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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: Final rule.

SUMMARY: The U.S. Department of Agriculture (USDA) is amending the Guidelines for Designating Biobased Products for Federal Procurement, to add eight sections to designate product categories within which biobased products will be afforded Federal procurement preference, as provided for under section 9002 of the Farm Security and Rural Investment Act of 2002, as amended by the Food, Conservation, and Energy Act of 2008 (referred to in this document as “section 9002”). USDA is also adding a new subcategory to one previously designated product category. USDA is also establishing minimum biobased contents for each of these product categories and subcategories. In addition, USDA is officially changing the term “item” to product category.

DATES: This rule is effective May 1, 2013.

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
- II. Background
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 - E. Executive Order 13132: Federalism
 - F. Unfunded Mandates Reform Act of 1995
 - G. Executive Order 12372: Intergovernmental Review of Federal Programs
 - H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - I. Paperwork Reduction Act
 - J. E-Government Act
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I. Authority

These product categories are designated 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

As part of the BioPreferred Program, USDA published, on December 5, 2012, a proposed rule in the **Federal Register** (FR) for the purpose of designating a total of eight product categories, and two new subcategories within previously designated product categories, for the preferred procurement of biobased products by Federal agencies (referred to hereafter in this FR notice as the “preferred procurement program”). This proposed rule can be found at 77 FR 72654. This rulemaking is referred to in this preamble as Round 10 (RIN 0599-AA16).

In the proposed rule, USDA proposed designating the following eight product categories for the 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 also proposed 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.

Today’s final rule designates the proposed product categories within which biobased products will be afforded Federal procurement preference and adds the proposed countertops subcategory to the existing composite panels product category. USDA has determined that each of the product categories being designated under today’s rulemaking meets the necessary statutory requirements; that they are being produced with biobased products; and that their procurement will carry out the following objectives of section 9002: to improve demand for 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.

When USDA designates by rulemaking a product category (a generic grouping of products) for preferred procurement under the BioPreferred Program, manufacturers of all products under the umbrella of that product category, that meet the requirements to qualify for preferred procurement, can claim that status for their products. To qualify for preferred procurement, a product must be within a designated product category and must contain at least the minimum biobased content established for the designated product category. With the designation of these specific product categories, USDA invites the manufacturers and vendors of qualifying products to provide information on the product, contacts, and performance testing for posting on its BioPreferred Web site, <http://www.biopreferred.gov>. Procuring agencies will be able to utilize this Web site as one tool to determine the availability of qualifying biobased products under a designated product category. Once USDA designates a product category, procuring agencies are required generally to purchase biobased products within the designated product category where the purchase price of the procurement product exceeds \$10,000

or where the quantity of such products or of functionally equivalent products purchased over the preceding fiscal year equaled \$10,000 or more.

The BioPreferred program started using the term product category in the fall of 2011 while drafting a proposed rule to amend the BioPreferred Program Guidelines (FR DOC # 2012–10420, published May 1, 2012). The preamble to that proposed rule explains the change from “items” to “product categories.” Below is the text that appears in the proposed rule:

“3. Replacement of “Designated Item” with “Designated Category”

The current guidelines use the term “designated item” to refer to a generic grouping of biobased products identified in subpart B as eligible for the procurement preference. The use of this term has created some confusion, however, because the word “item” is also used in the guidelines to refer to individual products rather than a generic grouping of products. USDA is proposing to replace the term “designated item” with the term “designated product category.” In addition, USDA is proposing to add a definition for the term “qualifying biobased product” to refer to an individual product that meets the definition and minimum biobased content criteria for a designated product category and is, therefore, eligible for the procurement preference. Although these changes are not required by section 9001 of FCEA, USDA believes the proposed terms and definitions will add clarity to the rule.”

Because USDA did not receive any comments opposing this change during the 60-day comment period on the proposed rule and because it will be some time until the rule is promulgated, USDA is incorporating the new product category language in this designation regulation.

Subcategorization. USDA is subcategorizing three of the product categories. Those product categories are: aircraft and boat cleaners; metal cleaners and corrosion removers; and microbial cleaning products. The 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 subcategories are: stainless steel cleaners; other metal cleaners; and corrosion removers. For the microbial cleaning products category, the subcategories are: drain maintenance products; general cleaners; and wastewater maintenance products. USDA is also adding a new subcategory for countertops to the composite panels

product category designated in Round 2 (73 FR 27954, May 14, 2008).

USDA will continue to gather additional data related to the categories designated today and additional subcategories may be created in a future rulemaking.

Minimum Biobased Contents. The minimum biobased contents being established with today’s rulemaking 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 additional biobased content data associated with manufacturer’s applications for certification to use the USDA Certified Biobased Product label. These test results are also considered when determining the minimum biobased content levels for designated product categories.

