

**DEPARTMENT OF AGRICULTURE****Office of Energy Policy and New Uses****7 CFR Part 2902**

RIN 0503-AA34

**Designation of Biobased Items for Federal Procurement****AGENCY:** Departmental Management, USDA.**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The U.S. Department of Agriculture (USDA) is proposing to amend the Guidelines for Designating Biobased Products for Federal Procurement (Guidelines) to add nine sections that will designate the following items within which biobased products would be afforded Federal procurement preference: Disposable tableware; expanded polystyrene foam recycling products; heat transfer fluids; ink removers and cleaners; mulch and compost materials; multipurpose lubricants; office paper; topical pain relief products; and turbine drip oils. USDA is also proposing minimum biobased contents for each of these items.

**DATES:** USDA will accept public comments on this proposed rule until April 12, 2010.

**ADDRESSES:** You may submit comments by any of the following methods. All submissions received must include the agency name and Regulatory Information Number (RIN). The RIN for this rulemaking is 0503-AA34. Also, please identify submittals as pertaining to the "Proposed Designation of Items."

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* [biopreferred@usda.gov](mailto:biopreferred@usda.gov). Include RIN number 0503-AA34 and "Proposed Designation of Items" on the subject line. Please include your name and address in your message.

- *Mail/commercial/hand delivery:* Mail or deliver your comments to: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St., SW., Washington, DC 20024.

- Persons with disabilities who require alternative means for communication for regulatory information (Braille, large print, audiotope, etc.) should contact the USDA TARGET Center at (202) 720-2600 (voice) and (202) 690-0942 (TTY).

**FOR FURTHER INFORMATION CONTACT:** Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St., SW.,

Washington, DC 20024; e-mail: [biopreferred@usda.gov](mailto:biopreferred@usda.gov); phone (202) 205-4008. Information regarding the 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:

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**I. Authority**

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

**II. Background**

Section 9002 provides for the preferred procurement of biobased products by Federal procuring agencies and is referred to hereafter in this **Federal Register** notice as the "preferred procurement program." The definition of "procuring agency" in section 9002 includes both Federal agencies and "a person that is a party to a contract with any Federal agency, with respect to work performed under such a contract." Thus, Federal contractors, as well as Federal agencies, are expressly subject to the procurement preference provisions of section 9002, as amended in section 9002 of the 2008 Farm Bill.

The term "item" is used in the designation process to mean a generic

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

USDA recognizes that the performance needs for a given application are important criteria in making procurement decisions. USDA is not requiring procuring agencies to limit their choices to biobased products that fall under the items for designation in this proposed rule. Rather, the effect of the designation of the items is to require procuring agencies to determine their performance needs, determine whether there are qualified biobased products that fall under the designated items that meet the reasonable performance standards for those needs, and purchase such qualified biobased products to the maximum extent practicable as required by section 9002 of the 2002 Farm Bill.

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

It is the responsibility of the manufacturers to “self-certify” that each product being offered as a biobased product for preferred procurement contains qualifying feedstock. USDA will develop a monitoring process for these self-certifications to ensure manufacturers are using qualifying feedstocks. If misrepresentations are found, USDA will remove the subject biobased product from the preferred procurement program and put a notice of this action on the BioPreferred Web site.

*Subcategorization.* Most of the items USDA is considering for designation for preferred procurement cover a wide range of products. For some items, there are subgroups of products within the item that meet different requirements, uses and/or different performance specifications. For example, within the item category “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 item “hand cleaners and sanitizers,” USDA has determined it is reasonable to create a “hand cleaner” subcategory and a “hand sanitizer” subcategory. Sanitizing specifications would be applicable to the latter subcategory, but not the former. In sum, USDA looks at the products within each item category to evaluate whether there are subgroups of products within the item that meet different performance specifications and, where USDA finds this type of difference, it intends to create subcategories with the minimum biobased content based on the tested products within the subcategory.

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

USDA is not proposing to subcategorize any of the items being proposed for designation in today’s action. However, public comments and additional data are being requested for several of the items and subcategories may be created in a future proposed 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 volunteer to invest the resources required to submit the samples.

