Proposed Rules

Federal Register
Vol. 77, No. 84
Tuesday, May 1, 2012

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

DEPARTMENT OF AGRICULTURE

7 CFR Part 3201

RIN 0503–AA40

Guidelines for Designating Biobased Products for Federal Procurement

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Proposed rule; amendments.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to amend 7 CFR part 3201, Guidelines for Designating Biobased Products for Federal Procurement, to incorporate statutory changes to section 9002 of the Farm Security and Rural Investment Act (FSRIA) that were effected when the Food, Conservation, and Energy Act of 2008 (FCEA) was signed into law on June 18, 2008.

DATES: USDA will accept public comments on these proposed rule amendments until July 2, 2012.

ADDRESSES: You may submit comments by any of the following methods. All submissions received must include the agency name and Regulatory Information Number (RIN). The RIN for this rulemaking is 0503–AA40. Also, please identify submittals as pertaining to the ''Proposed Amendments to BioPreferred Program Guidelines.''

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: biopreferred@usda.gov.* Include RIN number 0503–AA40 and ''Proposed Amendments to BioPreferred Program Guidelines'' on the subject line. Please include your name and address in your message.
- *Mail/commercial/hand delivery:* Mail or deliver your comments to: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St. SW., Washington, DC 20024.
- Persons with disabilities who require alternative means for communication for regulatory information (Braille, large print, audiotape, etc.) should contact the USDA TARGET Center at (202) 720–2600 (voice) and (202) 690–0942 (TTY).

FOR FURTHER INFORMATION CONTACT: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St. SW., Washington, DC 20024; email: *biopreferred@usda.gov;* phone (202) 205–4008. Information regarding the Federal biobased preferred procurement program (one part of the BioPreferred Program) is available on the Internet at *http://www.biopreferred.gov.*

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

I. Authority

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

II. Background

As originally enacted, section 9002 provides for the preferred procurement of biobased products by Federal agencies. USDA proposed the Guidelines for implementing this preferred procurement program on December 19, 2003 (68 FR 70730–70746). The Guidelines were promulgated on January 11, 2005 (70 FR 1792), and are contained in 7 CFR part 3201, ''Guidelines for Designating Biobased Products for Federal Procurement.''

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

On June 18, 2008, the FCEA was signed into law. Section 9001 of the FCEA includes several provisions that amend the provisions of section 9002 of FSRIA. In an effort to update operational aspects of the BioPreferred program in response to the amendments in the FCEA, USDA initiated a process to review current program guidelines, gather input from government, industry, and public stakeholders on different aspects of the program, and determine appropriate methods for implementing the new requirements established by the FCEA. USDA held three public meetings during the first four months of 2010 to provide an opportunity for stakeholder input. A complete summary for each of the public meetings, including transcripts, presentation slides, and attendee lists can be found on the BioPreferred Web site at: *http://www.biopreferred.gov/BioPreferred_Public_Meetings.aspx.*

The purpose of these proposed rule amendments is to revise the Guidelines to incorporate changes to section 9002 of FSRIA that were included in the FCEA. These proposed guidelines will not affect products that have already been designated for Federal procurement preference. Any changes necessary to the existing designation status of products will be established by future rule-makings.

III. Executive Summary

USDA is proposing to amend 7 CFR part 3201 for two reasons. The first reason is to incorporate statutory changes to section 9002 of the Farm Security and Rural Investment Act made by enactment of the Food, Conservation, and Energy Act (FCEA) of 2008 on June 18, 2008. The second reason is to make improvements to the existing rule based

on several years of operating experience. The remainder of this section presents a brief summary of the proposed amendments to the existing Guidelines and Section IV of this preamble presents more detailed discussions.

A. Purpose of the Regulatory Action

1. Need for the Regulatory Action

The FCEA contains legislative requirements related to the Biobased Markets Program that cannot be implemented without further guidance. For example, the law requires USDA to first designate those intermediate ingredients and feedstocks that are or can be used to produce items that will be subject to program's Federal procurement preference. The law then requires USDA to automatically designate products composed of designated intermediate ingredients and feedstocks, if the content of the designated intermediate ingredients and feedstocks exceeds 50 percent of the product (unless the Secretary determines a different composition percentage is appropriate). Today's proposed rule establishes procedures to carry out this and other provisions of FCEA.

2. Legal Authority for the Regulatory Action

Enactment of the Food, Conservation, and Energy Act (FCEA) of 2008 (Pub. L. 110–234) on June 18, 2008 provides the legal authority for the proposed rule.

B. Summary of Major Provisions of the Proposed Rule

1. Designation of Intermediate or Feedstock Categories

The designation of intermediate ingredient or feedstock categories, as proposed, will follow the same process that USDA uses in the ongoing designation of product categories. USDA will establish a minimum biobased content for each intermediate ingredient or feedstock category based on an evaluation of the available biobased content data. The minimum biobased content requirement will be set at the highest level practicable, considering technological limitations.

USDA recognizes that, in general, the Federal government does not purchase large quantities of intermediate ingredients and feedstocks. Designating such materials, then, represents a means to include finished products made from such designated materials in the Federal biobased products procurement preference program.