In today’s final rule, the minimum biobased content for the water turbine bearing oils category is based on a single tested product. USDA will continue to gather information on the lubricant product categories designated today and if additional data on the biobased content for products within these designated categories are obtained, USDA will evaluate whether the minimum biobased content should be revised in a future rule. We are also clarifying definitions of water turbine bearing oils versus turbine drip oils.

Overlap with EPA’s Comprehensive Procurement Guideline program for recovered content products under the Resource Conservation and Recovery Act (RCRA) Section 6002. This final 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 Environmental Protection Agency’s Comprehensive Procurement Guideline for products containing recovered materials, and the Environmentally Preferable Purchasing program. The Office of the Federal Environmental Executive (OFEE) and the Office of Management and Budget (OMB) encourage agencies to implement these components comprehensively when purchasing products and services.

Other Preferred Procurement Programs. Federal procurement officials should also note that biobased products may be available for purchase by Federal agencies through the AbilityOne Program (formerly known as the Javits-Wagner-O’Day (JWOD) program). Under this program, members of organizations including the National Industries for the Blind (NIB) and the National Institute for the Severely Handicapped (NISH) offer products and services for preferred procurement by Federal agencies. A search of the AbilityOne Program’s online catalog (www.abilityone.gov) indicated that products within three of the product categories, or subcategories, being designated 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 designated today may be available through the AbilityOne Program in the future. Procurement of biobased products through the AbilityOne Program would further the objectives of both the AbilityOne Program and the preferred procurement program.

Outreach. To augment its own research, USDA consults with industry and Federal stakeholders to the preferred procurement program during the development of the rulemaking packages for the designation of product categories. USDA requests stakeholder input in gathering 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 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.

III. Discussion of Public Comments

Summary of Changes

USDA received comments on wheel bearing and chassis greases, crankcase oils, gasoline fuel additives, and microbial cleaning products.

USDA solicited comments on the proposed rule for 60 days ending on February 4, 2013. USDA received four comments by that date. Two of the comments were from manufacturers of biobased products, one was from another Federal agency, and the fourth was from a trade association. The comments are presented below, along with USDA's responses, and are shown under the product categories to which they apply.

After consideration of the comments, USDA has decided to: (1) Delay the designation of the wheel bearing and chassis greases subcategory; (2) revise the minimum biobased content of the engine crankcase oil product category upward to 27 percent from the proposed

level of 18 percent; and (3) add clarification to the definition of the water turbine bearing oils product category. Additional information on these changes is presented below in the discussion of public comments.

Public Comments

General Process Comments

A trade association had a number of comments on how USDA administers the BioPreferred program. This same trade association had also made earlier similar comments July 2, 2012 in response to the proposed amendments to the revised Program Guidelines. The final guidelines have not yet been published. Although we will discuss these process comments herein, USDA will address the comments at a later date in revisions to the Program Guidelines, to which they are directly applicable.

Comment: The trade association focused some "comments on the environmental elements of the BioPreferred program" and stated products "should be designated and preferred based upon their improved health profile, which could include manufacturing improvements, environmental and/or health benefits, and disposal mechanisms." The association further commented, that biobased content, "while a key factor, is only one of many potential environmental considerations."

Response: Although the BioPreferred program is often associated with environmental programs and biobased products generally offer environmental benefits, USDA is charged with considering products that contain biobased carbon. The program's rationale is to use the purchasing power of the Federal government to pull the market for biobased products that are made from agricultural commodities. USDA does not have the legislative mandate to consider all environmental factors in designating a product category.

Comment: The association is critical of sample sizes and calls for "more robust" sample sizes.

Response: This is a voluntary program and USDA cannot collect any more information than companies are willing to provide. Moreover, by law USDA cannot ask biobased companies to supply any more information than non-biobased competitors. It is up to Federal procurement officials to solicit additional information from biobased companies to help in the procurement decision-making process.

Comment: The association calls for USDA to provide more information on

"exclusions" (i.e., price, performance and availability).

Response: As indicated above, USDA cannot mandate that private companies provide such data. USDA believes consideration of exclusionary factors is a matter to be discussed on a case-by-case basis between buyer and seller.

Comment: Confidential business information (CBI) should not be posted on the BioPreferred Web site.

Response: USDA agrees. USDA does not post CBI.

Comment: One commenter felt USDA was "accommodating to the less-renewable end of the range" with an "orphan data point" at 21 percent.

Response: USDA appreciates the comment. The commenter notes correctly that 21 percent was on the lower end of the range and USDA agrees that this data point does appear to be an outlier. Thus, we are revising the minimum content to 27 percent, which is the lower end of the mid-range of 30 percent minus the test variability. This revision is only slightly higher than the previously proposed minimum and increasing the minimum biobased content for this category is consistent with the requirement in section 9002 that agencies buy products with the highest practicable percentage of biobased content.