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

USDA also considers the overall range of the tested biobased contents within an item, groupings of similar values, and breaks (significant gaps between two groups of values) in the biobased content test data array. For example, the biobased contents of five tested products within an item being proposed for designation today are 5, 22, 31, 82, and 85 percent. Because this is a very wide range, and because there is a significant gap in the data between the 31 percent biobased product and the 82 percent biobased product, USDA reviewed the product literature to determine whether subcategories could be created within this item. USDA found that the available product information did not justify subcategorization. Further, USDA did not find any performance claims that would justify setting the minimum biobased content based on the 5, 22, or 31 percent biobased content products. Thus, USDA is proposing to set the minimum biobased content for this item based on the product with a tested

biobased content of 82 percent. USDA believes that this evaluation process allows it to establish minimum biobased contents based on a broad set of factors to assist the Federal procurement community in its decisions to purchase biobased products.

USDA makes every effort to obtain biobased content test data on multiple products within each item. For most designated items, USDA has biobased content test data on more than one product within a designated item. However, in some cases, USDA has been able to obtain biobased content data for only a single product within a designated item because only one manufacturer volunteered to supply a sample for testing. As USDA obtains additional data on the biobased contents for products within these designated items and their subcategories, USDA will evaluate whether the minimum biobased content for a designated item will be revised. Where future revisions of established minimum biobased contents are justified, such revisions will be announced in a proposed rulemaking with an opportunity for public comment prior to finalizing the rulemaking.

USDA anticipates that the minimum biobased content of an item that is based on a single product is more likely to change as additional products within that designated item are identified and tested. In today’s proposed rule, the minimum biobased contents for one of the designated items (“expandable polystyrene foam recycling products”) is based on a single tested product. Given that only two biobased products have been identified in this item, and only one manufacturer supplied a sample for testing, USDA believes it is reasonable to set a minimum biobased content for this item based on the single data point.

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

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

materials. In situations where it believes there may be an overlap, USDA is asking manufacturers of qualifying biobased products to make additional product and performance information available to Federal agencies conducting market research to assist them in determining whether the biobased products in question are, or are not, the same products for the same uses as the recovered content products.

Manufacturers are asked to provide information highlighting the sustainable features of their biobased products and to indicate the various suggested uses of their product and the performance standards against which a particular product has been tested. In addition, depending on the type of biobased product, manufacturers are being asked to provide other types of information, such as whether the product contains fossil energy-based components (including petroleum, coal, and natural gas) and whether the product contains recovered materials. Federal agencies also may ask manufacturers for information on a product's biobased content and its profile against environmental and health measures and life-cycle costs (the ASTM Standard D7075, "Standard Practice for Evaluating and Reporting Environmental Performance of Biobased Products," or the Building for Environmental and Economic Sustainability (BEES) analysis for evaluating and reporting on environmental performance of biobased products). Federal agencies may then use this information to make purchasing decisions based on the sustainability features of the products. Detailed information on ASTM Standard D7075, and other ASTM standards, can be found on ASTM's Web site at <http://www.astm.org>. Information on the BEES analytical tool can be found on the Web site <http://www.bfil.nist.gov/oa/software/bees.html>.

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

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

This proposed rule designates three items for preferred procurement for which there may also be an EPA-designated recovered content product. The first item is mulch and compost materials, which are also EPA-designated recovered content products "hydraulic mulch products" and "compost materials" under the "landscaping products" category of products. The second item is multipurpose lubricants, which, depending on how they are used, may be an EPA-designated recovered content product "re-refined lubricating oils." The third item is office paper, which is an EPA-designated recovered content product under the "paper and paper products" category of products. EPA provides recovered materials content recommendations for these recovered content products in a 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.

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 U.S. EPA's Design for the Environment (DfE) program. Both the Green Seal standards and the DfE program identify chemicals of concern in cleaning products. These include zinc and other metals, formaldehyde, ammonia, alkyl phenol ethoxylates, ethylene glycol ethers, and volatile organic compounds. In addition, both require that cleaning products have neutral or less caustic pH.

