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7 CFR Part 2902

Designation of Biobased Items for Federal Procurement; Proposed Rule

DEPARTMENT OF AGRICULTURE

Office of Energy Policy and New Uses

7 CFR Part 2902

RIN 0503–AA36

Designation of Biobased Items for Federal Procurement

AGENCY: Departmental Management, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to amend the Guidelines for Designating Biobased Products for Federal Procurement (Guidelines) to add 14 sections that will designate the following items within which biobased products would be afforded Federal procurement preference: Animal repellents; bath products; bioremediation materials; compost activators and accelerators; concrete and asphalt cleaners; cuts, burns, and abrasions ointments; dishwashing products; erosion control materials; floor cleaners and protectors; hair care products; interior paints and coatings; oven and grill cleaners; slide way lubricants; and thermal shipping containers. USDA is also proposing minimum biobased contents for each of these items.

DATES: USDA will accept public comments on this proposed rule until January 24, 2011.

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–AA36. Also, please identify submittals as pertaining to the "Proposed Designation of Items."

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Direct your comments to Docket ID No. OPPM–2010–0002.
- *E-mail: biopreferred@usda.gov.* Include RIN number 0503–AA36 and "Proposed Designation of Items" 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; e-mail: *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 designation of these items is proposed 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 (referred to in this document as "section 9002").

II. Background

Section 9002 provides for the preferred procurement of biobased products by Federal procuring agencies and is referred to hereafter in this **Federal Register** notice as the "preferred procurement program." The definition of "procuring agency" in section 9002 includes both Federal agencies and "a person that is a party to a contract with any Federal agency, with respect to work performed under such a contract." Thus, Federal contractors, as well as Federal agencies, are expressly subject to the procurement preference provisions of section 9002.

The term "item" is used in the designation process to mean a generic grouping of specific products that perform a similar function, such as the various brands of crankcase oils or interior paints. Once USDA designates an item, procuring agencies are required generally to purchase biobased products within these designated items where the purchase price of the procurement item exceeds $10,000 or where the quantity of such items or the functionally equivalent items purchased over the preceding fiscal year equaled $10,000 or more. Procuring agencies must procure biobased products within each designated item unless they determine that products within a designated item are not reasonably available within a reasonable period of time, fail to meet the reasonable performance standards of the procuring agencies, or are available only at an unreasonable price. As stated in 7 CFR Part 2902—"Guidelines for Designating Biobased Products for Federal Procurement" (Guidelines), biobased products that are merely incidental to Federal funding are excluded from the preferred procurement program; that is, the requirements to purchase biobased products do not apply to such purchases if they are unrelated to or incidental to the purpose of the Federal contract. In implementing the preferred procurement program for biobased products, procuring agencies should follow their procurement rules and Office of Federal Procurement Policy guidance on buying non-biobased products when biobased products exist and should document exceptions taken for price, performance, and availability.

USDA recognizes that the performance needs for a given application are important criteria in making procurement decisions. USDA is not requiring procuring agencies to limit their choices to biobased products that fall under the items for designation in this proposed rule. Rather, the effect of the designation of the items is to require procuring agencies to determine their performance needs, determine whether there are qualified biobased products that fall under the designated items that meet the reasonable performance standards for those needs, and purchase such qualified biobased products to the maximum extent practicable as required by section 9002.

Section 9002(a)(3)(B) requires USDA to provide information to procuring agencies on the availability, relative price, performance, and environmental and public health benefits of such items

and to recommend, where appropriate, the minimum level of biobased content to be contained in the procured products.

Subcategorization. Most of the items USDA is considering for designation for preferred procurement cover a wide range of products. For some items, there are subgroups of products within the item that meet different requirements, uses and/or different performance specifications. For example, within the item category "thermal shipping containers," some containers are designed as durable products that can be re-used over long periods of time. Such containers might be used, for example, in the trucking industry when trucks are dedicated to shipping the same types of products on a regular basis. Other thermal shipping containers may be non-durable, or intended for only a one-time use. These containers might be used to ship small quantities of perishable fruits or vegetables to consumers who would then dispose of the container. Where such subgroups exist, USDA intends to create subcategories. Thus, for example, for the item "thermal shipping containers," USDA has determined it is reasonable to create a "durable thermal shipping container" subcategory and a "non-durable thermal shipping container" subcategory. Where structural integrity may be a key characteristic of a durable thermal shipping container, disposal concerns are a key characteristic of a non-durable thermal shipping container. In sum, USDA looks at the products within each item category to evaluate whether there are subgroups of products within the item that have different characteristics or that meet different performance specifications and, where USDA finds these types of differences, it intends to create subcategories with the minimum biobased content based on the tested products within the subcategory.

For some items, however, USDA may not have sufficient information at the time of proposal to create subcategories within an item. For example, USDA may know that there are different performance specifications that thermal shipping containers are required to meet, but it may have information on only one type of container. In such instances, USDA may either designate the item without creating subcategories (*i.e.,* defer the creation of subcategories) or designate one subcategory and defer designation of other subcategories within the item until additional information is obtained. Once USDA has received sufficient additional information to justify the designation of a subcategory, the subcategory will be designated through the proposed and final rulemaking process.

Within today's proposed rule, USDA is proposing to subcategorize two of the items being proposed for designation. The first item is hair care products and the proposed subcategories are shampoo products and conditioner products. The second item is thermal shipping containers and the proposed subcategories are durable and non-durable thermal shipping containers.

Minimum Biobased Contents. The minimum biobased contents being proposed with today's rule are based on products for which USDA has biobased content test data. Because the submission of product samples for biobased content testing is on a strictly voluntary basis, USDA was able to obtain samples only from those manufacturers who volunteered to invest the resources required to submit the samples.

In addition to considering the biobased content test data for each item, USDA also considers other factors including product performance information. USDA evaluates this information to determine whether some products that may have a lower biobased content also have unique performance or applicability attributes that would justify setting the minimum biobased content at a level that would include these products. For example, a lubricant product that has a lower biobased content than others within an item but is formulated to perform over a wider temperature range than the other products may be more desirable to Federal agencies. Thus, it would be beneficial to set the minimum biobased content for the item at a level that would include the product with superior performance features.

USDA also considers the overall range of the tested biobased contents within an item, groupings of similar values, and breaks (significant gaps between two groups of values) in the biobased content test data array. For example, the biobased contents of six tested products within an item being proposed for designation today are 22, 28, 82, 98, 100, and 100 percent. Because this is a very wide range, and because there is a significant gap in the data between the 28 percent biobased product and the 82 percent biobased product, USDA reviewed the product literature to determine whether subcategories could be created within this item. USDA found that the available product information did not justify subcategorization. Further, USDA did not find any performance claims that would justify setting the minimum biobased content based on the 22 or 28 percent biobased content products. Thus, USDA is proposing to set the minimum biobased content for this item based on the product with a tested biobased content of 82 percent. USDA believes that this evaluation process allows it to establish minimum biobased contents based on a broad set of factors to assist the Federal procurement community in its decisions to purchase biobased products.

USDA makes every effort to obtain biobased content test data on multiple products within each item. For most designated items, USDA has biobased content test data on more than one product within a designated item. However, in some cases, USDA has been able to obtain biobased content data for only a single product within a designated item. As USDA obtains additional data on the biobased contents for products within these designated items and their subcategories, USDA will evaluate whether the minimum biobased content for a designated item or subcategory will be revised.

USDA anticipates that the minimum biobased content of an item that is based on a single product is more likely to change as additional products within that designated item are identified and tested. In today's proposed rule, the minimum biobased contents for both subcategories under the thermal shipping containers designated item are based on a single tested product. Given that only three biobased products have been identified in this item, and only one manufacturer of products within each subcategory supplied a sample for testing, USDA believes it is reasonable to set minimum biobased contents for these subcategories based on the single data point for each subcategory.

Where USDA receives additional biobased content test data for products within these proposed items and subcategories during the public comment period, USDA will take that information into consideration when establishing the minimum biobased content when the items and subcategories are designated in the final rulemaking.

Overlap with EPA's Comprehensive Procurement Guideline program for recovered content products under the Resource Conservation and Recovery Act (RCRA) Section 6002. Some of the products that are biobased items designated for preferred procurement under the preferred procurement program may also be items the Environmental Protection Agency (EPA) has designated under the EPA's Comprehensive Procurement Guideline (CPG) for products containing recovered materials. In situations where it believes

there may be an overlap, USDA is asking manufacturers of qualifying biobased products to make additional product and performance information available to Federal agencies conducting market research to assist them in determining whether the biobased products in question are, or are not, the same products for the same uses as the recovered content products. Manufacturers are asked to provide information highlighting the sustainable features of their biobased products and to indicate the various suggested uses of their product and the performance standards against which a particular product has been tested. In addition, depending on the type of biobased product, manufacturers are being asked to provide other types of information, such as whether the product contains fossil energy-based components (including petroleum, coal, and natural gas) and whether the product contains recovered materials. Federal agencies also may ask manufacturers for information on a product's biobased content and its profile against environmental and health measures and life-cycle costs (the ASTM Standard D7075, "Standard Practice for Evaluating and Reporting Environmental Performance of Biobased Products," or the Building for Environmental and Economic Sustainability (BEES) analysis for evaluating and reporting on environmental performance of biobased products). Federal agencies may then use this information to make purchasing decisions based on the sustainability features of the products. Detailed information on ASTM Standard D7075, and other ASTM standards, can be found on ASTM's Web site at *http://www.astm.org.* Information on the BEES analytical tool can be found on the Web site *http://www.bfrl.nist.gov/oae/software/bees.html.*

Section 6002 of RCRA requires a procuring agency procuring an item designated by EPA generally to procure such an item composed of the highest percentage of recovered materials content practicable. However, a procuring agency may decide not to procure such an item based on a determination that the item fails to meet the reasonable performance standards or specifications of the procuring agency. An item with recovered materials content may not meet reasonable performance standards or specifications, for example, if the use of the item with recovered materials content would jeopardize the intended end use of the item.

Where a biobased item is used for the same purposes and to meet the same Federal agency performance requirements as an EPA-designated recovered content product, the Federal agency must purchase the recovered content product. For example, if a biobased hydraulic fluid is to be used as a fluid in hydraulic systems and because "lubricating oils containing re-refined oil" has already been designated by EPA for that purpose, then the Federal agency must purchase the EPA-designated recovered content product, "lubricating oils containing re-refined oil." If, on the other hand, that biobased hydraulic fluid is to be used to address a Federal agency's certain environmental or health performance requirements that the EPA-designated recovered content product would not meet, then the biobased product should be given preference, subject to reasonable price, availability, and performance considerations.

