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- 3201.71 Interior paints and coatings.
- 3201.72 Oven and grill cleaners.
- 3201.73 Slide way lubricants.
- 3201.74 Thermal shipping containers.

SOURCE: 70 FR 1809, Jan. 11, 2005, unless otherwise noted.

AUTHORITY: 7 U.S.C. 8102.

### Subpart A—General

SOURCE: 70 FR 1809, Jan. 11, 2005. Redesignated at 76 FR 53632, Aug. 29, 2011.

#### § 3201.1 Purpose and scope.

(a) *Purpose.* The purpose of the guidelines in this part is to assist procuring agencies in complying with the requirements of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), Public Law 107-171, 116 Stat. 476 (7 U.S.C. 8102), as amended by the Food, Conservation, and Energy

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Act of 2008, Public Law 110-246, 122 Stat. 1651, as they apply to the procurement of the products designated in subpart B of this part.

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

[76 FR 6321, Feb. 4, 2011]

#### § 3201.2 Definitions.

These definitions apply to this part:

*Agricultural materials.* Agricultural-based, including plant, animal, and marine materials, raw materials or residues used in the manufacture of commercial or industrial, nonfood/nonfeed products.

*ASTM International.* ASTM International, a nonprofit organization organized in 1898, is one of the largest voluntary standards development organizations in the world with about 30,000 members in over 100 different countries. ASTM provides a forum for the development and publication of voluntary consensus standards for materials, products, systems, and services.

*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 items, developed by the U.S. Department of Commerce National Institute of Standards and Technology, with support from the U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics (BEES 3.0, Building for Environmental and Economic Sustainability Technical Manual and User Guide, NISTIR 6916, National Institute of Standards and Technology, U.S. Department of Commerce, October 2002). Also, see [http://www.bfrl.nist.gov/oa/software/bees\\_USDA.html](http://www.bfrl.nist.gov/oa/software/bees_USDA.html) for a discussion of how biobased feedstocks are addressed in the BEES Analysis.

*Biobased components.* Any intermediary biobased materials or parts that, in combination with other components, are functional parts of the biobased product.

*Biobased content.* Biobased content shall be determined based on the amount of biobased carbon in the material or product as a percent of weight

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

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

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

*Biological products.* Products derived from living materials other than agricultural or forestry materials.

*Designated item.* A generic grouping of biobased products identified in subpart B that is eligible for the procurement preference established under section 9002 of FSRIA.

*Diluent.* A substance used to diminish the strength, scent, or other basic property of a substance.

*Engineered wood products.* Products produced with a combination of wood, food fibers and adhesives.

*EPA-designated recovered content product.* A product, designated under the Resource Conservation and Recovery Act, that is subject to Federal procurement as specified in section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962), whereby Federal agencies must give preferred procurement to those products composed of the highest percentage of recovered materials practicable, subject to availability, cost, and performance.

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

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

*Filler.* A substance added to a product to increase the bulk, weight, viscosity, strength, or other property.

*Forest thinnings.* Refers to woody materials removed from a dense forest, primarily to improve growth, enhance forest health, or recover potential mortality. (To recover potential mortality means to remove trees that are going to die in the near future.)

*Forestry materials.* Materials derived from the practice of planting and caring for forests and the management of growing timber. Such materials must come from short rotation woody crops (less than 10 years old), sustainably managed forests, wood residues, or forest thinnings.

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

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

*Functional unit.* A measure of product technical performance that provides a common reference to which all environmental and economic impacts of the product are scaled. This reference is necessary to ensure comparability of performance results across competing products. Comparability of results is critical when competing product alternatives are being assessed to ensure that such comparisons are made on a common basis. For example, the functional unit for competing interior paint products may be defined as "protecting one square foot of interior wall surface for 50 years."

*Ingredient.* A component; part of a compound or mixture; may be active or inactive.

*ISO.* The International Organization for Standardization, a network of national standards institutes from 145 countries working in partnership with international organizations, governments, industries, business, and consumer representatives.

*Neat product.* A product that is made of only one ingredient and is not diluted or mixed with other substances.

*Procuring agency* means 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.

*Relative price.* The price of a product as compared to the price of other products on the market that have similar performance characteristics.

*Residues.* That which remains after a part is taken, separated, removed, or designated; a remnant; a remainder; and, for this purpose, is from agricultural materials, biological products, or forestry materials.

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

*Small and emerging private business enterprise.* Any private business which will employ 50 or fewer new employees and has less than \$1 million in projected annual gross revenues.

*Sustainably managed forests.* Refers to the practice of a land stewardship ethic that integrates the reforestation, management, growing, nurturing, and harvesting of trees for useful products while conserving soil and improving air and water quality, wildlife, fish habitat, and aesthetics.

[70 FR 1809, Jan. 11, 2005, as amended at 71 FR 13704, Mar. 16, 2006; 71 FR 42575, July 27, 2006; 76 FR 6321, Feb. 4, 2011]

#### § 3201.3 Applicability to Federal procurements.

(a) *Applicability to procurement actions.* The guidelines in this part apply to all procurement actions by procuring agencies involving items designated by USDA in this part, where the procuring agency purchases \$10,000 or more worth of one of these items during the course of a fiscal year, or where the quantity of such items or of functionally equivalent items purchased during the preceding fiscal year was \$10,000 or more. The \$10,000 threshold applies to Federal agencies as a whole rather than to agency subgroups such as regional offices or subagencies of a larger Federal department or agency.

(b) *Exception for procurements subject to EPA regulations under the Solid Waste Disposal Act.* For any procurement by any procuring agency that is subject to regulations of the Administrator of the Environmental Protection Agency under section 6002 of the Solid Waste Disposal Act as amended by the Resource Conservation Act of 1976 (40 CFR part 247), these guidelines do not apply to the extent that the requirements of this part are inconsistent with such regulations.

(c) *Procuring products composed of the highest percentage of biobased content.* Section 9002(a)(2) requires procuring agencies to procure designated items composed of the highest percentage of biobased content practicable or such products that comply with the regula-

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tions issued under section 103 of Public Law 100–556 (42 U.S.C. 6914b–1), consistent with maintaining a satisfactory level of competition, considering these guidelines. Procuring agencies may decide not to procure such products if they are not reasonably priced or readily available or do not meet specified or reasonable performance standards.

(d) This guideline does not apply to purchases of designated items 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 items.

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

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

(2) Spacecraft systems and launch support equipment.

[71 FR 42575, July 27, 2006, as amended at 73 FR 27953, May 14, 2008; 76 FR 6321, Feb. 4, 2011]

#### § 3201.4 Procurement programs.

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

(b) *Federal agency preferred procurement programs.* (1) On or before January 11, 2006, each Federal agency shall develop a procurement program which will assure that items composed of biobased products will be 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 designated items,

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