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

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

Manufacturers of qualifying biobased products under the preferred procurement program will be able to provide, at the request of Federal agencies, factual information on environmental and human health effects of their products, including the results

of the ASTM D7075, or the comparable BEES analysis which examines 12 different environmental parameters, including human health. Therefore, USDA encourages Federal procurement agencies to consider that USDA has already examined all available information on the environmental and human health effects of biopreferred products, when making their purchasing decisions.

**Other Preferred Procurement Programs.** Federal procurement officials should also note that biobased products may be available for purchase by Federal agencies through the AbilityOne Program (formerly known as the Javits-Wagner-O'Day (JWOD) program). Under this program, members of organizations including the National Industries for the Blind (NIB) and the National Institute for the Severely Handicapped (NISH) offer products and services for preferred procurement by Federal agencies. A search of the AbilityOne Program's online catalog (<http://www.abilityone.gov>) indicated that four of the items being proposed today ("disposable tableware," "mulch and compost materials," "multipurpose lubricants," and "office paper") are available through the AbilityOne Program. While none of the specific products within these items are identified in the JWOD online catalog as being biobased products, it is possible that biobased products are available or will be available in the future. Also, because additional categories of products are frequently added to the AbilityOne Program, it is possible that biobased products within other items being proposed for designation today may be available through the AbilityOne Program in the future. Procurement of biobased products through the AbilityOne Program would further the objectives of both the AbilityOne Program and the preferred procurement program.

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

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

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

### III. Summary of Today's Proposed Rule

USDA is proposing to designate the following items for preferred procurement: Disposable tableware; expanded polystyrene (EPS) foam recycling products; heat transfer fluids; ink removers and cleaners; mulch and compost materials; multipurpose lubricants; office paper; topical pain relief products; and turbine drip oils. USDA is also proposing minimum biobased content for each of these items (see Section IV.C). Lastly, USDA is proposing a date by which Federal agencies must incorporate designated items into their procurement specifications (see Section IV.D).

In today's proposed rule, USDA is providing information on its findings as to the availability, economic and technical feasibility, environmental and public health benefits, and life-cycle costs for each of the designated items. Information on the availability, relative price, performance, and environmental and public health benefits of individual products within each of these items is not presented in this notice. Further, USDA has reached an understanding with manufacturers not to publish their

names in conjunction with specific product data published in the **Federal Register** when designating items. This understanding was reached to encourage manufacturers to submit products for testing to support the designation of an item. Once an item has been designated, USDA will encourage the manufacturers of products within the designated item to voluntarily make their names and other contact information available for the BioPreferred Web site.

**Warranties.** Some of the items being proposed for designation today may affect original equipment manufacturers' (OEMs) warranties for equipment in which the items are used. For example, the manufacturer of a piece of equipment that requires lubrication typically includes a list of recommended lubricants in the owner/operator's manual that accompanies the equipment when purchased. If the purchaser of the equipment uses a lubricant (including a biobased lubricant) that is not among the lubricants recommended by the equipment manufacturer, the manufacturer may cite that as a reason not to honor the warranty on the equipment. At this time, USDA does not have information available as to the extent that OEMs have included, or will include, biobased products among their recommended lubricants (or other similar operating components). This does not necessarily mean that use of biobased products will void warranties, only that USDA does not currently have such information. USDA is requesting comments and information on this topic, but cannot be held responsible if damage were to occur. USDA encourages manufacturers of biobased products to test their products against all relevant standards, including those that affect warranties, and to work with OEMs to ensure that biobased products are accepted and recommended for use. Whenever manufacturers of biobased products find that existing performance standards for warranties are not relevant or appropriate for biobased products, USDA is willing to assist them in working with the appropriate OEMs to develop tests that are relevant and appropriate for the end uses in which biobased products are intended. In addition to outreach to biobased product manufacturers and Federal agencies, USDA will, as time and resources allow, work with OEMs on addressing any effect the use of biobased products may have on their warranties. If, in spite of these efforts, there is insufficient information regarding the use of a biobased product

and its effect of warranties, the procurement agent would not be required to buy such a product. As information is available on warranties, USDA will make such information available on the BioPreferred Web site. Updates to the BioPreferred Web site will occur whenever new information is submitted.

