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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–AA31

Designation of Biobased Items for Federal Procurement

AGENCY: Office of Energy Policy and New Uses, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to amend 7 CFR part 2902, Guidelines for Designating Biobased Products for Federal Procurement, to add 10 sections to designate the following 10 items within which biobased products would be afforded Federal procurement preference, as provided for under section 9002 of the Farm Security and Rural Investment Act of 2002: 2-Cycle engine oils; lip care products; biodegradable films; stationary equipment hydraulic fluids; biodegradable cutlery; glass cleaners; greases; dust suppressants; carpets; and carpet and upholstery cleaners. USDA also is proposing minimum biobased content for each of these items. 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.

DATES: USDA will accept public comments on this proposed rule until October 16, 2006.

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–AA31. 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.
- *E-mail: fb4p@oce.usda.gov.* Include RIN number 0503–AA31 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: Marvin Duncan, USDA, Office of the Chief Economist, Office of Energy Policy and New Uses, Room 4059, South Building, 1400 Independence Avenue, SW., MS–3815, Washington, DC 20250–3815.
- 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) 401–4133 (TDD).

FOR FURTHER INFORMATION CONTACT: Marvin Duncan, USDA, Office of the Chief Economist, Office of Energy Policy and New Uses, Room 4059, South Building, 1400 Independence Avenue, SW., MS–3815, Washington, DC 20250–3815; e-mail: *mduncan@oce.usda.gov*; phone (202) 401–0461. Information regarding the Federal Biobased Products Preferred Procurement Program is available on the Internet at *http://www.biobased.oce.usda.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

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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), 7 U.S.C. 8102 (referred to in this document as ''section 9002'').

II. Background

Section 9002 of FSRIA, as amended by section 943 of the Energy Policy Act of 2005, Public Law 109–58 (Energy Policy Act), provides for the preferred procurement of biobased products by procuring agencies. Section 943 of the Energy Policy Act amended the definitions section of FSRIA, 7 U.S.C. 8101, by adding a definition of ''procuring agency'' that includes both Federal agencies and ''any person contracting with any Federal agency with respect to work performed under that contract.'' The amendment also made Federal contractors, as well as Federal agencies, expressly subject to the procurement preference provisions of section 9002 of FSRIA. However, because this program requires agencies to incorporate the preference for biobased products into procurement specifications, the statutory amendment makes no substantive change to the program. USDA amended the Guidelines to incorporate the new definition of ''procuring agency'' through an interim final rule.

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 the Guidelines, biobased products that are merely incidental to Federal funding are excluded from the preferred procurement program. 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 also requires USDA to provide information to procuring agencies on the availability, relative price, performance, and environmental and public health benefits of such items

and, under section 9002(e)(1)(C), to recommend where appropriate the minimum level of biobased content to be contained in the procured products.

Overlap with EPA Comprehensive Procurement Guidelines program for recovered content products. Some of the biobased items designated for preferred procurement may overlap with products designated under the Environmental Protection Agency's (EPA) Comprehensive Procurement Guidelines program for recovered content products. Where that occurs, an EPA-designated recovered content product (also known as ''recycled content products'' or ''EPA-designated products'') has priority in Federal procurement over the qualifying biobased product. In situations where USDA believes there may be an overlap, it plans to ask manufacturers of qualifying biobased products to provide additional product and performance information including 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 may also be asked to provide other types of information, such as whether the product contains petroleum-, coal-, or natural gas-based components and whether the product contains recovered materials. Federal agencies may also ask manufacturers for information on a product's biobased content and its profile against environmental and human health measures and life cycle costs (the Building for Environmental and Economic Sustainability (BEES) analysis or ASTM International (ASTM) Standard D7075 for evaluating and reporting on environmental performance of biobased products). Such information will assist Federal agencies in determining whether the biobased products in question are, or are not, the same products for the same uses as the recovered content products and will be available on USDA's Web site with its catalog of qualifying biobased products.

Where a biobased item is used for the same purposes and to meet the same 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 ''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 certain environmental or health requirements that the EPA-designated recovered content product would not meet, then the biobased product should be given preference, subject to cost, availability, and performance.

Federal Government Purchase of ''Green'' Products. Three components of the Federal government's green purchasing program are the Biobased Products Preferred Purchasing Program, the Environmental Protection Agency's Comprehensive Procurement Guidelines for products containing recovered materials, and the Environmentally Preferable Products 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.

In the case of cleaning products, procuring agencies should note that not all biobased products are ''environmentally preferable.'' Unless the cleaning products contain no or reduced levels of metals and toxic and hazardous constituents, they can be harmful to aquatic life, the environment, or workers. When purchasing environmentally preferable cleaning products, many Federal agencies specify that products must meet Green Seal standards for institutional cleaning products or that products have been reformulated in accordance with recommendations from the U.S. 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, alkylphenol ethoxylates, ethylene glycol, and volatile organic compounds. In addition, both require that cleaning products have neutral or less caustic pH.

On the other hand, some biobased products may be better for the environment than some products that meet Green Seal standards for institutional cleaning products or that have been reformulated in accordance with the 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. Qualifying biobased products offer the user the opportunity to manage the carbon cycle and limit the introduction of new fossil carbon into the atmosphere, whereas non-biobased products derived from fossil fuels add new fossil carbon to the atmosphere.

Manufacturers of qualifying biobased products under the Federal Biobased Products Preferred Procurement Program (FB4P) 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 BEES analysis, which examines 11 different environmental parameters, including human health, or the comparable ASTM D7505. Therefore, USDA encourages Federal procurement agencies to examine all available information on the environmental and human health effects of cleaning products when making their purchasing decisions.

Green Building Council. More than a dozen Federal agencies use the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Green Building Rating Systems for new construction, building renovation, and building operation and maintenance. The systems provide criteria for implementing sustainable design principles in building design, construction, operation, and maintenance. Points are assigned to each criterion, and building projects can be certified as ''certified,'' ''silver,'' ''gold,'' or ''platinum,'' depending on the number of points for which the project qualifies. LEED for New Construction and Major Renovations (LEED-NC) includes a ''Materials & Resources'' criterion, with one point allocated for the use of rapidly renewable materials. Thus, the use of biobased construction products can help agencies obtain LEED certification for their building construction projects.

Interagency Council. USDA has created, and is chairing, an ''interagency council,'' with membership selected from among Federal stakeholders to the FB4P. To augment its own research, USDA consults with this council in identifying the order of item designation, 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.

III. Summary of Today's Proposed Rulemaking

Today, USDA is proposing to designate the following 10 items for

preferred procurement: 2-Cycle engine oils; lip care products; biodegradable films; stationary equipment hydraulic fluids; biodegradable cutlery; glass cleaners; greases; dust suppressants; carpets; and carpet and upholstery cleaners. USDA is also proposing minimum biobased content for each of these items (see Section IV.C). Lastly, USDA is proposing a date by which Federal agencies must incorporate designated items into their procurement specifications (see Section IV.D).

In today's proposed rulemaking, 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 10 designated items. Information on the availability, relative price, performance, and environmental and public health benefits of individual products within each of these 10 items is not presented in this notice. Further, USDA has reached an agreement with manufacturers not to publish their names in the **Federal Register** when designating items. This agreement 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 of products within the designated item to voluntarily post their names and other contact information on the USDA FB4P Web site.

Warranties. Some of the items being proposed for designation today may affect maintenance warranties. As time and resources allow, USDA will work with manufacturers on addressing any effect the use of biobased products may have on maintenance warranties. At this time, however, USDA does not have information available as to whether or not the manufacturers will state that the use of these products will void maintenance warranties. USDA encourages manufacturers of biobased products to work with original equipment manufacturers (OEMs) to ensure that biobased products will not void maintenance warranties when used. USDA is willing to assist manufacturers of the biobased products, if they find that existing performance standards for maintenance warranties are not relevant or appropriate for biobased products, in working with the appropriate OEMs to develop tests that are relevant and appropriate for the end uses in which biobased products are intended. If despite these efforts there is insufficient information regarding the use of a biobased product and its effect on maintenance warranties, USDA notes that 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 its FB4P Web site.

Additional Information. USDA is working with manufacturers and vendors to post all relevant product and manufacturer contact information on the FB4P Web site before a procuring agency asks for it, in order to make the preferred 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.biobased.oce.usda.gov.*

Comments. USDA invites comment on the proposed designation of these 10 items, 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 (stationary equipment hydraulic fluids and carpets) may overlap with products designated under EPA's Comprehensive Procurement Guidelines 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 from manufacturers and users 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. USDA will post this information on the FB4P Web site.

2. Biobased carpet can be composed of a biobased face or a biobased backing or both (i.e., both the face and backing are biobased). USDA is proposing in today's notice that the minimum biobased content for carpet be based on the total product; that is, on both the carpet's face and backing. USDA is seeking comment on whether separate minimum biobased contents should be set for the face and for the backing. Please provide detailed rationale and information to support your comments.

3. USDA is proposing to designate dust suppressants as an item for preferred procurement. The products intended to be covered are those designed for use in outdoor environments. However, the same products, or products with very similar formulations, may also be used in indoor environments, such as indoor arenas, that simulate outdoor conditions. For example, an indoor arena might provide parking on a dirt floor, such as would be found in outside parking. USDA is proposing that dust suppressant products used for similar situations that take place within an indoor environment be included in this item. USDA is interested in your comments on whether this item should be strictly limited to outdoor environments. Please be sure to provide your rationale for your comments.

