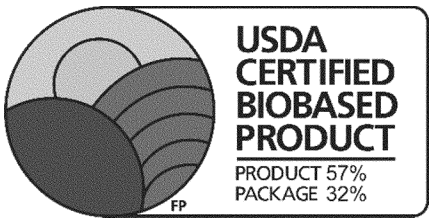


Figure 4 to Definition of USDA Certified Biobased Product Label—USDA Certified Biobased Product & Package Label



§ 4270.3 Applicability.

(a) *Applicability to Federal procurements*—(1) *Applicability to procurement actions.* The guidelines in this part apply to all procurement actions by Procuring Agencies involving product categories designated by USDA in this part, where the Procuring Agency makes purchases of $10,000 or more of one of these products during a fiscal year, or where the quantity of such products or of functionally equivalent products purchased during the preceding fiscal year was $10,000 or more. The $10,000 threshold applies to Federal Agencies as a whole rather than to agency subgroups such as regional offices or subagencies of a larger Federal department or agency.

(2) *Exception for procurements subject to Environmental Protection Agency (EPA) regulations under the Solid Waste Disposal Act.* For any procurement by any Procuring Agency that is subject to regulations of the Administrator of the EPA under section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (40 CFR part

247), these guidelines do not apply to the extent that the requirements of this part are inconsistent with such regulations.

(3) *Procuring products composed of the highest percentage of Biobased Content.* Section 9002(a)(2) of FSRIA (7 U.S.C. 8102(a)(2)) requires Procuring Agencies to procure Qualified Biobased Products composed of the highest percentage of Biobased Content practicable. Procuring agencies may decide not to procure such Qualified Biobased Products if they are not reasonably priced or readily available or do not meet specified or reasonable performance standards.

(4) *Incidental purchases.* This part does not apply to purchases of Qualified Biobased Products that are unrelated to or incidental to Federal funding (*i.e.,* purchases that are not the direct result of a contract or agreement with persons supplying products to a Procuring Agency or providing support services that include the supply or use of products).

(5) *Exemptions.* The following applications are exempt from the preferred procurement requirements of this part:

(i) Military equipment: Products or systems designed or procured for combat or combat-related missions.

(ii) Spacecraft systems and launch support equipment.

(b) *Applicability to Participating Organizations and Other Entities*—(1) *Participating Organizations.* The requirements in this part apply to all prospective Participating Organizations who wish to participate in the BioPreferred Program. Those wishing to participate in the BioPreferred Program are required to obtain and maintain product certification. USDA will allow only one owner or Designated Representative of a branded product to participate. Participating Organizations may not obtain product certification for a product using a brand name owned by a separate organization unless they are acting on behalf of the brand owner, with their approval, as a Designated Representative.

(2) *Other Entities.* The requirements in this part apply to Other Entities who wish to use the USDA Certified Biobased Product Label or Certification Icon in promoting the sales or the public awareness of Certified Biobased Products.

§ 4270.4 Criteria for eligibility.

A product must meet each of the criteria specified in paragraphs (a) through (c) of this section to be eligible to participate in the BioPreferred Program.

(a) *Biobased Product.* The product for which certification is sought must be a Biobased Product as defined in § 4270.2. Products must undergo Biobased Content Testing as described in § 4270.7 of this part to confirm the products meet or exceed the applicable minimums.

(1) *Products that are qualified for preferred Federal procurement but not certified as of the date of publication of this rule.* If the product is qualified for preferred Federal procurement through the BioPreferred Program as of January 8, 2025, the product will remain eligible under the legacy rules, which can be found on the BioPreferred Program website (*biopreferred.gov*), until the product is reformulated, discontinued, or until December 9, 2027, whichever comes first. These products must follow the procedures described in § 4270.9 before December 9, 2027 to remain eligible.

(2) *Exclusions.* Motor vehicle fuels, heating oil, and electricity are excluded by statute from this Program. For the purposes of this Program, food, animal feed, and products intended to be ingested or inhaled such as pharmaceuticals or nutraceuticals are also excluded.

(b) *Minimum Biobased Content.* The Biobased Content of the product must be equal to or greater than the Applicable Minimum Biobased Content, as described in paragraphs (b)(1) and (2) of this section.

(1) *Products that fall under one or more Defined Product Categories*—(i) *Product is within a single product category.* If the Biobased Product is within a single Defined Product Category that, at the time the application for certification is submitted, has been designated by USDA for preferred Federal procurement, the Applicable Minimum Biobased Content requirement for the product is the minimum Biobased Content specified for the Defined Product Category as found in the Register of Designated Categories on the BioPreferred Program website at *biopreferred.gov.*

(ii) *Product is within multiple product categories.* If the Biobased Product is marketed within more than one Defined Product Category identified for preferred Federal procurement at the time the application for certification is submitted and uses the same packaging for each use, the product's Biobased Content must meet or exceed the specified minimum Biobased Content for each of the applicable product categories, as found in the Register of Designated Categories on the BioPreferred Program website at *biopreferred.gov,* to become certified in each category. If the product's Biobased Content does not meet the specified minimum Biobased Content for the category that most closely matches the product's primary intended use, the product is not eligible to participate.

(2) *Products that do not meet the definition of at least one Defined Product Category.* If the Biobased Product does not meet the definition of a Defined Product Category that has been designated by USDA at the time the application for certification is submitted, the Applicable Minimum Biobased Content is 30 percent. USDA will evaluate such products as described in § 4270.6 to determine the viability of designating a new product category. If a new category is subsequently designated for preferred Federal procurement, the Applicable Minimum Biobased Content will become, as of the effective date indicated in the Register of Designated Categories, the minimum Biobased Content specified for the newly Defined Product Category.

(c) *Innovative Criteria.* 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 will also consider other documentation of innovative approaches in the growing, harvesting, sourcing, procuring, processing, manufacturing, or application of Biobased Products on a case-by-case basis. USDA may deny or revoke certification for any products whose manufacturers are unable to provide USDA with the documentation necessary to verify claims that innovative approaches are used.

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

(ii) The Biobased Product or material is grown, harvested, manufactured, processed, sourced, or applied in other innovative ways; or

(iii) The Biobased Content of the product or material makes its composition different from products or material used for the same historical uses or applications.

(2) *Manufacturing and processing.* (i) The Biobased 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 Biobased Product or material is manufactured or processed with technologies that reduce waste and 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 (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 agricultural wastes); or

(iii) The raw material used in the product is acquired as a result of activities related to a natural disaster, debris clearing, right-of-way maintenance, tree health improvement, or public safety; or

(iv) The raw material used in the product is grown, harvested, manufactured, processed, sourced, or applied in other sustainable and ethically sourced ways as determined by USDA. Examples include but are not limited to rainforest and habitat conservation, wildlife protection, ethical workplace practices, and adherence to environmental management systems, such as ISO 14001.