The proposed rule presents the procedure for designating those final products that are made from designated intermediate ingredients or feedstocks. The FCEA states that USDA shall ''automatically designate'' final products composed of designated intermediate ingredients or feedstocks if the content of the designated intermediate ingredients or feedstocks exceeds 50 percent of the final product (unless the Secretary determines a different composition percentage is appropriate). Even though the FCEA uses the term ''automatically'' when specifying that these final products are eligible for the Federal procurement preference, they still must be incorporated into the Guidelines by publication in the **Federal Register**. USDA is proposing a procedure whereby the designation of these final products would be done in conjunction with the designation of the intermediate ingredient or feedstock categories.

2. Designation of Complex Assembly Categories

The proposed rule would establish procedures for designating complex assembly products (multi-component assembled products with one or more component being made with biobased material) within the scope of the Federal biobased products procurement preference program. Although section 9001 of FCEA does not specifically mention these multi-component assembled products, USDA believes that including this type of finished product in the BioPreferred program will encourage the increased use of biobased materials and, thus, further advance the objectives of the program.

Today's proposal specifies a proposed procedure for determining the biobased content of complex assemblies. USDA is proposing that the biobased content of complex assemblies be calculated using an equation that yields a weighted average and is based on the summation of the biobased content of each individual component that contains, or could contain, biobased material divided by the total weight of all those components.

USDA selected the approach presented in the equation because it provides results that relate to the maximum amount of biobased material that could potentially be found in each complex assembly, regardless of the amount or type of materials used in other components.

3. Replacement of ''Designated Item'' With ''Designated Category''

The current guidelines use the term ''designated item'' to refer to a generic grouping of biobased products identified in subpart B as eligible for the procurement preference. The use of this term has created some confusion, however, because the word ''item'' is also used in the guidelines to refer to individual products rather than a generic grouping of products. USDA is proposing to replace the term ''designated item'' with the term ''designated product category.'' In addition, USDA is proposing to add a definition for the term ''qualifying biobased product'' to refer to an individual product that meets the definition and minimum biobased content criteria for a designated product category and is, therefore, eligible for the procurement preference. Although these changes are not required by section 9001 of FCEA, USDA believes the proposed terms and definitions will add clarity to the rule.

4. Procurement Preference for New and Emerging Markets

USDA is proposing that paragraph (b) of section 3201.5 be amended to add a statement that ''USDA will designate for preferred procurement those product categories and intermediate ingredient or feedstock categories that are determined to create new and emerging markets for biobased materials.'' This statement is being added to emphasize the section 9002 objectives ''to improve demand for biobased products'' and ''to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities.''

This new paragraph is intended to replace the current mature market exclusion, which limits the types of product categories eligible for the Federal procurement preference. USDA is proposing this change to be more consistent with the objectives and legislative intent of the Biobased Markets Program.

C. Costs and Benefits

Type	Costs	Benefits
Qualitative	Unable to quantify at this time	Unable to quantify at this time.
Qualitative	1. Costs of developing biobased alternative products	1. Advances the objectives of the BioPreferred program, as envisioned by Congress in developing the 2002 and 2008 Farm Bills.
	2. Costs to gather and submit biobased product information for BioPreferred Web site.	2. Opens new (Federal) market for biobased products that USDA designates.
	3. Loss of market share by manufacturers who choose not to offer biobased versions of products.	3. Opportunity for new and emerging biobased products to be publicized via BioPreferred Web site.

IV. Discussion of Today's Proposed Rule

USDA is proposing to amend nine sections of 7 CFR part 3201, as described below.

A. 7 CFR 3201.1—Purpose and Scope

Paragraph (b) of 7 CFR 3201.1 is being amended to state that the scope of the guidelines includes the designation of intermediate ingredients and feedstocks that are, or can be, used to produce final products that will be designated and, thus, subject to the Federal procurement preference. The amendments also specify that USDA may designate product categories for which there is only a single product or manufacturer. These proposed amendments are taken directly from the amendatory language found in section 9001 of the FCEA.

Finally, this section is being amended to include the designation of complex assembly products (multi-component assembled products with one or more component being made with biobased material) within the scope of the Federal biobased products procurement preference program. Although section 9001 of FCEA does not specifically mention these multi-component assembled products, USDA believes that including this type of finished product in the BioPreferred program will encourage the increased use of biobased materials and, thus, further advance the objectives of the program.

B. 7 CFR 3201.2—Definitions

USDA is proposing to amend 7 CFR 3201.2 by revising several of the definitions currently in that section and by adding definitions for several other terms. The current guidelines use the term ''designated item'' to refer to a generic grouping of biobased products identified in subpart B as eligible for the procurement preference. The use of this term has created some confusion, however, because the word ''item'' is also used in the guidelines to refer to individual products rather than a generic grouping of products. USDA is proposing to replace the term ''designated item'' with the term ''designated product category.'' In addition, USDA is proposing to add a definition for the term ''qualifying biobased product'' to refer to an individual product that meets the definition and minimum biobased content criteria for a designated product category and is, therefore, eligible for the procurement preference. Although these changes are not required by section 9001 of FCEA, USDA believes the proposed terms and definitions will add clarity to the rule.

Section 9001 of the FCEA authorized USDA to designate biobased intermediate ingredients or feedstocks that can be used in the manufacturing of final products. USDA is, therefore, revising the definition of the term ''biobased product'' to add the phrase ''intermediate ingredient or feedstock'' to the definition. USDA is also adding definitions for the terms ''intermediate ingredient or feedstock'' and ''designated intermediate ingredient or feedstock category'' to refer to a specific individual material and to a generic grouping of materials, respectively. The definition of the term ''intermediate ingredient or feedstock'' is taken from section 9001 of FCEA, except that the phrase referring to materials ''that have undergone a significant amount of value added processing (including thermal, chemical, biological, and mechanical), excluding harvesting operations, offered for sale by a manufacturer or vendor'' has been added. This phrase was added to the statutory definition to further distinguish intermediate ingredients or feedstocks from raw materials (such as corn or soybeans) that have been harvested but have not undergone any other processing. USDA does not intend to designate such raw materials for Federal preferred procurement under this program.

