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Title 7: Agriculture

PART 3202—VOLUNTARY LABELING PROGRAM FOR BIOBASED PRODUCTS

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§3202.1 Purpose and scope.

The purpose of this part is to set forth the terms and conditions for voluntary use of the “USDA Certified Biobased Product” certification mark. This part establishes the criteria that biobased products must meet in order to be eligible to become certified biobased products to which the “USDA Certified Biobased Product” mark can be affixed, the process manufacturers and vendors must use to obtain and maintain USDA certification, and the recordkeeping requirements for manufacturers and vendors who obtain certification. In addition, this part establishes specifications for the correct and incorrect uses of the certification mark, which apply to manufacturers, vendors, and other entities. Finally, this part establishes actions that constitute voluntary labeling program violations.

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§3202.2 Definitions.

Applicable minimum biobased content. The biobased content at or above the level set by USDA to qualify for use of the certification mark.

ASTM International (ASTM). American Society for Testing and Materials is a nonprofit organization 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 biobased carbon in the material or product expressed as a percent of weight (mass) of the total organic carbon in the material or product. For BioPreferred Products (products that have been identified for Federal preferred procurement), the biobased content shall be defined and determined as specified in the applicable section of subpart B of part 3201. For all other products, 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. (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 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.

Certification mark. A combination of the certification mark artwork (as defined in this subpart); one of three statements identifying whether the USDA certification applies to the product, the package, or both the product and package; and, where applicable, the letters “FP” to indicate that the product is within a designated product category and eligible for Federal preferred procurement. The certification mark is owned, and its use is managed by, USDA (standard trademark law definition applies).

Certification mark artwork. The distinctive image, as shown in Figures 1-3, that identifies products as USDA Certified.



Figure 1. USDA Certified Biobased Product Certification Mark
(Note: actual size will vary depending on application)



Figure 2. USDA Certified Biobased Product: Package Certification Mark
(Note: actual size will vary depending on application)



Figure 3. USDA Certified Biobased Product & Package Certification Mark
(Note: actual size will vary depending on application)

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Certified biobased product. A biobased product for which the manufacturer or vendor of the product has received approval from USDA to affix to the product the “USDA Certified Biobased Product” certification mark.

Days. As used in this part means calendar days.

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 7 CFR part 3201, that is eligible for the procurement preference established under section 9002 of FSRJA.

Designated representative. An entity authorized by a manufacturer or vendor to affix the USDA certification mark to the manufacturer's or vendor's certified biobased product or its packaging.

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.

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 manufacturer or vendor 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 of the requirements of the ISO 9001 standard, but that is not required to be ISO 9001 certified. ISO 9001 refers to the International Organization for Standardization'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.

Manufacturer. An entity that performs the necessary chemical and/or mechanical processes to make a final marketable product.

Other entity. Any person, group, public or private organization, or business other than USDA, or manufacturers or vendors of biobased products that may wish to use the “USDA Certified Biobased Product” certification mark in informational or promotional material related to a certified biobased product.

Program Manager. The manager of the BioPreferred Program.

Qualified 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 7 CFR part 3201.

Renewable chemical. A monomer, polymer, plastic, formulated product, or chemical substance produced from renewable biomass.

USDA. The United States Department of Agriculture.

Vendor. An entity that offers for sale final marketable biobased products that are produced by manufacturers.

[76 FR 3806, Jan. 20, 2011. Redesignated and amended at 76 FR 53632, Aug. 29, 2011; 80 FR 34036, June 15, 2015]

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§3202.3 Applicability.

(a) *Manufacturers, vendors, and designated representatives.* The requirements in this part apply to all manufacturers and vendors, and their designated representatives, who wish to participate in the USDA voluntary labeling program for biobased products. Manufacturers and vendors wishing to participate in the voluntary labeling program are required to obtain and maintain product certification.

(b) *Other entities.* The requirements in this part apply to other entities who wish to use the certification mark in promoting the sales or the public awareness of certified biobased products.

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§3202.4 Criteria for product eligibility to use the certification mark.

A product must meet each of the criteria specified in paragraphs (a) through (c) of this section in order to be eligible to receive biobased product certification.

A product must meet each of the criteria specified in paragraphs (a) and (b) of this section in order to be eligible to receive biobased product certification.