4. 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 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. For example, in today's proposed rulemaking, a Green Seal standard (GS–37) has been identified for glass cleaners. USDA is interested in learning if other equivalent standards for glass cleaners exist and where they are being used.

5. As proposed, biodegradable films do not include films used for agricultural purposes (such as films that would be used to cover fields) and durable films. Durable films will be proposed as a separate item for preferred procurement. USDA, however, is interested in receiving comment on whether there should be any subcategories within biodegradable films (including any biodegradable films that might be considered agricultural films) and what they might be. Please be sure to provide rationale and supporting information with your comments.

6. 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 FB4P Web site. This information will then be available to Federal procuring agencies and will assist them in making ''best value'' purchase decisions. When possible, please provide appropriate documentation to support the environmental and human health attributes you describe.

To assist you in developing your comments, the background information used in proposing these items for designation can be found on the FB4P Web site. All comments should be submitted as directed in the **ADDRESSES** section above.

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

A. Background

In order to designate items (generic groupings of specific products such as crankcase oils or products that contain qualifying biobased fibers) 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 Biobased Manufacturers Association) 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 individual 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 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 uses the BEES analytical tool to test individual products within each proposed item. (Detailed information on this analytical tool can be found on the Web site *http://www.bfrl.nist.gov/oae/software/bees.html*.) The BEES analytical tool measures the environmental performance and the economic performance of a product.

Environmental performance is measured in the BEES analytical tool using the internationally-standardized and science-based life cycle assessment approach specified in the International Organization for Standardization (ISO) 14000 standards. The BEES environmental performance analysis includes human health as one of its components. All stages in the life of a product are analyzed: Raw material production; manufacture; transportation; installation; use; and recycling and waste management. The time period over which environmental performance is measured begins with raw material production and ends with disposal (waste management). The BEES environmental performance analysis also addresses products made from biobased feedstocks.

Economic performance in the BEES analysis is measured using the ASTM standard life cycle cost method (ASTM E917), which covers the costs of initial investment, replacement, operation, maintenance and repair, and disposal. The time frame for economic performance extends from the purchase of the product to final disposal.

USDA then utilizes the BEES results of individual products within a designated item in its consideration of the life cycle costs at the item level. There is a single unit of comparison associated with each designated item. The basis for the unit of comparison is the ''functional unit,'' defined so that the products compared are true substitutes for one another. If significant differences have been identified in the useful lives of alternative products within a designated item (e.g., if one product lasts twice as long as another), the functional unit will include reference to a time dimension to account for the frequency of product replacement. The functional unit also will account for products used in different amounts for equivalent service. For example, one surface coating product may be environmentally and economically preferable to another on a pound-for-pound basis, but may require twice the mass to cover one square foot of surface, and last half as long, as the other product. To account for these performance differences, the functional unit for the surface coating item could be ''one square foot of application for 20 years'' instead of ''one pound of surface coating product.'' The functional unit provides the critical reference point to which all BEES results for products within an item are scaled. Because functional units vary from item to item, performance comparisons are valid only among products within a designated item.

The complete results of the BEES analysis, extrapolated to the item level, for each item proposed for designation in today's proposed rulemaking can be found at *http://www.biobased.oce.usda.gov*.

As discussed above, the BEES analysis includes information on the environmental performance, human health impacts, and economic performance. In addition, ASTM D7505, which manufacturers may use in lieu of the BEES analytical tool, provides similar information. USDA is working with manufacturers and vendors to post this information on the FB4P Web site before a procuring agency asks for it, 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 post this information, including manufacturer contact information, on the FB4P Web site to 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 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 from manufacturers of biobased products being considered for designation information on industry standard test methods that they are using to evaluate the functional performance of their products. Additional standards are also being 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 identified during the development of this **Federal Register** notice for these 10 items. While this process identifies

many of the relevant standards, USDA recognizes that the performance test methods identified herein do not represent all of the methods 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 FB4P Web site.

In gathering information relevant to the analyses discussed above, USDA has made extensive efforts to contact and request information and product samples from representatives of all known manufacturers of products within the items proposed for designation. However, because the submission of information is on a strictly voluntary basis, USDA was able to obtain information and samples only from those manufacturers who were willing voluntarily to invest the resources required to gather and submit the information and samples. USDA used the samples to test for biobased content and the information to conduct the BEES analyses. The data presented are all the data that were submitted in response to USDA requests for information from all known manufacturers of the products within the 10 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 are sufficient to support designation of the items in today's proposed rulemaking.

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 not unexpected that even 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 that the identification of two or more biobased products within an item, or even a single product with two or more suppliers, is sufficient to consider the designation of that item. 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 USDA biobased program Web site at *http://www.biobased.oce.usda.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 independent manufacturers. These evaluations begin by asking the following questions about the products within an item:

- Are they cost competitive with non-biobased products?
- Do they meet industry performance standards?
- Are they readily available on the commercial market?

In addition to these primary concerns, 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 groups of approximately 10 items, a new rulemaking package will be developed to designate the items within that group. The list of items may change, with items being added or dropped, and 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 rulemaking, USDA is proposing to designate 10 items for the preferred procurement program: 2-Cycle engine oils; lip care products; biodegradable films; stationary equipment hydraulic fluids; biodegradable cutlery; glass cleaners; greases; dust suppressants; carpets; and carpet and upholstery cleaners. USDA has determined that each of these 10 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 10 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.

Mature Markets. Section 2902.5(c)(2) of the final guidelines states that USDA will not designate items for preferred procurement that are determined to have mature markets. Mature markets are described as items that had significant national market penetration in 1972. USDA contacted manufacturers, manufacturing associations, and industry researchers to determine if, in 1972, biobased products had a significant market share within any of the items proposed for designation today. USDA found that biobased products within none of the 10 items proposed for designation today had a significant market share in 1972 and that, generally, the companies that produce biobased products within these proposed designated items have been in business for only 10 to 20 years.

Overlap with EPA-Designated Recovered Content Products. In today's proposed rule, two of the 10 items may overlap with EPA-designated recovered content products. These two items are: stationary equipment hydraulic fluid and carpets. For these two items, USDA is requesting that certain information on the qualifying biobased products be made available by their manufacturers to assist Federal agencies in determining

if an overlap exists between the qualifying biobased product and the applicable EPA-designated recovered content product. As noted earlier in this preamble, USDA is requesting 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 FB4P Web site.

Exemptions. When proposing items for preferred procurement under the FB4P, USDA will identify, on an item-by-item basis, items that would be exempt from preferred procurement on the basis of their use in products and systems designed or procured for combat or combat-related missions. USDA believes it is inappropriate to apply the biobased purchasing requirement to tactical equipment unless the Department of Defense has documented that these products can meet the performance requirements for such equipment and are available in sufficient supply to meet domestic and overseas deployment needs. After evaluating these situations for each of the 10 items being proposed for designation, USDA is proposing to exempt 2-cycle engine oils, stationary hydraulic fluids, greases, and dust suppressants from preferred procurement under the FB4P when used in combat or combat-related missions.

USDA is proposing an exemption for all designated items when used in spacecraft systems and launch support equipment, because failure of such items could lead to catastrophic consequences. Many, if not all, items that USDA is or is planning to designate for preferred procurement are or will be used in space applications. Frequently, such applications used these items in ways that are different from their more ''conventional'' use on Earth. It is difficult, if not impossible, to forecast what situations may occur when these items are used in space and how they will perform. Therefore, USDA believes is it reasonable to limit the preferred procurement program to items used in more conventional applications and is proposing to exempt all designated items used in space applications from the FB4P.

For each item being proposed for exemption, the exemption does not extend to contractors performing work for DoD or NASA. For example, if a contractor is producing a part for use on the space shuttle, the metalworking fluid the contractor uses to produce the part should be biobased (provided it meets the specifications for metalworking). 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 applications. For example, if the part being produced by the contractor would actually be part of the space shuttle, then the exemption applies.

Each of the 10 proposed designated items are discussed in the following sections.

1. 2-Cycle Engine Oils

2-Cycle engine oils are lubricant products formulated to provide clean-burning lubrication, decreased spark plug fouling, reduced deposit formation, and reduced engine wear in 2-cycle gasoline engines (commonly found in lawn and garden equipment, small marine craft, and personal recreational vehicles such as motorcycles and snowmobiles). Biobased 2-cycle engine oils are typically formulated from natural soy, canola, or other seed-based oil feed stocks.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in products and systems designed or procured for combat or combat-related missions and in spacecraft systems and launch support equipment.