USDA recognizes that the incorporation of biobased materials into one or more of the components of an assembled final product is an important emerging trend. By including these multi-component assembled products in the BioPreferred program, USDA can encourage the increased use of biobased materials and, thus, further advance the objectives of the program. USDA is proposing revisions to the guidelines to facilitate the designation of these assembled products. USDA is proposing that these assembled products be referred to as ''complex'' assemblies and that the term ''complex assembly'' be defined as ''a system of distinct materials and components assembled to create a finished product with specific functional intent where some or all of the system inputs contain some amount of biobased material or feedstock.''

In addition to the changes discussed above, USDA is proposing to simplify the definition of the term ''BEES'' by removing the references to the BEES User Guide and Web site from the current definition, as this information is not necessary to define the term. USDA is also revising the format of the definition of ''procuring agency'' to make it consistent with the other definitions in section 3201.2 and adding a definition of the term ''relevant stakeholder,'' which is used in the proposed revision to § 3201.1 to refer to non-Federal stakeholders having an interest or involvement in the BioPreferred program.

C. 7 CFR 3201.3—Applicability to Federal Procurements; and 7 CFR 3201.4—Procurement Programs

USDA is proposing to revise the text in §§ 3201.3 and 3201.4 to be consistent with the decision to clarify the terminology used in the BioPreferred program by avoiding, to the extent possible, the use of the terms ''item'' and ''designated item.'' As proposed, the references in the sections will be to ''products'' and ''qualifying biobased products,'' as applicable. The revisions in these sections will make the terminology consistent throughout the rule but will have no other effect on the rule.

D. 7 CFR 3201.5—Item Designation

USDA is proposing to change the name of this section to ''Category Designation'' and to make several revisions to the text of the section. In addition to the change in terminology from ''item'' to ''product category,'' the section, as proposed, adds procedures for the designation of both intermediate ingredient or feedstock categories and the final products that are made from

those designated intermediate ingredients or feedstocks. As proposed, paragraph (a) of the section will include three sub-paragraphs.

Sub-paragraph (1) presents the procedure for designating product categories, which are generic groupings of specific products or complex assemblies that are commercially available to procuring agencies.

Sub-paragraph (2) presents the procedure for designating intermediate ingredient or feedstock categories, which are generic groupings of specific intermediate ingredients or feedstocks that are subsequently used in the manufacture of final products. The designation of intermediate ingredient or feedstock categories, as proposed, will follow the same process that USDA uses in the ongoing designation of product categories. USDA will establish a minimum biobased content for each intermediate ingredient or feedstock category based on an evaluation of the available biobased content data. The minimum biobased content requirement will be set at the highest level practicable, considering technological limitations.

USDA recognizes that, in general, the Federal government does not purchase large quantities of intermediate ingredients and feedstocks. Designating such materials, then, represents a means to include finished products made from such designated materials in the Federal biobased products procurement preference program.

Sub-paragraph (3) presents the procedure for designating those final products that are made from designated intermediate ingredients or feedstocks. The FCEA states that USDA shall ''automatically designate'' final products composed of designated intermediate ingredients or feedstocks if the content of the designated intermediate ingredients or feedstocks exceeds 50 percent of the final product (unless the Secretary determines a different composition percentage is appropriate). Even though the FCEA uses the term ''automatically'' when specifying that these final products are eligible for the Federal procurement preference, they still must be incorporated into the Guidelines by publication in the **Federal Register**. USDA is proposing a procedure whereby the designation of these final products would be done in conjunction with the designation of the intermediate ingredient or feedstock categories.

During the process of designating intermediate ingredient or feedstock categories, USDA would also gather information on the various types of final products that are, or can be, made from those intermediate ingredients or feedstocks. Those final products that are identified during the information gathering process would be listed in the **Federal Register** proposed rule for designating the intermediate ingredient or feedstock categories. USDA would also specify in the proposed rule a minimum biobased content for each of the final products based on the amount of designated intermediate ingredients or feedstocks such products contain. Public comment would be invited on the list of potential final products, and the minimum biobased content for each, as well as on the intermediate ingredient or feedstock categories being proposed for designation. Public comments on the list of potential final products would be considered, along with any additional information gathered by USDA, and the list would be finalized. When the final rule designating the intermediate ingredient or feedstock categories, by adding them to subpart B, is published in the **Federal Register**, the list of final products would also be added to subpart B. Once these final products are listed in subpart B, they become eligible for the Federal procurement preference.

USDA is proposing that paragraph (b) of § 3201.5 be amended to add a statement that ''USDA will designate for preferred procurement those product categories and intermediate ingredient or feedstock categories that are determined to create new and emerging markets for biobased materials.'' This statement is being added to emphasize the section 9002 objectives ''to improve demand for biobased products'' and ''to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities.''

USDA is also proposing to amend paragraph (c) of § 3201.5 to delete the exclusion (currently found in 3201.5(c)(2)) for products that are determined to have mature markets. This exclusion is being removed, in conjunction with the additions to paragraph (b), as part of USDA efforts to emphasize the intent to create new and emerging markets for biobased materials.