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

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

1. Three items (“mulch and compost materials,” “multipurpose lubricants,” and “office paper”) may overlap with products designated under EPA’s Comprehensive Procurement Guideline for products containing recovered material. To help procuring agencies in making their purchasing decisions between biobased products within the proposed designated items that overlap with products containing recovered material, USDA is requesting product-specific information on unique performance attributes, environmental and human health effects, disposal costs, and other attributes that would distinguish biobased products from

products containing recovered material as well as non-biobased products.

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

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

4. Some items (e.g., “disposable tableware,” “heat transfer fluids,” and “ink removers and cleaners”) have wide ranges of tested biobased contents. For the reasons discussed later in this preamble, USDA is proposing minimum biobased content levels that would allow many of the tested products to be eligible for preferred procurement. USDA welcomes comments on the appropriateness of the proposed minimum biobased contents for these items and whether there are potential subcategories within the items that should be considered.

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

6. Today’s proposed rule is expected to have both positive and negative impacts on individual businesses, including small businesses. USDA anticipates that the biobased preferred procurement program will provide additional opportunities for businesses and manufacturers to begin supplying products under the proposed designated biobased items to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their

contractors. Because USDA has been unable to determine the number of businesses, including small businesses, that may be adversely affected by today’s proposed rule, USDA requests comment on how many small entities may be affected by this rule and on the nature and extent of that effect.

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

To assist you in developing your comments, the background information used in proposing these items for designation has been assembled in a technical support document, “Technical Support for Proposed Rule—Round 6 Designated Items,” which is available on the BioPreferred Web site. The technical support document can be located by clicking on the Proposed and Final Regulations link on the right side of the BioPreferred Web site’s home page (<http://www.biopreferred.gov>). At the next screen, click on the Supporting Documentation link under Round 6 Designated Items under the Proposed Regulations section. This will bring you to the link to the technical support document.

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

##### *A. Background*

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

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

In considering an item’s economic and technological feasibility, USDA examines evidence pointing to the general commercial use of an item and its life-cycle cost and performance characteristics. This information is obtained from the sources used to assess an item’s availability. Commercial use, in turn, is evidenced by any manufacturer and vendor information

on the availability, relative prices, and performance of their products as well as by evidence of an item being purchased by a procuring agency or other entity, where available. In sum, USDA considers an item economically and technologically feasible for purposes of designation if products within that item are being offered and used in the marketplace.

In considering the life-cycle costs of items proposed for designation, USDA has obtained the necessary input information (on a voluntary basis) from manufacturers of biobased products and has used the BEES analytical tool to analyze individual products within each proposed item. The BEES analytical tool measures the environmental performance and the economic performance of a product. The environmental performance scores, impact values, and economic performance results for products within the Round 6 designated items analyzed using the BEES analytical tool can be found in "Technical Support for Proposed Rule—Round 6 Designated Items," located on the BioPreferred Web site (<http://www.biopreferred.gov>).

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

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

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

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

In gathering information relevant to the analyses discussed above for this proposed rule, USDA has made extensive efforts to contact and request information and product samples within the items proposed for designation. For product information, USDA has attempted to contact representatives of the manufacturers of biobased products identified by the preferred procurement program. For product samples on which to conduct biobased content tests and

BEES analysis, USDA has attempted to obtain samples and BEES input information for at least five different suppliers of products within each item in today's proposed rule. However, because the submission of information and samples is on a strictly voluntary basis, USDA was able to obtain information and samples only from those manufacturers who volunteer to invest the resources required to gather and submit the information and samples. The data presented are all the data that were submitted in response to USDA requests for information from manufacturers of the products within the items proposed for designation. While USDA would prefer to have complete data on the full range of products within each item, the data that were submitted support designation of the items in today's proposed rule.

To propose an item for designation, USDA must have sufficient information on a sufficient number of products within an item to be able to assess its availability and its economic and technological feasibility, including its life-cycle costs. For some items, there may be numerous products available. For other items, there may be very few products currently available. Given the infancy of the market for some items, it is not unexpected that even single-product items will be identified. Further, given that the intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products, USDA has determined it is appropriate to designate an item or subcategory for preferred procurement even when there is only a single product with a single supplier. However, USDA has also determined that in such situations it is appropriate to defer the effective preferred procurement date until such time that more than one supplier is identified in order to provide choice to procuring agencies. Similarly, the documented availability, benefits, and life-cycle costs of even a very small percentage of all products that may exist within an item are also considered sufficient to support designation.