For biobased 2-cycle engine oils, USDA identified 11 different manufacturers producing 17 individual biobased products. These 11 manufacturers do not necessarily include all manufacturers of biobased 2-cycle engine oils, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that many of these products have been tested against multiple industry performance standards and are being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- ASTM D445–04e2, Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity);
- ASTM D93–02a, Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester;
- ASTM D2896–05 Standard Test Method for Base Number of Petroleum Products by Potentiometric Perchloric Acid Titration;
- ASTM D97–05, Standard Test Method for Pour Point of Petroleum Products;
- ASTM D2500–02e1, Standard Test Method for Cloud Point of Petroleum Products;
- ASTM D4682–87 (2002), Standard Specification for Miscibility with Gasoline and Fluidity of Two-Stroke-Cycle Gasoline Engine Lubricants;
- CEC–L–33–T82 is comparable to ASTM 5864 and tests for biodegradability;
- ASTM D2619, Standard Test Method for Hydrolytic Stability of Hydraulic Fluids (Beverage Bottle Method);
- ASTM D892, Standard Test Method for Foaming Characteristics of Lubricating Oils;
- ASTM D665, Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water;
- ASTM D2270, Standard Practice for Calculating Viscosity Index From Kinematic Viscosity at 40 and 100 °C; and
- International Organization for Standardization #ISO GD Surface chemical analysis—Glow discharge optical emission spectrometry (GD–OES).

USDA contacted procurement officials with various procuring agencies including the General Services Administration, several offices within the Defense Logistics Agency, the OFEE, USDA Departmental Administration, the National Park Service, EPA, Oak Ridge National Laboratory, and OMB in an effort to gather information on the purchases of 2-cycle engine oils and products within the other nine items proposed for designation today. Communications with these officials lead to the conclusion that obtaining credible current usage statistics and specific potential markets within the Federal government for biobased products within the 10 proposed designated items is not possible at this time. Most of the contacted officials reported that procurement data are reported in higher level groupings of materials and supplies than the proposed designated items. Also, the purchasing of such materials as part of contracted services and with individual purchase cards used to purchase products locally further obscures credible data on purchases of specific products.

USDA also investigated the Web site *http://www.fedbizopps.gov*, a site which lists Federal contract purchase opportunities greater than $25,000. The information provided on this Web site, however, is for broad categories of products rather than the specific types of products that are included in today's rulemaking. Therefore, USDA has been

unable to obtain data on the amount of 2-cycle engine oils purchased by procuring agencies. However, Federal agencies routinely perform, or procure contract services such as lawn maintenance services, that utilize small gas powered devices. Thus, they have a need for 2-cycle engine oils and for services that require the use of 2-cycle engine oils. Designation of 2-cycle engine oils will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased 2-cycle engine oils was performed for three of the products using the BEES analytical tool. Table 1 summarizes the BEES results for the three 2-cycle engine oils. As seen in Table 1, the environmental performance score, which includes human health, ranges from 0.0474 to 0.0661 points per gallon (mixed with fuel and ready to use). The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one gallon (mixed with fuel and ready to use) of the product, expressed in 100ths of 1 percent. For example, the total amount of criteria air pollutants emitted in the U.S. in one year was divided by the total U.S. population to derive a ''criteria air pollutants per person value.'' The production and use of one gallon (mixed with fuel and ready to use) of 2-cycle engine oil sample A was estimated to contribute 0.000002 percent of this value.

TABLE 1.—SUMMARY OF BEES RESULTS FOR 2-CYCLE ENGINE OILS

Parameters	2-Cycle engine oils		
	Sample A	Sample B	Sample C
BEES Environmental Performance—Total Score [1]	0.0474	0.0485	0.0661
Acidification (5%)	0.0000	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0002	0.0002	0.0008
Ecological Toxicity (11%)	0.0036	0.0036	0.0092
Eutrophication (5%)	0.0017	0.0018	0.0035
Fossil Fuel Depletion (5%)	0.0200	0.0204	0.0215
Global Warming (16%)	0.0060	0.0061	0.0080
Habitat Alteration (16%)	0.0000	0.0000	0.0000
Human Health (11%)	0.0080	0.0085	0.0103
Indoor Air (11%)	0.0000	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000	0.0000
Smog (6%)	0.0079	0.0078	0.0122
Water Intake (3%)	0.0000	0.0001	0.0006
Economic Performance (Life Cycle Costs ($)) [2]	2.70	2.95	4.84
First Cost	2.70	2.95	4.84
Future Cost (3.9%)	([3])	([3])	([3])
Functional Unit	1 gallon (mixed with fuel and ready to use)		

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

When evaluating the information presented in Table 1, as well as in the subsequent tables presented in this preamble, it should be noted that comparisons of the environmental performance scores are valid only among products within a designated item. Thus, comparisons of the scores presented in Table 1 and the scores presented in tables for other proposed designated items are not meaningful.

The numbers in parentheses following each of the 12 environmental impacts listed in the tables in this preamble indicate weighting factors. The weighting factors represent the relative importance of the 12 environmental impacts, including human health impacts, that contribute to the BEES Environmental Score. They are derived from lists of the relative importance of these impacts developed by the EPA Science Advisory Board for the purpose of advising EPA as to how best to allocate its limited resources among environmental impact areas. Note that a lower Environmental Performance score is better than a higher score.

Life cycle costs presented in the tables in this preamble are per the appropriate functional unit for the proposed designated item. Future costs are discounted to present value using the OMB discount rate of 3.9 percent.

The life cycle costs of the submitted 2-cycle engine oils range from $2.70 to $4.84 (present value dollars) per gallon (mixed with fuel and ready to use). Present value dollars presented in this preamble represent the sum of all costs associated with a product over a fixed period of time, including any applicable costs for purchase, installation, replacement, operation, maintenance and repair, and disposal. Present value dollars presented in this preamble reflect 2005 dollars. Dollars are expressed in present value terms to adjust for the effects of inflation. The complete results of the BEES analysis, extrapolated to the item level, for each item proposed for designation in today's proposed rulemaking can be found at *http://www.biobased.oce.usda.gov.*

2. Lip Care Products

Lip care products are personal care products formulated to replenish the moisture and/or prevent drying, thereby promoting better skin health of the lips. Biobased lip care products are typically formulated from natural soy or other seed-based oil feed stocks.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in spacecraft systems and launch support equipment.

For biobased lip care products, USDA identified 10 different manufacturers producing 28 individual biobased products. These 10 manufacturers do not necessarily include all manufacturers of biobased lip care products, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are typically tested against an

industry standard and are being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

• United States Pharmacopeia (USP) Stability Test.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on 2-cycle engine oils. These attempts were largely unsuccessful. However, various Federal agencies procure personal care products for use by their employees. Thus, they have a need for lip care products. Designation of lip care products will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased lip care products was performed for two of the products using the BEES analytical tool. Table 2 summarizes the BEES results for the two lip care products. As seen in Table 2, the environmental performance score, which includes human health, ranges from 0.1484 to 0.1778 points per case of lip balm (*i.e.*, 2,380 tubes). The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one case of the product, expressed in 100ths of 1 percent.

TABLE 2.—SUMMARY OF BEES RESULTS FOR LIP CARE PRODUCTS

Parameters	Lip care products	
	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.1484	0.1778
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0007	0.0010
Ecological Toxicity (11%)	0.0409	0.0447
Eutrophication (5%)	0.0157	0.0101
Fossil Fuel Depletion (5%)	0.0412	0.0533
Global Warming (16%)	0.0136	0.0182
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0128	0.0180
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0076	0.0105
Water Intake (3%)	0.0159	0.0220
Economic Performance (Life Cycle Costs($)) [2]	1,071	2,356
First Cost	1,071	2,356
Future Cost (3.9%)	([3])	([3])
Functional Unit	one case (2,380 tubes)	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle costs of the submitted lip care products range from $1,071 to $2,356 (present value dollars) per case of lip balm.

3. Biodegradable Films

Biodegradable films are used in packaging, wrappings, linings, and other similar applications and are capable of meeting ASTM D6400 standards for biodegradability. For the purpose of defining this designated item, biodegradable films do not include films used for agricultural purposes (such as films that would be used to cover fields) and durable films. Durable films will be proposed as a separate item for preferred procurement.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in spacecraft systems and launch support equipment.

For biobased biodegradable films, USDA identified 15 different manufacturers producing 45 individual products. These 15 manufacturers do not necessarily include all manufacturers of biobased biodegradable films, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are typically tested against one or more industry performance standards and are being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

• ASTM D6400, Standard Specification for Compostable Plastics; and

• Deutsches Institut fur Normung, the German Institute for Standardization #DIN V 54900 Standard for testing the compostability of polymeric materials.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on 2-cycle engine oils. These attempts were largely unsuccessful. However, Federal agencies routinely procure products, such as trash can liners, leaf collection bags, and packaging materials, that are made from biodegradable films. In addition, many Federal agencies contract for services involving the use of such products. Thus, they have a need for products made from biodegradable films and for services that use products made from biodegradable films. Designation of biodegradable films will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased biodegradable films was performed for two of the products using the BEES analytical tool. Table 3 summarizes the BEES results for the two biobased biodegradable films. As seen in Table 3, the environmental performance score, which includes human health, ranges from 0.0150 to 0.5682 points per kilogram of biodegradable film. The environmental performance score indicates the share of annual per capita U.S. environmental

impacts that is attributable to one kilogram of the product, expressed in 100ths of 1 percent.

TABLE 3.—SUMMARY OF BEES RESULTS FOR BIODEGRADABLE FILMS

Parameters	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.5682	0.0150
Acidification (5%)	0.0001	0.0000
Criteria Air Pollutants (6%)	0.0046	0.0001
Ecological Toxicity (11%)	0.0277	0.0006
Eutrophication (5%)	0.0330	0.0005
Fossil Fuel Depletion (5%)	0.2052	0.0084
Global Warming (16%)	0.0717	0.0020
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0893	0.0020
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.1365	0.0012
Water Intake (3%)	0.0001	0.0002
Economic Performance (Life Cycle Costs($)) [2]	6.60	8.17
First Cost	6.60	8.17
Future Cost (3.9%)	([3])	([3])
Functional Unit	one kilogram	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted biodegradable films was $6.60 to $8.17 (present value dollars) per kilogram of biodegradable film.