This proposed rule designates two items for preferred procurement for which there may be overlap with an EPA-designated recovered content product. The first item is interior paints and coatings, which may overlap with the EPA-designated recovered content products "reprocessed latex paints" and "consolidated latex paints." The second item is slide way lubricants, which, depending on how they are used, may overlap with the EPA-designated recovered content product "re-refined lubricating oils." EPA provides recovered materials content recommendations for this recovered content products in a Recovered Materials Advisory Notice (RMAN I). The RMAN recommendations for this CPG product can be found by accessing EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

Federal Government Purchase of Sustainable Products. The Federal government's sustainable purchasing program includes the following three statutory preference programs for designated products: the BioPreferred Program, the Environmental Protection Agency's Comprehensive Procurement Guideline for products containing recovered materials, and the Environmentally Preferable Purchasing program. The Office of the Federal Environmental Executive (OFEE) and the Office of Management and Budget (OMB) encourage agencies to implement these components comprehensively when purchasing products and services.

Procuring agencies should note that not all biobased products are "environmentally preferable." For example, unless cleaning products contain no or reduced levels of metals and toxic and hazardous constituents, they can be harmful to aquatic life, the environment, and/or workers. Household cleaning products that are formulated to be disinfectants are required, under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), to be registered with EPA and must meet specific labeling requirements warning of the potential risks associated with misuse of such products. When purchasing environmentally preferable cleaning products, many Federal agencies specify that products must meet Green Seal standards for institutional cleaning products or that the products have been reformulated in accordance with recommendations from the EPA's Design for the Environment (DfE) program. Both the Green Seal standards and the DfE program identify chemicals of concern in cleaning products. These include zinc and other metals, formaldehyde, ammonia, alkyl phenol ethoxylates, ethylene glycol, and volatile organic compounds. In addition, both require that cleaning products have neutral or less caustic pH.

In contrast, some biobased products may be more environmentally preferable than some products that meet Green Seal standards for institutional cleaning products or that have been reformulated in accordance with EPA's DfE program. To fully compare products, one must look at the "cradle-to-grave" impacts of the manufacture, use, and disposal of products. Biobased products that will be available for preferred procurement under this program have been assessed as to their "cradle-to-grave" impacts.

One consideration of a product's impact on the environment is whether (and to what degree) it introduces new fossil carbon into the atmosphere. Fossil carbon is derived from non-renewable sources (typically fossil fuels such as coal and oil), whereas renewable biomass carbon is derived from renewable sources (biomass). Qualifying biobased products offer the user the opportunity to manage the carbon cycle and reduce the introduction of new fossil carbon into the atmosphere.

Manufacturers of qualifying biobased products designated under the preferred procurement program will be able to provide, at the request of Federal agencies, factual information on environmental and human health effects of their products, including the results of the ASTM D7075, or the comparable BEES analysis which examines 12 different environmental parameters, including human health. Therefore, USDA encourages Federal procurement agencies to consider that USDA has already examined all available

information on the environmental and human health effects of biopreferred products, when making their purchasing decisions.

Other Preferred Procurement Programs. Federal procurement officials should also note that biobased products may be available for purchase by Federal agencies through the AbilityOne Program (formerly known as the Javits-Wagner-O'Day (JWOD) program). Under this program, members of organizations including the National Industries for the Blind (NIB) and the National Institute for the Severely Handicapped (NISH) offer products and services for preferred procurement by Federal agencies. A search of the AbilityOne Program's online catalog (*http://www.abilityone.gov*) indicated that four of the items being proposed today (concrete and asphalt cleaners, dishwashing detergent, floor cleaners and protectors, and hair care products) are available through the AbilityOne Program. While there is no specific product within these items identified in the AbilityOne online catalog as being a biobased product, it is possible that such biobased products are available or will be available in the future. Also, because additional categories of products are frequently added to the AbilityOne Program, it is possible that biobased products within other items being proposed for designation today may be available through the AbilityOne Program in the future. Procurement of biobased products through the AbilityOne Program would further the objectives of both the AbilityOne Program and the preferred procurement program.

Outreach. To augment its own research, USDA consults with industry and Federal stakeholders to the preferred procurement program during the development of the rulemaking packages for the designation of items. USDA consults with stakeholders to gather information used in determining the order of item designation and in identifying: Manufacturers producing and marketing products that fall within an item proposed for designation; performance standards used by Federal agencies evaluating products to be procured; and warranty information used by manufacturers of end user equipment and other products with regard to biobased products.

Future Designations. In making future designations, USDA will continue to conduct market searches to identify manufacturers of biobased products within items. USDA will then contact the identified manufacturers to solicit samples of their products for voluntary submission for biobased content testing. Based on these results, USDA will then propose new items for designation for preferred procurement.

In the preamble to the first six items designated for preferred procurement (71 FR 13686, March 16, 2006), USDA stated that it planned to identify approximately 10 items in each future rulemaking. In an effort to finalize the designation of more items in a shorter time period, USDA now plans to increase the number of items in each rulemaking, whenever possible. Thus, today's proposed rulemaking would designate 14 items for preferred procurement.

USDA has developed a preliminary list of items for future designation and has posted this preliminary list on the BioPreferred Web site. While this list presents an initial prioritization of items for designation, USDA cannot identify with certainty which items will be presented in each of the future rulemakings. In response to comments from other Federal agencies, USDA intends to give increased priority to those items that contain the highest biobased content. In addition, as the program matures, manufacturers of biobased products within some industry segments have become more responsive to USDA's requests for technical information than those in other segments. Thus, items with high biobased content and for which sufficient technical information can be obtained quickly may be added or moved up on the prioritization list. USDA intends to update the list of items for future designation on the Biopreferred Web site every six months, or more often if significant changes are made to the list.

III. Summary of Today's Proposed Rule

USDA is proposing to designate the following items and subcategories for preferred procurement: Animal repellents; bath products; bioremediation materials; compost activators and accelerators; concrete and asphalt cleaners; cuts, burns, and abrasions ointments; dishwashing products; erosion control materials; floor cleaners and protectors; hair care products, including shampoos and conditioners as subcategories; interior paints and coatings; oven and grill cleaners; slide way lubricants; and thermal shipping containers, including durable and non-durable thermal shipping containers as subcategories. USDA is also proposing minimum biobased content for each of these items and subcategories (*see* Section IV.C). Lastly, except for thermal shipping containers, USDA is proposing a date by which Federal agencies must incorporate these designated items into their procurement specifications (*see* Section IV.D). USDA is proposing to defer the preference compliance date for biobased thermal shipping containers until two or more manufacturers of these containers have been identified.

In today's proposed rule, USDA is providing information on its findings as to the availability, economic and technical feasibility, environmental and public health benefits, and life-cycle costs for each of the designated items. Information on the availability, relative price, performance, and environmental and public health benefits of individual products within each of these items is not presented in this notice. Further, USDA has reached an understanding with manufacturers not to publish their names in conjunction with specific product data published in the **Federal Register** when designating items. This understanding was reached to encourage manufacturers to submit products for testing to support the designation of an item. Once an item has been designated, USDA will encourage the manufacturers and vendors of products within the designated item to voluntarily make their names and other contact information available for the BioPreferred Web site.

Warranties. Some of the items being proposed for designation today may affect original equipment manufacturers' (OEMs) warranties for equipment in which the items are used. For example, the manufacturer of a piece of equipment that requires lubrication typically includes a list of recommended lubricants in the owner/operator's manual that accompanies the equipment when purchased. If the purchaser of the equipment uses a lubricant (including a biobased lubricant) that is not among the lubricants recommended by the equipment manufacturer, the manufacturer may cite that as a reason not to honor the warranty on the equipment. At this time, USDA does not have information available as to the extent that OEMs have included, or will include, biobased products among their recommended lubricants (or other similar operating components). This does not necessarily mean that use of biobased products will void warranties, only that USDA does not currently have such information. USDA is requesting comments and information on this topic, but cannot be held responsible if damage were to occur. USDA encourages manufacturers of biobased products to test their products against all relevant standards, including those that affect warranties, and to work with OEMs to ensure that biobased products

are accepted and recommended for use. Whenever manufacturers of biobased products find that existing performance standards for warranties are not relevant or appropriate for biobased products, USDA is willing to assist them in working with the appropriate OEMs to develop tests that are relevant and appropriate for the end uses in which biobased products are intended. In addition to outreach to biobased product manufacturers and Federal agencies, USDA will, as time and resources allow, work with OEMs on addressing any effect the use of biobased products may have on their warranties. If, in spite of these efforts, there is insufficient information regarding the use of a biobased product and its effect on warranties, the procurement agent would not be required to buy such a product. As information is available on warranties, USDA will make such information available on the BioPreferred Web site. Updates to the BioPreferred Web site will occur whenever new information is submitted.

Additional Information. USDA is working with manufacturers and vendors to make all relevant product and manufacturer contact information available on the BioPreferred Web site before a procuring agency asks for it, in order to make the preferred procurement program more efficient. Steps USDA has implemented, or will implement, include: Making direct contact with submitting companies through e-mail and phone conversations to encourage completion of product listing; coordinating outreach efforts with intermediate material producers to encourage participation of their customer base; conducting targeted outreach with industry and commodity groups to educate stakeholders on the importance of providing complete product information; participating in industry conferences and meetings to educate companies on program benefits and requirements; and communicating the potential for expanded markets beyond the Federal government, to include State and local governments, as well as the general public markets. Section V provides instructions to agencies on how to obtain this information on products within these items through the following Web site: *http://www.biopreferred.gov.*

Comments. USDA invites comment on the proposed designation of these items and subcategories, including the definition, proposed minimum biobased content, and any of the relevant analyses performed during the selection of these items. In addition, USDA invites comments and information in the following areas:

1. Two of the items being proposed for designation (interior paints and coatings and slide way lubricants) may overlap with products designated under EPA's Comprehensive Procurement Guideline for products containing recovered material. To help procuring agencies in making their purchasing decisions between biobased products within the proposed designated items that overlap with products containing recovered material, USDA is requesting product-specific information on unique performance attributes, environmental and human health effects, disposal costs, and other attributes that would distinguish biobased products from products containing recovered material as well as non-biobased products.

2. We have attempted to identify relevant and appropriate performance standards and other relevant measures of performance for each of the proposed items. If you know of other such standards or relevant measures of performance for any of the proposed items, USDA requests that you submit information identifying such standards and measures, including their name (and other identifying information as necessary), identifying who is using the standard/measure, and describing the circumstances under which the product is being used.