#### *B. Items Proposed for Designation*

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

In general, items are developed and prioritized for designation by evaluating

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

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

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

In today's proposed rule, USDA is proposing to designate the following items for the preferred procurement program: Disposable tableware; EPS foam recycling products; heat transfer fluids; ink removers and cleaners; mulch and compost materials; multipurpose lubricants; office paper; topical pain relief products; and turbine drip oils. USDA has determined that each of these items meets the necessary statutory requirements—namely, that they are being produced with biobased products and that their procurement by procuring agencies will carry out the following objectives of section 9002:

- To increase demand for biobased products, which would in turn increase demand for agricultural commodities that can serve as feedstocks for the production of biobased products;
- To spur development of the industrial base through value-added

agricultural processing and manufacturing in rural communities; and

- To enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas.

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

*Overlap with EPA's Comprehensive Procurement Guideline program for recovered content products.* In today's proposed rule, three items being designated for preferred procurement may overlap with EPA-designated recovered content products. The first item is "mulch and compost materials," which may overlap with the EPA-designated recovered content products "hydraulic mulch products" and "compost materials" under the "landscaping products" category of products. The second item is "multipurpose lubricants," which, depending on how they are used, may overlap with the EPA-designated recovered content product "re-refined lubricating oils." The third item is "office paper," which may overlap with the EPA-designated recovered content products under the "paper and paper products" category of products.

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

*Exemptions.* Products used in spacecraft systems and launch support applications and military equipment used in combat and combat-related applications are exempt from the biobased product procurement preference, but agencies may purchase biobased products wherever performance, availability and reasonable price indicates that such purchases are justified.

Although each item in today's proposed rule would be exempt from the procurement preference requirement when used in spacecraft systems or launch support application or in

military equipment used in combat and combat-related applications, this exemption does not extend to contractors performing work other than direct maintenance and support of the spacecraft or launch support equipment or combat or combat-related missions. For example, if a contractor is painting the interior of a non-combat office building on a military base, the interior paint the contractor purchases and uses in the office building should be a biobased interior paint (provided it meets the specifications for the designated item "interior paints and coatings"). 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 their contract, where a contractor has any question on the exemption, they should contact the cognizant contracting officer.

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

The proposed designated items are discussed in the following sections.

#### 1. Disposable Tableware (Minimum Biobased Content 72 Percent)<sup>1</sup>

Disposable tableware is one-time-use drink ware and dishware, including cups, plates, bowls, and serving platters used for dining.

USDA identified 19 different manufacturers and suppliers of 65 biobased disposable tableware products. These 19 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased disposable tableware, 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 two performance standards and one product certification (as shown below) used in evaluating products within this item. While there may be additional performance standards, as

<sup>1</sup> Additional information on the determination of minimum biobased contents is presented in Section IV.C of this preamble.

well as test methods, product certifications, and other measures of performance applicable to products within this item, those identified by manufacturers of product within this item are:

*Performance Standards*

- ASTM D6400, "Standard Specification for Compostable Plastics;" and
- ASTM D6868, "Standard Specification for Biodegradable Plastics Used as Coatings on Paper and Other Compostable Substrates."

*Product Certifications and Other Measures*

- Biodegradable Products Institute certified compostable plastic products will biodegrade and compost satisfactorily in actively managed compost facilities.

USDA contacted procurement officials with various policy-making and procuring agencies including GSA, several offices within the Defense Logistics Agency, OFEE, USDA Departmental Administration, the National Park Service, EPA, Oak Ridge National Laboratory, and OMB in an effort to gather information on the purchases of disposable tableware and products within the other eight items proposed for designation today. Communications with these officials led to the conclusion that obtaining credible current usage statistics and specific potential markets within the Federal government for biobased products within the nine proposed designated items is not possible at this time.