(a) *Biobased product.* The product for which certification is sought must be a biobased product as defined in §3202.2 of this part.

(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) through (b)(4) of this section.

(1) *Qualified Biobased Products—(i) Product is within a single product category.* If the product is within a single product category that, at the time the application for certification is submitted, has been designated by USDA for Federal preferred procurement, the applicable minimum biobased content is the minimum biobased content specified for the item as found in subpart B of 7 CFR part 3201.

(ii) *Product is within multiple product categories.* If a biobased product is marketed within more than one product category identified for preferred Federal purchasing, uses the same packaging for each product, and the applicant seeks certification of the product, the product's biobased content must meet or exceed the specified minimum biobased content for each of the applicable product categories in order to use the certification mark on the product. However, if the manufacturer packages the product differently for each product category, then the applicable minimum biobased contents are those established under paragraph (b)(1)(i) of this section for each product category for which the applicant seeks to use the certification mark.

(2) *Finished biobased products that are not Qualified Biobased Products.* (i) If the product is not an intermediate ingredient or feedstock, and is not within a product category eligible for Federal preferred procurement at the time the application for certification is submitted, the applicable minimum biobased content is 25 percent. Manufacturers, vendors, groups of manufacturers and/or vendors, and trade associations may propose an alternative applicable minimum biobased content for the product by developing, in consultation with USDA, 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 the product to be labeled.

(ii) If a product certified under paragraph (b)(2)(i) of this section is within a product category that USDA subsequently designates for Federal preferred procurement, the applicable minimum biobased content shall become, as of the effective date of the final designation rule, the minimum biobased content specified for the item as found in subpart B of 7 CFR part 3201.

(3) *Products that are intermediate ingredients or feedstocks.* (i) If the product is an intermediate ingredient or feedstock that is not eligible for Federal preferred procurement at the time the application for certification is submitted, the applicable minimum biobased content is 25 percent. Manufacturers, vendors, groups of manufacturers and/or vendors, and trade associations may propose an alternative applicable minimum biobased content for the product by developing, in consultation with USDA, 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 the intermediate ingredient or feedstock product to be labeled.

(ii) If a product certified under paragraph (b)(3)(i) of this section is within a category that USDA subsequently designates for Federal preferred procurement, the applicable minimum biobased content shall become, as of the effective date of the final designation rule, the minimum biobased content specified for the item as found in subpart B of 7 CFR part 3201.

(4) *Finished products that are complex assemblies.* (i) If the product is a complex assembly, as defined in subpart A of 7 CFR part 3201, that is not eligible for federal preferred procurement at the time the application for certification is submitted, the applicable minimum biobased content is 25 percent. The biobased content shall be determined using the procedures specified in §3201.7(c)(3) of this chapter. Manufacturers, vendors, groups of manufacturers and/or vendors, and trade associations may propose an alternative applicable minimum biobased content for the product by developing, in consultation with USDA, 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 the complex assembly to be labeled.

(ii) If a product certified under paragraph (b)(4)(i) of this section is within a category that USDA subsequently designates for federal preferred procurement, the applicable minimum biobased content shall become, as of the effective date of the final designation rule, the minimum biobased content specified for the item as found in subpart B of 7 CFR part 3201.

(c) *Innovative approach.* 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 certification for any products whose manufacturers are unable to provide USDA with the documentation necessary to verify claims that innovative approaches are used in the growing, harvesting, sourcing, procuring, processing, manufacturing, or application of their biobased products.

(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 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—10, 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

(iii) The raw material used in the product is from an urban environment and is acquired as a result of activities related to a natural disaster, land clearing, right-of-way maintenance, tree health improvement, or public safety.

[76 FR 3806, Jan. 20, 2011. Redesignated and amended at 76 FR 53632, Aug. 29, 2011; 80 FR 34038, June 15, 2015]

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§3202.5 Initial approval process.

(a) *Application*. Manufacturers and vendors seeking USDA approval to use the certification mark for an eligible biobased product must submit a USDA-approved application for each biobased product. A standardized application form and instructions are available on the USDA BioPreferred Program Web site (<http://www.biopREFERRED.gov>). The contents of an acceptable application are as specified in paragraphs (a)(1) through (a)(4) of this section.