3. Many biobased products within the items being proposed for designation will have positive environmental and human health attributes. USDA is seeking comments on such attributes in order to provide additional information on the BioPreferred Web site. This information will then be available to Federal procuring agencies and will assist them in making informed sustainable procurement decisions. When possible, please provide appropriate documentation to support the environmental and human health attributes you describe.

4. Several items (*e.g.,* animal repellents, bath products, concrete and asphalt cleaners, dishwashing products, floor cleaners and protectors, oven and grill cleaners, and hair care products) have wide ranges of tested biobased contents. For the reasons discussed later in this preamble, USDA is proposing a minimum biobased content that would allow many of the tested products to be eligible for preferred procurement. USDA welcomes comments on the appropriateness of the proposed minimum biobased contents for these items and whether there are potential subcategories within the items that should be considered.

5. As discussed above, the effect that the use of biobased products may have on original equipment manufacturers' warranties is uncertain. USDA requests comments and supporting information on any aspect of this issue.

6. Today's proposed rule is expected to have both positive and negative impacts on individual businesses, including small businesses. USDA anticipates that the biobased preferred procurement program will provide additional opportunities for businesses and manufacturers to begin supplying products under the proposed designated biobased items to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their contractors. Because USDA has been unable to determine the number of businesses, including small businesses, that may be adversely affected by today's proposed rule, USDA requests comment on how many small entities may be affected by this rule and on the nature and extent of that effect.

All comments should be submitted as directed in the **ADDRESSES** section above.

To assist you in developing your comments, the background information used in proposing these items for designation has been assembled in a technical support document (TSD), "Technical Support for Proposed Rule—Round 7 Designated Items," which is available on the BioPreferred Web site. The TSD can be located by clicking on the Proposed and Final Regulations link on the right side of the BioPreferred Web site's home page (*http://www.biopreferred.gov*). At the next screen, click on the Supporting Documentation link under Round 7 Designation under the Proposed Regulations section. This will bring you to the link to the TSD.

IV. Designation of Items, Minimum Biobased Contents, and Time Frame

A. Background

In order to designate items for preferred procurement, section 9002 requires USDA to consider: (1) The availability of items and (2) the economic and technological feasibility of using the items, including the life-cycle costs of the items.

In considering an item's availability, USDA uses several sources of information. USDA performs Internet searches, contacts trade associations (such as the Bio organization) and commodity groups, searches the Thomas Register (a database, used as a

resource for finding companies and products manufactured in North America, containing over 173,000 entries), and contacts manufacturers and vendors to identify those manufacturers and vendors with biobased products within items being considered for designation. USDA uses the results of these same searches to determine if an item is generally available.

In considering an item's economic and technological feasibility, USDA examines evidence pointing to the general commercial use of an item and its life-cycle cost and performance characteristics. This information is obtained from the sources used to assess an item's availability. Commercial use, in turn, is evidenced by any manufacturer and vendor information on the availability, relative prices, and performance of their products as well as by evidence of an item being purchased by a procuring agency or other entity, where available. In sum, USDA considers an item economically and technologically feasible for purposes of designation if products within that item are being offered and used in the marketplace.

In considering the life-cycle costs of items proposed for designation, USDA has obtained the necessary input information (on a voluntary basis) from manufacturers of biobased products and has used the BEES analytical tool to analyze individual products within each proposed item. The BEES analytical tool measures the environmental performance and the economic performance of a product. The environmental performance scores, impact values, and economic performance results for products within the Round 7 designated items analyzed using the BEES analytical tool can be found in "Technical Support for Proposed Rule—Round 7 Designated Items," located on the BioPreferred Web site (*http://www.biopreferred.gov*).

In addition to the BEES analytical tool, manufacturers wishing to make similar life-cycle information available may choose to use the ASTM Standard D7075 analysis. The ASTM Standard D7075 product analysis includes information on environmental performance, human health impacts, and economic performance. USDA is working with manufacturers and vendors to make this information available on the BioPreferred Web site in order to make the preferred procurement program more efficient.

As discussed earlier, USDA has also implemented, or will implement, several other steps intended to educate the manufacturers and other stakeholders on the benefits of this program and the need to make this information, including manufacturer contact information, available on the BioPreferred Web site in order to then make it available to procurement officials. Additional information on specific products within the items proposed for designation may also be obtained directly from the manufacturers of the products. USDA has also provided a link on the BioPreferred Web site to the Defense Standardization Program, including the Defense Logistics Agency (DLA), and to the General Services Administration (GSA)-related standards lists used as guidance when procuring products. These lists can be accessed through the "Selling to the Federal Government" link on the BioPreferred Web site.

USDA recognizes that information related to the functional performance of biobased products is a primary factor in making the decision to purchase these products. USDA is gathering information on industry standard test methods and performance standards that manufacturers are using to evaluate the functional performance of their products. (Test methods are procedures used to provide information on a certain attribute of a product. For example, a test method might determine how many bacteria are killed. Performance standards identify the level at which a product must perform in order for it to be "acceptable" to the entity that set the performance standard. For example, a performance standard might require that a certain percentage (*e.g.,* 95 percent) of the bacteria must be killed through the use of the product.) The primary sources of information on these test methods and performance standards are manufacturers of biobased products within these items. Additional test methods and performance standards are also identified during meetings of the Interagency council and during the review process for each proposed rule. We have listed, under the detailed discussion of each item proposed for designation (presented in Section IV.B), the functional performance test methods, performance standards, product certifications, and other measures of performance associated with the functional aspects of products identified during the development of this **Federal Register** notice for these items.

While this process identifies many of the relevant test methods and standards, USDA recognizes that those identified herein do not represent all of the methods and standards that may be applicable for a designated item or for any individual product within the designated item. As noted earlier in this preamble, USDA is requesting identification of other relevant performance standards and measures of performance. As the program becomes fully implemented, these and other additional relevant performance standards will be available on the BioPreferred Web site.

In gathering information relevant to the analyses discussed above for this proposed rule, USDA has made extensive efforts to contact and request information and product samples within the items proposed for designation. For product information, USDA has attempted to contact representatives of the manufacturers of biobased products identified by the preferred procurement program. For product samples on which to conduct biobased content tests and BEES analysis, USDA has attempted to obtain samples and BEES input information from at least five different suppliers of products within each item in today's proposed rule. However, because the submission of information and samples is on a strictly voluntary basis, USDA was able to obtain information and samples only from those manufacturers who volunteered to invest the resources required to gather and submit the information and samples. The data presented are all the data that were submitted in response to USDA requests for information from manufacturers of the products within the items proposed for designation. While USDA would prefer to have complete data on the full range of products within each item, the data that were submitted support designation of the items in today's proposed rule.

To propose an item for designation, USDA must have sufficient information on a sufficient number of products within an item to be able to assess its availability and its economic and technological feasibility, including its life-cycle costs. For some items, there may be numerous products available. For other items, there may be very few products currently available. Given the infancy of the market for some items, it is expected that single-product items will be identified. Further, given that the intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products, USDA has determined it is appropriate to designate an item or subcategory for preferred procurement even when there is only a single product with a single supplier, though this will generally occur once other items with high biobased content and two or more producers are first designated. However, USDA has also determined that in such situations it is appropriate to defer the

effective preferred procurement date until such time that more than one supplier is identified in order to provide choice to procuring agencies. Similarly, the documented availability, benefits, and life-cycle costs of even a very small percentage of all products that may exist within an item are also considered sufficient to support designation.

B. Items Proposed for Designation

USDA uses a model (as summarized below) to identify and prioritize items for designation. Through this model, USDA has identified over 100 items for potential designation under the preferred procurement program. A list of these items and information on the model can be accessed on the BioPreferred Web site at *http://www.biopreferred.gov*.

In general, items are developed and prioritized for designation by evaluating them against program criteria established by USDA and by gathering information from other government agencies, private industry groups, and manufacturers. These evaluations begin by looking at the cost, performance, and availability of products within each item. USDA then considers the following points:

- Are there manufacturers interested in providing the necessary test information on products within a particular item?
- Are there a number of manufacturers producing biobased products in this item?
- Are there products available in this item?
- What level of difficulty is expected when designating this item?
- Is there Federal demand for the product?
- Are Federal procurement personnel looking for biobased products?
- Will an item create a high demand for biobased feed stock?
- Does manufacturing of products within this item increase potential for rural development?

After completing this evaluation, USDA prioritizes the list of items for designation. USDA then gathers information on products within the highest priority items and, as sufficient information becomes available for a group of items, a new rulemaking package is developed to designate the items within that group. USDA points out that the list of items may change, with items being added or dropped, and that the order in which items are proposed for designation is likely to change because the information necessary to designate an item may take more time to obtain than an item lower on the list.

In today's proposed rule, USDA is proposing to designate the following items and subcategories for the preferred procurement program: Animal repellents; bath products; bioremediation materials; compost activators and accelerators; concrete and asphalt cleaners; cuts, burns, and abrasions ointments; dishwashing products; erosion control materials; floor cleaners and protectors; hair care products, including shampoos and conditioners as subcategories; interior paints and coatings; oven and grill cleaners; slide way lubricants; and thermal shipping containers, including durable and non-durable thermal shipping containers as subcategories. USDA has determined that each of these items meets the necessary statutory requirements—namely, that they are being produced with biobased products and that their procurement by procuring agencies will carry out the following objectives of section 9002:

- To increase demand for biobased products, which would in turn increase demand for agricultural commodities that can serve as feedstocks for the production of biobased products.
- To spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and
- To enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas.

Further, USDA has sufficient information on these items to determine their availability and to conduct the requisite analyses to determine their biobased content and their economic and technological feasibility, including life-cycle costs.

Overlap with EPA's Comprehensive Procurement Guideline program for recovered content products. In today's proposed rule, two items may overlap with EPA-designated recovered content products. The first item is interior paints and coatings, which may overlap with the EPA-designated recovered content products "Reprocessed Latex Paints" and "Consolidated Latex Paints." The second item is slide way lubricants, which may overlap with the EPA-designated recovered content "Re-refined Lubricating Oils."

For these items, USDA is requesting that information on qualifying biobased products be made available by their manufacturers to assist Federal agencies in determining if an overlap exists between the biobased products and the applicable EPA-designated recovered content products. USDA is requesting this information on overlap situations to further help procuring agencies make informed decisions when faced with purchasing a recovered content material product or a biobased product. As this information is developed, USDA will make it available on the BioPreferred Web site.

