DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

7 CFR Part 3201

RIN 0599–AA16

Designation of Product Categories for Federal Procurement

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to amend the Guidelines for Designating Biobased Products for Federal Procurement (Guidelines) to add eight sections that will designate the following product categories within which biobased products would be afforded Federal procurement preference: Aircraft and boat cleaners; automotive care products; engine crankcase oil; gasoline fuel additives; metal cleaners and corrosion removers; microbial cleaning products; paint removers; and water turbine bearing oils. USDA is also proposing to add the following subcategories to previously designated product categories: Countertops to the composite panels category; and wheel bearing and chassis grease to the greases category. USDA is also proposing minimum biobased contents for each of these product categories and subcategories.

DATES: USDA will accept public comments on this proposed rule until February 4, 2013.

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 0599–AA16. Also, please identify submittals as pertaining to the ''Proposed Designation of Product Categories.''

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: biopreferred@usda.gov.* Include RIN number 0599–AA16 and ''Proposed Designation of Product Categories'' on the subject line. Please include your name and address in your message.
- *Mail/commercial/hand delivery:* Mail or deliver your comments to: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St. SW., Washington, DC 20024.
- Persons with disabilities who require alternative means for communication for regulatory information (Braille, large print, audiotape, etc.) should contact the USDA TARGET Center at (202) 720–2600 (voice) and (202) 690–0942 (TTY).

FOR FURTHER INFORMATION CONTACT: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St. SW., Washington, DC 20024; email: *biopreferred@usda.gov;* phone (202) 205–4008. Information regarding the Federal preferred procurement program (one part of the BioPreferred Program) is available on the Internet at *http://www.biopreferred.gov.*

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

I. Authority

The designation of these product categories is proposed under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), 7 U.S.C. 8102 (referred to in this document as ''section 9002'').

II. Background

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

The term ''product category'' is used in the designation process to mean a generic grouping of specific products that perform a similar function, such as the various brands of paint removers or engine crankcase oils. Once USDA designates a product category, procuring agencies are required generally to purchase biobased products within these designated product categories where the purchase price of the procurement product exceeds $10,000 or where the quantity of such products or the functionally equivalent products purchased over the preceding fiscal year equaled $10,000 or more. Procuring agencies must procure biobased products within each product category unless they determine that products within a product category are not reasonably available within a reasonable period of time, fail to meet the reasonable performance standards of the procuring agencies, or are available only at an unreasonable price. As stated in 7 CFR part 3201—''Guidelines for Designating Biobased Products for Federal Procurement'' (Guidelines), biobased products that are merely incidental to Federal funding are excluded from the Federal preferred procurement program; that is, the requirements to purchase biobased products do not apply to such purchases if they are unrelated to or incidental to the purpose of the Federal contract. In implementing the Federal 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 product categories

proposed for designation in this proposed rule. Rather, the effect of the designation of the product categories is to require procuring agencies to determine their performance needs, determine whether there are qualified biobased products that fall under the designated product categories that meet the reasonable performance standards for those needs, and purchase such qualified biobased products to the maximum extent practicable as required by section 9002.

Section 9002(a)(3)(B) requires USDA to provide information to procuring agencies on the availability, relative price, performance, and environmental and public health benefits of such products and to recommend, where appropriate, the minimum level of biobased content to be contained in the procured products.

Subcategorization. Most of the product categories USDA is considering for designation for Federal preferred procurement cover a wide range of products. For some product categories, there are subgroups of products that meet different requirements, uses and/or different performance specifications. For example, within the product category ''hand cleaners and sanitizers,'' products that are used in medical offices may be required to meet performance specifications for sanitizing, while other products that are intended for general purpose hand washing may not need to meet these specifications. Where such subgroups exist, USDA intends to create subcategories. Thus, for example, for the product category ''hand cleaners and sanitizers,'' USDA determined that it was reasonable to create a ''hand cleaner'' subcategory and a ''hand sanitizer'' subcategory. Sanitizing specifications are applicable to the latter subcategory, but not the former. In sum, USDA looks at the products within each product category to evaluate whether there are groups of products within the category that have different characteristics or that meet different performance specifications and, where USDA finds these types of differences, it intends to create subcategories with the minimum biobased content based on the tested products within the subcategory.

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

Within today's proposed rule, USDA is proposing to subcategorize three of the product categories. Those product categories are: Aircraft and boat cleaners; metal cleaners and corrosion removers; and microbial cleaning products. The proposed subcategories for the aircraft and boat cleaners product category are: Aircraft cleaners and boat cleaners. For the metal cleaners and corrosion removers product category, the proposed subcategories are: Stainless steel cleaners; other metal cleaners; and corrosion removers. For the microbial cleaning products category, the proposed subcategories are: Drain maintenance products; general cleaners; and wastewater maintenance products. USDA is also proposing to add a subcategory for countertops to the composite panels product category designated in Round 2 (73 FR 27954, May 14, 2008) and a subcategory for wheel bearing and chassis grease to the greases product category designated in Round 3 (73 FR 27974, May 14, 2008). In addition, public comments and additional data are being requested for several other product categories and subcategories may be created in a future rulemaking.

Minimum Biobased Contents. The minimum biobased contents being proposed with today's rule are based on products for which USDA has biobased content test data. Because the submission of product samples for biobased content testing is on a strictly voluntary basis, USDA was able to obtain samples only from those manufacturers who volunteered to invest the resources required to submit the samples. USDA has, however, begun to receive biobased content data associated with manufacturer's applications for certification to use the USDA Certified Biobased Product label. As discussed later in this preamble, these test results will also be considered when proposing the minimum biobased content levels for designated product categories.

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

USDA also considers the overall range of the tested biobased contents within a product category, groupings of similar values, and breaks (significant gaps between two groups of values) in the biobased content test data array. For example, the biobased contents of 7 tested products within a product category being proposed for designation today range from 17 to 100 percent, as follows: 17, 41, 78, 79, 94, 98, and 100 percent. Because this is a very wide range, and because there is a significant gap in the data between the 41 percent biobased product and the 78 percent biobased product, USDA reviewed the product literature to determine whether subcategories could be created within this product category. USDA found that the available product information did not justify creating a subcategory based on the 17 percent product or the 41 percent biobased content product. Further, USDA did not find any performance claims that would justify setting the minimum biobased content based on either the 17 percent or the 41 percent biobased content products. Thus, USDA is proposing to set the minimum biobased content for this product category based on the product with a tested biobased content of 78 percent. USDA believes that this evaluation process allows it to establish minimum biobased contents based on a broad set of factors to assist the Federal procurement community in its decisions to purchase biobased products.

USDA makes every effort to obtain biobased content test data on multiple products within each product category. For most designated product categories, USDA has biobased content test data on more than one product within the category. However, in some cases, USDA has been able to obtain biobased content data for only a single product within a designated product category. As USDA obtains additional data on the

biobased contents of products within these designated product categories or their subcategories, USDA will evaluate whether the minimum biobased content for a designated product category or subcategory will be revised.

USDA anticipates that the minimum biobased content for a product category that is based on a single product is more likely to change as additional products within that category are identified and tested. In today's proposed rule, the proposed minimum biobased content for the water turbine bearing oils category is based on a single tested product.