§ 4270.5 Procurement programs.

(a) *Integration into the Federal procurement framework.* The Office of Federal Procurement Policy, in cooperation with USDA, has the responsibility to coordinate this policy's implementation in the Federal procurement regulations. These guidelines are not intended to address full implementation of these requirements into the Federal procurement framework. This will be accomplished through revisions to the Federal Acquisition Regulation.

(b) *Federal Agency preferred procurement programs.* (1) Each Federal Agency will maintain and implement a procurement program that will assure that Qualified Biobased Products are purchased to the maximum extent practicable and that is consistent with applicable provisions of Federal procurement laws. Each procurement program will contain:

(i) A preference program for purchasing Qualified Biobased Products;

(ii) A training program to educate the Federal Agency and its contractors on the requirements for purchasing Qualified Biobased Products;

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

(iv) Provisions for reporting quantities and types of Biobased Products purchased by the Federal Agency and its contractors through the BioPreferred Program Portal in the System for Award Management (*https://sam.gov*) as required by 48 CFR 52.223–2; and

(v) Provisions for reviewing and eliminating specifications that prohibit the purchasing of Qualified Biobased Products.

(2) In developing their preference program, Federal agencies will adopt one of the following options, or a substantially equivalent alternative, as part of the procurement program:

(i) A policy of awarding contracts on a case-by-case basis to the vendor offering a Qualified Biobased Product composed of the highest percentage of Biobased Content practicable except when such products:

(A) Are not available within a reasonable timeframe;

(B) Fail to meet performance standards for their intended use, or the reasonable performance standards of the Federal Agency; or

(C) Are not available at a reasonable price.

(ii) A policy of setting minimum Biobased Content specifications in such a way as to assure that the required Biobased Content of Qualified Biobased Products is consistent with section 9002 of FSRIA and the requirements of the guidelines in this part.

(iii) A policy of documenting and reporting cases where it is not possible to award contracts and set specifications in such a way that is consistent with section 9002 of FSRIA and the requirements of this part.

(3) In implementing the preference program, Federal agencies will treat as eligible for the preference Biobased Products from designated countries, as that term is defined in 48 CFR 25.003 (Federal Acquisition Regulation), provided that those products otherwise meet all requirements for participation in the preference program.

(4) Each Federal Agency will continue to establish an annual targeted biobased-only procurement requirement under which the Procuring Agency will issue a certain number of biobased-only contracts when the Procuring Agency is purchasing products, or purchasing services that include the use of products, that are included in a Biobased Product category designated by the Secretary.

(c) *Procurement specifications.* Federal agencies that have the responsibility for drafting or reviewing specifications for products procured by Federal agencies will ensure that their specifications require the use of Qualified Biobased Products, consistent with the guidelines in this part. These specifications must be put in place no later than six months after a designated category of products is finalized and added to the Register of Designated Categories. USDA will identify the allowable time frame for specifications to be put in place in the Register of Designated Categories found on the BioPreferred Program website at *biopreferred.gov*. The Biobased Content of Qualified Biobased Products within a Designated Product Category may vary considerably from product to product based on the mix of Ingredients used in its manufacture. In procuring Qualified Biobased Products, the percentage of Biobased Content should be maximized, consistent with achieving the desired performance for the product.

§ 4270.6 Category designation.

(a) *Procedure.* Designated Product Categories are found in the Register of Designated Categories on the BioPreferred Program website (*biopreferred.gov*).

(1) *General.* In designating product categories, USDA will designate categories composed of generic groupings of specific products, Intermediate Ingredients or Feedstocks, or Complex Assemblies and will identify the minimum Biobased Content for each listed category or subcategory. As product categories are designated for procurement preference, they will be added to the Register of Designated Categories on the BioPreferred Program website at *biopreferred.gov.*

(i) *Adding new product categories to the Register of Designated Categories.* If a product does not fall within a Defined Product Category that has been designated by USDA at the time the application for certification is submitted, the Applicable Minimum Biobased Content is 30 percent, and it will be listed in the other product category. USDA will evaluate the viability of designating new product categories to categorize products in the other product category more appropriately, following the procedure described in paragraphs (a)(1)(i)(A) through (D) of this section.

(A) New Defined Product Categories that are identified during the category evaluation process will be added to the Register of Designated Categories on the BioPreferred Program website (*biopreferred.gov*). Using the data gathered during the certification process, USDA will establish a provisional category name, definition, and minimum Biobased Content for each new product category based on the product(s) that fall within the new category.

(B) The provisional minimum will be in place for a period of six months following the addition of the new Defined Product Category to the Register of Designated Categories. During that time, any product that falls within the category based on the category definition and has a Biobased Content that is either at least 30 percent or within 30 percentage points of the provisional minimum, whichever is higher, will be considered for inclusion.

(C) After a period of six months following the addition of the new product category to the Register of Designated Categories, USDA will re-evaluate the provisional category name, description, and minimum Biobased Content based on the data gathered during the year. At that time, USDA will make final the product category name, description, and minimum Biobased Content, and the category will no longer be considered provisional.

(D) Procuring agencies, in accordance with this part, are encouraged to give a procurement preference for Qualified Biobased Products that falls within provisionally designated categories and are required to give a procurement preference for Qualified Biobased Products that falls within designated categories no later than six months after the finalized product category is added to the Register of Designated Categories. By that date, Federal agencies responsible for products to be procured will ensure that the relevant specifications require the use of Biobased Products that fall within the designated categories.

(ii) *Revising Defined Product Categories on the Register of Designated Categories.* USDA will periodically evaluate the need to update the product categories included in the Register of Designated Categories by reviewing items including, but not limited to, the category names, definitions, minimum Biobased Contents, subcategories, and the need for the category or subcategory. If the data support making updates, USDA will amend the category and publish the updated category to the Register of Designated Categories. No later than six months after the amended category is published to the Register of Designated Categories, procuring agencies, in accordance with this part, will give a procurement preference for Qualified Biobased Products that fall within the amended designated category. By that date, Federal agencies responsible for products to be procured will ensure that the relevant specifications require the use of Biobased Products that fall within the designated categories.

(2) *Public comments.* Interested parties, including manufacturers, vendors, groups of manufacturers and/or vendors, and trade associations may propose an alternative Applicable Minimum Biobased Content for a new, provisional, defined, or Designated Product Category by, in consultation with USDA, developing 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 products that fall within that category to be certified.