Gasoline Fuel Additives

Comment: One commenter asked that USDA lower the biobased content from 92 percent to 70 percent.

Response: USDA is charged with administering a program where Federal buyers procure products with the highest biobased content possible that will still deliver performance. In the absence of any technical data to the contrary, we have decided to keep the content level at the proposed level of 92 percent. However, if data can be identified to confirm the content level of 92 percent is not technically effective or necessary, USDA will revisit that content specification in later rulemaking.

Microbial Cleaning Products

Comment: One commenter stated the NAVSEA 6840 (which refers to the U.S. Navy surface ship (non-submarine) authorized chemical cleaning products and dispensing systems) should not be cited as a test method, but simply as a listing of approved products. The commenter further stated it should not necessarily be listed as a general reference because the products listed here are covered by the general exemption of combat related missions.

Response: USDA agrees with the suggestion of the Federal commenter.

Water Turbine Bearing Oils

Comment: One commenter noted that the definition for water turbine bearing oils should be revised to better distinguish this category from the previously designated category, “turbine drip oils”.

Response: USDA appreciates the clarification and has revised the definition in the final rule to indicate these water turbine bearing oils are used to lubricate bearings of electric power generating water turbines.

Wheel Bearing and Chassis Grease

Comment: One commenter stated that “the wheel bearing and chassis grease with National Lubricating Grease Institute (NLGI) cannot be reached with a biobased content of 50 percent” and pointed out that there is a problem meeting the GC ASTM-D-4950 part of the specification because of the high temperature process used to make lithium complex grease. Another commenter asked that USDA not list chassis grease, as there is “incompatibility” between existing petroleum-based greases and biobased greases.

Response: USDA believes the ASTM issue is a complex one and requires additional technical data. Thus, USDA will not list the subcategory of wheel bearing and chassis grease at this time but will investigate and defer designation to a later round. As regards the incompatibility issue, USDA does not believe potential incompatibility is an appropriate reason to not designate a biobased category or subcategory. If a particular product will not function properly in a certain application, that product will not meet performance requirements and thus need not be shown the procurement preference.

IV. 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 final 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 final rule. As discussed in the preamble to the proposed rulemaking, USDA made extensive efforts to obtain information on the Federal agencies’ usage within the eight designated product categories, including their subcategories. These efforts were largely unsuccessful. Therefore, attempts to determine the economic impacts of today’s final 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 biobased 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 final rule. Consideration was also given to the fact that agencies may choose not to procure designated items due to unreasonable price.

1. Summary of Impacts

Today’s final rule is expected to have both positive and negative impacts to individual businesses, including small businesses. USDA anticipates that the biobased preferred procurement program will provide additional opportunities for businesses and manufacturers to begin supplying products under the 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 final rule. The final 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 Final Rule

The designation of these eight 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 final rule can result in expanding and strengthening markets for biobased materials used in these product categories.

3. Costs of the Final Rule

Like the benefits, the costs of today’s final 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 designation of these product categories to determine whether its actions would have a significant impact on a substantial number of small entities. Because the preferred procurement program established under section 9002 applies only to Federal

agencies and their contractors, small governmental (city, county, etc.) agencies are not affected. Thus, the final rule 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 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 designated 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 will be relatively low. Also, this final 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 final 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 final 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 final 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 final 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 final 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this final 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 final 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 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 final 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 final 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 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.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, that includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. USDA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

List of Subjects in 7 CFR Part 3201

Biobased products, Procurement.

For the reasons stated in the preamble, the Department of Agriculture is amending 7 CFR chapter XXXII 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 new 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 (a)(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 April 1, 2014, 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. Add §§ 3201.100 through 3201.107 to subpart B to read as follows:

Sec.

3201.100	Aircraft and boat cleaners.
3201.101	Automotive care products.
3201.102	Engine crankcase oil.
3201.103	Gasoline fuel additives.
3201.104	Metal cleaners and corrosion removers.
3201.105	Microbial cleaning products.
3201.106	Paint removers.
3201.107	Water turbine bearing oils.

§ 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 residue, 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 residue, 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 residue, 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 April 1, 2014, 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 April 1, 2014, 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 27 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 April 1, 2014, 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 April 1, 2014, 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 April 1, 2014, 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 April 1, 2014, 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 April 1, 2014, 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 for electric power generation. Previously designated turbine drip oils are used to lubricate bearings of electric power generating 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 April 1, 2014, 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.

Dated: March 25, 2013.

Gregory L. Parham,

Acting Assistant Secretary For Administration, U.S. Department of Agriculture.