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

Overlap with EPA's Comprehensive Procurement Guideline program for recovered content products under the Resource Conservation and Recovery Act (RCRA) Section 6002. Some of the products that are within biobased product categories designated for Federal preferred procurement under this program may also be within categories the Environmental Protection Agency (EPA) has designated under the EPA's Comprehensive Procurement Guideline (CPG) for products containing recovered materials. In situations where it believes there may be an overlap, USDA is asking manufacturers of qualifying biobased products to make additional product and performance information available to Federal agencies conducting market research to assist them in determining whether the biobased products in question are, or are not, the same products for the same uses as the recovered content products. Manufacturers are asked to provide information highlighting the sustainable features of their biobased products and to indicate the various suggested uses of their product and the performance standards against which a particular product has been tested. In addition, depending on the type of biobased product, manufacturers are being asked to provide other types of information, such as whether the product contains fossil energy-based components (including petroleum, coal, and natural gas) and whether the product contains recovered materials. Federal agencies also may review available information on a product's biobased content and its profile against environmental and health measures and life-cycle costs (the ASTM Standard D7075,''Standard Practice for Evaluating and Reporting Environmental Performance of Biobased Products,'' or the Building for Environmental and Economic Sustainability (BEES) analysis for evaluating and reporting on environmental performance of biobased products). Federal agencies may then use this information to make purchasing decisions based on the sustainability features of the products. Detailed information on ASTM Standard D7075, and other ASTM standards, can be found on ASTM's Web site at *http://www.astm.org.* Information on the BEES analytical tool can be found on the Web site *http://www.bfrl.nist.gov/oae/software/bees.html.*

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

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

This proposed rule designates one product category for Federal preferred procurement for which there may be overlap with an EPA-designated recovered content product. The product category is engine crankcase oils, which may overlap with the EPA-designated recovered content product ''Re-refined lubricating oils.'' EPA provides recovered materials content recommendations for these recovered content products in Recovered Materials Advisory Notice (RMAN) I. The RMAN recommendations for these CPG products can be found by accessing EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

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

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

In contrast, some biobased products may be more environmentally preferable than some products that meet Green Seal standards for institutional cleaning products or that have been reformulated in accordance with EPA's DfE program. To fully compare products, one must look at the ''cradle-to-grave'' impacts of

the manufacture, use, and disposal of products. Biobased products that will be available for Federal preferred procurement under this program have been assessed as to their ''cradle-to-grave'' impacts.

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

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

Other Federal Preferred Procurement Programs. Federal procurement officials should also note that biobased products may be available for purchase by Federal agencies through the AbilityOne Program (formerly known as the Javits-Wagner-O'Day (JWOD) program). Under this program, members of organizations including the National Industries for the Blind (NIB) and NISH offer products and services for preferred procurement by Federal agencies. A search of the AbilityOne Program's online catalog (*www.abilityone.gov*) indicated that products within three of the product categories, or subcategories, being proposed today are available through the AbilityOne Program. These are: Composite Panels—Countertops, Metal Cleaners and Corrosion Removers—Stainless Steel Cleaners, and Metal Cleaners and Corrosion Removers—Other Metal Cleaners. While there is no specific product within these product categories identified in the AbilityOne online catalog as being a biobased product, it is possible that such biobased products are available or will be available in the future. Also, because additional categories of products are frequently added to the AbilityOne Program, it is possible that biobased products within other product categories being proposed for designation today may be available through the AbilityOne Program in the future. Procurement of biobased products through the AbilityOne Program would further the objectives of both the AbilityOne Program and the Federal preferred procurement program.

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

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

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

III. Summary of Today's Proposed Rule

USDA is proposing to designate the following product categories for Federal preferred procurement: Aircraft and boat cleaners; automotive care products; engine crankcase oil; gasoline fuel additives; metal cleaners and corrosion removers; microbial cleaning products; paint removers; and water turbine bearing oils. USDA is also proposing to add the following subcategories to previously designated product categories: ''countertops'' to the composite panels category and ''wheel bearing and chassis grease'' to the greases category. In addition, USDA is proposing a minimum biobased content for each of these product categories and subcategories. Lastly, USDA is proposing a date by which Federal agencies must incorporate these designated product categories into their procurement specifications (see Section IV.E).

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

Warranties. Some of the product categories being proposed for designation today may affect original equipment manufacturers' (OEMs) warranties for equipment in which the product categories are used. For example, the manufacturer of a piece of equipment that requires lubrication typically includes a list of recommended lubricants in the owner/operators manual that accompanies the equipment when purchased. If the purchaser of the equipment uses a lubricant (including a biobased

lubricant) that is not among the lubricants recommended by the equipment manufacturer, the manufacturer may cite that as a reason not to honor the warranty on the equipment. At this time, USDA does not have information available as to the extent that OEMs have included, or will include, biobased products among their recommended lubricants (or other similar operating components). This does not necessarily mean that use of biobased products will void warranties, only that USDA does not currently have such information. USDA is requesting comments and information on this topic, but cannot be held responsible if damage were to occur. USDA encourages manufacturers of biobased products to test their products against all relevant standards, including those that affect warranties, and to work with OEMs to ensure that biobased products are accepted and recommended for use. Whenever manufacturers of biobased products find that existing performance standards for warranties are not relevant or appropriate for biobased products, USDA is willing to assist them in working with the appropriate OEMs to develop tests that are relevant and appropriate for the end uses in which biobased products are intended. In addition to outreach to biobased product manufacturers and Federal Agencies, USDA will, as time and resources allow, work with OEMs on addressing any effect the use of biobased products may have on their warranties. If, in spite of these efforts, there is insufficient information regarding the use of a biobased product and its effect on warranties, the procurement agent would not be required to buy such a product. As information is available on warranties, USDA will make such information available on the BioPreferred Web site.

Additional Information. USDA is working with manufacturers and vendors to make all relevant product and manufacturer contact information available on the BioPreferred Web site before a procuring agency asks for it, in order to make the Federal preferred procurement program more efficient. Steps USDA has implemented, or will implement, include: Making direct contact with submitting companies through email 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 product categories through the following Web site: *http://www.biopreferred.gov.*

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

1. We have attempted to identify relevant and appropriate performance standards and other relevant measures of performance for each of the proposed product categories. If you know of other such standards or relevant measures of performance for any of the proposed product categories, 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.

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

3. Several product categories being proposed for designation today have wide ranges of tested biobased contents. For the reasons discussed later in this preamble, USDA is proposing a minimum biobased content for most of these product categories that would allow many of the tested products to be eligible for Federal preferred procurement. USDA welcomes comments on the appropriateness of the proposed minimum biobased contents for these product categories and whether there are potential subcategories within the product categories that should be considered.

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

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

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

To assist you in developing your comments, the background information used in proposing these product categories for designation has been posted on the BioPreferred Web site. The background information can be located by clicking on the ''Federal Procurement Preference'' link on the right side of the BioPreferred Web site's home page (*http://www.biopreferred.gov*) and then on the ''Rules and Regulations'' link. At the next screen, click on the Supporting Documentation link under Round 10 Designation under the Proposed Regulations section.

IV. Designation of Product Categories, Minimum Biobased Contents, and Time Frame

A. Background

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

In considering a product's availability, USDA uses several sources

of information. USDA performs Internet searches, contacts trade associations (such as the Bio organization) and commodity groups, searches the Thomas Register (a database, used as a resource for finding companies and products manufactured in North America, containing over 173,000 entries), and contacts manufacturers and vendors to identify those manufacturers and vendors with biobased products within product categories being considered for designation. USDA uses the results of these same searches to determine if a product category is generally available.

In considering a product category's economic and technological feasibility, USDA examines evidence pointing to the general commercial use of a product and its life-cycle cost and performance characteristics. This information is obtained from the sources used to assess a product'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 a product being purchased by a procuring agency or other entity, where available. In sum, USDA considers a product category economically and technologically feasible for purposes of designation if products within that product category are being offered and used in the marketplace.

In considering the life-cycle costs of product categories proposed for designation, USDA has obtained the necessary input information (on a voluntary basis) from manufacturers of biobased products and has used the BEES analytical tool to analyze individual products within each proposed product category. The BEES analytical tool measures the environmental performance and the economic performance of a product. The environmental performance scores, impact values, and economic performance results for products within the Round 10 designated product categories analyzed using the BEES analytical tool can be found on the BioPreferred Web site (*http://www.biopreferred.gov*) under the Supporting Documentation link mentioned above.