4. Stationary Equipment Hydraulic Fluids

Stationary equipment hydraulic fluids are hydraulic fluid products formulated for use in the hydraulic systems of stationary equipment. Products in this item act as a mechanical power transmission medium to replace mineral oils and to provide wear, rust, and oxidation protection for machine tools and equipment. Biobased stationary hydraulic fluids are typically formulated from natural soy, canola, or other seed oil-based feed stocks.

Qualifying products within this item may overlap with the EPA-designated recovered content product: Re-refined lubricating oils.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in products and systems designed or procured for combat or combat-related missions and in spacecraft systems and launch support equipment.

For biobased stationary equipment hydraulic fluids, USDA identified 20 different manufacturers producing 66 individual biobased products. These 20 manufacturers do not necessarily include all manufacturers of biobased stationary equipment hydraulic fluids, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that many of these products have been tested against multiple industry performance standards and are being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- ASTM D1122–97a(2002), Standard Test Method for Density or Relative Density of Engine Coolant Concentrates and Engine Coolants By The Hydrometer;
- ASTM D1298–99e2, Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method;
- ASTM D130–04, Standard Test Method for Corrosiveness to Copper from Petroleum Products by Copper Strip Test;
- ASTM D1401–02, Standard Test Method for Water Separability of Petroleum Oils and Synthetic Fluids;
- ASTM D1500–04a, Standard Test Method for ASTM Color of Petroleum Products (ASTM Color Scale);
- ASTM D2266–01, Standard Test Method for Wear Preventive Characteristics of Lubricating Grease (Four-Ball Method);
- ASTM D2270–04, Standard Practice for Calculating Viscosity Index From Kinematic Viscosity at 40 and 100 °C;
- ASTM D2272–02, Standard Test Method for Oxidation Stability of Steam Turbine Oils by Rotating Pressure Vessel;
- ASTM D2532–03, Standard Test Method for Viscosity and Viscosity Change After Standing at Low Temperature of Aircraft Turbine Lubricants;
- ASTM D2619–95(2002)e1, Standard Test Method for Hydrolytic Stability of Hydraulic Fluids (Beverage Bottle Method);
- ASTM D287–92(2000)e1, Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method);
- ASTM D2983–04a, Standard Test Method for Low-Temperature Viscosity of Lubricants Measured by Brookfield Viscometer;
- ASTM D4052–96(2002)e1, Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter;
- ASTM D4172–94(2004), Standard Test Method for Wear Preventive Characteristics of Lubricating Fluid (Four-Ball Method);
- ASTM D445–04e2, Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity);
- ASTM D567–53(1955), Method for Calculating Viscosity Index (Withdrawn 1966);
- ASTM D5864–00, Standard Test Method for Determining Aerobic Aquatic Biodegradation of Lubricants or Their Components; and
- ASTM D665–03, Standard Test Method for Rust-Preventing

Characteristics of Inhibited Mineral Oil in the Presence of Water.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on 2-cycle engine oils. These attempts were largely unsuccessful. However, Federal agencies routinely own and operate stationary equipment with hydraulic cylinders. In addition, many Federal agencies contract for services involving the use of such equipment. Thus, they have a need for stationary equipment hydraulic fluids and for services that require the use of stationary equipment hydraulic fluids. Designation of stationary equipment hydraulic fluids will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of stationary equipment hydraulic fluids was performed for two of the products using the BEES analytical tool. Table 4 summarizes the BEES results for the two stationary equipment hydraulic fluids. As seen in Table 4, the environmental performance score, which includes human health, ranges from 0.0042 to 0.0524 points per gallon of hydraulic fluid. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one gallon of hydraulic fluid, expressed in 100ths of 1 percent.

TABLE 4.—SUMMARY OF BEES RESULTS FOR STATIONARY EQUIPMENT HYDRAULIC FLUIDS

Parameters	Stationary equipment hydraulic fluids	
	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.0042	0.0524
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0000	0.0002
Ecological Toxicity (11%)	0.0012	0.0093
Eutrophication (5%)	0.0002	0.0181
Fossil Fuel Depletion (5%)	0.0012	0.0063
Global Warming (16%)	0.0008	0.0054
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0004	0.0012
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0002	0.0045
Water Intake (3%)	0.0002	0.0074
Economic Performance (Life Cycle Costs ($)) [2]	10.45	8.75
First Cost	10.45	8.75
Future Cost (3.9%)	([3])	([3])
Functional Unit	one gallon	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted stationary equipment hydraulic fluids range from $8.75 to $10.45 (present value dollars) per gallon of hydraulic fluid.

5. Biodegradable Cutlery

Biodegradable cutlery is a group of products that is used as hand-held, disposable utensils designed for one-time use in eating food and that is capable of meeting ASTM D5338 standard for biodegradability.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in spacecraft systems and launch support equipment.

For biobased biodegradable cutlery, USDA identified 7 different manufacturers producing 15 individual biobased products. These 7 manufacturers do not necessarily include all manufacturers of biobased biodegradable cutlery, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are typically tested against one or more industry performance standards and are being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- ASTM D5338, Standard Test Method for Determining Aerobic Biodegradation of Plastic Materials Under Controlled Composting Conditions;
- ASTM D6400, Standard Specification for Compostable Plastics;
- D5209–92, Standard Test Method for Determining the Aerobic Biodegradation of Plastic Materials in the Presence of Municipal Sewage Sludge (Discontinued 2001); and
- Deutsches Institut fur Normung, the German Institute for Standardization #DIN CERTCO 54900 Standard for testing the compostability of polymeric materials.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on 2-cycle engine oils. These attempts were largely unsuccessful. However, many Federal agencies routinely perform, or procure contract services to perform, food preparation and distribution activities that utilize disposable cutlery. Thus, they have a need for disposable cutlery and for services that require the use of disposable cutlery. Designation of biodegradable cutlery will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased biodegradable cutlery was performed for two of the products using the BEES analytical tool. Table 5 summarizes the BEES results for the two biodegradable cutlery products. As seen in Table 5, the environmental performance score, which includes human health, ranges from 0.0565 to 0.0690 points per 1000 pieces of cutlery.

The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to 1,000 pieces of cutlery, expressed in 100ths of 1 percent.

TABLE 5.—SUMMARY OF BEES RESULTS FOR BIODEGRADABLE CUTLERY

Parameters	Biodegradable cutlery	
	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.0565	0.0690
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0002	0.0005
Ecological Toxicity (11%)	0.0113	0.0021
Eutrophication (5%)	0.0052	0.0014
Fossil Fuel Depletion (5%)	0.0236	0.0440
Global Warming (16%)	0.0056	0.0085
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0065	0.0079
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0024	0.0035
Water Intake (3%)	0.0017	0.0011
Economic Performance (Life Cycle Costs ($)) [2]	32.00	32.00
First Cost	32.00	32.00
Future Cost (3.9%)	([3])	([3])
Functional Unit	1,000 pieces of cutlery	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted biodegradable cutlery was $32 present value dollars) per 1,000 pieces of cutlery.

6. Glass Cleaners

Glass cleaners are products designed for use in cleaning glass surfaces such as mirrors, car windows, and computer monitors.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in spacecraft systems and launch support equipment.

Procuring agencies should note that, as discussed in section II of this preamble, not all biobased cleaning products are ''environmentally preferable'' to non-biobased products. Unless cleaning products have been formulated to contain no (or reduced levels of) metals and toxic and hazardous constituents, they can be harmful to aquatic life, the environment, or workers. When purchasing environmentally preferable cleaning products, Federal agencies must compare the ''cradle-to-grave'' impacts of the manufacture, use, and disposal of both biobased and non-biobased products.

For biobased glass cleaners, USDA identified 16 different manufacturers producing 19 individual biobased products. These 16 manufacturers do not necessarily include all manufacturers of biobased glass cleaners, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are typically tested against one relevant measure of performance and are being used commercially. While applicable performance standards and other measures of performance may exist, applicable industry performance standards and relevant measures of performance against which these products have been typically tested, as identified by manufacturers of products within this item and by others, include:

- U.S. Navy, Navsea 6840 Surface Ship (Non-Submarine) Authorized Chemical Cleaning Products and Dispensing Systems.
- Green Seal, GS–37, Environmental Standard for General Purpose, Bathroom, Glass, and Carpet Cleaners used for Industrial and Institutional Purposes.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on 2-cycle engine oils. These attempts were largely unsuccessful. However, Federal agencies routinely procure cleaning and maintenance services and materials, including glass cleaners. Thus, they have a need for glass cleaners and for services that require the use of glass cleaners. Designation of glass cleaners will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased glass cleaners was performed for two of the products using the BEES analytical tool. Table 6 summarizes the BEES results for the two glass cleaners. As seen in Table 6, the environmental performance score, which includes human health, ranges from 0.08787 to 0.9818 points per 1,000 gallons of biobased glass cleaner, diluted and ready to use. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to 1,000 gallons of glass cleaner, diluted and ready to use, expressed in 100ths of 1 percent.