E. 7 CFR 3201.6—Providing Product Information to Federal Agencies

USDA is proposing to create two sub-paragraphs under paragraph (a) of § 3201.6. The first sub-paragraph describes the type of information provided on the USDA-maintained Web site and has been updated to include reference to products within designated intermediate ingredient or feedstock categories. The second sub-paragraph is new and notifies stakeholders that the BioPreferred Web site will also include the National Testing Center Registry, an electronic listing of recognized industry standard testing organizations.

F. 7 CFR 3201.7—Determining Biobased Content

USDA is proposing to make several revisions to § 3201.7. Proposed paragraphs (a) and (b) have been revised to refer to designated product categories, rather than to designated items, and to include references to the new designated intermediate ingredient or feedstock categories. Proposed paragraph (c) has been updated to refer to the new name for ASTM Standard Method D–6866. Proposed paragraph (c) has also been revised to include three sub-paragraphs.

Sub-paragraph (1) states that the biobased content for biobased products and intermediate ingredients or feedstocks will be based on the amount of biobased carbon in the product or material as percent of the weight (mass) of the total organic carbon in the product or material.

Sub-paragraph (2) states that for final products composed of intermediate ingredient or feedstock materials, the biobased content of the final product will be determined by multiplying the percentage by weight (mass) of the intermediate ingredient or feedstock material in the final product times the percentage of biobased content of the intermediate ingredient or feedstock material and dividing the result by 100. For example: a product is formulated such that 25 percent of its total weight is component A and component A is a biobased feedstock material that is 60 percent biobased; 40 percent of the total weight of the product is component B and component B is a biobased feedstock material that is 80 percent biobased. The biobased content of the final product is 47 percent [(25 * 60 = 1500) + (40 * 80 = 3200) = 4700/100 = 47 percent]. This approach was selected because the manufacturer of the final product can determine the biobased content of their final product using their own formulation data and knowledge of the biobased content of the intermediate ingredient or feedstock as certified by the manufacturer of that material. The cost of performing ASTM 6866 testing on the final product is, thus, avoided.

Sub-paragraph (3) specifies the proposed procedure for determining the biobased content of complex assemblies. USDA is proposing that the biobased content of complex assemblies be calculated using the following equation:

$$BC = \frac{\sum_{i=1}^{n} BC_i * W_i}{W_T}$$

Where:

BC = biobased content of the complex assembly product, (percent);
BC_i = biobased content of an individual component that has the potential to be manufactured with biobased material (percent);
W_i = weight of an individual component that has the potential to be manufactured with biobased material, (mass unit); and
W_T = total weight of all components that have the potential to be manufactured with biobased material (mass unit).

The result of the equation is a weighted average that is based on the summation of the biobased content of each individual component that contains, or could contain, biobased material divided by the total weight of all those components. USDA considered dividing the summation in the numerator of the equation by the total weight of the entire assembled product. However, USDA believes that the results of such an approach could be misleading because the weight of non-biobased components is expected to be drastically different among the various complex assemblies. For example, both an automobile and a computer may have several individual components that could potentially be manufactured with biobased materials. If all of these individual components in both the automobile and the computer were made of 100 percent biobased material, the equation above would result in a calculated biobased content of 100 percent for both the automobile and the computer. This would indicate that both complex assemblies (the automobile or the computer) contained the maximum biobased content possible, given that many components of the completed complex assemblies cannot be made from biobased materials. If, however, the biobased content was based on the total weight of the completed complex assembly, the results would not be comparable for the two example complex assemblies. The possible amount of biobased material in an automobile divided by the total weight of the automobile would be a very small percentage because of the amount of metal and glass in the automobile that cannot be made of biobased material. For the computer, however, the percentage would be considerably higher because a much larger portion of the completed assembly can be made from biobased materials. Thus, USDA selected the approach presented in the equation above because it provides results that relate to the maximum amount of biobased material that could potentially be found in each complex assembly, regardless of the amount or type of materials used in other components. Two example calculations using the proposed approach are provided below.

Example 1:

- A completed complex assembly contains 10 components, 7 of the components are made from steel and the other 3 (components X, Y, and Z) are plastic and could be manufactured using biobased plastic resins
- Component X weighs 5 pounds and is made from a resin with 40 percent biobased content
- Component Y weighs 7 pounds and is made from a resin with 50 percent biobased content
- Component Z weighs 15 pounds and is made from a resin with 60 percent biobased content
- The biobased content of the completed complex assembly is calculated as follows:

$$BC = \frac{((40)(5))+((50)(7))+((60)(15))}{(5)+(7)+(15)}$$

$$= \frac{(200)+(350)+(900)}{(27)}$$

$$= 53.7 = 54 \text{ percent biobased}$$

Example 2:

- Another manufacturer makes a version of the complex assembly described in Example 1 (contains 10 components, 7 of the components are made from steel and the other 3 are plastic and could be manufactured using biobased plastic resins)
- Component X weighs 5 pounds and is made from a petroleum-based resin (0 percent biobased content)
- Component Y weighs 7 pounds and is made from a resin with 20 percent biobased content
- Component Z weighs 15 pounds and is made from a resin with 90 percent biobased content
- The biobased content of the completed complex assembly is calculated as follows:

$$BC = \frac{((0)(5))+((20)(7))+((90)(15))}{(5)+(7)+(15)}$$

$$= \frac{(0)+(140)+(1350)}{(27)}$$

$$= 55.2 = 55 \text{ percent biobased}$$

These examples show how the proposed equation would be applied and also show the importance of using a weighted approach to calculating the biobased content of the completed complex assembly. In example 1, the manufacturer uses three components that all contain about 50 percent biobased content and uses a total of 14.50 pounds of biobased material in the manufacturing of the complex assembly. In example 2, the manufacturer only uses biobased material in two of the three non-steel components, with one of those components containing only 20 percent biobased content. However, because the largest component is made from 90 percent biobased material, the total weight of the biobased material in the completed complex assembly is 14.90 pounds. USDA believes that the proposed method of calculating the biobased content of complex assemblies provides manufacturers the maximum amount of flexibility in their processes while recognizing the actual amount of biobased material usage in a reasonable, equitable, and practical manner.