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

As discussed earlier, USDA has also implemented, or will implement, several other steps intended to educate the manufacturers and other stakeholders on the benefits of this program and the need to make this information, including manufacturer contact information, available on the BioPreferred Web site in order to then make it available to procurement officials. Additional information on specific products within the product categories proposed for designation may also be obtained directly from the manufacturers of the products. USDA has also provided a link on the BioPreferred Web site to a document that offers useful information to manufacturers and vendors who wish to position their businesses as BioPreferred vendors to the Federal Government. This document can be accessed by clicking on the ''Sell Biobased Products'' tab on the right side of the home page of the BioPreferred Web site, then on the ''Resources for Business'' tab under ''Related Topics'' on the right side of the next page, and then on the document titled ''Selling Biobased Products to the Federal Government'' in the middle of the page.

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

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

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

To propose a product category for designation, USDA must have sufficient information on a sufficient number of products within the category to be able to assess its availability and its economic and technological feasibility, including its life-cycle costs. For some product categories, there may be

numerous products available. For others, there may be very few products currently available. Given the infancy of the market for some product categories, it is expected that categories with only a single product will be identified. Further, given that the intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products, USDA has determined it is appropriate to designate a product category or subcategory for Federal preferred procurement even when there is only a single product with a single supplier, though this will generally occur once other products with high biobased content and two or more producers are first designated. However, USDA has also determined that in such situations it is appropriate to defer the effective Federal preferred procurement date until such time that more than one supplier is identified in order to provide choice to procuring agencies. Similarly, the documented availability, benefits, and life-cycle costs of even a very small percentage of all products that may exist within a product category are also considered sufficient to support designation.

B. Product Categories Proposed for Designation

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

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

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

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

In today's proposed rule, USDA is proposing to designate the following product categories for the Federal preferred procurement program: Aircraft and boat cleaners; automotive care products; engine crankcase oil; gasoline fuel additives; metal cleaners and corrosion removers; microbial cleaning products; paint removers; and water turbine bearing oils. USDA is also proposing to add the following subcategories to previously designated product categories: ''countertops'' to the composite panels category and ''wheel bearing and chassis grease'' to the greases category. USDA has determined that each of these product categories and subcategories 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 product categories 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.

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

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

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

Each of the proposed designated product categories are discussed in the following sections.

1. Aircraft and Boat Cleaners (Minimum Biobased Content: 48 Percent for Aircraft Cleaners; 38 Percent for Boat Cleaners)[1]

Aircraft and boat cleaners are products designed to remove built-on grease, oil, dirt, pollution, insect reside,

[1] Additional information on the determination of minimum biobased content is presented in Section IV,D of this Preamble.

or impact soils on both interior and exterior of aircraft and/or boats.

USDA identified 6 manufacturers and suppliers of 8 biobased aircraft cleaners and 13 manufacturers and suppliers of 24 biobased boat cleaners. These 19 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased aircraft cleaners and boat cleaners, merely those identified during USDA information gathering activities. Relevant product information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified 22 test method (as shown below) used in evaluating products within the aircraft cleaners and boat cleaners subcategories. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this product category, the 22 test methods identified by the manufacturers are:

Test Methods

- Aerospace Material Specifications 1526 Cleaner for Aircraft Exterior Surfaces, Pressure Spraying Type;
- ASTM International D877 Standard Test Method for Dielectric Breakdown Voltage of Insulating Liquids Using Disk Electrodes;
- ASTM International F1110 Standard Test Method for Sandwich Corrosion Test;
- ASTM International F1111 Standard Test Method for Corrosion of Low-Embrittling Cadmium Plate by Aircraft Maintenance Chemicals;
- ASTM International F483 Standard Test Method for Total Immersion Corrosion Test for Aircraft Maintenance Chemicals;
- ASTM International F484 Standard Test Method for Stress Crazing of Acrylic Plastics in Contact with Liquid or Semi-Liquid Compounds;
- ASTM International F502 Standard Test Method for Effects of Cleaning and Chemical Maintenance Materials on Painted Aircraft Surfaces;
- ASTM International F519 Standard Test Method for Mechanical Hydrogen Embrittlement Evaluation of Plating/Coating Processes and Service Environments;
- Boeing BAC 5763E Emulsion Cleaning & Aqueous Degreasing, Type II, Class 2, Grades A & B;
- Boeing D6–17487N Exterior and General Cleaners and Liquid Waxes;
- Environmental Protection Agency Method 796.3100 Aerobic Aquatic Biodegradation;
- Lockheed Martin FMS2004 Type II F–16, F–22, F–35 General Purpose Cleaner;
- Lockheed Martin LAC 41–4939 Cleaning Solvent, Environmentally Compliant;
- Lockheed Martin LMA–MN040 Type II F–16, F–22, F–35 General Purpose Cleaner;
- Military Performance Specification 85570D Cleaning Compounds, Aircraft, Exterior;
- Military Performance Specification 87937D Cleaning Compound, Aerospace Equipment, Type IV Heavy Duty Water Dilutable Cleaning Compound * Tested by SMI, ref # 04JAN940;
- New York City Transit S–70–01–96 Bus Wash Alkaline Cleaner—Tile Cleaning Procedure;
- SAE International AMS 3167B Solvents, Wipe for Cleaning Prior to Application of Primer and Top Coat Materials, or Sealing Compounds;
- SAE International ARP 1755B Effect of Cleaning Agents on Aircraft Engine Materials;
- South Coast Air Quality Management District Method 313–91 Clean Air Solvent—Eligibility; ATCC Biosafety Level 1; Minimal potential for causing diseases in humans, plants, animals and aquatic life;
- NSF Cat. 61; Pretreatment of Potable Water Sources; and
- EPA/600/4–90/027; Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms.

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

Most of the contacted officials reported that procurement data are appropriately reported in higher level groupings of Federal Supply Codes[2] for materials and supplies, which is higher level coding than the proposed designated product categories. Using terms that best match the product categories in today's proposed rule, USDA queried the GSA database for Federal purchases of products within today's proposed product categories. The results indicate purchases of products within product categories in today's proposed rule. The results of this inquiry can be found in the background information for Round 10, which is posted on the BioPreferred Web site. Also, the purchasing of such materials as part of contracted services and with individual purchase cards used to purchase products locally leads to less accurate data on purchases of specific products.

USDA also investigated the Web site FEDBIZOPPS.gov, a site which lists Federal contract purchase opportunities and awards greater than $25,000. The information provided on this Web site, however, is for broad categories of services and products rather than the specific types of products that are included in today's proposed rule. Therefore, USDA has been unable to obtain data on the amount of aircraft and boat cleaners purchased by procuring agencies. However, many Federal agencies routinely perform, or procure contract services to perform, the types of cleaning activities that use these products. Thus, they have a need for aircraft cleaners and boat cleaners and for services that require the use of these cleaners. Designation of aircraft cleaners and boat cleaners will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on 8 aircraft cleaners and 21 boat cleaners. Analyses of the environmental and human health benefits and the life-cycle costs of aircraft cleaners were performed for three products using the BEES analytical tool. The results of those analyses are presented in the background information for Round 10, which can be found on the BioPreferred Web site.

2. Automotive Care Products (Minimum Biobased Content 75 Percent)

Automotive care products are formulated for cleaning and protecting automotive surfaces. Typical products include waxes, buffing compounds, polishes, degreasers, soaps, wheel and

[2] The Federal Supply Code (FSC) is a four-digit code used by government buying offices to classify and identify, in broad terms, the products and supplies that the government buys and uses. The FSC is the first four digits in the much more detailed 13-digit National Stock Number (NSN) that is assigned to all government purchases for purposes of identification and inventory control.

tire cleaners, leather care products, interior cleaners, and fragrances.