TABLE 6.—SUMMARY OF BEES RESULTS FOR GLASS CLEANERS

Parameters	Glass cleaners	
	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.0878	0.9818
Acidification (5%)	0.0000	0.0001
Criteria Air Pollutants (6%)	0.0008	0.0064
Ecological Toxicity (11%)	0.0092	0.0578
Eutrophication (5%)	0.0021	0.0124
Fossil Fuel Depletion (5%)	0.0310	0.3953
Global Warming (16%)	0.0078	0.1317
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0108	0.1840
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0042	0.0492
Water Intake (3%)	0.0219	0.1449
Economic Performance (Life Cycle Costs ($)) [2]	89.06	983.00
First Cost	89.06	983.00
Future Cost (3.9%)	([3])	([3])
Functional Unit	1,000 gallons, diluted and ready to use.	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted glass cleaners range from $89 to $983 (present value dollars) per 1,000 gallons of glass cleaner, diluted and ready to use.

7. Greases

Greases are lubricants composed of oils thickened with soaps or other thickeners to a semisolid or solid consistency. Grease composition (i.e., greases made with clay thickeners versus those made with metallic soap thickeners) must be considered carefully because of potential incompatibility when mixed. This can occur between two different biobased greases, between two different non-biobased (petroleum) greases, and between a biobased grease and a petroleum-based grease. Machinery lubricated with one particular type of grease must be purged properly before lubrication with an incompatible grease.

Greases are used in many different applications. Based on the information acquired, USDA is proposing to subcategorize this item into four specified-use subcategories and one ''not elsewhere specified'' subcategory as follows: Food grade greases, multipurpose greases, rail track greases, fifth wheel (coupling plate between the tractor trailer truck and the semi-trailer) greases, and greases that do not fit any of the other four subcategories. USDA believes this is reasonable because of the varying conditions that each of the four specified-use subcategories require of greases in order to perform satisfactorily and in accordance with any regulatory requirements (e.g., for food grade greases).

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in products and systems designed or procured for combat or combat-related missions and in spacecraft systems and launch support equipment.

For biobased greases, USDA identified 18 different manufacturers producing 67 individual biobased products. For the five subcategories of greases for which USDA is proposing designation, USDA identified at least two manufacturers of each type. The 18 manufacturers total, and those identified for each subcategory of grease, do not necessarily include all manufacturers of biobased greases, merely those identified during USDA information gathering activities.

Information supplied by these manufacturers indicates that several of these products have been tested against multiple industry performance standards and are being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- ASTM D1264–03e1, Standard Test Method for Determining the Water Washout Characteristics of Lubricating Greases;
- ASTM D127–05, Standard Test Method for Drop Melting Point of Petroleum Wax, Including Petrolatum;
- ASTM D130–04, Standard Test Method for Corrosiveness to Copper from Petroleum Products by Copper Strip Test;
- ASTM D1742–94 (2000)e1, Standard Test Method for Oil Separation from Lubricating Grease During Storage;
- ASTM D1743–05a, Standard Test Method for Determining Corrosion Preventive Properties of Lubricating Greases;
- ASTM D1748–02, Standard Test Method for Rust Protection by Metal Preservatives in the Humidity Cabinet;
- ASTM D1831–00e1, Standard Test Method for Roll Stability of Lubricating Grease;
- ASTM D217–02, Standard Test Methods for Cone Penetration of Lubricating Grease;
- ASTM D2265–00, Standard Test Method for Dropping Point of Lubricating Grease Over Wide Temperature Range;
- ASTM D2266–01, Standard Test Method for Wear Preventive Characteristics of Lubricating Grease (Four-Ball Method);
- ASTM D2270–04, Standard Practice for Calculating Viscosity Index From Kinematic Viscosity at 40 and 100 °C;
- ASTM D2509–03, Standard Test Method for Measurement of Load-Carrying Capacity of Lubricating Grease (Timken Method);
- ASTM D2569–97 (2002), Standard Test Method for Distillation of Pitch;
- ASTM D2596–97 (2002)e1, Standard Test Method for Measurement of Extreme-Pressure Properties of Lubricating Grease (Four-Ball Method);

- ASTM D445–04e2, Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity);
- ASTM D566–02, Standard Test Method for Dropping Point of Lubricating Grease;
- ASTM D5864–00, Standard Test Method for Determining Aerobic Aquatic Biodegradation of Lubricants or Their Components;
- ASTM D6184–98, Standard Test Method for Oil Separation from Lubricating Grease (Conical Sieve Method);
- ASTM D92–05a, Standard Test Method for Flash and Fire Points by Cleveland Open Cup Tester;
- ASTM D942–02, Standard Test Method for Oxidation Stability of Lubricating Greases by the Oxygen Bomb Method;
- ASTM D97–05, Standard Test Method for Pour Point of Petroleum Products;
- Co-ordinating European Council #CEC–L–33–A–93 Test to predict the potential biodegradation of mineral oil-based lubricants in soil; and
- National Lubricating Grease Institute #NLGI 2 Greases classified according to their consistency range as measured by the worked penetration at 25 °C (77 °C): 265 to 295.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on 2-cycle engine oils. These attempts were largely unsuccessful. However, Federal agencies routinely operate, or procure contract services to operate, the types of machinery and equipment that require the use of greases. Thus, they have a need for greases and for services that require the use of greases. Designation of greases will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased greases was performed for two of the products using the BEES analytical tool. Table 7 summarizes the BEES results for the two greases. As seen in Table 7, the environmental performance score, which includes human health, ranges from 0.0281 to 0.0451 points per gallon of grease. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one gallon of grease, expressed in 100ths of 1 percent.

TABLE 7.—SUMMARY OF BEES RESULTS FOR GREASES

Parameters	Greases	
	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.0281	0.0451
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0002	0.0002
Ecological Toxicity (11%)	0.0036	0.0103
Eutrophication (5%)	0.0026	0.0126
Fossil Fuel Depletion (5%)	0.0105	0.0067
Global Warming (16%)	0.0042	0.0046
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0035	0.0022
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0022	0.0034
Water Intake (3%)	0.0013	0.0051
Economic Performance (Life Cycle Costs ($)) [2]	14.84	52.03
First Cost	14.84	52.03
Future Cost (3.9%)	([3])	([3])
Functional Unit	one gallon	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted greases range from $14.84 to $52.03 (present value dollars) per gallon of grease.

8. Dust Suppressants

Dust suppressants are products formulated to reduce or eliminate the spread of dust associated with gravel roads, dirt parking lots, or similar sources of dust, and include products used in equivalent indoor applications (such as in indoor arenas where dirt parking lots may be found). This item does not cover products designed for indoor uses (such as the application of a dust suppressant to a dust mop), except as noted above.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in products and systems designed or procured for combat or combat-related missions and in spacecraft systems and launch support equipment.

For biobased dust suppressants, USDA identified 12 different manufacturers producing 13 individual biobased products. These 12 manufacturers do not necessarily include all manufacturers of biobased dust suppressants, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are typically tested against one or more industry performance standards and are being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- Missouri State Specifications; and
- Water runoff quality test (Minnesota DOT).

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on 2-cycle engine oils. These attempts were largely unsuccessful. However, Federal agencies routinely use, or procure contract services that use, dust suppressants in construction, forestry, transportation, and maintenance

activities. Thus, they have a need for dust suppressants and for services that require the use of dust suppressants. Designation of dust suppressants will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased dust suppressants was performed for two of the products using the BEES analytical tool. Table 8 summarizes the BEES results for the two dust suppressants. As seen in Table 8, the environmental performance score, which includes human health, ranges from 0.0335 to 0.7545 points per 1,000 square feet of application. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to 1,000 square feet of application, expressed in 100ths of 1 percent.

TABLE 8.—SUMMARY OF BEES RESULTS FOR DUST SUPPRESSANTS

Parameters	Dust suppressants	
	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.0335	0.7545
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0002	0.0052
Ecological Toxicity (11%)	0.0194	0.1417
Eutrophication (5%)	0.0015	0.1238
Fossil Fuel Depletion (5%)	0.0048	0.2064
Global Warming (16%)	0.0024	0.0965
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0025	0.0737
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0010	0.0421
Water Intake (3%)	0.0017	0.0651
Economic Performance (Life Cycle Costs ($)) [2]	7.20	47.00
First Cost	7.20	47.00
Future Cost (3.9%)	([3])	([3])
Functional Unit	1,000 square feet of application.	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted dust suppressants range from $7.20 to $47 (present value dollars) per 1,000 square feet of application.

9. Carpets

Carpets are floor coverings composed of woven fibers, with a backing.

Qualifying products within this item may overlap with the EPA-designated recovered content product: Carpet (polyester).

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in spacecraft systems and launch support equipment.