(3) *Continued eligibility.* If the applicable required minimum Biobased Content for a product to be eligible to participate in the BioPreferred Program is revised by USDA, the product will remain certified or qualified, as applicable, only if it meets the new minimum Biobased Content level. In those cases where the Biobased Content of a certified or qualified product fails to meet the new minimum Biobased Content level, USDA will notify the Participating Organization that their certification is no longer valid. Such Participating Organizations must notify USDA of their intent to increase the Biobased Content of their product to a level at or above the new minimum Biobased Content level within 120 Days and must re-apply for certification within an additional 120 Days if they wish to continue to participate in the Program. The affected product's certification will expire if the Participating Organization does not notify USDA of the intent to reformulate within 120 Days or if the Participating Organization does not re-apply within the additional 120 Days. Participating Organizations who have re-applied for certification may continue using the existing USDA Certified Biobased Product Label until they receive notification from USDA on the results of their re-application for certification.

(b) *Considerations.* (1) In designating product categories, USDA will consider the availability of Qualified Biobased Products and the economic and technological feasibility of using such products, including price. USDA will gather information on individual Qualified Biobased Products within a category and extrapolate that information to the category level for consideration in designating product categories.

(2) In designating product categories for the BioPreferred Program, USDA will consider as eligible only those products that use innovative approaches in 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 § 4270.4(b)(1) and (2) to be eligible for the BioPreferred Program. USDA will also consider other documentation of innovative approaches in growing, harvesting, sourcing, procuring, processing, manufacturing, or application of Biobased Products on a case-by-case basis.

§ 4270.7 Determining Biobased Content.

(a) *Certification requirements.* For any Biobased Product seeking to participate in the BioPreferred Program, prospective Participating Organizations must submit an application as specified in § 4270.9 and confirm that the product meets the Applicable Minimum Biobased Content requirements and the definition for the Defined Product Category within which the Biobased Product falls. Paragraph (c) of this section addresses how to determine Biobased Content. Upon request, manufacturers and vendors must provide USDA and Federal agencies information to verify Biobased Content claims for Qualified Biobased Products.

(b) *Minimum Biobased Content.* Unless specified otherwise in the designation of a particular product category, the minimum Biobased Content requirements in a specific category designation refer to the organic carbon portion of the product, and not the entire product.

(c) *Determining Biobased Content.* Verification of Biobased Content must be based on third party ASTM/ISO compliant test facility testing using the ASTM Standard Method D6866 (Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis). ASTM Standard Method D6866 determines Biobased Content based on the amount of biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the product.

(1) *General.* Biobased Content will be based on the amount of biobased carbon in the product as a percent of the weight

(mass) of the total organic carbon in the product.

(2) *Complex Assemblies*—(i) *Equation.* The Biobased Content of a Complex Assembly product, where the product has n components whose Biobased Content and organic carbon content can be experimentally determined, may be calculated using the following equation:

$$Biobased\ Content\ of\ Product = \frac{\sum_{i=1}^{n} M_i * BBC_i * OCC_i}{\sum_{i=1}^{n} M_i * OCC_i}$$

Where:

M_i = mass of the ith component

BCC_i = biobased carbon content of the ith component (%)

OCC_i = organic carbon content of the ith component (%)

(ii) *Proportional sampling.* The Biobased Content of an Assembly product may be determined by sub-sampling (by weight) each organic constituent in a proportion representative of its content within the assembly and combining the sub-samples into a measurable quantity so that a single ASTM D6866 analysis of the combined sub-samples is representative of the assembly.

(d) *Products and Intermediate Ingredients or Feedstocks with the same formulation.* In the case of products and Intermediate Ingredients or Feedstocks that are essentially the same formulation but marketed under more than one brand name, Biobased Content test data may be shared as specified in paragraphs (d)(1) and (2) of this section.

(1) *Test exemptions.* In situations where a new product for which certification is sought is composed of the same Ingredients and has the same Biobased Content as a product that has already been certified and tested by a company that the interested party has a direct relationship with, the interested party may apply for a test exemption by referencing the Certified Application of the certified Parent Product in lieu of having the new product undergo Biobased Content Testing using ASTM D6866.

(2) *Families.* In situations where a Participating Organization is seeking certification for two or more products that are composed of the same Ingredients and have the same Biobased Content but are marketed for different uses or under more than one brand name, the products may be grouped in a family. Biobased Content test data must only be obtained for one of the products in the family, and the test data will apply to all products within the family.

§ 4270.8 [Reserved]

§ 4270.9 Initial approval process.

(a) *Application.* Prospective Participating Organizations seeking USDA approval to use the USDA Certified Biobased Product Label and to become qualified for preferred Federal procurement for an eligible Biobased Product must submit an application for each Biobased Product or product family. USDA has developed a standardized application form that must be used. The standardized application form and instructions are available on the BioPreferred Program website (*biopreferred.gov*). The contents of an acceptable application are as specified in paragraphs (a)(1) and (2) of this section.

(1) *General content.* The applicant must provide the information as specified in paragraphs (a)(1)(i) though (viii) of this section.

(i) Contact information, including the name, mailing address, email address, and telephone number of the applicant.

(ii) The product's brand name(s) or other identifying information.

(iii) Intended uses of the product.

(iv) The biobased source(s) of the raw materials used in the product.

(v) Information to document that one or more of the Innovative Criteria specified in § 4270.4(c) has been met.

(vi) The corresponding Designated Product Category classification for preferred Federal procurement.

(vii) The estimated Biobased Content of the product.

(viii) A web link directly to the applicant's website (if available).

(2) *Commitments.* The applicant must verify in the application that the product for which use of the USDA Certified Biobased Product Label is sought is a Biobased Product as defined in § 4270.2. The applicant must also agree to statements in the application that commit the applicant to submitting to USDA the information specified in paragraphs (a)(1)(i) through (viii) of this section, some of which USDA will post to the BioPreferred Program website (*biopreferred.gov*), and to providing USDA with up-to-date information on this website.

(b) *Evaluation of applications*—(1) *Initial evaluation.* USDA will evaluate each application to determine if it contains the information specified in paragraph (a) of this section and to determine compliance with the criteria specified in § 4270.4. If USDA determines that the application is incomplete, USDA will contact the applicant via email with an explanation of the application's deficiencies. Once the deficiencies have been addressed, the applicant may respond to USDA with an explanation of how the application's deficiencies were addressed for re-evaluation by USDA, and USDA will update the application as needed. If the applicant does not provide a response within 90 Days, USDA will make the application inactive.

(2) *Prequalification.* (i) USDA will provide a written response to each applicant as quickly as practicable, but no later than 90 Days after the receipt of a complete application, depending on the responsiveness of the applicant. The written response will inform the applicant of whether the application has been conditionally approved, or prequalified, to move forward to Biobased Content Testing, or has been disapproved. After notification that the application has been conditionally approved, if any of the information specified in paragraphs (a)(1)(i) through (viii) of this section has changed, the applicant must provide updates to USDA (for posting by USDA on the BioPreferred Program website).