Exemptions. Products exempt from the biobased procurement preference are military equipment, defined as any product or system designed or procured for combat or combat-related missions, and spacecraft systems and launch support equipment. However, agencies may purchase biobased products wherever performance, availability and reasonable price indicates that such purchases are justified.

Although each item in today's proposed rule would be exempt from the procurement preference requirement when used in spacecraft systems or launch support application or in military equipment used in combat and combat-related applications, this exemption does not extend to contractors performing work other than direct maintenance and support of the spacecraft or launch support equipment or combat or combat-related missions. For example, if a contractor is cleaning the interior of a non-combat office building on a military base, the floor cleaners and protectors the contractor purchases and uses in the office building should be biobased. The exemption does apply, however, if the product being purchased by the contractor is for use in combat or combat-related missions or for use in space or launch applications. After reviewing the regulatory requirement and the relevant contract, where contractors have any questions on the exemption, they should contact the cognizant contracting officer.

USDA points out that it is not the intent of these exemptions to imply that biobased products are inferior to non-biobased products. If manufacturers of biobased products can meet the concerns of these two agencies, USDA is willing to reconsider such exemptions on an item-by-item basis. Any changes to the current exemptions would be announced in a proposed rule amendment with an opportunity for public comment.

Each of the proposed designated items and their subcategories are discussed in the following sections.

1. Animal Repellents (Minimum Biobased Content 79 Percent) [1]

Animal repellents are products used to aid in deterring animals that cause destruction to plants and/or property.

USDA identified 29 manufacturers and suppliers of 109 animal repellents. These 29 manufacturers and suppliers do not necessarily include all manufacturers of animal repellents, merely those identified during USDA information gathering activities. Relevant product information supplied by these manufacturers and suppliers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any performance standards, test methods, or applicable industry measures of performance against which these products have been tested. As noted earlier in this preamble, the lack of identified performance standards is not relevant to the designation of an item for preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate an item for preferred procurement. If and when performance standards, test methods, and other relevant measures of performance are identified for this item, USDA will provide such information on the BioPreferred Web site.

USDA contacted procurement officials with various policy-making and procuring agencies in an effort to gather information on the purchases of animal repellents, as well as information on products within the other 13 items proposed for designation today. These agencies included GSA, several offices within the DLA, OFEE, USDA Departmental Administration, the National Park Service, EPA, a Department of Energy laboratory, and OMB. Communications with these Federal officials led to the conclusion that obtaining current item statistics and specific potential markets within the Federal government for biobased products within the 14 proposed designated items is not possible at this time.

Most of the contacted officials reported that procurement data are appropriately reported in higher level groupings of Federal Supply Codes for materials and supplies, which is higher level coding than the proposed designated items. Using terms that best match the items in today's proposed rule, USDA queried the GSA database for Federal purchases of products within today's proposed items. The results indicate purchases of products within items in today's proposed rule. The results of this inquiry can be found in the TSD for this proposed rule. Also, the purchasing of such materials as part of contracted services and with individual purchase cards used to purchase products locally leads to less accurate data on purchases of specific products.

USDA also investigated the Web site FEDBIZOPPS.gov, a site which lists Federal contract purchase opportunities and awards greater than $25,000. The information provided on this Web site, however, is for broad categories of services and products rather than the specific types of products that are included in today's proposed rule. Therefore, USDA has been unable to obtain data on the amount of animal repellents purchased by procuring agencies. However, many Federal agencies routinely procure such products for use in animal control and related services involving the use of such products. On this basis, USDA reaches the conclusion that the government has a need for animal repellents and for services that use these products. Designation of animal repellents will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on eight animal repellents. Analyses of the environmental and human health benefits and the life-cycle costs of biobased animal repellents were performed for three of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

2. Bath Products (Minimum Biobased Content 61 Percent)

Bath products are personal hygiene products, including soaps and other cleansers for the body. These products are generally bar soaps, liquids, or gels that are referred to as body washes, body shampoos, or cleansing lotions.

USDA identified 369 manufacturers and suppliers of 888 bath products. These 369 manufacturers and suppliers do not necessarily include all manufacturers of bath products, merely those identified during USDA information gathering activities. Relevant product information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified four test methods (as shown below) used in evaluating products within this item. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this item, the four test methods identified by the manufacturers of products within this item are:

Test Methods:

- ASTM International D–130 Standard Test Method for corrosiveness to copper from petroleum products by copper strip test;
- ASTM International D–665 Standard Test Method for rust-preventing characteristics of inhibited mineral oil in the presence of water;
- ISO 32 Calibration in analytical chemistry and use of certified reference materials; and
- Vickers I–286–S Tests for pump wear.

USDA attempted to gather data on the potential market for bath products within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, Federal agencies routinely procure such products and contract for lodging and health care related services involving the use of such products. On this basis, USDA concludes that the government has a need for bath products and for services that use bath products. Designation of bath products will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on 101 bath products. Analyses of the environmental and human health benefits and the life-cycle costs of biobased bath products were performed for three of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

3. Bioremediation Materials (Minimum Biobased Content 86 Percent)

Bioremediation materials are dry or liquid solutions used to clean oil, fuel, and other hazardous spill sites. They do not include sorbent materials, but may include bacteria or other microbes.

USDA identified 31 manufacturers and suppliers of 53 bioremediation materials. The 31 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased bioremediation materials, merely those identified during USDA information

[1] Additional information on the determination of minimum biobased contents is presented in Section IV.C of this preamble.

gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified two test methods (as shown below) used in evaluating products within this item. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this item, the two test methods identified by the manufacturers of products within this item are:

Test Methods:

• American Type Culture Collection Biosafety Level 1 minimal potential for causing diseases in humans, plants, animals and aquatic life; and

• California Air Resources Board Method 310 VOCs.

USDA attempted to gather data on the potential market for bioremediation materials within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, many Federal agencies own residential and office buildings and routinely perform, or procure contract services to perform, the types of maintenance activities that would use these products. Thus, they have a need for bioremediation materials and for services that require the use of bioremediation materials. Designation of bioremediation materials will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on 11 bioremediation materials. An analysis of the environmental and human health benefits and the life-cycle costs of biobased bioremediation materials was performed for one of the products using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

4. Compost Activators and Accelerators (Minimum Biobased Content 95 Percent)

Compost activators and accelerators are products designed to be applied to compost piles to aid in speeding up the composting process and to ensure successful compost that is ready for consumer use. They are available in either liquid or powder forms.

USDA identified 19 manufacturers and suppliers of 32 compost activators and accelerators. The 19 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased compost activators and accelerators, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of an item for preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate an item for preferred procurement. If and when performance standards, test methods, and other relevant measures of performance are identified for this item, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for compost activator and accelerator products within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, Federal agencies routinely perform, or procure contract services to perform, the types of composting activities that would use these products. Thus, they have a need for compost activators and accelerators and for services that require the use of compost activators and accelerators. Designation of compost activators and accelerators will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on five compost activators and accelerators. An analysis of the environmental and human health benefits and the life-cycle costs of biobased compost activator and accelerator was performed for one of the products using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

5. Concrete and Asphalt Cleaners (Minimum Biobased Content 58 Percent)

Concrete and asphalt cleaners are products used in concrete etching as well as to remove petroleum-based soils, lubricants, paints, mastics, organic soils, rust, and dirt from concrete, asphalt, stone and other hard porous surfaces for commercial, industrial, or residential use.

USDA identified 29 manufacturers and suppliers of 34 concrete and asphalt cleaners. The 29 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased concrete and asphalt cleaners, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified six test methods (as shown below) used in evaluating products within this item. While there may be additional test methods, as well as performance standards and other measures of performance, applicable to products within this item, the six test methods identified by the manufacturers of products within this item are:

Test Methods:

• Boeing Spec D6–17487P for aircraft exterior and general cleaning;

• ASTM International D3505 standard test method for density or relative density of pure liquid chemicals;

• ASTM International E70 standard test method for pH of aqueous solutions with the glass electrode;

• Environmental Protection Agency 560/6–82–003 Describes methods for performing testing of chemical substances under the Toxic Substances Control Act;

• Environmental Protection Agency 601 Purgeable Halocarbons; and

• Environmental Protection Agency 602 Purgeable Aromatics.

USDA attempted to gather data on the potential market for concrete and asphalt cleaning products within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, many Federal agencies routinely perform, or procure contract services to perform, concrete and asphalt cleaning. Thus, they have a need for concrete and asphalt cleaners and for services that require the use of concrete and asphalt cleaners. Designation of concrete and asphalt cleaners will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on nine concrete and asphalt cleaners. An analysis of the environmental and human health benefits and the life-cycle costs of biobased concrete and asphalt cleaners was performed for one of the products using the BEES analytical tool.

The results of that analysis are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

6. Cuts, Burns, and Abrasions Ointments (Minimum Biobased Content 84 Percent)

Cuts, burns, and abrasions ointments are products designed to aid in the healing and sanitizing of scratches, cuts, bruises, abrasions, sun damaged skin, tattoos, rashes and other skin conditions.

USDA identified 42 manufacturers and suppliers of 71 different cuts, burns, and abrasions ointments. These 42 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased cuts, burns, and abrasions ointments, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of an item for preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate an item for preferred procurement. If and when performance standards, test methods, and other relevant measures of performance are identified for this item, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for cuts, burns, and abrasions ointments within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, many Federal agencies routinely procure and use such products in daily operations. In addition, Federal agencies may contract for health care services involving the use of such products. Thus, they have a need for cuts, burns, and abrasions ointments and for services that require the use of cuts, burns, and abrasions ointments. Designation of cuts, burns, and abrasions ointments will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 23 cuts, burns, and abrasions ointments. Analyses of the environmental and human health benefits and the life-cycle costs of biobased cuts, burns, and abrasions ointments were performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

7. Dishwashing Products (Minimum Biobased Content 58 Percent)

Dishwashing products are soaps and detergents used for cleaning and clean rinsing of tableware in either hand washing or dishwashing machines.

USDA identified 39 manufacturers and suppliers of 64 different dishwashing products. These 39 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased dishwashing products, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified six test methods (as shown below) used in evaluating products within this item. While there may be additional test methods, as well as performance standards and other measures of performance, applicable to products within this item, the six test methods identified by the manufacturers of products within this item are:

Test Methods:

- Bacteria Inhibitory;
- Chlorine Equal;
- Boeing D6–7127: "Cleaning interiors of commercial transport aircraft";
- Federal Test Method Standard 536A: Soap and soap products (including synthetic detergents) sampling and testing;
- South Coast Air Quality Management District, Clean Air: The South Coast Air Quality Management District hereby certifies the above product as a "Clean Air Solvent"; and
- U.S. Navy, Navsea 6840 U.S. Navy surface ship (non-submarine) authorized chemical cleaning products and dispensing systems.