USDA identified 12 manufacturers and suppliers of 30 different biobased automotive care products. These 12 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased automotive care products, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of a product category for Federal preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate a product category for Federal preferred procurement. If and when performance standards, test methods, and other relevant measures of performance are identified for this product category, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for automotive care products within the Federal government as discussed in the section on aircraft and boat cleaners. These attempts were largely unsuccessful. However, Federal agencies use or contract for services that use such products in maintaining fleets of automobiles. Thus, they have a need for automotive care products and for services that require the use of automotive care products. Designation of automotive care products will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 13 automotive care products. Analyses of the environmental and human health benefits and the life-cycle costs of automotive care products were performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the background information for Round 10, which can be found on the BioPreferred Web site.

3. Engine Crankcase Oils (Minimum Biobased Content 18 Percent)

Engine crankcase oils are products formulated to provide lubrication and wear protection for four-cycle gasoline or diesel engines.

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

Test Methods

- ASTM International D2619 Standard Test Method for Hydrolytic Stability of Hydraulic Fluids (Beverage Bottle Method);
- ASTM International D665 Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water;
- ASTM International D892 Standard Test Method for Foaming Characteristics of Lubricating Oils;
- SAE International 0W20 J300 Engine Oil Viscosity Classification;
- SAE International 10W40 J300 Engine Oil Viscosity Classification;
- SAE International 15W50 J300 Engine Oil Viscosity Classification;
- SAE International 20W60 J300 Engine Oil Viscosity Classification;
- SAE International 20W70 J300 Engine Oil Viscosity Classification; and
- SAE International 5W30 J300 Engine Oil Viscosity Classification.

USDA attempted to gather data on the potential market for engine crankcase oils within the Federal government as discussed in the section on aircraft and boat cleaners. These attempts were largely unsuccessful. However, many Federal agencies operate motor vehicle fleet maintenance facilities where engine crankcase oils are used. In addition, Federal agencies may contract for services involving the use of such products. Thus, they have a need for engine crankcase oils and for services that require the use of engine crankcase oils. Designation of engine crankcase oils will promote the use of biobased products, furthering the objectives of this program.

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

4. Gasoline Fuel Additives (Minimum Biobased Content 92 Percent)

Gasoline fuel additives are chemical agents added to gasoline to increase octane levels, improve lubricity, and provide engine cleaning properties to gasoline-fired engines.

USDA identified 115 manufacturers and suppliers of 117 gasoline fuel additives. These 115 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of gasoline fuel additives, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of a product category for Federal preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate a product category for Federal preferred procurement. If and when performance standards, test methods, and other relevant measures of performance are identified for this product category, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for gasoline fuel additives within the Federal government as discussed in the section on aircraft and boat cleaners. These attempts were largely unsuccessful. However, many Federal agencies operate motor vehicle fleet facilities where gasoline fuel additives are used. In addition, Federal agencies may contract for services involving the use of such products. Thus, they have a need for gasoline fuel additives and for services that require the use of gasoline fuel additives. Designation of gasoline fuel additives will promote the use of

biobased products, furthering the objectives of this program.

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

5. Metal Cleaners and Corrosion Removers (Minimum Biobased Content: 71 Percent for Corrosion Removers; 75 Percent for Stainless Steel Cleaners; and 56 Percent for Other Metal Cleaners)

Metal cleaners and corrosion removers are products that are designed to clean and remove grease, oil, dirt, stains, soils, and rust from metal surfaces. Corrosion removers are formulated to remove corrosion (rust) through chemical action, although mechanical actions may be used to speed the process.

USDA identified 43 manufacturers and suppliers of 62 metal cleaners and corrosion removers. Based on the information evaluated, USDA believes that it is appropriate to subcategorize this product category into three subcategories: Corrosion removers, stainless steel cleaners, and other metal cleaners. Of the 62 products identified, 12 were formulated specifically as corrosion removers, 7 were formulated for cleaning stainless steel, and 24 were formulated for cleaning other metals.

The 43 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of metal cleaners and corrosion removers, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified eight test methods (as shown below) used in evaluating products within the other metal cleaners subcategory. While other test methods and measures of performance, as well as performance standards, applicable to products within this product category may exist, the eight test methods identified by manufacturers are:

Test Methods

- DfE Qualifying Product—The DfE review team has screened each ingredient for potential human health and environmental effects;
- ASTM D4488—Standard Guide for Testing Cleaning Performance of Products Intended for Use on Resilient Flooring and Washable Walls;
- GS–37—Green Seal Environmental Standard for General-Purpose, Bathroom, Glass, and Carpet Cleaners Used for Industrial and Institutional Purposes;
- OECD G.L. 203—Guidelines for the Testing of Chemicals, Organization;
- Ecologo CCD–146—Environmental Leadership of Hard Surface Cleaners;
- Boeing BAC 5750 Section 5.1s Glidsafe Prepsolv—95% minimum d-Limonone for Solvent Cleaning;
- OECD 301F-Manometric Respirometry Test; and
- NSF H1—Lubricants with incidental contact.

USDA attempted to gather data on the potential market for metal cleaners and corrosion removers within the Federal government as discussed in the section on aircraft and boat cleaners. These attempts were largely unsuccessful. However, Federal agencies procure metal cleaners and corrosion removers for use in facilities such as vehicle maintenance shops, metal fabrication shops, hospitals, and office buildings. Also, many Federal agencies often procure contract services that use these products. Thus, they have a need for metal cleaners and corrosion removers and for services that require the use of metal cleaners and corrosion removers. Designation of metal cleaners and corrosion removers will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 36 metal cleaners and corrosion removers. Analyses of the environmental and human health benefits and the life-cycle costs of biobased metal cleaners and corrosion removers were performed for two products using the BEES analytical tool. The results of those analyses are presented in the background information for Round 10, which can be found on the BioPreferred Web site.

6. Microbial Cleaning Products (Minimum Biobased Content: 45 Percent for Drain Maintenance Products; 44 Percent for Wastewater Maintenance Products; and 50 Percent for General Cleaners)

Microbial cleaning products are cleaning agents that use microscopic organisms to treat or eliminate waste materials within drains, plumbing fixtures, sewage systems, wastewater treatment systems, or on a variety of other surfaces. These products typically include organisms that digest protein, starch, fat, and cellulose.

USDA identified 163 manufacturers and suppliers of 490 microbial cleaners. Based on the information evaluated, USDA believes that it is appropriate to subcategorize this product category into three subcategories: Drain maintenance products, wastewater maintenance products, and general cleaners. Of the 490 products identified, 241 were formulated specifically for drain maintenance, 186 were formulated for wastewater maintenance, and 63 were general purpose cleaning products.

The 163 manufacturers and suppliers do not necessarily include all manufacturers of microbial cleaners, merely those identified during USDA information gathering activities. Information supplied by the manufacturers and supplier indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified 15 performance standards and test methods (as shown below) used in evaluating products within this product category. While there may be additional performance standards, test methods, product certifications, and other measures of performance, applicable to products within this product category, the 15 performance standards and test methods identified by the manufacturers are:

Test Methods—Drain Maintenance Products

- EPA SW–846—Test Methods for Evaluating Solid Waste, Physical/Chemical Methods;
- DfE Qualifying Product—The DfE review team has screened each ingredient for potential human health and environmental effects; and
- ATCC Biosafety Level 1—Minimal potential for causing diseases in humans, plants, animals and aquatic life.