USDA acknowledges that the determination of which components of a complex assembly have the ''potential'' to be made from biobased materials will require significant input and cooperation from stakeholders. USDA will solicit input from industry trade organizations, as well as individual manufacturers of complex assemblies and intermediate ingredients or feedstocks, during the development of the technical information for the proposed rule designating a complex assembly. USDA will use this information to develop a minimum biobased content to include in the proposed rule. USDA will also ask for additional information in the proposal and will consider any information provided during the public comment period. USDA will use this stakeholder input to identify, for each category of complex assembly products that is designated, the components that have the potential to be made from biobased materials.

USDA is also proposing to revise paragraph (d) of § 3201.7 to add a reference to intermediate ingredients or feedstocks to the existing provisions of the paragraph. Paragraph (d) states that where multiple products are marketed under several brand names but are all essentially the same formulation, the biobased content testing does not have to be brand-name specific. This provision reduces the cost of biobased content testing for manufacturers of products or intermediate ingredients or feedstocks who sell their products or materials under more than one brand name.

G. 7 CFR 3201.8—Determining Life Cycle Costs, Environmental and Health Benefits, and Performance

USDA is proposing to change the name of this section to ''Determining relative price, environmental and health benefits, and performance.'' In the original guidelines, manufacturers were required, under § 3201.8(a), to provide life cycle cost information from either a BEES analysis or a similar analysis using ASTM D7075 when such information was requested by a Federal

agency. In response to the language in section 9001 of the FCEA and numerous comments by stakeholders, USDA previously amended § 3201.8 (76 FR 6322) to eliminate this requirement. In today's proposed revisions, USDA is adding language to paragraph (a) encouraging stakeholders to develop and provide information on environmental and public health benefits, including life cycle costs, associated with their biobased products. While Federal agencies may no longer require such information from manufacturers of biobased products, USDA believes that information from life cycle analyses (LCA) will be a valuable tool in the marketing of biobased products. Numerous stakeholders have provided comments and recommendations regarding the role of LCA in the BioPreferred program and USDA acknowledges that opinions vary widely on the benefits and the most appropriate approach to conducting LCA. USDA considered requiring that manufacturers perform LCA on their biobased products but decided that such a requirement would not be appropriate at this time, given the issues raised by stakeholders. USDA continues to believe, however, that the availability of LCA information, developed using industry-accepted approaches, such as the ASTM D7075 standard or the BEES analytical tool, may be valuable in Federal procurements that take into account human health, environmental, or disposal considerations in the product selection process. Thus, USDA is encouraging biobased product manufacturers to voluntarily perform these analyses and make the information available for posting on the BioPreferred Web site.

H. 7 CFR 3201.9—Funding for Testing

USDA is proposing to remove the existing text related to funding for BEES and other life cycle cost analyses from this section and reserve the section.

I. Subpart B—Designated Items

USDA is proposing to change the title of subpart B of part 3201 to read as follows: ''Subpart B—Designated Product Categories and Intermediate Ingredients or Feedstocks.'' We are proposing this change so that the title will be consistent with the revised terminology being proposed for the BioPreferred Program.

V. Request for Comment

USDA is requesting comment on all aspects of today's proposed amendments to the Guidelines. In particular, USDA requests that stakeholders provide comment on the following topics:

1. Whether the use of the new terms ''product category,'' ''designated product category,'' and ''qualifying biobased product'' add clarity and, if not, suggestions on terms that would be more clear.

2. Whether the proposed procedure for designating final products made from designated intermediate ingredients or feedstocks is a reasonable and workable approach. Commenters are requested to provide recommendations for alternative approaches to any element of the procedure they believe is not appropriate.

3. Whether the proposed methodology for determining the biobased content of final products composed of intermediate ingredient or feedstock materials is appropriate and, if not, specific recommendations on an alternative approach.

4. Whether the definition of the term ''complex assembly'' and the procedure for designating complex assemblies is reasonable and appropriate.

5. Whether the proposed methodology for determining the biobased content of complex assemblies is appropriate and, if not, specific recommendations on an alternative approach.

6. The appropriate role of LCA in the process of qualifying biobased products for the BioPreferred program and, if you believe there is a role for LCA, the most appropriate methodology to use.

7. USDA is proposing to revise § 3201.5(b) to state that ''USDA will designate for preferred procurement those product categories and intermediate ingredient or feedstock categories that are determined to create new and emerging markets for biobased materials.'' USDA is also proposing to remove § 3201.5(c)(2), the exclusion of mature market products. USDA requests comments on what the term ''new and emerging markets'' means to stakeholders.