For biobased carpets, USDA identified 7 different manufacturers producing 19 individual biobased products. These 7 manufacturers do not necessarily include all manufacturers of biobased carpets, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are typically tested against one or more industry performance standards and are being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- Aachen Test, ISO/EN Dimensional Stability: Machine-made textile floor coverings—Determination of dimensional changes due to the effects of varied water and heat conditions;
- American Association of Textile Chemists and Colorists #Color Fastness AATCC 165 Crocking: Textile Floor Coverings—AATCC Crockmeter Method;
- American Association of Textile Chemists and Colorists #Color Fastness AATCC 164 Oxides of Nitrogen in the Atmosphere under High Humidities;
- American Association of Textile Chemists and Colorists #Color Fastness AATCC 129 Ozone in the Atmosphere under High Humidities;
- American Association of Textile Chemists and Colorists #Color Fastness AATCC 138 Cleaning: Washing of Textile Floor Coverings;
- American Association of Textile Chemists and Colorists #Color Fastness AATCC 107 Water;
- ASTM D1335, Standard Test Method for Tuft Bind of Pile Yarn Floor Coverings; and
- ASTM D3936, Standard Test Method for Resistance to Delamination of the Secondary Backing of Pile Yarn Floor Covering.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on 2-cycle engine oils. USDA found that in fiscal year 2005 approximately $34 million of carpet were purchased on GSA schedule, of which $5.2 million met the recycled content as defined by Executive Order 13101. While it is unknown what percentage of total carpet purchased by the Federal government the $34 million represents, it is clear that Federal agencies purchase and install large volumes of carpets. Designation of carpets, therefore, will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased carpets was performed for two of the products using the BEES analytical tool. Table 9 summarizes the BEES results for the two carpets. As seen in Table 9, the environmental performance score, which includes

human health, was 0.2429 per 1 square yard of carpet over 50 years for both samples. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one square yard of carpet over 50 years, expressed in 100ths of 1 percent.

TABLE 9.—SUMMARY OF BEES RESULTS FOR CARPETS

Parameters	Carpets
	Sample A Sample B
BEES Environmental Performance—Total Score [1]	0.2429
Acidification (5%)	0.0000
Criteria Air Pollutants (6%)	0.0014
Ecological Toxicity (11%)	0.0165
Eutrophication (5%)	0.0112
Fossil Fuel Depletion (5%)	0.1028
Global Warming (16%)	0.0240
Habitat Alteration (16%)	0.0000
Human Health (11%)	0.0278
Indoor Air (11%)	0.0377
Ozone Depletion (5%)	0.0000
Smog (6%)	0.0079
Water Intake (3%)	0.0136
Economic Performance (Life Cycle Costs ($)) [2]	39.22
First Cost	20.00
Future Cost (3.9%)	19.22
Functional Unit	one square yard over 50 years

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.

The life cycle cost of both submitted carpets was $39.22 per square yard of carpet over 50 years.

10. Carpet and Upholstery Cleaners

Carpet and upholstery cleaners are products used to clean carpets and upholstery, through a dry or wet process, found in locations such as houses, cars, and workplaces. As proposed, this item does not include spot cleaners.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in spacecraft systems and launch support equipment.

For biobased carpet and upholstery cleaners, USDA identified 13 different manufacturers producing 17 individual biobased products. These 13 manufacturers do not necessarily include all manufacturers of biobased carpet and upholstery cleaners, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are typically tested against one relevant measure of performance and are being used commercially. While other relevant measurements of performance may exist, applicable relevant measurements of performance against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- U.S. Navy, Navsea 6840 Surface Ship (Non-Submarine) Authorized Chemical Cleaning Products and Dispensing Systems.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on 2-cycle engine oils. These attempts were largely unsuccessful. However, Federal agencies routinely perform, and procure services that perform, the types of cleaning activities that utilize carpet and upholstery cleaners. Thus, they have a need for carpet and upholstery cleaners and for services that require the use of carpet and upholstery cleaners. Designation of carpet and upholstery cleaners will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased carpet and upholstery cleaners was performed for two of the products using the BEES analytical tool. Table 10 summarizes the BEES results for the two carpet and upholstery cleaners. As seen in Table 10, the environmental performance score, which includes human health, ranges from 0.0898 to 0.1542 points per 1,000 square feet of carpet cleaned. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to 1,000 square feet of carpet cleaned, expressed in 100ths of 1 percent.

TABLE 10.—SUMMARY OF BEES RESULTS FOR CARPET AND UPHOLSTERY CLEANERS

Parameters	Carpet and upholstery cleaners	
	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.0898	0.1542
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0007	0.0015
Ecological Toxicity (11%)	0.0069	0.0124
Eutrophication (5%)	0.0007	0.0016
Fossil Fuel Depletion (5%)	0.0330	0.0733

TABLE 10.—SUMMARY OF BEES RESULTS FOR CARPET AND UPHOLSTERY CLEANERS—Continued

Parameters	Carpet and upholstery cleaners	
	Sample A	Sample B
Global Warming (16%)	0.0101	0.0233
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0164	0.0370
Indoor Air (11%)	0.0196	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0024	0.0049
Water Intake (3%)	0.0000	0.0002
Economic Performance (Life Cycle Costs($))[2]	20.29	4.55
First Cost	20.29	4.55
Future Cost (3.9%)	([3])	([3])
Functional Unit	1,000 square feet of carpet cleaned.	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted carpet and upholstery cleaners range from $4.55 to $20.29 (present value dollars) per 1,000 square feet of carpet cleaned. Based on information supplied by the manufacturers, USDA has confirmed that the qualifying biobased content in each of the samples tested is derived, in whole or in significant part, from renewable domestic agricultural or forestry material.

C. Minimum Biobased Contents

Section 9002(e)(1)(C) directs USDA to recommend minimum biobased content levels where appropriate. In today's proposed rulemaking, USDA is proposing minimum biobased product content for each of the 10 items proposed for designation based on information currently available to USDA.

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 10 items. The data presented in the following paragraphs are the test results from all of the product samples that were submitted for analysis. It is the responsibility of the manufacturers to ''self-certify'' that each product being offered as a biobased product for preferred procurement contains qualifying feedstock. As contained in the Guidelines, USDA will consider qualifying feedstocks for biobased products originating in ''designated countries'' (as that term is defined in the Federal Acquisition Regulation (FAR) § 25.003)) as well as from the United States. USDA will develop a monitoring process for these self-certifications to ensure manufacturers are using qualifying feedstocks. If misrepresentations are found, USDA will remove the subject biobased product from the preferred procurement program and may take further actions as deemed appropriate.

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 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 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 minimus 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. Procuring agencies are encouraged to seek products with the highest biobased content that is practicable in all 10 of the proposed designated items.

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

1. 2-Cycle Engine Oils

Seven of the 17 biobased 2-cycle engine oils identified have been tested for biobased content using ASTM D6866.[1] The biobased content of these 7 samples ranged from 6 percent to 77 percent.

USDA is proposing to set the minimum biobased content for this item at 7 percent, based on the product with a tested biobased content of 10 percent. USDA evaluated the manufacturer's performance claims for the product whose biobased content was tested at 6 percent. The available information for this product did not indicate any unique performance characteristics or features not found in products with a higher biobased content. Therefore, USDA dropped this product from consideration in setting the minimum biobased content for the item. USDA found that the product with 10 percent biobased content, the second-lowest tested value, was formulated to meet the

[1] ASTM D6866 (Standard Test Methods for Determining the Biobased Content of Natural Range Materials Using Radiocarbon and Isotope Ratio Mass Spectrometry 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.

specifications of Japanese small engine manufacturers. None of the other products tested made this claim or indicated that they had been tested using the Japanese performance standards. Because of the predominance of Japanese engines in the marketplace, USDA believes that establishing a minimum biobased content for this item based on a product formulated to meet their performance specifications is reasonable. To account for possible variability in the results of ASTM D6866, as discussed earlier, the tested 10 percent value was then adjusted to 7 percent.

2. Lip Care Products

Two of the 28 available biobased lip care products have been tested for biobased content using ASTM D6866. The biobased content of these two lip care products was 85 percent and 88 percent.

USDA is proposing to set the minimum biobased content for this item at 82 percent, based on the product with a tested biobased content of 85 percent. While no differences were found in the performance of the two products tested, USDA believes that the slight difference between the biobased content of two products tested is insignificant. Also, establishing the minimum biobased content for the item based on the lower tested value offers procurement agents more choice in selecting products to purchase.

3. Biodegradable Films

Thirteen of the 45 biobased biodegradable films identified have been tested for biobased content using ASTM D6866. The biobased content of these 13 biodegradable films ranged from 1 percent to 96 percent. USDA will not establish the minimum biobased content for a designated item based on products with essentially no biobased content; that is, in this instance, on either the product with a tested biobased content of 1 percent or the product with a tested biobased content of 2 percent. The biobased content of the remaining 11 products ranged from 25 percent to 96 percent.

USDA is proposing to set the minimum biobased content for this item at 22 percent, based on the product with a tested biobased content of 25 percent. The manufacturer of the product with the biobased content of 25 percent also manufactures biodegradable films with 48 and 52 percent biobased content. The product with 25 percent biobased content has a significantly longer shelf-life than the other products. Because Federal procuring agencies are likely to purchase biodegradable films in larger quantities than the average consumer, USDA believes that shelf-life is a key performance criteria for establishing the minimum biobased content of this item. Therefore, USDA is proposing to establish the minimum biobased content for this item based on this particular product. Furthermore, establishing the minimum biobased content level at this level will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

4. Stationary Equipment Hydraulic Fluids

Twenty two of the 66 biobased stationary equipment hydraulic fluids identified have been tested for biobased content using ASTM D6866. The biobased content of these 22 biobased stationary equipment hydraulic fluids ranged from 49 percent to 100 percent.