Test Methods—Wastewater Maintenance Products

- Navsea 6840—U.S. Navy surface ship (non-submarine) authorized chemical cleaning products and dispensing systems;
- EPA/600/4–90/027—Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms;
- EPA SW–846—Test Methods for Evaluating Solid Waste, Physical/Chemical Methods;
- EPA Method 418.1—Petroleum Hydrocarbons, Total Recoverable for

determining total petroleum hydrocarbons (TPH) in water;

- DfE Qualifying Product—The DfE review team has screened each ingredient for potential human health and environmental effects;
- ATCC Biosafety Level 1—Minimal potential for causing diseases in humans, plants, animals and aquatic life;
- ASTM E96—Standard Test Methods for Water Vapor Transmission of Materials;
- ASTM D792—Standard Test Methods for Density and Specific Gravity (Relative Density) of Plastics by Displacement;
- ASTM D638—Standard Test Method for Tensile Properties of Plastics;
- ASTM D4060—Standard Test Method for Abrasion Resistance of Organic Coatings by the Taber Abraser; and
- ASTM D2240—Standard Test Method for Rubber Property—Durometer Hardness.

Test Methods—General Cleaners

- ATCC Biosafety Level 1—Minimal potential for causing diseases in humans, plants, animals, and aquatic life.

USDA attempted to gather data on the potential market for microbial cleaners within the Federal government using the procedure described in the section on aircraft and boat cleaners. These attempts were largely unsuccessful. However, most Federal agencies routinely operate, or contract for the operation of, facilities that include drains and wastewater systems that require periodic cleaning. In addition, many Federal agencies engage in the types of cleaning operations where general purpose cleaners are used for cleaning oily or greasy surfaces. Thus, they have a need for products such as microbial cleaners. Designation of microbial cleaners will promote the use of biobased products, furthering the objectives of this program.

Specific product information including company contact, intended use, biobased content, and performance characteristics have been collected on 95 microbial cleaners. Analyses of the environmental and human health benefits and the life-cycle costs of two products (one drain maintenance product and one general cleaner) were performed using the BEES analytical tool. The results of those analyses are presented in the background information for Round 10, which can be found on the BioPreferred Web site.

7. Paint Removers (Minimum Biobased Content 41 Percent)

Paint removers are products formulated to loosen and remove paint from painted surfaces.

USDA identified 29 manufacturers of 42 biobased paint removers. The 29 manufacturers do not necessarily include all manufacturers of biobased paint removers, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of a product category for Federal preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate a product category for Federal preferred procurement. If and when performance standards, test methods, and other relevant measures of performance are identified for this product category, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for paint removers within the Federal government as discussed in the section on aircraft and boat cleaners. These attempts were largely unsuccessful. However, many Federal agencies use, and procure services that use, paint removers in the construction, renovation, and maintenance of facilities and equipment. Thus, they have a need for paint removers and for services that require the use of paint removers. Designation of paint removers will promote the use of biobased products, furthering the objectives of this program.

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

8. Water Turbine Bearing Oils (Minimum Biobased Content 46 Percent)

Water turbine bearing oils are lubricants that are specifically formulated for use in the bearings found in water turbines.

USDA identified four manufacturers and suppliers of six water turbine bearing oils. These four manufacturers and suppliers do not necessarily include all manufacturers and suppliers of water turbine bearing oils, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified 12 test methods (as shown below) used in evaluating products within this product category. While other test methods and measures of performance, as well as performance standards, applicable to products within this product category may exist, the 12 test methods identified by manufacturers are:

Test Methods

- ASTM D665 Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water;
- 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 D5864 Standard Test Method for Determining Aerobic Aquatic Biodegradation of Lubricants or Their Components;
- DIN 51354–1—Testing of lubricants; FZG gear test rig; general working principles;
- American Petroleum Institute Ashless GL–3 Lubricant with light EP effect for transmissions and non-hypoid gear drives;
- API GL–3 Automotive Gear Lubricant Service Categories;
- ISO 46 Designates Oil Viscosity Grade;
- OECD 201 Algal Growth Inhibition Test;
- OECD 202 Acute Immobilization Test and Reproduction Test;
- OECD 203 Fish Acute Toxicity Test; and
- OECD 301B Guideline for Testing of Chemicals, Ready Biodegradability: Modified Sturm Test.

USDA attempted to gather data on the potential market for water turbine bearing oils within the Federal

government as discussed in the section on aircraft and boat cleaners. These attempts were largely unsuccessful. However, many Federal agencies are responsible for maintaining water supply systems and routinely procure water turbine bearing oils, or contract with services that procure these products. Thus, they have a need for water turbine bearing oils and for services that require the use of water turbine bearing oils. Designation of water turbine bearing oils will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on one water turbine bearing oils. Analyses of the environmental and human health benefits and the life-cycle costs of biobased water turbine bearing oils were performed for one product using the BEES analytical tool. The results of those analyses are presented in the background information for Round 10, which can be found on the BioPreferred Web site.

C. New Subcategories Proposed for Designation

On May 14, 2008, USDA finalized the designation of several product categories including one for composite panels (73 FR 27954) and one for greases (73 FR 27974). Each of these product categories included subcategories. Since that time, USDA has obtained additional information on products within these two product categories and is now proposing to add one new subcategory within each of the two product categories.

1. Composite Panels—Countertops (Minimum Biobased Content 89 Percent)

Composite panels—countertops are engineered products that are flat panels designed to serve as horizontal work surfaces in locations such as kitchens, break rooms or other food preparation areas, bathrooms or lavatories, and workrooms.

USDA identified 27 manufacturers and suppliers of 52 biobased composite panels—countertops products. These 27 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased composite panels—countertops products, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified 12 test methods (as shown below) used in evaluating products within this product category. While other test methods and measures of performance, as well as performance standards, applicable to products within this product category may exist, the 12 test methods identified by manufacturers are:

Test Methods

- ASTM D256—Standard Test Methods for Determining the Izod Pendulum Impact Resistance of Plastics;
- ASTM D3023—Standard Practice for Determination of Resistance of Factory-Applied Coatings on Wood Products to Stains and Reagents;
- ASTM D570—Standard Test Method for Water Absorption of Plastics;
- ASTM D635—Standard Test Method for Rate of Burning and/or Extent and Time of Burning of Plastics in a Horizontal Position;
- ASTM D638—Standard Test Method for Tensile Properties of Plastics;
- ASTM D648—Standard Test Method for Deflection Temperature of Plastics Under Flexural Load in the Edgewise Position;
- ASTM D695—Compressive Strength, Tensile, Modulus of Elasticity;
- ASTM D785 Standard Test Method for Rockwell Hardness of Plastics and Electrical Insulating Materials;
- ASTM D790 Standard Test Methods for Flexural Properties of Unreinforced and Reinforced Plastics and Electrical Insulating Materials;
- ASTM G122—Standard Test Method for Evaluating the Effectiveness of Cleaning Agents;
- ASTM E84—Standard Test Method for Surface Burning Characteristics of Building Materials; and
- ASTM D4060—Standard Test Method for Abrasion Resistance of Organic Coatings by the Taber Abraser.

USDA attempted to gather data on the potential market for composite panels—countertops within the Federal government as discussed in the section on aircraft and boat cleaners. These attempts were largely unsuccessful. However, many Federal agencies use, and procure services that use, countertops in the construction, renovation, and maintenance of residential, medical, and office facilities. Thus, they have a need for countertops and for services that require the use of countertops. Designation of composite panels—countertops will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 20 composite panels—countertops products. This information is presented in the background information for Round 10, which can be found on the BioPreferred Web site.