(1) *General content*. The applicant must provide contact information and product information including all brand names or other identifying information, intended uses of the product, information to document that one or more of the innovative approach criteria specified in section 3202.4(c) has been met, and, if applicable, the corresponding product category classification for federal preferred procurement. The applicant must also provide a sample of the product to be analyzed by a third-party, ISO 9001 conformant, testing entity for determination of the biobased content. In situations where a new product for which certification is sought is composed of the same biobased ingredients and has the same biobased content as a product that has already been certified, the manufacturer may, in lieu of having the new product tested, self-declare the biobased content of the new product by referencing the tested biobased content of the original certified product. Certification of the original product must have been obtained by either the

manufacturer of the new product or by the supplier of the biobased ingredients used in the new product.

(2) *Certifications.* The applicant must certify in the application that the product for which use of the certification mark is sought is a biobased product as defined in §3202.2 of this part.

(3) *Commitments.* The applicant must sign a statement in the application that commits the applicant to submitting to USDA the information specified in paragraph (c)(1) through (c)(4) of this section, which USDA will post to the USDA BioPreferred Program Web site, and to providing USDA with up-to-date information for posting on this Web site.

(4) *Application fee.* Effective (date to be added after authority to collect fee is granted), applicants must submit an application fee of \$500 with each completed application for certification. Instructions for submitting the application fee are available on the USDA BioPreferred Program Web site (<http://www.biopREFERRED.gov>), along with the application form and instructions.

(b) *Evaluation of applications.* (1) USDA will evaluate each application to determine if it contains the information specified in paragraph (a) of this section. If USDA determines that the application is not complete, USDA will return the application to the applicant with an explanation of its deficiencies. Once the deficiencies have been addressed, the applicant may resubmit the application, along with a cover letter explaining the changes made, for re-evaluation by USDA. USDA will evaluate resubmitted applications separately from first-time applications, and those with the earliest original application submittal date will be given first priority.

(2)(i) USDA will evaluate each complete application to determine compliance with the criteria specified in §3202.4. USDA will provide a written response to each applicant within 60 days after the receipt of a complete application, informing the applicant of whether the application has been conditionally approved or has been disapproved.

(ii) For those applications that are conditionally approved, a notice of certification, as specified in paragraph (c) of this section, must be issued before the use of the certification mark can begin.

(iii) For those applications that are disapproved, USDA will issue a notice of denial of certification and will inform the applicant in writing of each criterion not met. Applicants who receive a notice of denial of certification may appeal using the procedures specified in §3202.6.

(c) *Notice of certification.* After notification that its application has been conditionally approved, the applicant must provide to USDA (for posting by USDA on the USDA BioPreferred Program Web site) the information specified in

paragraphs (c)(1) through (c)(4) of this section. Once USDA confirms that the information is received and complete, USDA will issue a notice of certification to the applicant. Upon receipt of a notice of certification, the applicant may begin using the certification mark on the certified biobased product. Paragraph (c)(5) of this section presents the procedures for revising the information provided under paragraphs (c)(1) through (4) of this section after a notice of certification has been issued.

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

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

(3) The biobased content of the product.

(4) A hot link directly to the applicant's Web site (if available).

(5) If at any time, during the application process or after a product has been certified, any of the information specified in paragraphs (c)(1) through (4) of this section changes, the applicant must notify USDA of the change within 30 days. Such notification must be provided in writing to USDA.

(d) *Term of certification.* (1) The effective date of certification is the date on which the applicant receives a notice of certification from USDA. Except as specified in paragraphs (d)(2)(i) through (d)(2)(v) of this section, certifications will remain in effect as long as the product is manufactured and marketed in accordance with the approved application and the requirements of this subpart.

(2)(i) If the product formulation of a certified product is changed such that the biobased content of the product is reduced to a level below that reported in the approved application, the existing certification will not be valid for the product under the revised conditions and the manufacturer or vendor, as applicable, and its designated representatives must discontinue affixing the certification mark to the product and must not initiate any further advertising of the product using the certification mark. USDA will consider a product under such revised conditions to be a reformulated product, and the manufacturer or vendor, as applicable, 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 product is changed such that the biobased content of the product is increased from the level reported in the approved application, the existing certification will continue to be valid for the product.