USDA is proposing to set the minimum biobased content for this item at 46 percent, based on the product with a tested biobased content of 49. Stationary equipment hydraulic fluids can be formulated to meet a wide range of demands. Because of the resulting range in product characteristics, USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. 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. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

5. Biodegradable Cutlery

Five of the 15 biobased biodegradable cutlery identified have been tested for biobased content using ASTM D6866. The biobased contents of these five biobased biodegradable products ranged from 36 percent to 100 percent.

USDA is proposing to set the minimum biobased content for this item at 33 percent, based on the product with a tested biobased content of 36 percent. USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. 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. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

6. Glass Cleaners

Seven of the 19 biobased glass cleaners identified have been tested for biobased content using ASTM D6866. The biobased contents of these glass cleaners ranged from 0 percent to 67 percent. The products with tested biobased contents of 0 and 1 percent were not considered in establishing the minimum biobased content for this proposed designated item. The one product whose tested biobased content was 0 percent was eliminated from consideration because, according to the results of the analysis, the product would not be considered a biobased product. Further, USDA will not establish the minimum biobased content for a designated item based on products with essentially no biobased content; that is, in this instance on a product with a tested biobased content of 1 percent. The biobased content of the remaining five products ranged from 26 percent to 67 percent.

USDA is proposing to set the minimum biobased content for this item at 23 percent, based on the product with a tested biobased content of 26 percent. USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. 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. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

7. Greases

Eighteen of the 67 biobased greases identified have been tested for biobased

content using ASTM D6866. For the five proposed subcategories of greases, the results obtained and the proposed minimum biobased contents are discussed in the following paragraphs by proposed grease subcategory.

Food grade greases. The biobased content was measured for three food grade greases. The tested biobased contents were 45, 62, and 95 percent.

USDA is proposing to set the minimum biobased content for food grade greases at 42 percent, based on the product with a tested biobased content of 45 percent. 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 level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

Multipurpose greases. The biobased content was measured for three multipurpose greases. The tested biobased contents were 76, 76, and 76 percent.

USDA is proposing to set the minimum biobased content for food grade greases at 73 percent, based on the tested biobased content of 76 percent for all three multipurpose greases.

Rail track greases. The biobased content was measured for six rail track greases. The tested biobased contents ranged from 33 percent to 66 percent.

USDA is proposing to set the minimum biobased content for rail track greases at 30 percent, based on the two products with a tested biobased content of 33 percent. The range in biobased contents is due to formulations necessary to meet seasonal requirements. Because one would not use a rail track grease formulated for winter use in the summer (and vice-versa), USDA does not believe it is necessary to subdivide this item. Instead, USDA believes that it is appropriate to set a single minimum biobased content and is proposing to set it based on the lowest tested biobased content. By doing so, USDA believes that it is setting a minimum biobased content level that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics, which is in the best interests of this program. Further, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

Truck greases. The biobased content was measured for three truck greases. The tested biobased contents were 75, 77, and 77 percent.

USDA is proposing to set the minimum biobased content for truck greases at 72 percent, based on the product with a tested biobased content of 77 percent. USDA believes that the slight difference between the biobased content of three products tested is insignificant, and establishing the minimum biobased content for the item based on the lower tested value offers procurement agents more choice in selecting truck grease products to purchase.

Greases not elsewhere specified. The biobased content was measured for four greases that did not fit any of the four specified subcategories. The tested biobased contents ranged from 78 percent to 96 percent.

USDA is proposing to set the minimum biobased content for greases not elsewhere specified at 75 percent, based on the product with a tested biobased content of 78 percent. Because of the nature of this subcategory, grease products within it will be formulated to meet a wide range of demands. Because of the resulting range in product characteristics, USDA is proposing to set the minimum biobased content at a level that will include all of these ''other'' grease products sampled. 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 these ''other'' grease products to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled ''other'' grease products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

8. Dust Suppressants

Five of the 13 biobased dust suppressants identified have been tested for biobased content using ASTM D6866. The biobased contents of these 5 biobased dust suppressants ranged from 69 percent to 100 percent.

USDA is proposing to set the minimum biobased content for this item at 66 percent, based on the product with a tested biobased content of 69 percent. USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled, including the product with 69 percent biobased content, which is the only one of the products that is formulated specifically as a concentrate to be mixed with water. 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. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

9. Carpet

Nine of the 19 biobased carpet identified have been tested for biobased content using ASTM D6866. The testing was conducted on the entire carpet samples (*i.e.*, face and backing). The biobased content of these nine biobased carpets ranged from 0 percent to 37 percent. The two products whose tested biobased content was 0 percent was eliminated from consideration because, according to the results of the analysis, the product would not be considered a biobased product. The biobased content of the remaining 7 products ranged from 10 percent to 37 percent.

USDA is proposing to set the minimum biobased content for this item at 7 percent, based on the product with a tested biobased content of 10 percent. For each of the carpet samples tested, the biobased component of the carpets sampled was the material used as the carpet backing. The sampled products with a higher biobased content contain similar biobased materials, but had higher biobased contents because they simply had a thicker layer of the backing material. Thus, those products with the lower biobased content are likely to be less costly and more competitive in markets such as the commercial carpet segment. USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. 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. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products also will provide more products from which procurement officials may choose and will encourage the most widespread usage of biobased products by procuring agencies.

10. Carpet and Upholstery Cleaners

Ten of the 17 biobased carpet and upholstery cleaners identified have been tested for biobased content using ASTM D6866. The biobased content of these 10 biobased carpet and upholstery cleaners ranged from 10 percent to 99 percent. Two products, with biobased contents of 10 and 15 percent are characterized by their manufacturers as ''spot removers.'' USDA did not consider these products in establishing the minimum biobased content because this designated item is intended to include those products formulated for use in larger scale cleaning operations than would be typical for ''spot removers.'' The biobased content of the eight remaining products ranged from 37 percent to 99 percent.

USDA is proposing to set the minimum biobased content for this item at 34 percent, based on the product with a biobased content of 37 percent. USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. 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. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

D. Effective 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, under the terms of the proposed rule, procuring agencies would 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 proposes a one-year period before the procurement preferences would take effect based on an understanding that Federal agencies will need time to incorporate the preferences into procurement documents and to revise existing standardized specifications. Section 9002(d) of FSRIA and section 2902(c) of 7 CFR part 2902 explicitly acknowledge the latter 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 when these designated items were proposed), 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.

V. Where Can Agencies Get More Information on These USDA-Designated Items?

Once the item designations in today's proposal become final, manufacturers and vendors voluntarily may post information on specific products, including product and contact information, on the USDA biobased products Web site *http://www.biobased.oce.usda.gov.* USDA will periodically audit the information displayed on the Web site and, where questions arise, contact 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 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 its 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 USDA's FB4P Web site and click on the ''Product Submission'' 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.''

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866. The annual economic effect associated with today's proposed rule

has not been quantified because the information necessary to estimate the effect does not exist. As was discussed earlier in this preamble, USDA made extensive efforts to obtain information on the Federal agencies' usage of the 10 items proposed for designation. These efforts were largely unsuccessful. Therefore, attempts to determine the economic impacts of today's proposed rule would necessitate estimating the anticipated market penetration of biobased products, which would entail many assumptions and, thus, be of questionable value. Also, the program allows procuring agencies the option of not purchasing biobased products if the costs are deemed ''unreasonable.'' Under this program, the determination of ''unreasonable'' costs will be made by individual agencies. USDA knows these agencies will consider such factors as price, life-cycle costs, and environmental benefits in determining whether the cost of a biobased product is determined to be ''reasonable'' or ''unreasonable.'' However, until the program is actually implemented by the various agencies, it is impossible to quantify the impact this option would have on the economic effect of the rule. Therefore, USDA relied on a qualitative assessment to reach the judgment that the annual economic effect of the designation of these 10 items is less than $100 million, and likely to be substantially less than $100 million. This judgment was based primarily on the offsetting nature of the program (an increase in biobased products purchased with a corresponding decrease in petroleum products purchased) and, secondarily, on the ability of procuring agencies not to purchase these items if costs are judged unreasonable, which would reduce the economic effect.

1. Summary of Impacts

Today's proposed rulemaking 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 to begin supplying biobased materials to manufacturers of 2-cycle engine oils, lip care products, biodegradable films, stationary equipment hydraulic fluids, biodegradable cutlery, glass cleaners, greases, dust suppressants, carpets, and carpet and upholstery cleaners and to begin supplying these products made with biobased materials to Federal agencies and their contractors. In addition, other businesses, including small businesses, that do not directly contract with procuring agencies may be affected positively by the increased demand for these biobased materials and products. However, other businesses that manufacture and supply only non-qualifying products and do not offer a biobased alternative product may experience a decrease in demand for their products. Thus, today's proposed rule will likely increase the demand for biobased products, while decreasing the demand for non-qualifying products. It is anticipated that this will create a largely ''offsetting'' economic impact.

USDA is unable to determine the number of businesses, including small businesses, that may be adversely affected by today's proposed rule. If a business currently supplies any of the items proposed for designation to a procuring agency and those products do not qualify as biobased products, the proposed rule may reduce that company's ability to compete for future contracts. However, the proposed rule will not affect existing purchase orders, nor will it preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials. Thus, many businesses, including small businesses, that market to Federal agencies and their contractors have the option of modifying their product lines to meet the new biobased specifications.