2. Greases—Wheel Bearing and Chassis (Minimum Biobased Content 50 Percent)

Wheel bearing and chassis greases are lubricants that meet ASTM D4950 Standard Classification as GC and LB (wheel bearing and chassis). These greases are for mild to severe duty wheel bearing and chassis applications commonly found in automotive, truck, heavy duty, industrial and agricultural applications. Common applications include disc and drum brakes, wheel bearings, trailer bearings, chassis parts and industrial equipment and machinery. These greases are also used where there is a broad temperature requirement and where they may be subject to high pressure or heavy load.

USDA identified six manufacturers and suppliers of eight biobased wheel bearing and chassis greases. These six manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased wheel bearing and chassis greases, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified 10 test methods (as shown below) used in evaluating products within this product category. While other test methods and measures of performance, as well as performance standards, applicable to products within this product category may exist, the 10 test methods identified by manufacturers are:

Test Methods

- ASTM D1742—D1742 Standard Test Method for Oil Separation from Lubricating Grease During Storage;
- ASTM D217—D217 Standard Test Methods for Cone Penetration of Lubricating Grease;
- ASTM D2265—D2265 Standard Test Method for Dropping Point of Lubricating Grease Over Wide Temperature;
- ASTM D2266—D2266 Standard Test Method for Wear Preventive Characteristics of Lubricating Grease (Four-Ball Method);
- ASTM D2270—D2270 Standard Practice for Calculating Viscosity Index

From Kinematic Viscosity at 40 and 100 °C;

- ASTM D2509—D2509 Standard Test Method for Measurement of Load-Carrying Capacity of Lubricating Grease (Timken Method);
- ASTM D2596—D2596 Standard Test Method for Measurement of Extreme-Pressure Properties of Lubricating Grease (Four-Ball Method);
- ASTM D3233—D3233 Standard Test Methods for Measurement of Extreme Pressure Properties of Fluid Lubricants (Falex Pin and Vee Block Methods);
- ASTM D445—D445 Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity); and
- ASTM D92—D92 Standard Test Method for Flash and Fire Points by Cleveland Open Cup Tester.

USDA attempted to gather data on the potential market for wheel bearing and chassis greases within the Federal government as discussed in the section on aircraft and boat cleaners. These attempts were largely unsuccessful. However, many Federal agencies use, and procure services that use, wheel bearing and chassis greases in the maintenance of vehicles and equipment. Thus, they have a need for wheel bearing and chassis greases and for services that require the use of wheel bearing and chassis greases. Designation of wheel bearing and chassis greases will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on seven wheel bearing and chassis greases. This information is presented in the background information for Round 10, which can be found on the BioPreferred Web site.

D. Minimum Biobased Contents

USDA has determined that setting a minimum biobased content for designated product categories is appropriate. Establishing a minimum biobased content will encourage competition among manufacturers to develop products with higher biobased contents and will prevent products with de minimis biobased content from being purchased as a means of satisfying the requirements of section 9002. USDA believes that it is in the best interest of the Federal 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 a product category at a level met by several of the tested products will provide more products from which procurement officials may choose, will encourage the most widespread usage of biobased products by procuring agencies, and is expected to accomplish the objectives of section 9002.

As discussed in Section IV.A of this preamble, USDA relied entirely on manufacturers' voluntary submission of samples to support the proposed designation of these product categories. However, in selecting the proposed minimum biobased content for each product category, USDA also considered the biobased content of several products for which manufacturers have requested certification to use the USDA Certified Biobased Product label. USDA considered these data points to be valid and useful in setting the proposed minimum biobased content because the labeling program specifies that the reported biobased content must be determined by a third-party testing entity that is ISO 9001 conformant. Thus, the biobased content data presented in the following paragraphs includes test results from the labeling portion of the BioPreferred program as well as the test results from all of the product samples that were submitted for analysis under the Federal biobased products preferred procurement program.

As a result of public comments received on the first designated product categories 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 a product category at the tested biobased content of the product selected as the basis for the minimum value, USDA is establishing the minimum biobased content at a level three (3) percentage points less than the tested value. USDA believes that this adjustment is appropriate to account for the expected variations in analytical results.

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

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

1. Aircraft and Boat Cleaners

Twenty eight biobased aircraft and boat cleaners have been tested for biobased content using ASTM D6866.[3] The biobased contents of 15 biobased aircraft cleaners range from 14 percent to 100 percent, as follows: 14, 29, 51, 59, 74, 79, 80, 81, 94, 94, 97, 98, 98, 99, and 100 percent. Because there is a significant break between the 29 percent product and the 51 percent product, USDA considered the need to create another subcategory within this product category. However, USDA found that there was not sufficient information on the performance or applicability of the two products with the 14 and 29 percent biobased content to justify creating a subcategory based on those products. Because the biobased contents of the remaining 13 products are somewhat uniformly distributed between 50 and 100 percent with no obvious gaps or breaks in the data, USDA is proposing to set the minimum biobased content for aircraft cleaners at 48 percent, based on the product with a tested biobased content of 51 percent.

Thirteen biobased boat cleaners have been tested for biobased content using ASTM D6866. The biobased contents of these 13 biobased boat cleaners range from 2 percent to 98 percent, as follows: 2, 3, 4, 41, 42, 43, 53, 74, 79, 82, 94, 97, and 98 percent. Because the biobased contents of three of the products are extremely low, USDA did not consider setting the minimum biobased content for the subcategory based on these

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

products. The biobased contents of 4 of the remaining 10 products fall within the narrow range of 41 percent to 53 percent. USDA believes these products are representative of those within the subcategory and is proposing to set the minimum biobased content for boat cleaners at 38 percent, based on the product with a tested biobased content of 41 percent.

2. Automotive Care Products

Seven biobased automotive care products have been tested for biobased content using ASTM D6866. The biobased contents of these seven biobased automotive care products range from 17 percent to 100 percent, as follows: 17, 41, 78, 79, 94, 98, and 100 percent. Because there is a significant break between the values for the two products with the lowest biobased contents and the five products with the highest biobased contents, USDA considered the need to subcategorize this product category. However, USDA found that there was not sufficient information on the performance or applicability of the two products with the lowest biobased contents to justify creating a subcategory based on those products. Because the biobased contents of the remaining five products are within a narrow range, USDA is proposing to set the minimum biobased content for automotive care products at 75 percent, based on the product with a tested biobased content of 78 percent.

USDA will continue to gather information on products within this product category, and if sufficient supporting information becomes available, will consider establishing subcategories based on formulation, performance, or applicability.

3. Engine Crankcase Oils

Eleven biobased engine crankcase oils have been tested for biobased content using ASTM D6866. The biobased contents of these eleven biobased engine crankcase oils range from 2 percent to 53 percent, as follows: 2, 2, 21, 30, 31, 36, 37, 37, 50, 51, and 53 percent. Because the biobased contents of two of the products are extremely low and the biobased contents of the remaining nine products are all within the range of 21 to 53 percent, USDA is proposing to set the minimum biobased content for engine crankcase oils at 18 percent, based on the product with a tested biobased content of 21 percent.

4. Gasoline Fuel Additives

Three biobased gasoline fuel additives have been tested for biobased content using ASTM D6866. The biobased contents of these three biobased gasoline fuel additives are 20, 95, and 97 percent. USDA did not find any performance or applicability features that would justify setting the minimum biobased content on the 20 percent biobased product. USDA is, therefore, proposing to set the minimum biobased content for this product category at 92 percent, based on the product with the lowest biobased content of the other two products tested.

USDA will continue to gather information on products within this product category, and if sufficient supporting information becomes available, will consider establishing subcategories based on formulation, performance, or applicability.

