

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 2, 11, 23, and 52**[FAR Case 2010–004; Docket 2010–0004;
Sequence 1]

RIN 9000–AM03

**Federal Acquisition Regulation;
Biobased Procurements**

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement changes to the Farm Security and Rural Investment Act. The rule proposes to require contractors to report the biobased products purchased under service and construction contracts. This will allow Federal agencies to monitor compliance with the Federal preference for purchasing biobased products.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before September 12, 2011 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR case 2010–004 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2010–004” under the heading “Enter Keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “FAR Case 2010–004.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2010–004” on your attached document.

- *Fax:* (202) 501–4067.
- *Mail:* General Services

Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAR Case 2010–004, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Procurement Analyst, at (202) 219–1813 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR Case 2010–004.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement changes to the Farm Security and Rural Investment Act. The rule proposes to require contractors to report the biobased products purchased under service and construction contracts. This will allow Federal agencies to monitor compliance with the Federal preference for purchasing biobased products.

A. Overview

Section 9002 of the Farm Security and Rural Investment Act of 2002, codified at 7 U.S.C. 8102, was amended by the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246). 7 U.S.C. 8102 requires Federal agencies to establish a procurement program, develop procurement specifications, procure biobased products, and give preference to those items that are composed of the highest percentage of biobased products practicable or those products that comply with the regulations issued under section 103 of Public Law 100–556 (42 U.S.C. 6914b–1). 7 U.S.C. 8102 allows flexibility to procuring agencies not to procure products if the product cannot be acquired—

- (i) Within a time frame providing for compliance with the contract performance schedule;
- (ii) Meeting reasonable performance requirements; or
- (iii) At a reasonable price.

The Biobased Products Preference Program was originally implemented in the FAR on November 7, 2007 (72 FR 63040). This proposed rule will implement additional provisions of 7 U.S.C. 8102 as amended by Public Law 110–246.

B. Invitation for Specific Comments

The rule is being published as a proposed rule because the specific method of collecting the information required by Public Law 110–246 is not specified in the statute but is necessary for implementing in Federal contracts. This proposed rule identifies the specific proposed method.

(1) DoD, GSA, and NASA invite comments on the least burdensome, most cost-efficient method to collect this information. DoD, GSA, and NASA are particularly interested in current

practices to track purchases of biobased products.

(a) How is the purchase and use of biobased products tracked and to what level of detail are they tracked, *e.g.*, product type, product name, quantity, price?

(b) Is the tracking automated or manual?

2. Comments are solicited on the level of effort required to collect and report this information under a specific federal contract. Is the purchase and use of biobased products allocated to a specific contract as a direct cost or as an overhead costs?

(3) The estimated burden includes Fiscal Year 2009 and 2010 Federal Procurement Data System contract actions selected from the following Product Service Codes: A—Research and Development; F—Natural Resources Management; J—Maintenance, Repair, and Rebuilding of Equipment; M—Operation of Government-Owned Facility; S—Utilities and Housekeeping Services; T—Photographic, Mapping, Printing, and Publication Services; Y—Construction of Structures and Facilities; and Z—Maintenance, Repair or Alteration of Real Property.

(a) Are there certain contracts where biobased items are not typically purchased, such as information technology services, or should all services be included in the information collection?

(b) What impact or estimated burden would there be on subcontractors under contract actions which include FAR 52.223–2? What would be the average number of subcontractors on such contract actions?

(4) Comments are solicited on any new technologies, including Internet-based technologies, that would reduce the burden for this information collection and afford significant opportunities for reducing costs and increasing simplification of the collection.

II. Proposed Changes to the FAR**A. Definition**

The definition of “biobased product” is revised in FAR part 2 in accordance with the Public Law 110–246. A corresponding change is made at FAR 23.404(e).

B. Limit on Data Collection

For biobased products, a prohibition was added at FAR 11.302(c)(2) against agencies collecting more data than would typically be provided by other business entities, other than data confirming the biobased content of a product. At FAR 23.405(a)(3) a cross-

reference is added to FAR 11.302(c) to remind contracting officers that when acquiring recovered material or biobased products, the contracting officer may request information or data on such products, including on the recycled or biobased content or related standards of the products.

C. Annual Report

FAR 52.223–2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, is proposed for amendment to require the contractor to report annually the product types and dollar value of any biobased products purchased during the preceding fiscal year on the contract.

The purpose of this information collection is to monitor Federal agencies' compliance with 7 U.S.C. 8102, Federal Procurement of Biobased Products. Agencies can internally track direct procurement of biobased items. However, Federal agencies lack the ability to directly track biobased products purchased under service and construction contracts. The proposed information collection requirement is to track biobased products purchased by contractors under service and construction contracts.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

This proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.*, because the rule requires that the contractor report on the product types and dollar value of biobased products in the performance of a service or construction contract. Where this information is not already available, this may mean contractors will need to

create an inventory management system to track the product types and dollar value of biobased products purchased for each contract. However, DoD, GSA, and NASA expect that the impact will be minimal, because the existing clause being amended already requires the contractor to make maximum use of biobased products in the performance of a service and construction contract, and the change does not impose any substantial requirements. Small businesses are active suppliers of biobased products, and this rule may serve to enhance their participation in this market.