[FR Doc. 2013-07336 Filed 3-29-13; 8:45 am]

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DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 1292

[Docket No. EOIR 138F; A.G. Order No. 3377-2013]

RIN 1125-AA39

Registry for Attorneys and Representatives

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Final rule; request for comments.

SUMMARY: This final rule adopts, as amended, the proposed rule to authorize the Director of the Executive Office for Immigration Review (EOIR), or his designee, to register attorneys and accredited representatives as a condition of practicing before immigration judges and the Board of Immigration Appeals (Board or BIA). The final rule provides that the Director may establish registration procedures, including a requirement for electronic registration, and may administratively suspend from practice before EOIR any attorney or accredited representative who fails to provide certain registration information. This rule is part of an initiative to create an electronic case access and filing system within EOIR. The Department of Justice (Department) will publish a notice in the **Federal Register** prior to implementing the registration process. Although this rule is published as a final rule, post-promulgation public comments will be considered as EOIR moves forward with other phases of its electronic access and filing initiative.

DATES: *Effective date:* This rule is effective May 31, 2013. *Comment date:* Written comments must be submitted on or before May 31, 2013.

ADDRESSES: You may submit comments, identified by EOIR Docket No. 138F, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

- *Mail:* Jeff Rosenblum, General Counsel, Office of the General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041. To ensure proper handling, please reference EOIR Docket No. 138F on your correspondence. You may also use this mailing address to submit disks or CD-ROMs.

- *Hand Delivery/Courier:* Jeff Rosenblum, General Counsel, Office of the General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041. Contact Telephone Number (703) 305-0470.

FOR FURTHER INFORMATION CONTACT: Jeff Rosenblum, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone (703) 305-0470 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

On December 30, 2003, the Department published in the **Federal Register** a proposed rule that would establish a registry of attorneys and representatives who practice before EOIR. 68 FR 75160. The comment period ended March 1, 2004. The Department received seven letters from organizations and individuals, including the American Immigration Lawyers Association, several law school clinical programs, and two attorneys. Because some comments overlap and all of the commenters raised multiple subjects, the comments are addressed below by topic rather than by reference to a specific commenter. The changes to the proposed regulatory text made in response to public comments are addressed below. With the exception of the additional changes explained below, all other provisions of the proposed rule on which the public did not comment are adopted without change in this final rule.

As described further below, EOIR regards this rule as an initial step in a

multi-year, multi-phased initiative to make the transition to an electronic case access and filing system. Therefore, EOIR will accept post-promulgation comments regarding this rule and will consider them as it moves forward with its initiative.

II. Regulatory Background

This rule amends 8 CFR part 1292 by revising § 1292.1(a)(1) and (a)(4), and by establishing a new paragraph at § 1292.1(f).¹ These amendments provide the Director of EOIR with the authority to require attorneys and accredited representatives to register with EOIR in order to practice before its immigration judges and the Board.² The rule specifies the information that attorneys and accredited representatives will need to provide to EOIR when registering. The Director will require that attorneys and accredited representatives register through electronic means.³

EOIR is permitted to authorize individuals to practice in proceedings before immigration judges and the Board. *See* 8 U.S.C. 1229a(b)(4)(A) and 8 CFR part 1292. Pursuant to this final rule, attorneys and accredited representatives will need to register in order to be authorized to practice before EOIR. If an attorney or accredited representative who has cases pending with EOIR when this final rule takes effect fails to register by the deadline for registering, EOIR may administratively suspend that individual from practice.⁴ An attorney or accredited representative

¹ As noted below, EOIR will publish a notice in the **Federal Register** specifying the date on which attorneys and accredited representatives will first be able to register and the date by which attorneys and accredited representatives must register. The final rule revises slightly the proposed rule's amendments to 8 CFR 1292.1(a)(1) and (a)(4) to clarify that EOIR will not require attorneys and accredited representatives to register by the effective date of this rule. Instead, EOIR will publish further implementation guidance in the **Federal Register**.

² For purposes of this rule, the term "attorney" refers to any individual meeting the definition of "attorney" in 8 CFR 1001.1(f), except any attorney who represents the Federal Government before EOIR. The term "accredited representative" refers only to an accredited representative who is accredited to appear before EOIR. *See* 8 CFR 1292.2(d). The provisions of this rule do not apply to accredited representatives who are only accredited to appear before the Department of Homeland Security. *See id.*

³ As part of the registration process, attorneys and accredited representatives will be required to attest to the accuracy of the data they are submitting electronically.

⁴ If an attorney or accredited representative cannot appear at a hearing because he or she has failed to register, the immigration judge has the means available to avoid prejudice to the alien's case, which might include granting one-time permission for the attorney or accredited representative to appear in the case prior to registering, as discussed below, or a continuance under the applicable case law.