USDA attempted to gather data on the potential market for dishwashing products within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, many Federal agencies routinely use dishwashing products in daily operations. In addition, Federal agencies may contract for food preparation and kitchen cleaning services involving the use of such products. Thus, they have a need for dishwashing products and for services that require the use of dishwashing products. Designation of dishwashing products will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 28 dishwashing products. An analysis of the environmental and human health benefits and the life-cycle costs of biobased dishwashing products was performed for one of the products using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

8. Erosion Control Materials (Minimum Biobased Content 77 Percent)

Erosion control materials are woven or non-woven fiber materials manufactured for use on construction, demolition, or other sites to prevent wind or water erosion of loose earth surfaces, and may be combined with seed and/or fertilizer to promote growth.

USDA identified 30 manufacturers and suppliers of 169 erosion control materials. These 30 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased erosion control materials, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified 21 test methods (as shown below) used in evaluating products within this item. While other test methods and measures of performance, as well as performance standards, applicable to products within this item may exist, the 21 test methods identified by manufacturers of products within this item and by others are:

Test Methods:

- American Association of State Highway Transportation Officials M288–96 Geotextile Specifications;
- ASTM International D1388 Standard Test Method for Stiffness of Fabrics;
- ASTM International D1777 Standard Test Method for Thickness of Textile Materials;
- ASTM International D2974 Standard Test Method for Moisture, Ash, and Organic Matter of Peat and Other Organic Soils;
- ASTM International D3776 Standard Test Methods for Mass per Unit Area (Weight) of Fabric;

- ASTM International D4354 Standard Test Practice for Sampling of Geosynthetics for Testing;
- ASTM International D4595 Standard Test Method for Tensile Properties of Geotextiles by the Wide-Width Strip Method;
- ASTM International D5035 Standard Test Method for Breaking Force and Elongation of Textile Fabrics (Strip Method);
- ASTM International D5261 Standard Test Method for Measuring Mass per Unit Area of Geotextiles;
- ASTM D586 Standard Test Method for Ash in Pulp, Paper and Paper Products;
- ASTM International D6400 Standard Specification for Compostable Plastics;
- ASTM International D6459 Standard Test Method for Determination of Erosion Control Blanket (ECB) Performance in Protecting Hillslopes from Rainfall-Induced Erosion;
- ASTM International D6460 Standard Test Method for Determination of Rolled Erosion Control Product (RECP) Performance in Protecting Earthen Channels from Stormwater-Induced Erosion;
- ASTM International D6475 Standard Test Method for Measuring Mass per Unit Area of Erosion Control Blankets;
- ASTM International D6524 Standard Test Method for Measuring the Resiliency of Turf Reinforcement Mats (TRMs);
- ASTM International D6525 Standard Test Method for Measuring Nominal Thickness of Permanent Rolled Erosion Control Products;
- ASTM International D6566 Standard Test Method for Measuring Mass per Unit of Area of Turf Reinforcement Mats;
- ASTM International D6567 Standard Test Method for Measuring the Light Penetration of a Turf Reinforcement Mat (TRM);
- ASTM International D6575 Standard Test Method for Determining Stiffness of Geosynthetics Used as Turf Reinforcement Mats (TRMs);
- ASTM International D6818 Standard Test Method for Ultimate Tensile Properties of Turf Reinforcement Mats; and
- Erosion Control Technology Council Technical Guidance Manual: TASC 00197.

USDA attempted to gather data on the potential market for erosion control materials within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, many Federal agencies routinely perform, or procure contract services to perform construction, demolition or other site work or maintenance that requires the use of erosion control materials. Thus, they have a need for these products. Designation of erosion control materials will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 15 erosion control materials. Analyses of the environmental and human health benefits and the life-cycle costs of biobased erosion control materials were performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

9. Floor Cleaners and Protectors (Minimum Biobased Content 77 Percent)

Floor cleaners and protectors are cleaning solutions for either direct application or use in floor scrubbers for wood, vinyl, tile, or similar hard surface floors.

USDA identified 25 manufacturers and suppliers of 39 floor cleaners and protectors. These 25 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased floor cleaners and protectors, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified several test methods and other measures of performance (as shown below) used in evaluating products within this item. While other test methods and other measures of performance, as well as performance standards, applicable to products within this item may exist, those test methods and other measures of performance identified by manufacturers of products within this item and by others are:

Test Methods:

- ASTM International D4488 Standard guide for testing cleaning performance of products intended for use on resilient flooring and washable walls; and
- ASTM International D5343 Standard guide for evaluating cleaning performance of ceramic tile cleaners.

USDA attempted to gather data on the potential market for floor cleaners and protectors within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, many Federal agencies routinely perform, or procure contract services to perform, activities that use floor cleaners and protectors. Thus, they have a need for these products. Designation of floor cleaners and protectors will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 14 floor cleaners and protectors. Analyses of the environmental and human health benefits and the life-cycle costs of biobased floor cleaners and protectors were performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

10. Hair Care Products (Minimum Biobased Content: 66 Percent for Shampoos; 78 Percent for Conditioners)

Hair care products are products that are specifically formulated for hair cleaning and treatment applications, including shampoos and conditioners.

USDA identified 58 manufacturers and suppliers of 265 hair care products. Of these 265 products, 147 were identified as providing products designed specifically as shampoos and 118 were identified as providing products designed as conditioners. Based on the information available to it, USDA believes that it is appropriate to subcategorize this item into shampoo products and conditioner products. For the purpose of this rulemaking, products that contain a combination of shampoo and conditioner are considered to be shampoos because the primary purpose of these products is believed to be cleaning the hair.

The 58 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of hair care products, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any performance standards, test methods, or applicable industry measures of performance against which these products have been tested. As noted earlier in this preamble, the lack of identified performance standards is not relevant to the designation of an item for preferred procurement because it is not one of the criteria section 9002 requires USDA to

consider in order to designate an item for preferred procurement. If and when performance standards, test methods, and other relevant measures of performance are identified for this item, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for hair care products within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, some Federal agencies routinely procure hair care products, or procure services that use these products. Thus, they have a need for hair care products and for services that require the use of hair care products. Designation of hair care products will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 106 hair care products. Analyses of the environmental and human health benefits and the life-cycle costs of biobased hair care products were performed for two of the shampoo products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

11. Interior Paints and Coatings (Minimum Biobased Content 67 Percent)

Interior paints and coatings are products used to protect and add color to an object or surface by covering it with a pigmented coating specifically formulated to provide protection in indoor applications.

USDA identified 15 manufacturers and suppliers of 114 different biobased interior paints and coatings. These 15 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased interior paints and coatings, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified three test methods (as shown below) used in evaluating products within this item. While other test methods and other measures of performance, as well as performance standards, applicable to products within this item may exist, those test methods and other measures of performance identified by manufacturers of products within this item and by others are:

Test Methods:

- ASTM International D2486 Standard Test Method for Scrub Resistance of Wall Paint;
- ASTM International 4828–91 Stain Resistance; and
- ASTM International D2805–88 Standard Test Method for Opacity.

USDA attempted to gather data on the potential market for interior paints and coatings within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, Federal agencies have residential and office buildings that requires the use of interior paints and coatings. In addition, Federal agencies may procure contract maintenance services that require the use of interior paints and coatings. Thus, they have a need for interior paints and coatings and for services that require the use of such products. Designation of interior paints and coatings will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 10 interior paints and coatings. Analyses of the environmental and human health benefits and the life-cycle costs of biobased interior paints and coatings were performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

12. Oven and Grill Cleaners (Minimum Biobased Content 66 Percent)

Oven and grill cleaners are cleaning agents used on high temperature cooking surfaces such as barbeques, smokers, grills, stoves, and ovens to soften and loosen charred food, grease, and residue.

USDA identified 11 manufacturers and suppliers of 13 oven and grill cleaner products. These 11 manufacturers and suppliers do not necessarily include all manufacturers of oven and grill cleaners, merely those identified during USDA information gathering activities. Information supplied by the manufacturers and suppliers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of an item for preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate an item for preferred procurement. If and when performance standards, test methods, and other relevant measures of performance are identified for this item, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for oven and grill cleaners within the Federal government using the procedure described in the section on animal repellents. These attempts were largely unsuccessful. However, Federal agencies routinely engage in operations where oven and grill cleaners are used. In addition, many Federal agencies contract for food service activities involving the use of such products. Thus, they have a need for oven and grill cleaners and for services that use oven and grill cleaners. Designation of oven and grill cleaners will promote the use of biobased products, furthering the objectives of this program.

Specific product information including company contact, intended use, biobased content, and performance characteristics have been collected on nine oven and grill cleaners. Analyses of the environmental and human health benefits and the life-cycle costs of biobased oven and grill cleaners were performed for three of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

13. Slide Way Lubricants (Minimum Biobased Content 74 Percent)

Slide way lubricants are products used to provide lubrication between the mating surfaces, or slides, found in machine tools. These lubricants eliminate stick-slip or table chatter by reducing friction between mating surfaces.

USDA identified three manufacturers and suppliers of four different biobased slide way lubricants. These three manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased slide way lubricants, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified 10 test methods (as shown below) used in evaluating products within this item. While there may be additional test methods, as well as

performance standards and other measures of performance, applicable to products within this item, the 10 test methods identified by the manufacturers of products within this item are:

Test Methods:

- ASTM International D2161 Standard Practice for Conversion of Kinematic Viscosity to Saybolt Universal Viscosity or to Saybolt Furol;
- ASTM International D2270 Standard Practice for Calculating Viscosity Index from Kinematic Viscosity at 40 and 100 °C;
- ASTM International D2782 Standard Test Method for Measurement of Extreme-Pressure Properties of Lubricating Fluids (Timken Method);
- ASTM International D2783 Standard Test Method for Measurement of Extreme-Pressure Properties of Lubricating Fluids (Four-Ball Method);
- ASTM International D287 Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method);
- ASTM International D445 Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity);
- ASTM International D5864 Standard Test Method for Determining Aerobic Aquatic Biodegradation of Lubricants or Their Components;
- ASTM International D665 Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water;
- ASTM International D92 Standard Test Method for Flash and Fire Points by Cleveland Open Cup Tester; and
- ASTM International D97 Standard Test Method for Pour Point of Petroleum Products.