(iii) If the applicable required minimum biobased content for a product to be eligible to display the certification mark is revised by USDA, manufacturers and vendors may continue to label their previously certified product only if it meets the new minimum biobased content level. In those cases where the biobased content of

a certified product fails to meet the new minimum biobased content level, USDA will notify the manufacturer or vendor that their certification is no longer valid. Such manufacturers and vendors must increase the biobased content of their product to a level at or above the new minimum biobased content level and must re-apply for certification within 60 days if they wish to continue to use the certification mark. Manufacturers and vendors who have re-applied for certification may continue using the existing certification mark until they receive notification from USDA on the results of their re-application for certification.

(iv) All certifications are subject to USDA periodic auditing activities, as described in §3202.10(d). If a manufacturer or vendor of a certified biobased product fails to participate in such audit activities or if such audit activities reveal biobased content violations, as specified in §3202.8(b)(1), the certification will be subject to suspension and revocation according to the procedures specified in §3202.8(c).

(v) If USDA discovers that a certification has been issued for an ineligible biobased product as a result of errors on the part of USDA during the approval process, USDA will notify the product's manufacturer or vendor in writing that the certification is revoked effective 30 days from the date of the notice.

[76 FR 3806, Jan. 20, 2011. Redesignated and amended at 76 FR 53632, Aug. 29, 2011; 80 FR 34038, June 15, 2015]

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§3202.6 Appeal processes.

An applicant for certification may appeal a notice of denial of certification to the Program Manager. Entities that have received a notice of violation, and manufacturers and vendors of certified biobased products who have received a notice of suspension or revocation, may appeal to the Program Manager.

(a)(1) Appeals to the Program Manager must be filed within 30 days of receipt by the appellant of a notice of denial of certification, a notice of violation, a notice of suspension, or a notice of revocation. Appeals must be filed in writing and addressed to: Program Manager, USDA Voluntary Labeling Program for Biobased Products, Room 361, Reporters Building, 300 Seventh Street, SW., Washington, DC 20024.

(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 applicable program regulations, policies, or procedures, or otherwise was not proper.

(b)(1) If the Program Manager sustains an applicant's appeal of a notice of denial of certification, USDA will issue a notice of certification to the applicant for its biobased product.

(2) If the Program Manager sustains a manufacturer's or vendor's appeal of a notice of violation, USDA will rescind the notice and no further action will be taken by USDA.

(3) If the Program Manager sustains a manufacturer's or vendor's appeal of a notice of suspension, the manufacturer, vendor, and their designated representative (s) may immediately resume affixing the certification mark to the certified biobased product and USDA will reinstate the product's information to the USDA BioPreferred Program Web site.

(4) If the Program Manager sustains a manufacturer's or vendor's appeal of a notice of revocation, the manufacturer or vendor, and its designated representatives may immediately resume affixing the certification mark to the certified biobased product and sell and distribute the certified biobased product with the certification mark. In addition, USDA will reinstate the product's information to the USDA BioPreferred Program Web site.

(c) If the Program Manager sustains a manufacturer's or vendor's appeal of its product's exclusion from the program, the manufacturers or vendors may then apply for certification to use the certification mark on that product, as specified in §3202.5 (a) of this part.

(d) Appeals of any of the Program Manager's decisions may be made to the USDA Assistant Secretary for Administration. Appeals must be made, in writing, within 30 days of receipt of the Program Manager's decision and addressed to: Assistant Secretary for Administration, Room 209A, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250-0103. If the Assistant Secretary for Administration sustains an appeal, the provisions of paragraph (b) of this section will apply.

[76 FR 3806, Jan. 20, 2011. Redesignated and amended at 76 FR 53632, Aug. 29, 2011]

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§3202.7 Requirements associated with the certification mark.

(a) *Who may use the certification mark?* (1) *Manufacturers and vendors.* Only manufacturers and vendors who have received a notice of certification, or designated representatives of the manufacturer or vendor, may affix the official certification mark (in one of the three variations, as applicable) to the product or its packaging. A manufacturer or vendor who has received a notice of certification for a product under this part:

(i) May use the certification mark on the product, its packaging, and other related materials including, but not limited to, advertisements, catalogs, specification sheets, procurement databases, promotional material, Web sites, or user manuals for that product, according to the requirements set forth in this section; and

(ii) Is responsible for the manner in which the mark is used by its companies, as well as its designated representatives, including advertising agencies, marketing and public relations firms and subcontractors.