In addition, the Small Business Administration's Office of Advocacy estimates that compliance with environmental requirements is significantly more costly to small businesses than large business. For recent research on this topic, see <http://www.sba.gov/sites/default/files/rs371tot.pdf>.

The Regulatory Secretariat has submitted a copy of the Interim Regulatory Flexibility Analysis (IRFA) to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2010–004) in correspondence.

The analysis is summarized as follows:

This rule implements 7 U.S.C. 8102 as amended by Public Law 110–246, which establishes the policy that Federal agencies shall establish a procurement program, develop procurement specifications, procure biobased products, and give preference to those items that are composed of the highest percentage of biobased products practicable or those products that comply with the regulations issued under section 103 of Public Law 100–556 (42 U.S.C. 6914b–1).

This rule imposes a reporting requirement on prime contractors with construction or service contracts, unless the contract will not involve the use of USDA-designated items.

The rule promotes the use of biobased products and requires an annual report on the product types and dollar value of any USDA-designated biobased products purchased in carrying out service and construction contracts during the previous year. With regard to the submission of the report, we estimate that 48,376 contractors

will be affected. Of those entities, approximately 35,927 are small businesses.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies because the proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat will submit a request for approval of a new information collection requirement concerning “Biobased Procurements” to the Office of Management and Budget.

A. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 48,376.

Responses per respondent: 5.

Total annual responses: 241,880.

Preparation hours per response: 5.

Total response burden hours: 1,209,400.

B. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than September 12, 2011 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVCB), *Attn:* Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., 7th Floor, Washington, DC 20417. Please cite OMB Control Number 9000–0180, Biobased Procurements, in correspondence.

List of Subjects in 48 CFR Parts 2, 11, 23, and 52

Government procurement.

Dated: July 6, 2011.

Laura Auletta,

Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 11, 23, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 11, 23, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS**§ 2.101 [Amended]**

2. Amend section 2.101 by removing from paragraph (b)(2), in the definition “biobased product”, the words “(including plant, animal, and marine materials) or” and adding “and” in its place.

PART 11—DESCRIBING AGENCY NEEDS

3. Amend section 11.302 by revising paragraph (c)(2) to read as follows:

§ 11.302 Policy.

* * * * *

(c) * * *

(2) For biobased products, agencies may not require, as a condition of purchase of such products, the vendor or manufacturer to provide more data than would typically be provided by other business entities offering products for sale to the agency, other than data confirming the biobased content of a product (see 7 CFR 2902.8).

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**§ 23.404 [Amended]**

4. Amend section 23.404 by removing from paragraph (e)(1) the words “(including plant, animal, and marine materials)”.

5. Amend section 23.405 by revising paragraph (a)(2) and adding (a)(3) to read as follows:

§ 23.405 Procedures.

(a) * * *

(2) *Biobased products.* Contracting officers should refer to USDA’s list of USDA-designated items (available through the Internet at [http://](http://www.biopreferred.gov)

www.biopreferred.gov) and to their agencies’ affirmative procurement program when purchasing supplies that contain biobased material or when purchasing services that could include supplies that contain biobased material.

(3) When acquiring recovered material or biobased products, the contracting officer may request information or data on such products, including on the recycled or biobased content or related standards of the products (see 11.302(c)).

* * * * *

§ 23.406 [Amended]

6. Amend section 23.406 by removing from paragraph (b) “<http://www.usda.gov/biopreferred>” and adding “<http://www.biopreferred.gov>” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Amend section 52.223–2 by—

a. Revising the date of the clause;

b. Removing from paragraph (b) “<http://www.usda.gov/biopreferred>” and adding <http://www.biopreferred.gov> in its place; and

c. Adding paragraphs (c) and (d) to read as follows:

52.223–2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts

* * * * *

Affirmative Procurement of Biobased Products Under Service and Construction Contracts (Date)

* * * * *

(c) In the performance of this contract, the Contractor shall—

(1) Report to the cognizant Contracting Officer and the agency environmental manager on the product types and dollar value of any USDA-designated biobased products purchased by the Contractor during the previous year, between October 1 and September 30, in this contract;

(2) Submit this report no later than—

(i) October 31 of each year during contract performance; and

(ii) At the end of contract performance; and
(iii) Contact the cognizant environmental manager to obtain the preferred submittal format, if that format is not specified in this contract.

(d) The cognizant environmental manager for this contract is: _____.

[Contracting Officer shall insert full name, phone number, and email address or Web site for reporting.]

[FR Doc. 2011–17453 Filed 7–12–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 571**

[Docket No. NHTSA–2011–0101]

RIN 2127–AK99

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: Department of Transportation (DOT), National Highway Traffic Safety Administration (NHTSA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: NHTSA is proposing to restore the blue and green color boundaries to Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices and Associated Equipment*, that were removed when the agency published a final rule reorganizing the standard on December 4, 2007.

DATES: Comments to this proposal must be received on or before September 12, 2011.

ADDRESSES: You may submit comments, identified by the docket number in the heading of this document, by any of the following methods:

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments on the electronic docket site by clicking on “Help” or “FAQ.”

• *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

• *Fax:* 202–493–2251.

Regardless of how you submit comments, you should mention the docket number of this document.

You may call the Docket Management Facility at 202–366–9826.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.