



MEMORANDUM

Via E-Mail

DATE: October 16, 2009

TO: Clients and Friends

FROM: The Acta Group, L.L.C.

RE: USDA Proposes Voluntary Labeling Program for Biobased Products

Earlier this year, the United States Department of Agriculture (USDA) proposed a voluntary labeling program for biobased products and solicited comment on its approach. Under the proposed labeling program, manufacturers and vendors could, after obtaining certification from USDA, market the certified biobased product using the “USDA Certified Biobased Product” label. The proposed program would also apply to other entities, such as trade associations, that wish to use the label to promote biobased products. USDA states that the presence of the label would mean that the product meets or exceeds USDA standards for minimum biobased content, and that the manufacturer or vendor has provided relevant information on the product for the USDA BioPreferred website. According to USDA, the purpose of the labeling program would be to promote the sale and use of biobased products in the commercial sector. More information regarding the proposed program is available on the Internet at <http://www.biopreferred.gov/ProposedAndFinalRegulations.aspx>. This memorandum summarizes the proposed program and key comments submitted on it.

Background

Section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA) requires federal agencies to develop procurement programs that give preference to the purchase of biobased products. Section 9002 also requires USDA to provide information to federal agencies on the availability, relative price, performance, and environmental and public health benefits of products within such items and to recommend the minimum level of biobased content to be contained in the products within a designated item. To date, USDA has designated 33



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items used in a variety of applications, including cafeteria ware, personal and institutional cleaning products, construction products, and lubricants and greases. Section 9002 also requires USDA to establish a voluntary labeling program under which USDA authorizes manufacturers and vendors of biobased products to use a “USDA Certified Biobased Product” label. The voluntary labeling program is intended to encourage the purchase and use of biobased products by reaching beyond the federal purchasing community and promoting the purchase of biobased products by the general public.

Criteria for Obtaining Certification

To be eligible for USDA certification to use the label, USDA proposes that a product meet two criteria: (1) the product must be a biobased product; and (2) the biobased content of that product must be at or above its applicable minimum biobased content. USDA proposes to define biobased product as “a product determined by the Secretary to be a commercial or industrial product (other than food or feed) that is -- (A) composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or (B) an intermediate ingredient or feedstock. For the purposes of this subpart, the term ‘biobased product’ does not include motor vehicle fuels, heating oil, electricity produced from biomass, or any mature market products. Products from a mature market will be determined on a case-by-case basis.”

According to the notice, USDA believes the second criterion is necessary so that the label is not used to promote products with *de minimis* biobased content. The applicable minimum biobased content would depend under which of the three proposed categories the product falls:

1. Biobased products within one or more designated items. If a biobased product (including an intermediate ingredient or feedstock) is within a designated item at the time of submitting an application for certification, the applicable minimum biobased content for use of the label would be the minimum biobased content specified for that item in 7 C.F.R. Section 2902.
2. Finished biobased products that are not within designated items. If a biobased product is not within a designated item at the time the application for certification is submitted, the applicable minimum biobased content for



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the product for using the label would be 51 percent, unless USDA approves an alternative applicable minimum biobased content.

3. Products that are intermediate ingredients or feedstocks that are not within designated items. If a biobased product is an intermediate ingredient or feedstock and is not within a designated item at the time the application for certification is submitted, the applicable minimum biobased content for the product for using the label would be 51 percent, unless USDA approves an alternative applicable minimum biobased content.

Under the proposed rule, if the amount of biobased content within a product changes, then the manufacturer or vendor would be required to reapply for label certification. This would apply to products whose biobased content remains above the minimum but is different from the biobased content of the product's original application.

To apply, applicants must submit and update the following to USDA:

- Testing evidence of biobased content;
- Product brand name(s) and contact information for product;
- Hotlink to the applicant website (if applicable); and
- Documentation for other environmental claims made on the product packaging (*e.g.*, environmental and human health effects, life cycle costs, or sustainability benefits).

Once USDA reviews and certifies an application, that product will be immediately eligible for biobased labeling. There is no proposed certification period, but the USDA expects applicants to keep updated records regarding all performance tests, analyses, and USDA documentation.

Various industry members, trade coalitions, and non-governmental organizations submitted comments on the proposed labeling program. The comments were generally supportive of USDA's proposal, with the exception of certain broadly represented concerns:



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- The proposed listing of biobased content percentages on the label may be confusing or misleading to customers;
- Unclear definition of “renewable” within the Program’s goals;
- The use of 51 percent as a benchmark for all products not otherwise designated; many commenters argue this initial minimum is too high;
- Whether to exclude certain “Mature Market” materials that meet the goals of the program;
- Whether vendors should be allowed to apply for the label; and
- If the special federal procurement labels for a subcategory of products are necessary as it will not make a difference to consumers.

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We hope this information is helpful. As always, please call if you have any questions.