(2) *Other entities.* (i) Other entities may use the mark to advertise or promote certified biobased products in materials including, but not limited to, advertisements, catalogs, procurement databases, Web sites, and promotional and educational materials, as long as the manufacturer or vendor of the product, or one of their designated representatives, has affixed the mark to the product or its packaging.

(ii) Other entities may use the certification mark; the phrase “USDA Certified Biobased Product/Package/Product & Package,” as applicable; and 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 biobased product is certified.

(b) *Correct usage of the certification mark.* (1) The certification mark can be affixed only to certified biobased products and their associated packaging.

(2) The certification mark may be used in material including, but not limited to, advertisements, catalogs, procurement databases, Web sites, and promotional and educational materials to distinguish products that are certified for use of the label from those that are not certified. The certification mark 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) The certification mark may be used without reference to a specific certified biobased product only when informing the public about the purpose of the certification mark. For example, the following or similar claim is acceptable: “Look for the ‘USDA Certified Biobased Product’ certification mark. It means that the product meets USDA standards for the amount of biobased content and the manufacturer or vendor has provided relevant information on the product to be posted on the USDA BioPreferred Program Web site.” This exception allows manufacturers, vendors, and other entities to use the certification mark in documents such as corporate reports, but only in an informative manner, not as a statement of product certification.

(4) The certification mark may appear next to a picture of the product(s) or text describing it.

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

(6) The certification mark may be used as a watermark provided the use does not violate any usage restrictions specified in this part.

(7) The text portion of the certification mark 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 certification mark.* (1) The certification mark shall not be used on any product that has not been certified by USDA as a “USDA Certified Biobased Product.”

(2) The certification mark shall not be used on any advertisements or informational materials where both certified biobased products and non-certified products are shown unless it is clear that the certification mark applies to only the certified biobased product(s).

(3) The certification mark shall not be used to imply endorsement by USDA or the BioPreferred Program of any particular product, service, or company.

(4) The certification mark shall not be used in any form that could be misleading to the consumer.

(5) The certification mark shall not be used by manufacturers or vendors of certified products in a manner disparaging to USDA or any other government body.

(6) The certification mark shall not be used with an altered certification mark or incorporated into other label or logo designs.

(7) The certification mark shall not be used on business cards, company letterhead, or company stationery.

(8) The certification mark shall not be used in, or as part of, any company name, logo, product name, service, or Web site, except as may be provided for in this part.

(9) The certification mark shall not be used in a manner that violates any of the applicable requirements contained in this part.

(d) *Imported products.* The certification mark can be used only with a product that is certified by USDA under this part. The certification mark 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) *Contents of the certification mark.* The certification mark shall consist of the certification mark artwork, the biobased content percentage, and one of the three variations of text specified in paragraphs (e)(1) through (e)(3) of this section, as applicable.

(1) USDA Certified Biobased Product.

(2) USDA Certified Biobased Product: Package.

(3) USDA Certified Biobased Product & Package.

(f) *Physical aspects of the certification mark.* The certification mark artwork may not be altered, cut, separated into components, or distorted in appearance or perspective. Certification marks that are applied to biobased products that have been designated for preferred Federal procurement will include the letters “FP” as part of the certification mark artwork. The certification mark must appear only in the colors specified in paragraphs (f)(1) through (f)(3) of this section, unless approval is given by USDA for an exception.

(1) A multi-color version of the certification mark is preferred. The certification mark colors to be applied will be stipulated in the “Marketing Guides” document available on the USDA BioPreferred Program Web site (<http://www.biopREFERRED.gov>).

(2) A one-color version of the certification mark may be substituted for the multi-color version as long as the one color used is one of the multi-color choices reapplied without modification. Further guidance on the one-color certification mark application will also be detailed in the “Marketing Guides.”

(3) A black and white version of the certification mark is acceptable.

(g) *Placement of the certification mark.* (1) The certification mark 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 certification mark shall 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, Web sites, and promotional and educational materials, the certification mark must appear near a picture of the product or the text describing it.