USDA attempted to gather data on the potential market for slide way lubricants within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, Federal agencies have machinery and equipment that requires the use of slide way lubricants. In addition, Federal agencies may procure contract services that have machinery that requires the use of slide way lubricants. Thus, they have a need for slide way lubricants and for services that require the use of such lubricants. Designation of slide way lubricants will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on two slide way lubricants. An analysis of the environmental and human health benefits and the life-cycle costs of biobased slide way lubricants was performed for one of the products using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

14. Thermal Shipping Containers (Minimum Biobased Content: 21 Percent for Durable Containers; 82 Percent for Non-Durable Containers)

Thermal shipping containers are insulated containers for shipping temperature sensitive materials.

USDA identified two manufacturers of three biobased thermal shipping container products. Of these manufacturers, one was identified as providing two products designed for single, short term use (non-durable) and the other manufacturer was identified as providing a durable product intended for long term use.

The two manufacturers do not necessarily include all manufacturers of biobased thermal shipping containers, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified four methods (as shown below) used in evaluating products within this item. While other test methods and other measures of performance, as well as performance standards, applicable to products within this item may exist, those test methods and other measures of performance identified by manufacturers of products within this item and by others are:

Test Methods:

- ASTM International D4236 Standard Practice for Labeling Art Materials for Chronic Health Hazards;
- ASTM International D963 Specification for Copper Phthalcoyanine Blue Pigment;
- ASTM International D5338 Standard Test Method for Determining Aerobic Biodegradation of Plastic Materials Under Controlled Composting Conditions; and
- ASTM International D6868 Standard Specification for Biodegradable Plastics Used as Coatings on Paper and Other Compostable Substrates.

USDA attempted to gather data on the potential market for thermal shipping containers within the Federal government as discussed in the section on animal repellents. These attempts were largely unsuccessful. However, many Federal agencies routinely use such containers, and procure services that use thermal shipping containers. Thus, they have a need for thermal shipping containers and for services that require the use of thermal shipping containers. Designation of thermal shipping containers will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on two thermal shipping containers. Analyses of the environmental and human health benefits and the life-cycle costs of biobased thermal shipping containers were performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 7 items, which can be found on the BioPreferred Web site.

C. Minimum Biobased Contents

USDA has determined that setting a minimum biobased content for designated items is appropriate. Establishing a minimum biobased content will encourage competition among manufacturers to develop products with higher biobased contents and will prevent products with de minimis biobased content from being purchased as a means of satisfying the requirements of section 9002. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Setting the minimum biobased content for an item at a level met by several of the tested products will provide more products from which procurement officials may choose, will encourage the most widespread usage of biobased products by procuring agencies, and is expected to accomplish the objectives of section 9002.

As discussed in Section IV.A of this preamble, USDA relied entirely on manufacturers' voluntary submission of samples to support the proposed designation of these items. The data presented in the following paragraphs are the test results from all of the product samples that were submitted for analysis.

As a result of public comments received on the first designated items rulemaking proposal, USDA decided to account for the slight imprecision in the analytical method used to determine biobased content of products when establishing the minimum biobased content. Thus, rather than establishing the minimum biobased content for an

item at the tested biobased content of the product selected as the basis for the minimum value, USDA is establishing the minimum biobased content at a level three (3) percentage points less than the tested value. USDA believes that this adjustment is appropriate to account for the expected variations in analytical results.

USDA encourages procuring agencies to seek products with the highest biobased content that is practicable in all of the proposed designated items and subcategories. To assist the procuring agencies in determining which products have the highest biobased content, USDA will update the information in the biobased products catalog to include the biobased content of each product. Those products within each designated item that have the highest biobased content will be listed first and others will be listed in descending order. USDA is specifically requesting comments on the proposed minimum biobased contents of designated items and also requests additional data that can be used to re-evaluate the appropriateness of the proposed minimum biobased contents. As the market for biobased products develops and USDA obtains additional biobased content data, it will re-evaluate the established minimum biobased contents of designated items and consider raising them whenever justified.

The following paragraphs summarize the information that USDA used to propose minimum biobased contents within each proposed designated item.

1. Animal Repellents

Six of the 109 biobased animal repellents have been tested for biobased content using ASTM D6866.[2] The biobased contents of these six biobased animal repellents range from 22 to 100 percent, as follows: 22, 28, 82, 98, 100, and 100. There is a wide range of tested biobased contents, and a significant break between the values for the two products with the lowest biobased contents and the values for the four products with the highest biobased contents. Because USDA found that the two products with the 22 and 28 percent biobased content did not claim to offer any unique performance or applicability features not offered by the products with 100 percent biobased content, and because we have data showing that at least two different products are available with a biobased content of 100 percent, we are proposing to set the minimum biobased content for this item at 79 percent based on the product with a tested biobased content of 82 percent.

2. Bath Products

Thirteen of the 850 biobased bath products have been tested for biobased content using ASTM D6866. The biobased contents of these 13 biobased bath products range from 21 to 100 percent, as follows: 21, 43, 64, 66, 67, 70, 74, 76, 83, 96, and 100 (three products). Because there is a wide range of tested biobased contents, and because there are significant breaks among the values for the three products with the lowest biobased contents, USDA considered the need to subcategorize this item. USDA found that there was not sufficient information on the performance or applicability of the products to justify subcategorization. USDA also found that the two products with the 21 and 43 percent biobased contents did not claim to offer any unique performance features. The biobased contents of these two products are also significantly below the content of the next highest (64 percent) product. In addition, seven of the 13 tested products had biobased contents in the narrow range between 64 and 83 percent. Therefore, USDA is proposing to set the minimum biobased content for this item at 61 percent, based on the product with a tested biobased content of 64 percent.

3. Bioremediation Materials

Three of the 53 biobased bioremediation materials identified have been tested for biobased content using ASTM D6866. The biobased contents of these three biobased bioremediation materials are 24, 89, and 100 percent. Because there is a significant gap in the data between the 24 and the 89 percent biobased products, USDA investigated the 24 percent product to determine if there was justification in considering it when setting the minimum biobased content. USDA did not find any performance or applicability claims that would justify setting the minimum biobased content for the item at that level. Therefore, USDA is proposing to set the minimum biobased content for this item at 86 percent, based on the product with the tested biobased content of 89 percent.

4. Compost Activators and Accelerators

Two of the 32 biobased compost activators and accelerators identified have been tested for biobased content using ASTM D6866. The biobased contents of these two biobased compost activators and accelerators are 98, and 100 percent. Because of the narrow range of these products, USDA is proposing to set the minimum biobased content for compost activators and accelerators at 95 percent, based on the product with a tested biobased content of 98 percent.

5. Concrete and Asphalt Cleaners

Five of the 37 biobased concrete and asphalt cleaners identified have been tested for biobased content using ASTM D6866. The biobased contents of these five biobased concrete and asphalt cleaners range from 1 percent to 91 percent, as follows: 1, 11, 28, 73, and 91 percent.

USDA found that the products with 1 percent and 11 percent biobased contents are products that use microbial organisms as the active cleaning agents. As discussed earlier in this preamble, USDA is considering creating a separate designated item for microbial cleaners. As a result, USDA decided not to include these products when proposing the minimum biobased content for the concrete and asphalt cleaners item. USDA requests that manufacturers of these two microbial cleaning products, and manufacturers of any other microbial cleaners, provide comments and information on the creation of a separate category for microbial cleaners.

The three remaining concrete and asphalt cleaners had biobased contents of 28, 73, and 91 percent. Because there is a significant break between the 28 percent biobased product and the 73 percent biobased product, and there is no product information to suggest that the 28 percent product offers any unique performance or applicability features, USDA is proposing to set the minimum biobased content for this item at 70 percent, based on the product with a tested biobased content of 73 percent.

6. Cuts, Burns, and Abrasions Ointments

Eight of the 71 identified biobased cuts, burns, and abrasions ointments identified have been tested for biobased content using ASTM D6866. The biobased contents of these eight biobased cuts, burns, and abrasions ointments range from 87 percent to 100 percent, as follows: 87, 91, 93, 94, 97, 100, 100, and 100 percent. Because of the narrow range of these products, USDA is proposing to set the minimum biobased content for this item at 84 percent, based on the product with the 87 percent biobased content.

[2] ASTM D6866, "Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis," is used to distinguish between carbon from fossil resources (non-biobased carbon) and carbon from renewable sources (biobased carbon). The biobased content is expressed as the percentage of total carbon that is biobased carbon.

7. Dishwashing Products

Five of the 66 identified biobased dishwashing products identified have been tested for biobased content using ASTM D6866. The biobased contents of these five biobased dishwashing products range from 30 percent to 95 percent, as follows: 30, 41, 61, 75, and 95 percent.

There are two significant breaks in the range of data, one between the 41 and 61 percent biobased products and another between the 75 and 95 percent biobased products. Considering these breaks, the tested products within the item fall into three groups. USDA evaluated the available product information to determine if there were sufficient differences in formulation, performance, or applicability between these product groups to justify subcategorization. However, USDA did not find sufficient information to justify subcategories within the item. USDA also did not find any features of the 30 or 41 percent biobased content products that would justify setting the minimum biobased content at a level that would include these products. Therefore, USDA is proposing to set the minimum biobased content for this item at 58 percent, based on the product with the tested biobased content of 61 percent. USDA does not believe that it is reasonable to consider the break between the 75 percent biobased content product and the 95 percent biobased content product when setting the minimum biobased content because only one of the products would qualify if the minimum biobased content were set at this higher level.

USDA will continue to gather information on products within this item, and if sufficient supporting information becomes available, will consider establishing subcategories based on formulation (detergents versus soaps, liquids versus powders, *etc.*), performance, or applicability.

8. Erosion Control Materials

Eight of the 169 biobased erosion control materials identified have been tested for biobased content using ASTM D6866. The biobased contents of these eight biobased erosion control materials ranged from 80 percent to 100 percent as follows: 80, 81, 96, 98, 99, 100, 100, and 100 percent. Because of the narrow range of these products, USDA is proposing to set the minimum biobased content for erosion control materials at 77 percent, based on the product with a tested biobased content of 80 percent.

9. Floor Cleaners and Protectors

Seven of the 39 biobased floor cleaners and protectors identified have been tested for biobased content using ASTM D6866. The biobased contents of these seven biobased floor cleaners and protectors ranged from 40 percent to 99 percent as follows: 40, 57, 80, 80, 91, 97, and 99 percent.