VI. Regulatory Information

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

1. Need for the Rule

Today's proposed rule would amend the BioPreferred Program Guidelines to establish the regulatory framework for the designation of complex assemblies and intermediate ingredients or feedstocks for Federal procurement preference. The designation of such products is specifically required under the Food, Conservation, and Energy Act of 2008, which states that:

> ''(B) Requirements.—The guidelines under this paragraph shall—
>
> (i) designate those items (including finished products) that are or can be produced with biobased products (including biobased products for which there is only a single product or manufacturer in the category) that will be subject to the preference described in paragraph (2);
>
> (ii) designate those intermediate ingredients and feedstocks that are or can be used to produce items that will be subject to the preference described in paragraph (2);
>
> (iii) automatically designate items composed of intermediate ingredients and feedstocks designated under clause (ii), if the content of the designated intermediate ingredients and feedstocks exceeds 50 percent of the item (unless the Secretary determines a different composition percentage is appropriate).''

2. Benefits

We expect that the rule will result in benefits that justify its cost, but we lack the information to quantify those benefits. This rule expands the scope of products that may be considered for Federal procurement preference. The eligibility of intermediate ingredients or feedstocks and complex assemblies is expected to increase demand for these products once designated, which, in turn, is expected to increase demand for those agricultural products that can serve as ingredients and feedstocks. This Federal procurement preference will thus benefit businesses producing these ingredients and feedstocks. We request comment on the magnitude of this effect.

3. Costs

The anticipated costs of this action would stem from reduced demand for products that do not receive Federal Procurement Preference designation. Producers of ingredients and feedstocks that are not so designated could face a loss of market share within Federal procurement; however, this cost to some producers is a result of implementing

the provisions of the statute. As with benefits, we request information on the costs of this action to help quantify our analysis of impacts.

Although today's proposed rule would establish procedures for designating qualifying biobased product categories, no product categories are proposed to be designated today. The actual designation of biobased product categories under this program will be accomplished through future rulemaking actions and the effect of those rulemakings on the economy will be addressed at that time.

B. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601–602, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

Although the BioPreferred Program ultimately may have a direct impact on a substantial number of small entities, USDA has determined that today's proposed rule itself will not have a direct significant economic impact on a substantial number of small entities. This rule will directly affect Federal agencies, which will be required to consider designated products for purchase. In addition, private sector manufacturers and vendors of biobased products voluntarily may provide information to USDA through the means set forth in this rule. However, the rule imposes no requirement on manufacturers and vendors to do so, and does not differentiate between manufacturers and vendors based on size. USDA does not know how many small manufacturers and vendors may opt to participate at this stage of the program.

As explained above, when USDA issues a proposed rulemaking to designate product categories for preferred procurement under this program, USDA will assess the anticipated impact of such designations, including the impact on small entities. USDA anticipates that this program will positively impact small entities which manufacture or sell biobased products. For example, once product categories are designated, this program will provide additional opportunities for small businesses to manufacture and sell biobased products to Federal agencies. This program also will impact indirectly small entities that supply biobased materials to manufacturers. Additionally, this program may decrease opportunities for small businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. It is difficult for USDA to definitively assess these anticipated impacts on small entities until USDA proposes product categories for designation. This rule does not designate any product categories.

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

This proposed rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

D. Executive Order 12988: Civil Justice Reform

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

E. Executive Order 13132: Federalism

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

F. Unfunded Mandates Reform Act of 1995

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

G. Executive Order 12372: Intergovernmental Review of Federal Programs

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

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

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

I. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under the Guidelines is currently approved under OMB control number 0503–0011.

J. E-Government Act Compliance

USDA is committed to compliance with the E-Government Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for Federal preferred procurement under each designated item. For information pertinent to E-Government Act compliance related to this rule, please contact Ron Buckhalt at (202) 205–4008.

List of Subjects in 7 CFR Part 3201

Biobased products, Procurement.

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

CHAPTER XXXII—OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT

PART 3201—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

1. The authority citation for part 3201 continues to read as follows:

Authority: 7 U.S.C. 8102.

2. Section 3201.1 is amended by revising paragraph (b) to read as follows:

§ 3201.1 Purpose and scope.

* * * * *

(b) *Scope.* The guidelines in this part establish a process for designating categories of products (including those for which there is only a single product

or manufacturer) that are, or can be, produced with biobased components and materials and whose procurement by procuring agencies and other relevant stakeholders will carry out the objectives of section 9002 of FSRIA. The guidelines also establish a process for designating categories of intermediate ingredients and feedstocks that are, or can be, used to produce final products that will be designated and, thus, subject to Federal preferred procurement. The guidelines also establish a process for calculating the biobased content of complex assembly products, whose biobased content cannot be measured following ASTM Standard Method D–6866, and for designating complex assembly product categories.

3. Section 3201.2 is amended by:

a. Revising the definitions of ''BEES,'' ''Biobased product,'' and ''Procuring agency'';

b. Deleting the definition of ''Designated item''; and

c. Adding, in alphabetical order, new definitions for ''Complex assembly,'' ''Designated intermediate ingredient or feedstock category,'' ''Designated product category,'' ''Intermediate ingredient or feedstock,'' ''Qualifying biobased product,'' and ''Relevant stakeholder'' to read as follows:

§ 3201.2 Definitions.

* * * * *

BEES. An acronym for ''Building for Environmental and Economic Sustainability,'' an analytic tool used to determine the environmental and health benefits and life cycle costs of products and materials, developed by the U.S. Department of Commerce National Institute of Standards and Technology.