(i) If all products on a page are certified biobased products, the certification mark may be placed anywhere on the page.

(ii) If a page contains a mix of certified biobased products and non-certified products, the certification mark shall be placed in close proximity to the certified biobased products. An individual certification mark near each certified biobased product may be necessary to avoid confusion.

(h) *Minimum size and clear space recommendations for the certification mark*—(1) The certification mark may be sized to fit the individual application as long as the correct proportions are maintained and the certification mark remains legible.

(2) A border of clear space must surround the certification mark and must be of sufficient width to offset it from surrounding images and text and to avoid confusion. If the certification mark's color is similar to the background color of the product or packaging, the certification mark in a contrasting (*i.e.*, black, white) color may be used.

(i) *Where to obtain copies of the certification mark artwork*. The certification mark artwork is available at the USDA BioPreferred Program Web site <http://www.biopREFERRED.gov>.

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§3202.8 Violations.

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 §3202.6. If certification for a product is revoked, the manufacturer or vendor whose certification has been revoked may seek re-certification for the product using the procedures specified under the provisions in §3202.5.

(b) *Types of violations*. Actions that will be considered violations of this part include, but are not limited to, the following specific examples:

(1) *Biobased content violations*. The Program Manager will utilize occasional random testing of certified biobased products to compare the biobased content of the tested product with the product's applicable minimum biobased content and the biobased content reported by the manufacturer or vendor in its approved application. Such testing will be conducted using ASTM Method D6866. USDA will provide a copy of the results of its testing to the applicable manufacturer or vendor.

(i) If USDA 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 USDA testing shows that the biobased content is less than that reported by the manufacturer or vendor in its approved application, but is still equal to or greater than its applicable minimum biobased content(s), USDA will provide written notification to the manufacturer or vendor. The manufacturer or vendor 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 manufacturer or vendor can submit in the new application the biobased content reported to it by USDA in the written notification.

(B) Alternatively, the manufacturer or vendor may elect to retest the product in question and submit the results of the retest in the new application. If the manufacturer or vendor elects to retest the product, it must test a sample of the current product.

(2) *Certification mark violations.* (i) Any usage or display of the certification mark that does not conform to the requirements specified in §3202.7.

(ii) Affixing the certification mark to any product prior to issuance of a notice of certification from USDA.

(iii) Affixing the certification mark to a certified biobased product during periods when certification has been suspended or revoked.

(3) *Application violations.* Knowingly providing false or misleading information in any application for certification of a biobased product constitutes a violation of this part.

(4) *USDA BioPreferred Program Web site violations.* Failure to provide to USDA updated information when the information for a certified biobased product becomes outdated or when new information for a certified biobased product becomes available constitutes a violation of this part.

(c) *Notice of violations and associated actions.* USDA will provide the applicable manufacturer or vendor or their designated representatives and any involved other entity known to USDA written notification of any violations identified by USDA. USDA will first issue a preliminary notice that apparent violations have been identified. If satisfactory resolution of the apparent violation is not reached within 30 days from receipt of the preliminary notice, USDA will issue a notice of violation. Entities who receive a notice of violation for a biobased content violation must correct the violation(s) within 90 days from receipt of the notice of violation. Entities who receive a notice of violation for other types of violations also must correct the violation(s) within 90 days from receipt of the notice of violation. If the entity receiving a notice of violation is a manufacturer, a vendor, or a designated representative of a manufacturer or vendor, USDA will pursue notices of suspensions and revocation, as discussed in paragraphs (c)(1) and (c)(2) of this section. USDA reserves the right to further pursue action against these entities as provided for in paragraph (c)(3) of this section. If the entity receiving a notice of violation is an “other entity” (*i.e.*, not a manufacturer, vendor, or designated

representative), then USDA will pursue action according to paragraph (c)(3) of this section. Entities that receive notices of suspension or revocation may appeal such notices using the procedures specified in §3202.6.