(ii) For those applications that are conditionally approved to move forward, Biobased Content Testing must be completed as described in § 4270.7. Test results obtained prior to the application being conditionally accepted or obtained in a manner that does not comply with this part cannot be accepted.

(iii) After Biobased Content Testing has been completed, USDA will evaluate the results and determine if the product meets the criteria described in § 4270.4(b). For those applications that meet the criteria described in § 4270.4(b), USDA will issue a notice of certification, as specified in paragraph (c) of this section. A notice of certification must be issued before the use of the USDA Certified Biobased Product Label can begin.

(iv) For those applications that are disapproved, USDA will inform the applicant in writing of each criterion not met.

(c) *Notice of certification.* Once USDA confirms that the test results document an acceptable Biobased Content, USDA will issue a notice of certification to the applicant that includes the date of certification, name of the product(s) covered by the certification, and certified Biobased Content of the product(s). Upon receipt of a notice of certification, the applicant may begin using the USDA Certified Biobased Product Label on the Certified Biobased Product and may advertise that the product is a Certified Biobased Product. Paragraph (c)(1) of this section presents the procedures for revising the information provided under paragraphs (a)(1)(i) through (viii) of this section after a notice of certification has been issued.

(1) If at any time, during the application process or after a product has been certified, any of the information specified in paragraphs (a)(1)(i) through (viii) of this section changes, the applicant must notify USDA of the change within 30 Days. Such notification must be provided in writing via email to USDA. Failure to notify USDA of any change made to a Certified Biobased Product may result in the violation actions described in § 4270.12.

(2) After receiving the notice of certification, the Participating Organization may request to display a Biobased Content percentage that is lower than the content measured by the ASTM D6866 test results but is greater than or equal to the applicable category minimums. Such requests must be sent in writing via email to USDA and must be approved by USDA.

(3) If, after reviewing the test results, USDA determines that the product does not meet the Applicable Minimum Biobased Content, USDA will issue a notice of denial of certification and will inform the applicant in writing via email of each criterion not met.

(d) *Term of certification*—(1) *General.* The effective date of certification is included in the notice of certification from USDA. Except as specified in paragraphs (d)(1)(iii) and (iv) and (d)(2) through (4) of this section, certifications will remain in effect for five years. The applicant will be notified 90 Days before the certification expires, at which time, the product must be re-tested in accordance with the procedure as specified in § 4270.7.

(i) If the certification is not renewed within the 90 Days, the product certification will expire, the product will no longer be a Certified Biobased Product, and the product information will be removed from the BioPreferred Program website (*biopreferred.gov*).

(ii) If a Participating Organization whose product certification has expired wishes to renew the certification, the participant must follow the procedures required for original certification.

(iii) All certifications are subject to periodic USDA auditing activities, as described in § 4270.15. If a Participating Organization fails to participate in such audit activities or if such audit activities reveal Biobased Content violations, as specified in § 4270.12, the certification will be subject to suspension and revocation according to the procedures specified in § 4270.12(c)(3).

(iv) If USDA discovers that a certification has been issued for an ineligible product as a result of errors on the part of USDA during the approval process, USDA will notify the Participating Organization in writing that the certification is revoked effective 30 Days from the date of the notice.

(2) *Reformulations.* If at any time during the term of certification a Certified Biobased Product is reformulated, the participant must notify USDA of the change. USDA will consider the changes and inform the participant if re-testing is required as specified in paragraphs (d)(2)(i) through (iii) of this section.

(i) If the product formulation or raw materials of a Certified Biobased Product are changed such that the Biobased Content of the product is reduced to a level below that reported in the Certified Application, the existing certification will no longer be valid for the product under these revised conditions and the Participating Organization and its Designated Representatives must discontinue affixing the USDA Certified Biobased Product Label to the product and must not initiate any further advertising of the product using the USDA Certified Biobased Product Label. USDA will consider a product under such revised conditions to be a reformulated product, and the Participating Organization must submit a new application for certification using the procedures specified in paragraph (a) of this section.

(ii) If the product formulation of a Certified Biobased Product is changed such that the Biobased Content of the product is increased from the level reported in the Certified Application, and the raw materials are not significantly changed, the existing certification will continue to be valid for the product.

(iii) If the applicable required minimum Biobased Content for a product to participate in the BioPreferred Program is revised by USDA, Participating Organizations must follow the requirements specified in § 4270.6(a)(3).

(3) *Test exemptions.* For those products that are exempt from Biobased Content Testing as described in § 4270.7, the test exempt certification will expire at the same time as the Certified Application of the Parent Product.

(4) *Special considerations.* (i) For those Participating Organizations who have Qualified Biobased Products that are not certified as of January 8, 2025. USDA will solicit Biobased Content test data obtained using the ASTM D6866 test method. Participants who provide USDA with ASTM D6866 test data that has been obtained within the past five years from January 8, 2025 and whose products meet the requirements as described in § 4270.4 will receive certification for their products covered by the test data. The term of certification as described in paragraph (d)(1) of this section will then apply.

(ii) Participants who have Qualified Biobased Products that are not certified as of January 8, 2025 and do not provide recent ASTM D6866 test results within three years of the publication of this rule will be required to have their products tested and certified as described in § 4270.7. If certification is not completed within three years of the publication of this rule, these Biobased Products will no longer be listed as Qualified Biobased Products on the BioPreferred Program's website (*biopreferred.gov*) and will be removed from the BioPreferred Program's website (*biopreferred.gov*).

(iii) For those participants who have Certified Biobased Products that have been certified for more than five years as of the date of publication of this rule, USDA will require that the certification be renewed as described in paragraph (d)(1) of this section within three years of January 8, 2025. If an application for renewal is not completed within three years, the product certification will expire, the product will no longer be a Certified Biobased Product, and the product information will be removed from the BioPreferred Program website (*biopreferred.gov*).

§ 4270.10 [Reserved]

§ 4270.11 Requirements associated with promotional certification materials.

(a) *How participation in the BioPreferred Program can be promoted.* Guidance on promoting participation in the BioPreferred Program is provided in paragraphs (a)(1) and (2) of this section. USDA will evaluate additional requests for uses of promotional materials or references to the Program and will offer

guidance on the BioPreferred Program website (*biopreferred.gov*).

(1) *Participating Organizations.* Only Participating Organizations that have received a notice of certification, or Designated Representatives of the Participating Organization, may utilize certification materials provided by the BioPreferred Program. A Participating Organization that has received a notice of certification for a product under this part:

(i) May use the USDA Certified Biobased Product Label (in one of the approved variations, as applicable) on the product, its packaging, and other related materials including, but not limited to, advertisements, catalogs, specification sheets, procurement sheets, procurement databases, promotional material, websites, or user manuals for that product, according to the requirements set forth in this section.