* * * * *

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

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

(2) an intermediate ingredient or feedstock.

* * * * *

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 inputs contain some amount of biobased material or feedstock.

Designated intermediate ingredient or feedstock category. A generic grouping of biobased intermediate ingredients or feedstocks identified in subpart B of this part that, when used in the production of a resultant final product, qualifies the resultant final product for the procurement preference established under section 9002 of FSRIA.

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

* * * * *

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 a significant amount of value added processing (including thermal, chemical, biological, and mechanical), excluding harvesting operations, offered for sale by a manufacturer or vendor and that is subsequently used to make a more complex compound or product.

* * * * *

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

* * * * *

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

* * * * *

Relevant stakeholder. Individuals or officers of state or local government organizations, private non-profit institutions or organizations, and private businesses or consumers.

* * * * *

4. Section 3201.3 is amended by revising paragraphs (c) and (d) to read as follows:

§ 3201.3 Applicability to Federal procurements.

* * * * *

(c) *Procuring products composed of the highest percentage of biobased content.* Section 9002(a)(2) of FSRIA requires procuring agencies to procure qualifying biobased products composed of the highest percentage of biobased content practicable or such products that comply with the regulations issued under section 103 of Public Law 100–556 (42 U.S.C. 6914b–1). Procuring agencies may decide not to procure such qualifying biobased products if they are not reasonably priced or readily available or do not meet specified or reasonable performance standards.

(d) This guideline does not apply to purchases of qualifying biobased products that are unrelated to or incidental to Federal funding; i.e., not the direct result of a contract or agreement with persons supplying items to a procuring agency or providing support services that include the supply or use of products.

* * * * *

5. Section 3201.4 is amended by revising paragraphs (b) and (c) to read as follows:

§ 3201.4 Procurement programs.

* * * * *

(b) *Federal agency preferred procurement programs.*(1) On or before [date 1 year after publication of the final rule in the **Federal Register**], each Federal agency shall develop a procurement program which will assure that qualifying biobased products are purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement laws. Each procurement program shall contain:

(i) A preference program for purchasing qualifying biobased products,

(ii) A promotion program to promote the preference program; and

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

(2) In developing the preference program, Federal agencies shall 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 qualifying biobased product composed of the highest percentage of biobased content practicable except when such products:

(A) Are not available within a reasonable time;

(B) Fail to meet performance standards set forth in the applicable specifications, or the reasonable performance standards of the Federal agency; or

(C) Are available only at an unreasonable price.

(ii) A policy of setting minimum biobased content specifications in such a way as to assure that the required biobased content of qualifying biobased products is consistent with section 9002 of FSRIA and the requirements of the

guidelines in this part except when such products:

(A) Are not available within a reasonable time;

(B) Fail to meet performance standards for the use to which they will be put, or the reasonable performance standards of the Federal agency; or

(C) Are available only at an unreasonable price.

(3) In implementing the preference program, Federal agencies shall treat as eligible for the preference biobased products from ''designated countries,'' as that term is defined in § 25.003 of the Federal Acquisition Regulation, provided that those products otherwise meet all requirements for participation in the preference program.

(c) *Procurement specifications.* After the publication date of each designated product category and each designated intermediate ingredient or feedstock category, Federal agencies that have the responsibility for drafting or reviewing specifications for products procured by Federal agencies shall ensure within a specified time frame that their specifications require the use of qualifying biobased products, consistent with the guidelines in this part. USDA will specify the allowable time frame in each designation rule. The biobased content of qualifying biobased products within a designated product category or a designated intermediate ingredient or feedstock category may vary considerably from product to product based on the mix of ingredients used in its manufacture. Likewise, the biobased content of qualifying biobased products that qualify because they are made from materials within designated intermediate ingredient or feedstock categories may also vary significantly. In procuring qualifying biobased products, the percentage of biobased content should be maximized, consistent with achieving the desired performance for the product.

6. Section 3201.5 is amended by revising the title of the section and by revising paragraphs (a), (b), and (c) to read as follows:

§ 3201.5 Category designation.

(a) *Procedure.* Designated product categories, designated intermediate ingredient or feedstock categories, and designated final products composed of qualifying intermediate ingredients or feedstocks are listed in subpart B of this part.

(1) In designating product categories, USDA will designate categories composed of generic groupings of specific products 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 subpart B of this part.

(2) In designating intermediate ingredient or feedstock categories, USDA will designate categories composed of generic groupings of specific intermediate ingredients or feedstocks, and will identify the minimum biobased content for each listed category or sub-category. As categories are designated for product qualification, they will be added to subpart B of this part. USDA encourages manufacturers and vendors of intermediate ingredients or feedstocks to provide USDA with information relevant to significant potential applications for intermediate ingredients or feedstocks, including estimates of typical formulation rates.

(3) During the process of designating intermediate ingredient or feedstock categories, USDA will also gather information on the various types of final products that are, or can be, made from those intermediate ingredients or feedstocks. Final products that are identified during the information gathering process will be listed in the **Federal Register** proposed rule for designating the intermediate ingredient or feedstock categories. A minimum biobased content for each of the final products will also be identified based on the amount of designated intermediate ingredients or feedstocks such products contain. Public comment will be invited on the list of potential final products, and the minimum biobased content for each, as well as on the intermediate ingredient and feedstock categories being proposed for designation. Public comments on the list of potential final products will be considered, along with any additional information gathered by USDA, and the list will be finalized. When the final rule designating the intermediate ingredient or feedstock categories, by adding them to subpart B of this part, is published in the **Federal Register**, the list of final products will also be added to subpart B of this part. Once these final products are listed in subpart B of this part, they will become eligible for the Federal procurement preference.