2. Summary of Benefits

The designation of these 10 items provides the benefits outlined in the objectives of section 9002: To increase domestic demand for biobased products and, thus, for the many agricultural commodities that can serve as feedstocks for 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. The increased demand for biobased products will also lead to the substitution of products with a possibly more benign or beneficial environmental impact, as compared to the use of non-biobased products. By purchasing these biobased products, procuring agencies can increase opportunities for all of these benefits. On a national and regional level, today's proposed rule can result in expanding and strengthening markets for biobased materials used in these 10 items. However, because the extent to which procuring agencies will find the performance and costs of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of today's proposed rule. USDA, however, anticipates the annual economic effect of the designation of these 10 items to be substantially below the $100 million threshold. In addition, today's proposed rule does not do any of the following: Create serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

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 10 items to determine whether its actions would have a significant impact on a substantial number of small entities. Because the Federal Biobased Products Preferred Procurement Program in section 9002 of FSRIA 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. Conversely, the biobased procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. However, the proposed rule will not affect existing purchase orders and it will not preclude procuring agencies from continuing to purchase non-biobased items under

certain conditions relating to the availability, performance, or cost of biobased items. Today's 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. Thus, the economic impacts of today's proposed rule are not expected to be significant.

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 products within the 10 items proposed for designation by today's proposed rulemaking, the number is expected to be small. Because biobased products represent an 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 affected by today's proposed rulemaking is not expected to be substantial.

After considering the economic impacts of today's proposed rule on small entities, USDA certifies that this action will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

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 today's proposed rule would 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. Technological innovation associated with the use of biobased materials can translate into economic growth and increased industry competitiveness worldwide, thereby, creating opportunities for small entities.

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 12988: Civil Justice Reform

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This proposed rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

E. 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.

F. 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.

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

H. 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.

I. 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.

J. Government Paperwork Elimination Act Compliance

The Office of Energy Policy and New Uses is committed to compliance with the Government Paperwork Elimination Act (GPEA) (44 U.S.C. 3504 note), 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 item designated. For information pertinent to GPEA compliance related to this rule, please contact Marvin Duncan at (202) 401–0461.

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, DEPARTMENT OF AGRICULTURE

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 §§ 2902.26 through 2902.35 to subpart B to read as follows:

Subpart B—Designated Items

Sec.
2902.26 2–Cycle Engine Oils.
2902.27 Lip Care Products.
2902.28 Biodegradable Films.
2902.29 Stationary Equipment Hydraulic Fluids.
2902.30 Biodegradable Cutlery.
2902.31 Glass Cleaners.
2902.32 Greases.
2902.33 Dust Suppressants.
2902.34 Carpets.
2902.35 Carpet and Upholstery Cleaners.

Subpart B—Designated Items

* * * * *

§ 2902.26 2–Cycle Engine Oils.

(a) *Definition.* Lubricants formulated to provide clean-burning lubrication, decreased spark plug fouling, reduced deposit formation, and reduced engine wear in 2-cycle gasoline engines.

(b) *Minimum biobased content.* The minimum biobased content is 7 percent and 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 effective 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 2-cycle engine oils. 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 2-cycle engine oils.

(d) *Exemptions.* The following applications are exempt for the preferred procurement requirement for this item:

(1) Military equipment: Product or system designed or procured for combat or combat-related missions.

(2) Spacecraft systems and launch support equipment.

§ 2902.27 Lip Care Products.

(a) *Definition.* Personal care products formulated to replenish the moisture and/or prevent drying of the lips.

(b) *Minimum biobased content.* The minimum biobased content is 82 percent and 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 effective 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 lip 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 lip care products.

(d) *Exemptions.* Spacecraft systems and launch support equipment applications are exempt from the preferred procurement requirement for this item.

§ 2902.28 Biodegradable Films.

(a) *Definition.* Films used in packaging, wrappings, linings, and other similar applications and that are capable of meeting ASTM D6400 standard for biodegradability.

(b) *Minimum biobased content.* The minimum biobased content is 22 percent and 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 effective 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 biodegradable films. 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 biodegradable films.

(d) *Exemptions.* Spacecraft systems and launch support equipment applications are exempt from the preferred procurement requirement for this item.

§ 2902.29 Stationary Equipment Hydraulic Fluids.

(a) *Definition.* Hydraulic fluids formulated for use as a mechanical power transmission medium (and to provide wear, rust, and oxidation protection) in the hydraulic systems of stationary equipment.

(b) *Minimum biobased content.* The minimum biobased content is 46 percent and 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 effective 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 stationary equipment hydraulic fluids. 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 stationary equipment hydraulic fluids.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under 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 building insulation and which product should be afforded the preference in purchasing.

(e) *Exemptions.* The following applications are exempt for the preferred procurement requirement for this item:

(1) Military equipment: Product or system designed or procured for combat or combat-related missions.

(2) Spacecraft systems and launch support equipment.

§ 2902.30 Biodegradable Cutlery.

(a) *Definition.* Hand-held, disposable utensils designed for one-time use in eating food and that are capable of meeting ASTM D5338 standard for biodegradability.

(b) *Minimum biobased content.* The minimum biobased content is 33 percent and 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 effective 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 biodegradable cutlery. 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 biodegradable cutlery.

(d) *Exemptions.* Spacecraft systems and launch support equipment applications are exempt from the preferred procurement requirement for this item.

§ 2902.31 Glass Cleaners.

(a) *Definition.* Cleaning products designed specifically for use in cleaning glass surfaces, such as windows, mirrors, car windows, and computer monitors.

(b) *Minimum biobased content.* The minimum biobased content is 23 percent and 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. If the finished product is to be diluted before use, the biobased content of the cleaner must be determined before dilution.

(c) *Preference effective 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 glass 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 glass cleaners.

(d) *Exemptions.* Spacecraft systems and launch support equipment applications are exempt from the preferred procurement requirement for this item.

§ 2902.32 Greases.

(a) *Definition.* (1) Lubricants composed of oils thickened with soaps or other thickeners to a semisolid or solid consistency.

(2) Greases for which minimum biobased contents under paragraph (b) of this section apply are:

(i) *Food grade greases.* Lubricants that are designed for use on food-processing equipment as a protective anti-rust film, as a release agent on gaskets or seals of tank closures, or on machine parts and equipment in locations in which there is exposure of the lubricated part to food.

(ii) *Multipurpose greases.* Lubricants that are designed for general use.

(iii) *Rail track greases.* Lubricants that are designed for use on railroad tracks or heavy crane tracks.

(iv) *Truck greases.* Lubricants that are designed for use on the fifth wheel of tractor trailer trucks onto which the semi-trailer rests and pivots.

(v) *Greases not elsewhere specified.* Lubricants that meet the general definition of greases as defined in paragraph (a) of this section, but are not otherwise covered by paragraphs (b)(1) through (5) of this section.

(b) *Minimum biobased content.* The minimum biobased content for all greases 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 are:

(1) Food grade grease—42 percent.

(2) Multipurpose grease—73 percent.

(3) Rail track grease—30 percent.

(4) Truck grease—72 percent.

(5) Greases not elsewhere specified—75 percent.

(c) *Preference effective 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 greases. 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 greases.

(d) *Exemptions.* The following applications are exempt for the preferred procurement requirement for this item:

(1) Military equipment: Product or system designed or procured for combat or combat-related missions.

(2) Spacecraft systems and launch support equipment.

§ 2902.33 Dust Suppressants.

(a) *Definition.* Products formulated to reduce or eliminate the spread of dust associated with gravel roads, dirt parking lots, or similar sources of dust, including products used in equivalent indoor applications.

(b) *Minimum biobased content.* The minimum biobased content is 66 percent and 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. If the finished product is to be diluted before use, the biobased content of the suppressant must be determined before dilution.

(c) *Preference effective 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 dust suppressants. 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 dust suppressants.

(d) *Exemptions.* The following applications are exempt for the preferred procurement requirement for this item:

(1) Military equipment: Product or system designed or procured for combat or combat-related missions.

(2) Spacecraft systems and launch support equipment.

§ 2902.34 Carpets.

(a) *Definition.* Floor coverings composed of woven fibers, with a backing.

(b) *Minimum biobased content.* The minimum biobased content is 7 percent and 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 effective 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 carpet. 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 carpet.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the EPA-designated recovered content product: Carpets (polyester). 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 building insulation and which product should be afforded the preference in purchasing.

(e) *Exemptions.* Spacecraft systems and launch support equipment applications are exempt from the preferred procurement requirement for this item.

§ 2902.35 Carpet and Upholstery Cleaners.

(a) *Definition.* Cleaning products formulated specifically for use in cleaning carpets and upholstery, through a dry or wet process, found in locations such as houses, cars, and workplaces. Spot cleaners are not included in this item.

(b) *Minimum biobased content.* The minimum biobased content is 34 percent and 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 effective 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 carpet and upholstery 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 carpet and upholstery cleaners.

(d) *Exemptions.* Spacecraft systems and launch support equipment applications are exempt from the preferred procurement requirement for this item.

Dated: August 10, 2006.

Keith Collins,

Chief Economist, U.S. Department of Agriculture.

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