(ii) Is responsible for the manner in which the USDA Certified Biobased Product Label is used by its companies, as well as its Designated Representatives, including advertising agencies, marketing and public relations firms, and subcontractors.

(2) *Other Entities.* Other Entities who have entered into a partnership agreement with USDA may use the BioPreferred Program's promotional certification materials to advertise or promote Certified Biobased Products in materials including, but not limited to, advertisements, catalogs, procurement databases, websites, and promotional and educational materials. Other Entities may use:

(i) The Certification Icon;

(ii) The phrase ''USDA Certified Biobased Product/Package/Product & Package,'' as applicable; and

(iii) The BioPreferred Program name in general statements as described in paragraph (b) of this section, as long as the statements do not imply that a non-certified product is certified or endorsed by USDA.

(b) *Correct usage of the USDA Certified Biobased Product Label and other promotional certification materials.* (1) The USDA Certified Biobased Product Label can be affixed only to Certified Biobased Products and their associated packaging.

(2) The USDA Certified Biobased Product Label may be used in material including, but not limited to, advertisements, catalogs, procurement databases, websites, and promotional and educational materials to distinguish certified products from those that are not certified. The USDA Certified Biobased Product Label may be used in advertisements for both Certified Biobased Products and non-certified/labeled products if the advertisement clearly indicates which products are certified/labeled. Care must be taken to avoid implying that any non-certified products are certified.

(3) When educating the public about the USDA Certified Biobased Product Label, the watermarked sample version of the USDA Certified Biobased Product Label may be used without reference to a specific Biobased Product. For example, the following or similar claims are acceptable: ''Look for the 'USDA Certified Biobased Product Label. It means that the product meets USDA standards for the minimum amount of Biobased Content and the manufacturer or vendor has provided relevant information on the product to be posted on the BioPreferred Program website (*biopreferred.gov*).'' This exception allows Participating Organizations or Other Entities to use a sample USDA Certified Biobased Product Label in documents such as corporate reports, but only in an informative manner, not as a statement of product certification.

(4) The USDA Certified Biobased Product Label may appear next to a picture of the Certified Biobased Product(s) or text describing it.

(5) The USDA Certified Biobased Product Label must stand alone and not be incorporated into any other certification mark or logo designs.

(6) The USDA Certified Biobased Product Label may be embossed, stamped, or used as a watermark provided the use does not violate any BioPreferred Program brand standards or usage restrictions specified in this part.

(7) The text portion of the USDA Certified Biobased Product Label must be written in English and may not be translated, even when the certification mark is used outside of the United States.

(c) *Incorrect usage of the USDA Certified Biobased Product Label and other promotional certification materials.* (1) The USDA Certified Biobased Product Label will not be used on any product that has not been certified by USDA as a ''USDA Certified Biobased Product.''

(2) The USDA Certified Biobased Product Label will not be used in a way that does not maintain the integrity of the label and the BioPreferred Program.

(3) The word ''BioPreferred'' will not be used as a descriptor for anything other than the Program, including but not limited to products, categories, and companies. The BioPreferred Program name, the word ''BioPreferred,'' and the phrase ''USDA Certified Biobased Product'' are not interchangeable. For example, certified products may not be referenced as being ''BioPreferred products.''

(4) The USDA Certified Biobased Product Label will not be used on any advertisements or informal materials where both Certified Biobased Products and non-certified products are shown unless it is clear that the USDA Certified Biobased Product Label applies to only the Certified Biobased Product(s).

(5) The BioPreferred Program name and the USDA Certified Biobased Product Label will not be used to imply endorsement by USDA or the BioPreferred Program of any particular product, service, or company.

(6) The BioPreferred Program name and the USDA Certified Biobased Product Label will not be used in any form that could be misleading to the consumer.

(7) The BioPreferred Program name and the USDA Certified Biobased Product Label will not be used by manufacturers or vendors of Certified Biobased Products in a manner disparaging to USDA or any other government body.

(8) The BioPreferred Program name, the word ''BioPreferred,'' the USDA Certified Biobased Product Label, and the Certification Icon will not be altered or incorporated into other label or logo designs.

(9) The USDA Certified Biobased Product Label will not be used on business cards, company letterhead, company stationary, or email signatures.

(10) The BioPreferred Program name, the word ''BioPreferred,'' the USDA Certified Biobased Product Label, and the Certification Icon will not be used in, or as part of, any company name, logo, product name, service, or website, except as may be provided for in this part.

(11) The BioPreferred Program name, the word ''BioPreferred,'' the USDA Certified Biobased Product Label, and the Certification Icon will not be used in a manner that violates any of the applicable requirements contained in this part.

(d) *Imported products.* The USDA Certified Biobased Product Label can be used only with a product that is certified by USDA under this part. The USDA Certified Biobased Product Label cannot be used to imply that a product meets or exceeds the requirements of biobased programs in other countries. Products imported for sale in the U.S. must adhere to the same guidelines as U.S. sourced Biobased Products. Any product sold in the U.S. as a ''USDA Certified Biobased Product/Package/Product & Package'' must have received certification from USDA.

(e) *Elements of the USDA Certified Biobased Product Label.* The USDA Certified Biobased Product Label will consist of the Certification Icon, the Biobased Content percentage, the letters ''FP'' to indicate that the product is qualified for preferred Federal procurement, and one of the three variations of text specified in paragraphs (e)(1) through (3) of this section, as applicable.

(1) USDA Certified Biobased Product: Product.

(2) USDA Certified Biobased Product: Package.

(3) USDA Certified Biobased Product: Product & Package.

(f) *Physical aspects of the USDA Certified Biobased Product Label.* The USDA Certified Biobased Product Label elements may not be altered, cut, separated into components, or distorted in appearance or perspective. The USDA Certified Biobased Product Label must appear only in the colors specified in paragraphs (f)(1) and (2) of this section unless approval is given by USDA for an exception.

(1) A multi-color version of the USDA Certified Biobased Product Label is preferred. The USDA Certified Biobased Product Label colors to be applied will be stipulated in the ''USDA BioPreferred Program Brand and Marketing Guidelines'' document available on the BioPreferred Program website (*biopreferred.gov*).

(2) Black or white outline versions of the USDA Certified Biobased Product Label are acceptable.

(g) *Placement of the USDA Certified Biobased Product Label.* (1) The USDA Certified Biobased Product Label can appear directly on a product, its associated packaging, in user manuals, and in other materials including, but not limited to, advertisements, catalogs, procurement databases, and promotional and educational materials.