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

(2) In accordance with USDA interpretation of the intent of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), 7 U.S.C. 8102, USDA will designate for preferred procurement those product categories and intermediate ingredient or feedstock categories that are determined to create new and emerging markets for biobased materials.

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

7. Section 3201.6 is amended by revising paragraph (a) to read as follows:

§ 3201.6 Providing product information to Federal agencies.

(a) *Informational Web site.* An informational USDA Web site implementing section 9002 of FSRIA can be found at: *http://www.biopreferred.gov.* USDA will maintain a voluntary Web-based information site for manufacturers and vendors of qualifying biobased products and Federal agencies to exchange information, as described in paragraphs (a)(1) and (2) of this section.

(1) *Product Information.* The Web site will provide information as to the availability, relative price, biobased content, performance and environmental and public health benefits of the designated product categories and designated intermediate ingredient or feedstock categories. USDA encourages manufacturers and vendors to provide product and business contact information for designated categories. Instructions for posting information are found on the Web site itself. USDA also encourages Federal agencies to utilize this Web site to obtain current information on designated categories, contact information on manufacturers and vendors, and access to information on product characteristics relevant to procurement decisions. In addition to any information provided on the Web site, manufacturers and vendors are expected to provide relevant information to Federal agencies, subject to the limitations specified in § 3201.8(a), with respect to product characteristics, including verification of such characteristics if requested.

(2) *National Testing Center Registry.* The Web site will include an electronic listing of recognized industry standard testing organizations that will serve biobased product manufacturers such as ASTM International, Society of Automotive Engineers, and the

American Petroleum Institute. USDA encourages stakeholders to submit information on other possible testing resources to the BioPreferred Program for inclusion.

* * * * *

8. Section 3201.7 is revised to read as follows:

§ 3201.7 Determining biobased content.

(a) *Certification requirements.* For any qualifying biobased product offered for preferred procurement, manufacturers and vendors must certify that the product meets the biobased content requirements for the designated product category or designated intermediate ingredient or feedstock category within which the qualifying 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 for products certified to qualify for preferred procurement.

(b) *Minimum biobased content.* Unless specified otherwise in the designation of a particular product category or intermediate ingredient or feedstock 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 D 6866, ''Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis.'' ASTM Standard Method D 6866 determines biobased content based on the amount of biobased carbon in the material or product as percent of the weight (mass) of the total organic carbon in the material or product.

(1) *Biobased products, intermediate ingredients or feedstocks.* Biobased content will be based on the amount of biobased carbon in the product or material as percent of the weight (mass) of the total organic carbon in the product or material.

(2) *Final products composed of intermediate ingredient or feedstock materials.* The biobased content of final products composed of intermediate ingredient or feedstock materials will be determined by multiplying the percentage by weight (mass) of each intermediate ingredient or feedstock material in the final product times the percentage of biobased content of each intermediate ingredient or feedstock material, summing the results (if more than one intermediate ingredient or feedstock is used), and dividing the resultant value by 100.

(3) *Complex assemblies.* The biobased content of a complex assembly product, where the product has ''n'' components, will be determined using the following equation:

$$BC = \frac{\sum_{i=1}^{n} BC_i * W_i}{W_T}$$

Where:

BC = biobased content of the complex assembly product, (percent);

BC_i = biobased content of an individual component that has the potential to be manufactured with biobased material (percent);

W_i = weight of an individual component that has the potential to be manufactured with biobased material, (mass unit);and

W_T = total weight of all components that have the potential to be manufactured with biobased material (mass unit).

For each category of complex assembly products designated for Federal preferred procurement, USDA will identify, at the time of designation, each individual component that has the potential to be manufactured with biobased material.

(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 need not be brand-name specific.

9. Section 3201.8 is amended by revising the title of the section and by revising paragraphs (a) and (b) to read as follows:

§ 3201.8 Determining relative price, environmental and health benefits, and performance.

(a) *Providing information on relative price and environmental and health benefits.* Federal agencies may not require manufacturers or vendors of qualifying biobased products to provide to procuring agencies 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 manufacturer or vendor. USDA will work with manufacturers and vendors to collect information needed to estimate relative price of biobased products, complex assemblies, intermediate materials or feedstocks as part of the designation process, including application units, average unit cost, and application frequency. 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 ASTM D7075 standard for evaluating and reporting on environmental performance of biobased products, the International Standards Organization ISO 14040, the ASTM International life-cycle cost method (E917) and multi-attribute decision analysis (E1765), the British Standards Institution PAS 2050, and the National Institute of Standards and Technology BEES analytical tool. USDA will make such stakeholder-supplied information available on the BioPreferred Web site.

(b) *Performance test information.* In assessing performance of qualifying biobased products, 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 must 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.

* * * * *

§ 3201.9 [Reserved]

10. Remove and reserve § 3201.9.

11. Revise the heading to Subpart B of Part 3201 to read as follows:

Subpart B—Designated Product Categories and Intermediate Ingredients or Feedstocks

Dated: April 25, 2012.

Oscar Gonzales,

Deputy Assistant Secretary for Administration, U.S. Department of Agriculture.

[FR Doc. 2012–10420 Filed 4–30–12; 8:45 am]

BILLING CODE 3410–93–P