5. Metal Cleaners and Corrosion Removers

Twenty five biobased metal cleaners and corrosion removers have been tested for biobased content using ASTM D6866. The biobased contents of these 25 biobased metal cleaners and corrosion removers are as follows: for corrosion removers, 14, 74, 79, 90, 91, 91, 91, 91, 92, 92, 96, 97, 98, and 98 percent; for stainless steel cleaners, 12, 78, 79, 81, 83, 92, and 96 percent; for other metal cleaners, 19, 59, 79, and 98 percent. USDA is proposing to set the minimum biobased content for the corrosion removers subcategory at 71 percent, based on the product with the tested biobased content of 74 percent. USDA found no justification for setting the minimum based on the 14 percent biobased product and all of the remaining tested products are between 74 and 98 percent biobased. For the stainless steel cleaners subcategory, USDA found no unique performance features that would justify setting the minimum based on the product with the one tested biobased content of 12 percent. USDA is, therefore, proposing to set the minimum biobased content at 75 percent, based on the product with the tested biobased content of 78 percent. USDA also found no reason to set the minimum for the other metal cleaners subcategory based on the product with the tested biobased content of 19 percent. Therefore, the proposed minimum biobased content for this subcategory is 56 percent, based on the product with the tested biobased content of 59 percent.

6. Microbial Cleaning Products

Forty biobased microbial cleaners have been tested for biobased content using ASTM D6866. The biobased contents of these 40 biobased microbial cleaners are as follows: for drain maintenance products, 48, 51, 51, 53, 53, 53, 70, 74, 74, 74, 80, 91, 94, 95, and 98 percent; for wastewater maintenance products, 47, 53, 53, 58, 59, 70, 74, 95, 96, and 99 percent; and for general cleaners, 19, 27, 53, 53, 54, 69, 73, 74, 81, 91, 95, 96, 98, 99, and 100 percent.

For the drain maintenance and the wastewater subcategories, the test results cover a wide range but are fairly evenly distributed, with several products having biobased contents in the 50 percent range. USDA is, therefore, proposing to set the minimum biobased content for microbial cleaners at 45 percent for drain maintenance products and 44 percent for wastewater maintenance products based on the products with the lowest biobased content within each data set. For general cleaners, there is a significant gap between the 27 and the 53 percent products. USDA found no unique performance characteristics that justify setting the minimum biobased content based on the 19 percent or the 27 percent products. The remaining products are fairly even distributed between 53 and 100 percent. Thus, USDA is proposing to set the minimum biobased content at 50 percent for the general cleaners subcategory, based on the product with the tested biobased content of 53 percent.

7. Paint Removers

Eight biobased paint removers have been tested for biobased content using ASTM D6866. The biobased contents of these eight biobased paint removers range from 24 to 100 percent, as follows: 24, 30, 44, 55, 63, 87, 100, and 100 percent. USDA found no performance or applicability claims to justify setting the minimum biobased content for this product category based on the 24 or 30 percent products. Because three of the remaining six products have biobased contents within a narrow range of from 44 to 63 percent, USDA is proposing to set the minimum biobased content for paint removers at 41 percent, based on the product with a tested biobased content of 44 percent.

8. Water Turbine Bearing Oils

One of the biobased water turbine bearing oils has been tested for biobased content using ASTM D6866. The biobased content of this biobased water turbine bearing oil is 49 percent. USDA believes that this one product is typical of available biobased products within this product category and is proposing to set the minimum biobased content for this product category at 46 percent.

USDA will continue to gather information on products within this product category, and if sufficient supporting information becomes available, will consider establishing

subcategories based on formulation, performance, or applicability.

9. Composite Panels—Countertops

Seven biobased composite panels—countertops have been tested for biobased content using ASTM D6866. The biobased contents of these seven biobased countertops range from 18 to 100 percent, as follows: 18, 18, 44, 92, 95, 100, and 100 percent. USDA found no performance or applicability claims to justify setting the minimum biobased content for this product category based on the two 18 percent products or the 44 percent product. Because four of the remaining five products have biobased contents within a narrow range of from 92 to 100 percent, USDA is proposing to set the minimum biobased content for the countertops subcategory of composite panels at 89 percent, based on the product with a tested biobased content of 92 percent.

10. Greases—Wheel Bearing and Chassis

Five biobased wheel bearing and chassis greases have been tested for biobased content using ASTM D6866. The biobased contents of these five biobased greases range from 53 to 90 percent, as follows: 53, 54, 54, 63, and 90 percent. Because four of the five products have biobased contents within a narrow range of from 53 to 63 percent, USDA is proposing to set the minimum biobased content for the wheel bearing and chassis greases subcategory at 50 percent, based on the product with a tested biobased content of 53 percent.

E. Compliance Date for Procurement Preference and Incorporation into Specifications

USDA intends for the final rule to take effect thirty (30) days after publication of the final rule. However, as proposed, procuring agencies would 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 product category or subcategory would take effect.

USDA is proposing a one-year period before the procurement preferences would take effect because it recognizes that Federal agencies will need time to incorporate the preferences into procurement documents and to revise existing standardized specifications. Both section 9002(a)(3) and 7 CFR 3201(c) explicitly acknowledge the need for Federal agencies to have sufficient time to revise the affected specifications to give preference to biobased products when purchasing products within the designated product categories or subcategories. 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 product categories and subcategories are promulgated for designation, Federal agencies will have had a minimum of 18 months (from the date of this **Federal Register** notice), and much longer considering when the Guidelines were first proposed and these requirements were first laid out, to implement these requirements.

For these reasons, USDA proposes that the mandatory preference for biobased products under the designated product categories and subcategories 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 product categories or subcategories.

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

The background information used to develop this proposed rule can be located by clicking on the ''Federal Procurement Preference'' link on the right side of the BioPreferred Web site's home page (*http://www.biopreferred.gov*) and then on the ''Rules and Regulations'' link. At the next screen, click on the Supporting Documentation link under Round 10 Designation under the Proposed Regulations section.

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

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

VI. Regulatory Information

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Executive Order 12866, as supplemented by Executive Order 13563, requires agencies to determine whether a regulatory action is ''significant.'' The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may: ''(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

Today's proposed rule has been determined by the Office of Management and Budget to be not significant for purposes of Executive Order 12866. We are not able to quantify the annual economic effect associated with today's proposed rule. As discussed earlier in this preamble, USDA made extensive efforts to obtain information on the Federal agencies' usage within the eight designated product categories. These efforts were largely unsuccessful. Therefore,

attempts to determine the economic impacts of today's proposed rule would require estimation of the anticipated market penetration of biobased products based upon many assumptions. In addition, because agencies have the option of not purchasing products within designated product categories if price is ''unreasonable,'' the product is not readily available, or the product does not demonstrate necessary performance characteristics, certain assumptions may not be valid. While facing these quantitative challenges, USDA relied upon a qualitative assessment to determine the impacts of today's proposed rule. Consideration was also given to the fact that agencies may choose not to procure products within designated product categories due to unreasonable price.

1. Summary of Impacts

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

2. Benefits of the Proposed Rule

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

3. Costs of the Proposed Rule

Like the benefits, the costs of today's proposed rule have not been quantified. Two types of costs are involved: Costs to producers of products that will compete with the preferred products and costs to Federal agencies to provide procurement preference for the preferred products. Producers of competing products may face a decrease in demand for their products to the extent Federal agencies refrain from purchasing their products. However, it is not known to what extent this may occur. Pre-award procurement costs for Federal agencies may rise minimally as the contracting officials conduct market research to evaluate the performance, availability and price reasonableness of preferred products before making a purchase.

B. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601–602, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

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

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

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

The Federal preferred procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. Most manufacturers of non-biobased products within the product categories being proposed for designation for Federal preferred procurement in this rule are expected to be included under the following NAICS codes: 321999 (all other wood product manufacturing), 324191 (petroleum lubricating oil and grease manufacturing), 325510 (paint and coating manufacturing), and 325612 (polish and other sanitation goods manufacturing). USDA obtained information on these four NAICS categories from the U.S. Census Bureau's Economic Census database. USDA found that the Economic Census reports about 4,270 companies within these 4 NAICS categories and that these companies own a total of about 4,860 establishments. Thus, the average number of establishments per company is about 1.14. The Census data also reported that of the 4,860 individual establishments, about 4,850 (99 percent) have fewer than 500 employees. USDA also found that the overall average number of employees per company among these industries is about 30 and that the petroleum lubricating oil and grease industry has the highest average number of employees per company with an average of almost 50. Thus, nearly all of the businesses fall within the Small Business Administration's definition of a small business (less than 500 employees, in most NAICS categories).

USDA does not have data on the potential adverse impacts on manufacturers of non-biobased products within the product categories being designated, but believes that the impact will not be significant. Most of the product categories being proposed for designation in this rulemaking are typical consumer products widely used

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

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

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

C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This proposed rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

D. Executive Order 12988: Civil Justice Reform

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This 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. E-Government Act Compliance

USDA is committed to compliance with the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for Federal preferred procurement under each designated product category. For information pertinent to E-Government Act compliance related to this rule, please contact Ron Buckhalt at (202) 205–4008.

List of Subjects in 7 CFR Part 3201

Biobased products, Procurement.

For the reasons stated in the preamble, the Department of Agriculture proposes to amend 7 CFR part 3201 as follows:

PART 3201—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

1. The authority citation for part 3201 continues to read as follows:

Authority: 7 U.S.C. 8102.

2. Amend § 3201.19 by adding paragraphs (a)(6) and (b)(6) and revising paragraph (c) to read as follows:

§ 3201.19 Composite panels.

(a) * * *

(6) *Countertops.* Engineered products designed to serve as horizontal work surfaces in locations such as kitchens, break rooms or other food preparation areas, bathrooms or lavatories, and workrooms.

(b) * * *

(6) Countertops—89 percent.

(c) *Preference compliance dates.* (1) No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for those qualifying biobased composite panels specified in paragraphs (a)(1) through (5) of this section. 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 composite panels.

(2) 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 those qualifying biobased composite panels specified in paragraph (a)(6) of this section. 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 composite panels.

* * * * *

3. Amend § 3201.31 by:

a. Revising paragraph (a)(2)(v);

b. Adding paragraph (a)(2)(vi);

c. Revising paragraph (b)(5);

d. Adding paragraph (b)(6); and

e. Revising paragraph (c).

The revisions and additions read as follows:

§ 3201.31 Greases.

(a) * * *

(2) * * *

(v) *Wheel bearing and chassis greases.* Lubricants that meet ASTM D4950 Standard Classification as GC and LB (wheel bearing and chassis) and that are formulated for mild to severe duty wheel bearing and chassis applications commonly found in automotive, truck, heavy duty, industrial and agricultural applications.

(vi) *Greases not elsewhere specified.* Lubricants that meet the general definition of greases as defined in paragraph (a)(1) of this section, but are not otherwise covered by paragraphs (a)(2)(i) through (v) of this section.

* * * * *

(b) * * *

(5) Wheel bearing and chassis grease—50 percent.

(6) Greases not elsewhere specified—75 percent.

(c) *Preference compliance dates.* (1) No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for those qualifying biobased greases specified in paragraphs (a)(2)(i) through (iv) and (vi) of this section. 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.

(2) 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 those qualifying biobased greases specified in paragraph (a)(2)(v) of this section. 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.

* * * * *

4. Add §§ 3201.100 through 3201.107 to subpart B to read as follows:

Sec.

§ 3201.100 Aircraft and boat cleaners.

(a) *Definition.* (1) Aircraft and boat cleaners are products designed to remove built-on grease, oil, dirt, pollution, insect reside, or impact soils on both interior and exterior of aircraft and/or boats.

(2) Aircraft and boat cleaners for which Federal preferred procurement applies are:

(i) *Aircraft cleaners.* Cleaning products designed to remove built-on grease, oil, dirt, pollution, insect reside, or impact soils on both interior and exterior of aircraft.

(ii) *Boat cleaners.* Cleaning products designed to remove built-on grease, oil, dirt, pollution, insect reside, or impact soils on both interior and exterior of boats.

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

(1) *Aircraft cleaners*—48 percent.

(2) *Boat cleaners*—38 percent.

(c) *Preference compliance date.* No later than [DATE ONE YEAR AFTER THE DATE OF PUBLICATION OF THE FINAL RULE], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased aircraft and boat cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased aircraft and boat cleaners.

§ 3201.101 Automotive care products.

(a) *Definition.* Products such as waxes, buffing compounds, polishes, degreasers, soaps, wheel and tire cleaners, leather care products, interior cleaners, and fragrances that are formulated for cleaning and protecting automotive surfaces.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 75 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

§ 3201.102 Engine crankcase oils.

(a) *Definition.* Lubricating products formulated to provide lubrication and wear protection for four-cycle gasoline or diesel engines.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 18 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

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

Note to paragraph (d): Engine crankcase oils within this designated product category can compete with similar re-refined lubricating oil products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated re-refined lubricating oil products containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.17.

§ 3201.103 Gasoline fuel additives.

(a) *Definition.* Chemical agents added to gasoline to increase octane levels, improve lubricity, and provide engine cleaning properties to gasoline-fired engines.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 92 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

§ 3201.104 Metal cleaners and corrosion removers.

(a) *Definition.* (1) Products that are designed to clean and remove grease, oil, dirt, stains, soils, and rust from metal surfaces.

(2) Metal cleaners and corrosion removers for which Federal preferred procurement applies are:

(i) *Corrosion removers.* Products that are designed to remove rust from metal surfaces through chemical action.

(ii) *Stainless steel cleaners.* Products that are designed to clean and remove grease, oil, dirt, stains, and soils from stainless steel surfaces.

(iii) *Other metal cleaners.* Products that are designed to clean and remove grease, oil, dirt, stains, and soils from metal surfaces other than stainless steel.

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

(1) *Corrosion removers*—71 percent.

(2) *Stainless steel cleaners*—75 percent.

(3) *Other metal cleaners*—56 percent.

(c) *Preference compliance date.* No later than [DATE ONE YEAR AFTER THE DATE OF PUBLICATION OF THE FINAL RULE], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased metal cleaners and corrosion removers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased metal cleaners and corrosion removers.

§ 3201.105 Microbial cleaning products.

(a) *Definition.* (1) Cleaning agents that use microscopic organisms to treat or eliminate waste materials within drains, plumbing fixtures, sewage systems, wastewater treatment systems, or on a variety of other surfaces. These products typically include organisms that digest protein, starch, fat, and cellulose.

(2) Microbial cleaning products for which Federal preferred procurement applies are:

(i) *Drain maintenance products.* Products containing microbial agents that are intended for use in plumbing systems such as sinks, showers, and tubs.

(ii) *Wastewater maintenance products.* Products containing microbial agents that are intended for use in wastewater systems such as sewer lines and septic tanks.

(iii) *General cleaners.* Products containing microbial agents that are intended for multi-purpose cleaning in locations such as residential and commercial kitchens and bathrooms.

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

(1) *Drain maintenance products*—45 percent.

(2) *Wastewater maintenance products*—44 percent.

(3) *General cleaners*—50 percent.

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

§ 3201.106 Paint removers.

(a) *Definition.* Products formulated to loosen and remove paint from painted surfaces.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 41 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

§ 3201.107 Water turbine bearing oils.

(a) *Definition.* Lubricants that are specifically formulated for use in the bearings found in water turbines.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 46 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

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Gregory L. Parham,

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