(2) The USDA Certified Biobased Product Label will not be placed in a manner that is ambiguous about which product is a Certified Biobased Product or that could indicate certification of a non-certified product.

(3) When used to distinguish a Certified Biobased Product in material including, but not limited to, advertisements, catalogs, procurement databases, websites, and promotional and educational materials, the USDA Certified Biobased Product Label must appear near a picture of the product or text describing it.

(i) If all products on a page are Certified Biobased Products with the same Biobased Content percentage, the USDA Certified Biobased Product Label may be placed anywhere on that page.

(ii) If a page contains a mix of Certified Biobased Products and non-certified Biobased Products, the USDA Certified Biobased Product Label will be placed in close proximity to the Certified Biobased Products. An individual USDA Certified Biobased Product Label near each Certified Biobased Product may be necessary to avoid confusion.

(h) *Minimum size and clear space requirements for the USDA Certified Biobased Product Label.* (1) The USDA Certified Biobased Product Label may be sized to fit the individual application as long as the correct proportions are maintained, and all elements of the USDA Certified Biobased Product Label remain legible.

(2) The USDA Certified Biobased Product Label must be surrounded by a border of clear space that must be of sufficient width to offset it from surrounding images and text to avoid confusion. If a one-color outline version of the USDA Certified Biobased Product Label is used, the USDA Certified Biobased Product Label must appear on a solid background that is a contrasting color.

(i) *Where to obtain copies of the promotional certification materials.* The USDA Certified Biobased Product Label and other associated promotional materials including the USDA BioPreferred Program Brand and Marketing Guidelines are available at the BioPreferred Program website (*biopreferred.gov*).

§ 4270.12 Violations of program requirements.

This section identifies the types of actions that USDA considers violations under this part and the penalties (*e.g.,* the suspension or revocation of certification) associated with such violations.

(a) *General.* Violations under this section occur on a per product basis and the penalties are to be applied on a per product basis. Entities cited for a violation under this section may appeal using the provisions in § 4270.13. If certification for a product is revoked, the Participating Organization whose certification has been revoked may seek re-certification for the product specified under the provisions in § 4270.9.

(b) *Types of violations.* Actions that will be considered violations of this part include, but are not limited to, the examples as described in paragraphs (b)(1) through (4) of this section:

(1) *Biobased Content violations.* USDA reserves the right to request occasional testing of Certified Biobased Products without notice to compare the Biobased Content of the tested product with the product's Applicable Minimum Biobased Content and the Biobased content reported in its Certified Application. Such testing will be conducted using ASTM Method D6866 in accordance with the procedures discussed in § 4270.7.

(i) If the testing shows that the Biobased Content of a Certified Biobased Product is less than its Applicable Minimum Biobased Content, then a violation of this part will have occurred.

(ii) If the testing shows that the Biobased Content is less than that reported in the product's Certified Application but is still equal to or greater than its Applicable Minimum Biobased Content(s), USDA will provide written notification to the Participating Organization. The participant must submit, within 90 Days from receipt of USDA written notification, a new application for the lower Biobased Content. Failure to submit a new application within 90 Days will be considered a violation of this part.

(A) The participant can submit a new application to use the Biobased Content reported to it by USDA in the written notification.

(B) Alternatively, the participant may submit a new application and elect to retest the product in question. If the participant elects to retest the product, it must test a sample of the current product, and the procedures in § 4270.9 must be followed. USDA reserves the right to select the sample that will be submitted for retesting.

(2) *USDA Certified Biobased Product Label violations.* (i) Any usage or display of the USDA Certified Biobased Product Label that does not conform to the requirements specified in § 4270.10.

(ii) Affixing the USDA Certified Biobased Product Label to any product prior to issuance of a notice of certification from USDA.

(iii) Affixing the USDA Certified Biobased Product Label to a Certified Biobased Product during periods when certification has been suspended or revoked.

(iv) Using an image or icon other than the official USDA Certified Biobased Product Label in association with certification claims.

(3) *Application violations.* Knowingly providing false or misleading information in any application for certification of a Biobased Product.

(4) *BioPreferred Program website violations.* Failure to provide USDA with updated information when the information for a Certified Biobased Product becomes outdated or when new information for a Certified Biobased Product becomes available.

(c) *Noncompliance and escalation of actions.* Any identified violations as described in paragraphs (b)(1) through (4) are considered noncompliance with this part. USDA will respond to noncompliance through actions that include, but are not limited to, the examples as described in paragraphs (c)(1) through (4).

(1) *Noncompliance.* USDA will provide the applicable Participating Organization and any Other Entity involved, as known to USDA, written notification of any noncompliance identified by USDA, as well as actions that should be taken to resolve the noncompliance. USDA may remove the product or company information from the BioPreferred Program website (*biopreferred.gov*) until the noncompliance is corrected. If satisfactory resolution of the noncompliance is not reached, USDA will consider the noncompliance to be a violation of this part and may pursue further action as discussed in paragraphs (c)(2) through (4) of this section.

(2) *Violation.* USDA will first issue a notice of violation. Entities who receive a notice of violation for any violation must correct the violation(s) within 30 Days from receipt of the notice of violation. If the entity receiving a notice of violation is a Participating Organization, USDA will also issue notices of suspensions and revocations, as discussed in paragraph (c)(3) of this section. USDA reserves the right to further pursue action against these entities as provided in paragraph (c)(4) of this section. If the entity receiving a notice of violation is an Other Entity (*i.e.,* not a Participating Organization), then USDA may pursue action according to paragraph (c)(4) of this section.

(3) *Suspension and Revocation.* (i) If a violation is applicable to a Participating Organization and the participant fails to make the required corrections within 30 Days of receipt of a notice of violation, USDA will notify the participant, via email and certified mail as appropriate, of the continuing violation, and the certification for that product will be suspended. As of the date that the participant receives a notice of suspension, the participant and their Designated Representatives must not affix the USDA Certified Biobased Product Label to any of that product or associated packaging not already labeled and must not distribute any additional products bearing the USDA Certified Biobased Product Label. USDA will both remove the product information from the BioPreferred Program website (*biopreferred.gov*) and actively communicate the product suspension to buyers in a timely and overt manner.

(ii) If, within 30 Days from receipt of the notice of suspension, the participant whose USDA product certification has been suspended makes the required corrections and notifies the USDA that the corrections have been made, the participant and their Designated Representatives may, upon receipt of USDA approval of the corrections, resume use of the USDA Certified Biobased Product Label. USDA will also restore the product information to the BioPreferred Program website (*biopreferred.gov*).