There is a significant break in the range of data between the 57 and the 80 percent biobased content products, but the available product information does not justify creating subcategories within this item. The manufacturers of the two products with biobased contents of 40 and 57 do not make any performance or applicability claims for these products that would distinguish them from the other products. Therefore, USDA is proposing to set the minimum biobased content for biobased floor cleaners and protectors at 77 percent, based on the product with a tested biobased content of 80 percent.

10. Hair Care Products

Ten of the 263 biobased hair care products identified have been tested for biobased content using ASTM D6866. The biobased contents of these 10 biobased hair care products range from 38 percent to 89 percent as follows: 38, 40, 43, 69, 75, 76, 81, 82, 83, and 89 percent.

As noted earlier in this preamble, USDA is proposing to subcategorize this item into two subcategories: "Shampoos" and "Conditioners." The following paragraphs discuss the minimum biobased content for the two subcategories.

Shampoos. The biobased contents of the seven tested shampoos range from 38 percent to 83 percent, as follows: 38, 40, 43, 69, 75, 76, and 83. There is a significant break between the 43 percent biobased product and the 69 percent product, and USDA found no performance features claimed for the 38, 40, or 43 percent products that justified setting the minimum biobased content based on any of these products. Because the biobased contents of the remaining four products are within a narrow range, and there is no performance information to distinguish any one product from the others, USDA is proposing to set the minimum biobased content for shampoos at 66 percent, based on the product with a tested biobased content of 69 percent.

Conditioners. The biobased contents of the three tested conditioners range from 81 to 89 percent, as follows: 81, 82, and 89. Because of the narrow range of these products, USDA is proposing to set the minimum biobased content for conditioners at 78 percent, based on the product with a tested biobased content of 81 percent.

11. Interior Paints and Coatings

Five of the 114 biobased interior paints and coatings identified have been tested for biobased content using ASTM D6866. The biobased contents of these five biobased interior paints and coatings range from 70 to 100 percent, as follows: 70, 83, 90, 91, and 100 percent. Because the range of these five values is relatively narrow and there are no significant breaks in the range of the data, USDA is proposing to set the minimum biobased content for this item at 67 percent, based on the product with a tested biobased content of 70 percent.

12. Oven and Grill Cleaners

Four of the 13 biobased oven and grill cleaners identified have been tested for biobased content using ASTM D6866. The biobased contents of these four biobased oven and grill cleaners ranged from 22 percent to 91 percent, as follows: 22, 69, 88, and 91.

As shown, the tested biobased contents cover a wide range and there is a significant break between the 22 percent biobased product and the 69 percent biobased product. The one oven and grill cleaner whose tested biobased content was 22 percent was eliminated from consideration because USDA found no performance characteristics that set this product apart from other products in this item. Further, this product's tested biobased content is substantially lower than the next lowest oven and grill cleaner tested (69 percent). Therefore, USDA is proposing to set the minimum biobased content for oven and grill cleaners at 66 percent, based on the product with a tested biobased content of 69 percent.

13. Slide Way Lubricants

All of the four biobased slide way lubricants identified have been tested for biobased content using ASTM D6866. The biobased contents of these four biobased slide way lubricants are 77, 99, 100, and 100 percent. Because the range of these four values is relatively narrow and eliminating the product with the 77 percent biobased content would result in an extremely high minimum biobased content for this item, USDA is proposing to set the minimum biobased content for this item at 74 percent, based on the product with a tested biobased content of 77 percent.

14. Thermal Shipping Containers

Two of the three biobased thermal shipping containers identified have been tested for biobased content using ASTM D6866. The biobased contents of these two biobased thermal shipping containers were 24 percent and 85 percent. As noted earlier in this

preamble, USDA is proposing to subcategorize this item into two subcategories: "Durable thermal shipping containers" and "Non-durable thermal shipping containers." The following paragraphs discuss the minimum biobased content for the two subcategories.

Durable thermal shipping containers. USDA is proposing to set the minimum biobased content for durable thermal containers at 21 percent, based on the product with a tested biobased content of 24 percent. USDA will continue to gather additional biobased content information for this subcategory and, if sufficient data are obtained, will consider increasing the minimum biobased content for the final rule.

Non-durable thermal shipping containers. USDA is proposing to set the minimum biobased content for non-durable thermal containers at 82 percent, based on the product with a tested biobased content of 85 percent.

D. Compliance Date for Procurement Preference and Incorporation Into Specifications

USDA intends for the final rule to take effect thirty (30) days after publication of the final rule. However, as proposed, procuring agencies would, with the exception of one designated item discussed below, have a one-year transition period, starting from the date of publication of the final rule, before the procurement preference for biobased products within a designated item would take effect.

USDA is proposing a one-year period before the procurement preferences would take effect, because it recognizes that Federal agencies will need time to incorporate the preferences into procurement documents and to revise existing standardized specifications. Both section 9002(a)(3) and 7 CFR 2902(c) explicitly acknowledge the need for Federal agencies to have sufficient time to revise the affected specifications to give preference to biobased products when purchasing the designated items. Procuring agencies will need time to evaluate the economic and technological feasibility of the available biobased products for their agency-specific uses and for compliance with agency-specific requirements, including manufacturers' warranties for machinery in which the biobased products would be used.

By the time these items are promulgated for designation, Federal agencies will have had a minimum of 18 months (from the date of this **Federal Register** notice), and much longer considering when the Guidelines were first proposed and these requirements were first laid out, to implement these requirements.

For these reasons, USDA proposes that the mandatory preference for biobased products under the designated items take effect one year after promulgation of the final rule. The one-year period provides these agencies with ample time to evaluate the economic and technological feasibility of biobased products for a specific use and to revise the specifications accordingly. However, some agencies may be able to complete these processes more expeditiously, and not all uses will require extensive analysis or revision of existing specifications. Although it is allowing up to one year, USDA encourages procuring agencies to implement the procurement preferences as early as practicable for procurement actions involving any of the designated items.

Only one manufacturer within each subcategory of the thermal shipping containers designated item has been identified. Therefore, USDA is proposing to defer the procurement compliance date for the subcategories within this designated item until two or more manufacturers of products within the subcategories are identified. When USDA identifies two or more manufacturers, USDA will publish a document in the **Federal Register** announcing that Federal agencies will have one year from the date of publication of that announcement to give procurement preference to biobased durable and non-durable thermal shipping containers, as appropriate.

V. Where can agencies get more information on these USDA-designated items?

Information used to develop this proposed rule can be found in the TSD, which can be accessed on the BioPreferred Web site, which is located at: *http://www.biopreferred.gov.* At the BioPreferred Web site, click on the Proposed and Final Regulations link on the right side of the page. At the next screen, click on the Supporting Documentation link under Round 7 Designation under the Proposed Regulations section.

Further, once the item designations in today's proposal become final, manufacturers and vendors voluntarily may make available information on specific products, including product and contact information, for posting by the Agency on the BioPreferred Web site. USDA has begun performing periodic audits of the information displayed on the BioPreferred Web site and, where questions arise, is contacting the manufacturer or vendor to verify, correct, or remove incorrect or out-of-date information. Procuring agencies should contact the manufacturers and vendors directly to discuss specific needs and to obtain detailed information on the availability and prices of biobased products meeting those needs.

By accessing the BioPreferred Web site, agencies will also be able to obtain the voluntarily-posted information on each product concerning: Relative price; life-cycle costs; hot links directly to a manufacturer's or vendor's Web site (if available); performance standards (industry, government, military, ASTM/ISO) that the product has been tested against; and environmental and public health information from the BEES analysis or the alternative analysis embedded in the ASTM Standard D7075, "Standard Practice for Evaluating and Reporting Environmental Performance of Biobased Products."

USDA has linked the BioPreferred Web site to DoD's list of specifications and standards, which can be used as guidance when procuring products. To access this list, go to the BioPreferred Web site and click on the "Selling to Federal Government" tab and look for the DoD Specifications link.

VI. Regulatory Information

A. Executive Order 12866: Regulatory Planning and Review

Executive Order 12866 requires agencies to determine whether a regulatory action is "significant." The Order defines a "significant regulatory action" as one that is likely to result in a rule that may: "(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

Today's proposed rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. We are not able to quantify the annual economic effect associated with today's

proposed rule. As discussed earlier in this preamble, USDA made extensive efforts to obtain information on the Federal agencies' usage within the 14 designated items, including their subcategories. These efforts were largely unsuccessful. Therefore, attempts to determine the economic impacts of today's proposed rule would require estimation of the anticipated market penetration of biobased products based upon many assumptions. In addition, because agencies have the option of not purchasing designated items if price is "unreasonable," the product is not readily available, or the product does not demonstrate necessary performance characteristics, certain assumptions may not be valid. While facing these quantitative challenges, USDA relied upon a qualitative assessment to determine the impacts of today's proposed rule. Consideration was also given to the fact that agencies may choose not to procure designated items due to unreasonable price.

1. Summary of Impacts

Today's proposed rule is expected to have both positive and negative impacts to individual businesses, including small businesses. USDA anticipates that the biobased preferred procurement program will provide additional opportunities for businesses and manufacturers to begin supplying products under the proposed designated biobased items to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their contractors. USDA is unable to determine the number of businesses, including small businesses, that may be adversely affected by today's proposed rule. The proposed rule, however, will not affect existing purchase orders, nor will it preclude businesses from modifying their product lines to meet new requirements for designated biobased products. Because the extent to which procuring agencies will find the performance, availability and/or price of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of the rule. As discussed in Section III of this preamble, USDA is requesting comment on how many small entities may be affected by this rule and on the nature and extent of that effect.

2. Benefits of the Proposed Rule

The designation of these items provides the benefits outlined in the objectives of section 9002; to increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products, and to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities. On a national and regional level, today's proposed rule can result in expanding and strengthening markets for biobased materials used in these items.

3. Costs of the Proposed Rule

Like the benefits, the costs of today's proposed rule have not been quantified. Two types of costs are involved: Costs to producers of products that will compete with the preferred products and costs to Federal agencies to provide procurement preference for the preferred products.

Producers of competing products may face a decrease in demand for their products to the extent Federal agencies refrain from purchasing their products. However, it is not known to what extent this may occur. Pre-award procurement costs for Federal agencies may rise minimally as the contracting officials conduct market research to evaluate the performance, availability and price reasonableness of preferred products before making a purchase.

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.

USDA evaluated the potential impacts of its proposed designation of these items to determine whether its actions would have a significant impact on a substantial number of small entities. Because the preferred procurement program established under section 9002 applies only to Federal agencies and their contractors, small governmental (city, county, *etc.*) agencies are not affected. Thus, the proposal, if promulgated, will not have a significant economic impact on small governmental jurisdictions.