(1) *Suspension.* (i) If a violation is applicable to a manufacturer, vendor, or designated representative and the applicable entity fails to make the required corrections within 90 days of receipt of a notice of violation, USDA will notify the manufacturer or vendor, as appropriate, of the continuing violation, and the USDA certification for that product will be suspended. As of the date that the manufacturer or vendor receives a notice of suspension, the manufacturer or vendor and their designated representatives must not affix the certification mark to any of that product, or associated packaging, not already labeled and must not distribute any additional products bearing the certification mark. USDA will both remove the product information from the USDA BioPreferred Program Web site 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 manufacturer or vendor whose USDA product certification has been suspended makes the required corrections and notifies USDA that the corrections have been made, the manufacturer or vendor and their designated representatives may, upon receipt of USDA approval of the corrections, resume use of the certification mark. USDA will also restore the product information to the USDA BioPreferred Program Web site.

(2) *Revocation.* (i) If a manufacturer or vendor whose USDA product certification has been suspended fails to make the required corrections and notify USDA of the corrections within 30 days of the date of the suspension, USDA will notify the manufacturer or vendor that the certification for that product is revoked.

(ii) As of the date that the manufacturer or vendor receives the notice revoking USDA certification, the manufacturer or vendor and their designated representatives must not affix the certification mark to any of that product not already labeled. In addition, the manufacturer or vendor and their designated representatives are prohibited from further sales of product to which the certification mark is affixed.

(iii) If a manufacturer or vendor whose product certification has been revoked wishes to use the certification mark, the manufacturer or vendor must follow the procedures required for original certification.

(3) *Other remedies.* In addition to the suspension or revocation of the certification to use the label, 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.

[76 FR 3806, Jan. 20, 2011. Redesignated and amended at 76 FR 53632, Aug. 29, 2011; 80 FR 34039, June 15, 2015]

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§3202.9 Recordkeeping requirements.

(a) *Records.* Manufacturers and vendors shall maintain records documenting compliance with this part for each product that has received certification to use the label, as specified in paragraphs (a)(1) through (a)(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 date the applicant receives 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 was tested.

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

(b) *Record retention.* For each certified biobased product, records kept under paragraph (a) of this section must be maintained for at least three years beyond the end of the label certification period (*i.e.*, three years beyond the period of time when manufacturers and vendors cease using the certification mark). 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 during a USDA audit.

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§3202.10 Oversight and monitoring.

(a) *General.* USDA will conduct oversight and monitoring of manufacturers, vendors, designated representatives, and other entities involved with the voluntary product labeling program to ensure compliance with this part. This oversight will include, but not be limited to, conducting facility visits of manufacturers and vendors who have certified biobased products, and of their designated representatives. Manufacturers, vendors, and their designated representatives are required to cooperate fully with all USDA audit efforts for the enforcement of the voluntary labeling program.

(b) *Biobased content testing.* USDA will conduct biobased content testing of certified biobased products, as described in §3202.8(b)(1) to ensure compliance with this part.

(c) *Inspection of records.* Manufacturers, vendors, and their designated representatives must allow Federal representatives access to the records required under §3202.9 for inspection and copying during normal Federal business hours.

(d) *Audits.* USDA expects to conduct audits of the voluntary labeling program on an ongoing basis with audit activities conducted every other calendar year (bi-annually). Audit activities will include three stages and will be conducted in sequential order as follows:

(1) Stage 1 auditing includes contacting all participants via email and requesting that they complete a “Declaration of Conformance Form.” Program participants are asked to confirm that they still manufacture the product and that the formulation and manufacturing processes remain the same. Participants are also asked to list all active products and advise the USDA of any complaints regarding the claim of the biobased content. The first Stage 1 auditing activity was completed in 2012 and the second Stage 1 audit will be conducted in 2018.

(2) Stage 2 auditing consists of a random sampling of certified products to confirm the accuracy of biobased content percentages claimed. The participants whose products are selected will be required to submit product samples to be tested by independent testing labs at USDA expense. The first Stage 2 auditing activity began in 2014 and is scheduled to be completed during 2015 and the second Stage 2 audit will be conducted in 2020.

(3) Stage 3 auditing requires manufacturers of products that have been certified for 5 years or more to have their products re-tested at their expense to confirm that the biobased content remains at or above the level at which the product was originally certified. The first Stage 3 auditing activity is scheduled to be completed during 2016 and the second Stage 3 audit will be conducted in 2022.

[76 FR 3806, Jan. 20, 2011. Redesignated and amended at 76 FR 53632, Aug. 29, 2011; 80 FR 34039, June 15, 2015]

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