(iii) If, following the 30-Day period, the participant does not make the required corrections, the certification for that product will be revoked. As of that date, the participant must not affix the USDA Certified Biobased Product Label to any of that product not already labeled. In addition, the participant and their Designated Representatives are prohibited from further sales of the product to which the USDA Certified Biobased Product Label is affixed, and the product will no longer be listed on the BioPreferred Program website (*biopreferred.gov*) as a product qualified for preferred Federal procurement.

(iv) If a participant whose product certification has been revoked wishes to participate in the BioPreferred Program again, the participant must follow the procedures required for the original certification specified in § 4270.9.

(4) *Other remedies.* In addition to the suspension or revocation of the product certification, 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.

§ 4270.13 Appeal process.

Participating Organizations whose product certification has been revoked may appeal to USDA.

(a) *Filing an appeal.* (1) Appeals to the Agency must be filed within 30 Days of receipt by the appellant of a notice of suspension and revocation. Appeals must be filed in writing via email to the BioPreferred Program's email address as noted on the BioPreferred Program website (*biopreferred.gov*).

(2) All appeals must include a copy of the adverse decision and a statement of the appellant's reasons for believing that the decision was not made in accordance with the applicable Program regulations, policies, or procedures, or otherwise was not proper.

(b) *Reviewing appeals.* (1) If USDA sustains a Participating Organization's appeal of a notice of suspension and revocation, the participant and its Designated Representative(s) may immediately resume affixing the USDA Certified Biobased Product Label to the Certified Biobased Product and sell and distribute the Certified Biobased Product with the USDA Certified Biobased Product Label. In addition, USDA will reinstate the product's information to the BioPreferred Program website (*biopreferred.gov*).

(2) If USDA denies a participant's appeal of a notice of suspension and revocation, then the notice of suspension and revocation stands.

(c) *Appeals of decisions made on appeals.* Appeals of any of the BioPreferred Program's decisions may be made to the Rural Business-Cooperative Service Administrator. Appeals must be made, in writing, within 30 Days of receipt of USDA's decision and addressed to: Rural Business-Cooperative Service Administrator, 1400 Independence Avenue SW, Washington, DC 20250–1522 STOP 3250. If the Rural Business-Cooperative Service Administrator sustains an appeal, the provisions of paragraph (b) of this section will apply.

§ 4270.14 Reporting and recordkeeping.

(a) *Providing product information to Federal agencies*—(1) *Informational website.* An informational USDA website implementing section 9002 of FSRIA can be found at: *biopreferred.gov.* USDA will maintain a web-based information site for participating originations with Certified Biobased Products and Federal agencies to exchange information, as described in paragraphs (a)(1)(i) through (iv) of this section as applicable.

(i) *Product information.* The website will, as determined to be necessary by the Secretary based on the availability of data, provide the information specified in § 4270.9. USDA encourages Federal agencies to utilize this website to obtain current information on designated categories, contact information for Participating Organizations, and access to information on product characteristics relevant to procurement decisions. In addition to any information provided on the website, participants are expected to provide relevant information to Federal agencies, subject to the limitations specified in paragraph (a)(1)(ii) of this section, with respect to product characteristics, including verification of such characteristics if requested.

(ii) *Providing information on price and environmental and health benefits.* Federal agencies may not require Participating Organizations with Certified Biobased Products to provide procuring agencies with more data than would be required of other manufacturers or vendors offering products for sale to a Procuring Agency (aside from data confirming the Biobased Contents of the products) as a condition of the purchase of Biobased Products from the participant. USDA encourages industry Stakeholders to provide information on environmental and public health benefits based on industry accepted analytical approaches including, but not limited to, material carbon footprint analysis, the International Standards Organization (ISO) 14040, the ASTM International life-cycle cost method (E917) and multi-attribute decision analysis (E1765), and the British Standard Institution PAS 2050. USDA will make such Stakeholder-supplied information available on the BioPreferred Program website (*biopreferred.gov*).

(iii) *Industry standards test information.* The product information will include any relevant industry standard test information as supplied by the participant. In assessing performance of a Certified Biobased Product, USDA requires that procuring agencies rely on results of performance tests using applicable ASTM, ISO, Federal or military specifications, or other similarly authoritative industry test standards. Such testing may be conducted by a laboratory compliant with the requirements of the standards body. The procuring official will decide whether performance data must be brand-name specific in the case of products that are essentially of the same formulation.

(iv) *Biodegradability information.* If Biodegradability is claimed by a participant with a Certified Biobased Product as a characteristic of that product, USDA requires that, if requested by procuring agencies, these claims be verified using the appropriate, product-specific ASTM Biodegradability standard(s). Such testing must be conducted by an ASTM/ISO-compliant laboratory. The procuring official will decide whether Biodegradability data must be brand-name specific in the case of products that are essentially of the same formulation. ASTM Biodegradability standards include:

(A) D5338 (Standard Test Method for Determining Aerobic Biodegradation of Plastic Materials Under Controlled Composting Conditions);

(B) D5864 (Standard Test Method for Determining the Aerobic Aquatic Biodegradation of Lubricants or Their Components);

(C) D5988 (Standard Test Method for Determining Aerobic Biodegradation of Plastic Materials in Soil);

(D) D6006 (Standard Guide for Assessing Biodegradability of Hydraulic Fluids);

(E) D6400 (Standard Specification for Compostable Plastics) and the standards cited therein;

(F) D6139 (Standard Test Method for Determining the Aerobic Aquatic Biodegradation of Lubricants of Their Components Using the Gledhill Shake Flask);

(G) D6868 (Standard Specification for Biodegradable Plastics Used as Coatings on Paper and Other Compostable Substrates); and

(H) D7081 (Standard Specification for Non-Floating Biodegradable Plastics in the Marine Environment).

(2) *Advertising, labeling, and marketing claims.* Participating Organizations are reminded that their advertising, labeling, and other marketing claims, including claims regarding health and environmental benefits of the product, must conform to 16 CFR part 260 (Federal Trade Commission Guides for the Use of Environmental Marketing Claims). For further requirements on marketing claims associated with the BioPreferred Program, refer to the ''USDA BioPreferred Program Brand and Marketing Guidelines'' found on the BioPreferred Program website (*biopreferred.gov*).

(b) *Records.* Participating Organizations will maintain records documenting compliance with this part for each product that has received a notice of certification, as specified in paragraphs (b)(1) through (3) of this section.

(1) The results of all tests, and any associated calculations, performed to determine the Biobased Content of the product.

(2) The notice of certification from USDA, the dates of changes in formulation that affect the Biobased Content of Certified Biobased Products, and the dates when the Biobased Content of Certified Biobased Products were tested.

(3) Documentation of analyses performed by participants to support claims of environmental or human health benefits, life cycle cost, sustainability benefits, and product performance made by the participant.