USDA anticipates that this program will affect entities, both large and small, that manufacture or sell biobased products. For example, the designation of items for preferred procurement will provide additional opportunities for businesses to manufacture and sell biobased products to Federal agencies and their contractors. Similar opportunities will be provided for entities that supply biobased materials to manufacturers.

The intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products. Because the program is still in its infancy, however, it is unknown how many businesses will ultimately be affected. While USDA has no data on the number of small businesses that may choose to develop and market biobased products within the items designated by this rulemaking, the number is expected to be small. Because biobased products represent a small emerging market, only a small percentage of all manufacturers, large or small, are expected to develop and market biobased products. Thus, the number of small businesses manufacturing biobased products affected by this rulemaking is not expected to be substantial.

The preferred procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. Most manufacturers of non-biobased products within the items being proposed for designation for preferred procurement in this rule are expected to be included under the following NAICS codes: 324191 (petroleum lubricating oil and grease manufacturing), 325320 (pesticide and other agricultural chemical manufacturing), 325412 (pharmaceutical preparation manufacturing), 325510 (paint and coating manufacturing), 325611 (soap and other detergent manufacturing), 325612 (polish and other sanitation goods manufacturing), 325620 (toilet preparation manufacturing), 325998 (other miscellaneous chemical products and preparation manufacturing), 326150 (urethane and other foam product manufacturing), and 314999 (other miscellaneous textile mill products). USDA obtained information on these 10 NAICS categories from the U.S. Census Bureau's Economic Census database. USDA found that the Economic Census reports about 8,092 companies within these 10 NAICS categories and that these companies own a total of about 9,255 establishments. Thus, the average number of establishments per company is about 1.1. The Census data also reported that of the 9,255 individual establishments, about 9,119 (98.5 percent) have fewer than 500 employees. USDA also found that the overall average number of employees per company among these industries is

about 58, with only one segment reporting an average of more than 100 employees (the pharmaceutical preparation industry segment at about 250 employees per company). Thus, nearly all of the businesses fall within the Small Business Administration's definition of a small business (fewer than 500 employees, in most NAICS categories).

USDA does not have data on the potential adverse impacts on manufacturers of non-biobased products within the items being designated, but believes that the impact will not be significant. Most of the items being proposed for designation in this rulemaking are typical consumer products widely used by the general public and by industrial/commercial establishments that are not subject to this rulemaking. Thus, USDA believes that the number of small businesses manufacturing non-biobased products within the items being designated and selling significant quantities of those products to government agencies affected by this rulemaking to be relatively low. Also, this proposed rule will not affect existing purchase orders and it will not preclude procuring agencies from continuing to purchase non-biobased items when biobased items do not meet the availability, performance, or reasonable price criteria. This proposed rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials.

After considering the economic impacts of this proposed rule on small entities, USDA certifies that this action will not have a significant economic impact on a substantial number of small entities.

While not a factor relevant to determining whether the proposed rule will have a significant impact for RFA purposes, USDA has concluded that the effect of the rule will be to provide positive opportunities to businesses engaged in the manufacture of these biobased products. Purchase and use of these biobased products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies.

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 13132: Federalism

This proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this proposed rule will 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.

E. 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.

F. 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 Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

G. 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.

H. Paperwork Reduction Act

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

I. 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 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 2902

Biobased products, Procurement.

For the reasons stated in the preamble, the Department of Agriculture proposes to amend 7 CFR chapter XXIX as follows:

CHAPTER XXIX—OFFICE OF ENERGY POLICY AND NEW USES

PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

1. The authority citation for part 2902 continues to read as follows:

Authority: 7 U.S.C. 8102.

2. Add §§ 2902.61 through 2902.74 to subpart B to read as follows:

Sec.
2902.61 Animal repellents.
2902.62 Bath products.
2902.63 Bioremediation materials.
2902.64 Compost activators and accelerators.
2902.65 Concrete and asphalt cleaners.
2902.66 Cuts, burns, and abrasions ointments.
2902.67 Dishwashing products.
2902.68 Erosion control materials.
2902.69 Floor cleaners and protectors.
2902.70 Hair care products.
2902.71 Interior paints and coatings.
2902.72 Oven and grill cleaners.
2902.73 Slide way lubricants.
2902.74 Thermal shipping containers.

§ 2902.61 Animal repellents.

(a) *Definition.* Products used to aid in deterring animals that cause destruction to plants and/or property.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 79 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased animal repellents. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that

the relevant specifications require the use of biobased animal repellents.

§ 2902.62 Bath products.

(a) *Definition.* Personal hygiene products including bar soaps, liquids, or gels that are referred to as body washes, body shampoos, or cleansing lotions.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 61 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased bath products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased bath products.

§ 2902.63 Bioremediation materials.

(a) *Definition.* Dry or liquid solutions (including those containing bacteria or other microbes but not including sorbent materials) used to clean oil, fuel, and other hazardous spill sites.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 86 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased bioremediation materials. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased bioremediation materials.

§ 2902.64 Compost activators and accelerators.

(a) *Definition.* Products in liquid or powder form designed to be applied to compost piles to aid in speeding up the composting process and to ensure successful compost that is ready for consumer use.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 95 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased compost activators and accelerators. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased compost activators and accelerators.

§ 2902.65 Concrete and asphalt cleaners.

(a) *Definition.* Chemicals used in concrete etching as well as to remove petroleum-based soils, lubricants, paints, mastics, organic soils, rust, and dirt from concrete, asphalt, stone and other hard porous surfaces for commercial, industrial, or residential use.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 70 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased concrete and asphalt cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased concrete and asphalt cleaners.

§ 2902.66 Cuts, burns, and abrasions ointments.

(a) *Definition.* Products designed to aid in the healing and sanitizing of scratches, cuts, bruises, abrasions, sun damaged skin, tattoos, rashes and other skin conditions.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 84 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased cuts, burns, and abrasions ointments. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased cuts, burns, and abrasions ointments.

§ 2902.67 Dishwashing products.

(a) *Definition.* Soaps and detergents used for cleaning and clean rinsing of tableware in either hand washing or dishwashing.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 58 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased dishwashing products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased dishwashing products.

§ 2902.68 Erosion control materials.

(a) *Definition.* Woven or non-woven fiber materials manufactured for use on construction, demolition, or other sites to prevent wind or water erosion of loose earth surfaces, which may be combined with seed and/or fertilizer to promote growth.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 77 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased erosion control materials. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased erosion control materials.

§ 2902.69 Floor cleaners and protectors.

(a) *Definition.* Cleaning solutions for either direct application or use in floor scrubbers for wood, vinyl, tile, or similar hard surface floors.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 77 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased floor cleaners and protectors. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased floor cleaners and protectors.

§ 2902.70 Hair care products.

(a) *Definitions.* (1) Personal hygiene products specifically formulated for hair cleaning and treating applications, including shampoos and conditioners.

(2) Hair care products for which preferred procurement applies are:

(i) *Shampoos.* These are products whose primary purpose is cleaning hair. Products that contain both shampoos and conditioners are included in this subcategory because the primary purpose of these products is cleaning the hair.

(ii) *Conditioners.* These are products whose primary purpose is treating hair to improve the overall condition of hair.

(b) *Minimum biobased content.* The minimum biobased content for all hair care products shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents for the preferred procurement products are:

(1) Shampoos—66 percent.

(2) Conditioners—78 percent.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased hair care products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased hair care products.

§ 2902.71 Interior paints and coatings.

(a) *Definition.* Pigmented liquids, formulated for use indoors, that dry to form a film and provide protection and added color to the objects or surfaces to which they are applied.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 67 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased interior paints and coatings. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased interior paints and coatings.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products within this item may, in some cases, overlap with the EPA-designated recovered content products: Reprocessed latex paints and consolidated latex paints. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated reprocessed latex paints and consolidated latex paints and which product should be afforded the preference in purchasing.

Note to paragraph (d): Biobased interior paints and coating products within this designated item can compete with similar reprocessed latex paint and consolidated latex paint products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated reprocessed latex paints and consolidated latex paints containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.12.

§ 2902.72 Oven and grill cleaners.

(a) *Definition.* Liquid or gel cleaning agents used on high temperature cooking surfaces such as barbeques, smokers, grills, stoves, and ovens to soften and loosen charred food, grease, and residue.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 66 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased oven and grill cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased oven and grill cleaners.

§ 2902.73 Slide way lubricants.

(a) *Definition.* Products used to provide lubrication and eliminate stick-slip and table chatter by reducing friction between mating surfaces, or slides, found in machine tools.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 74 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased slide way lubricants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased slide way lubricants.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products within this item may, in some cases, overlap with the EPA-designated recovered content product: Re-refined lubricating oils. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance

standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated re-refined lubricating oils and which product should be afforded the preference in purchasing.

Note to paragraph (d): Biobased slide way lubricant products within this designated item can compete with similar slide way lubricant products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated re-refined lubricating oils containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.11(a).

§ 2902.74 Thermal shipping containers.

(a) *Definitions.* (1) Insulated containers designed for shipping temperature-sensitive materials.

(2) Thermal shipping containers for which preferred procurement applies are:

(i) *Durable thermal shipping container.* These are thermal shipping containers that are designed to be reused over an extended period of time.

(ii) *Non-durable thermal shipping containers.* These are thermal shipping containers that are designed to be used once.

(b) *Minimum biobased content.* The minimum biobased content for all thermal shipping container products shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents for the preferred procurement products are:

(1) Durable thermal shipping containers—21 percent.

(2) Non-durable thermal shipping containers—82 percent.

(c) *Preference compliance date.*

(1) *Durable thermal shipping containers.* Determination of the preference compliance date for durable thermal shipping containers is deferred until USDA identifies two or more manufacturers of biobased durable thermal shipping containers. At that time, USDA will publish a document in the **Federal Register** announcing that Federal agencies have one year from the date of publication to give procurement preference to biobased durable thermal shipping containers.

(2) *Non-durable thermal shipping containers.* Determination of the preference compliance date for non-durable thermal shipping containers is deferred until USDA identifies two or more manufacturers of biobased non-durable thermal shipping containers. At that time, USDA will publish a document in the **Federal Register** announcing that Federal agencies have one year from the date of publication to give procurement preference to biobased non-durable thermal shipping containers.

Pearlie S. Reed,

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