(c) *Record retention.* For each Certified Biobased Product, records kept under paragraphs (a) and (b) of this section must be maintained for at least three years beyond the end of the certification period (*i.e.,* three years beyond the date the product's term of certification expires). Records may be kept in either electronic format or hard copy format. All records kept in electronic format must be readily accessible and/or provided by request.

§ 4270.15 Oversight and monitoring.

(a) *General.* USDA will conduct oversight and monitoring of Participating Organizations, Designated Representatives, and Other Entities involved with the BioPreferred Program to ensure compliance with this part. This oversight may include, but not be limited to, conducting facility visits to Participating Organizations that have Certified Biobased Products and their Designated Representatives. Participating Organizations are required to cooperate fully with all USDA audit efforts for the enforcement of the BioPreferred Program requirements.

(b) *Biobased Content Testing.* USDA will conduct Biobased Content Testing of Certified Biobased Products as described in § 4270.12(b)(1) to ensure compliance with this part.

(c) *Inspection of records.* Participating Organizations must allow Federal representatives access to the records required under § 4270.14 for inspection and copying during normal business hours.

(d) *Audits.* USDA will conduct an annual desk audit on an ongoing basis to verify that the product and company information supplied by Participating Organizations remain valid. Through the BioPreferred Program website (*biopreferred.gov*), Participating Organizations will be asked to confirm that they still manufacture the product, that the formulation remains the same, and that the information described under § 4270.9(a)(1) remains valid. Participants may also be asked for additional supplemental information.

(1) If a Participating Organization indicates that their product or company information needs to be updated during an annual desk audit, these updates will be incorporated into the BioPreferred Program website (*biopreferred.gov*). If it is indicated that a product is no longer manufactured, the product information will be removed from the BioPreferred Program website (*biopreferred.gov*).

(2) If a Participating Organization fails to complete an annual desk audit, the participant will be considered to be in noncompliance with this part, and the Participating Organization and associated product information will be removed from the BioPreferred Program website (*biopreferred.gov*). USDA reserves the right to revoke product

certification for failure to participate in an audit.

§§ 4270.16–4270.98 [Reserved]

§ 4270.99 OMB control number.

The information collection requirements in this part are approved by the Office of Management and Budget (OMB) and assigned OMB control number 0570–0083.

Xochitl Torres Small,

Deputy Secretary, United States Department of Agriculture.

[FR Doc. 2024–28431 Filed 12–6–24; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Rural Housing Service

Rural Business-Cooperative Service

7 CFR Part 5001

[Docket No. RUS–19–Agency–0030]

RIN 0572–AC56

OneRD Guaranteed Loan Regulation

AGENCY: Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service, USDA.

ACTION: Final rule, correction and correcting amendments.

SUMMARY: On September 30, 2024, Rural Development's Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service, agencies of the United States Department of Agriculture (USDA), published a final rule with comment for the OneRD Guarantee Loan Program (OneRD). The final rule made necessary revisions to the policy and procedures that strengthened the oversight and management of the growing Community Facilities, Water and Waste Disposal, Business and Industry, and Rural Energy for America guarantee portfolios. The final rule had a misspelled subject heading in the preamble. The final rule also contained information in an instruction that was not ultimately in the final rule, an incomplete definition of affiliate, and a misstatement regarding protective advances. This document corrects the final regulation.

DATES: This rule is effective December 9, 2024.

ADDRESSES: Address all comments concerning this correction to Susan Woolard, Regulations Management Division, Rural Development Innovation Center, U.S. Department of Agriculture, 1400 Independence Ave. SW, Stop 1522, Washington, DC 20250; telephone (202) 720–9631; email *susan.woolard@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Woolard, Regulations Management Division, Rural Development Innovation Center, U.S. Department of Agriculture, 1400 Independence Ave. SW, Stop 1522, Washington, DC 20250; telephone (202) 720–9631; email *susan.woolard@usda.gov.*

SUPPLEMENTARY INFORMATION: Rural Development's Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service are issuing corrections to the final rule that published September 30, 2024, at 89 FR 79698.

List of Subjects in 7 CFR Part 5001

Business and industry, Community facility, Energy efficiency improvement, Loan programs, Renewable energy, Rural areas, Rural development, Water and waste disposal.

In FR Doc. 2024–21920 published September 30, 2024, beginning on page 79698, make the following corrections:

■ 1. On page 79699, in the third column, item 11, the title is corrected to read ''*11. § 5001.116 Ineligible CF Projects*''.

■ 2. On page 79702, in the third column, item 39a, is corrected to read:

■ a. § 5001.516(c) is updated to inform lenders that payment of real estate taxes is considered a protective advance but does not require advanced Agency approval.

■ 3. On page 79704, in the third column, Instruction 4 for § 5001.3, is corrected by removing the words ''commercially available''.

■ 4. On page 79711, in the second column, Instruction 14 is corrected to read:

■ 14. Amend § 5001.106 by revising the first sentence of the introductory text, paragraphs (d)(2), (e)(2) and (e)(3) introductory text to read as follows:

For the reasons discussed in the preamble, 7 CFR 5001 is corrected by making the following correcting amendments:

PART 5001—GUARANTEED LOANS.

■ 1. The authority citation for part 5001 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1926(a); 7 U.S.C. 1932(a); and 7 U.S.C. 8107.

■ 2. Amend § 5001.3 by revising the definition of ''affiliate'' to read as follows:

§ 5001.3 Definitions.

* * * * *

Affiliate means a person that is connected with or controlled by another organization. Factors such as ownership, management, current and previous relationships with or ties to another person, and contractual relationships, may be considered in determining whether affiliation exists. Affiliation is determined using the principles outlined in 13 CFR 121.301(f).

* * * * *

■ 3. Amend § 5001.516 by revising paragraph (c) to read as follows:

§ 5001.516 Protective advances.

* * * * *

(c) A lender must obtain written Agency approval for any protective advance that will cumulatively amount to more than $200,000, or 10 percent of the aggregate outstanding balance of principal and interest, whichever is less, to the same borrower. Payment of real estate taxes by the lender is considered a protective advance, subject to the requirements of this section, and does not require Agency advance approval.

Basil I. Gooden,

Deputy Under Secretary, Rural Development.

[FR Doc. 2024–28031 Filed 12–6–24; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–2129; Project Identifier MCAI–2024–00066–T; Amendment 39–22889; AD 2024–23–10]

RIN 2120–AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain ATR—GIE Avions de Transport Régional Model ATR42 and ATR72 airplanes. This AD was prompted by a report that for airplanes converted from passenger to cargo configuration using certain supplemental type certificates, no height limitation for the cargo, when loaded in the cargo compartment, is defined, and that as a consequence, cargo might be loaded up to the ceiling of the cargo compartment. This AD