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

USDA also investigated the Web site FEDBIZOPPS.gov, a site which lists Federal contract purchase opportunities greater than \$25,000. The information provided on this Web site, however, is for broad categories of products rather than the specific types of products that

are included in today's proposed rule. Therefore, USDA has been unable to obtain data on the amount of disposable tableware purchased by procuring agencies. However, Federal agencies routinely procure such products and contract for food preparation services involving the use of such products. Thus, they have a need for disposable tableware and for services that use disposable tableware. Designation of "disposable tableware" will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased disposable tableware was performed for one of the products using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 6 items, which can be found on the BioPreferred Web site.

2. Expanded Polystyrene (EPS) Foam Recycling Products (Minimum Biobased Content 90 Percent)

These are products formulated to dissolve EPS foam (examples would include foam coolers, hot drink cups, and flotation devices) to reduce the volume of recycled or discarded EPS foam items. The products are sprayed on the EPS foam, which is quickly dissolved into a concentrated material that can then be recycled or landfilled. The primary uses of these products are in recycling operations and construction/demolition projects.

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

USDA attempted to gather data on the potential market for biobased products within the Federal government using the procedure described in the section on "disposable tableware." These attempts were largely unsuccessful. USDA is aware that products used for recycling EPS foam represent a developing application that will be working into the market and that there are many potential applications where Federal facilities could benefit from this technology. For example, at this time, there is a project on the Lake of the Ozarks (Corps of Engineers) to recycle EPS foam from boat docks to prevent the material from getting into the power generation plants. Thus, USDA believes that designation of "EPS foam recycling products" will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased EPS foam recycling products was performed for one of the products using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 6 items, which can be found on the BioPreferred Web site.

3. Heat Transfer Fluids (Minimum Biobased Content 89 Percent)

Heat transfer fluids are products with high thermal capacities used to facilitate the transfer of heat from one location to another, including coolants or refrigerants for use in HVAC applications, internal combustion engines, personal cooling devices, thermal energy storage, or other heating or cooling closed-loops.

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

performance are identified for this item, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for heat transfer fluids within the Federal government as discussed in the section on “disposable tableware.” These attempts were largely unsuccessful. However, most Federal agencies routinely perform, or procure services to perform, activities that use these products. Thus, they have a need for heat transfer fluids and for services that require the use of heat transfer fluids. Designation of “heat transfer fluids” will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased heat transfer fluids was performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 6 items, which can be found on the BioPreferred Web site.

#### 4. Ink Removers and Cleaners (Minimum Biobased Content 79 Percent)

Ink removers and cleaners are chemicals used for removing ink, haze, glaze, and other residual ink contaminants from ink presses, rollers, and other equipment used in the printing and textile industries.

USDA identified nine manufacturers and suppliers of 15 biobased ink removers and cleaners. These nine manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased ink removers and cleaners, 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. As noted earlier in this preamble, the lack of identified performance standards is not relevant to the designation of an item for preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate an item for preferred procurement. If and when performance standards, test methods, product certifications, and other relevant measures of performance are identified for this item, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on “disposable tableware.” These attempts were largely unsuccessful. However, Federal agencies (e.g., Bureau of Engraving and Printing) have ink presses and similar equipment that would be cleaned with such products. In addition, such Federal agencies may contract for cleaning services that would use such products. Thus, they have a need for ink removers and cleaners and for services that require the use of ink removers and cleaners. Designation of “ink removers and cleaners” will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased ink removers and cleaners was performed for one of the products using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 6 items, which can be found on the BioPreferred Web site.

#### 5. Mulch and Compost Materials (Minimum Biobased Content 95 Percent)

Mulch is a protective covering placed atop the soil, primarily to keep down weeds and to improve the appearance of landscaping. Compost is the aerobically decomposed remnants of organic materials used in gardening and agriculture as a soil amendment, and commercially by the landscaping and container nursery industries.

USDA identified 67 manufacturers and suppliers of 232 mulch and compost materials. These 67 manufacturers and suppliers do not necessarily include all manufacturers of mulch and compost materials, merely those identified during USDA information gathering activities. Information supplied by the manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified three test methods (as shown below) used in evaluating products within this item. While other test methods and measures of performance, as well as performance standards, applicable to products within this item may exist, the three test methods identified by manufacturers of products within this item and by others are:

##### *Test Methods*

- ASTM International C16 Standard Test Method for Load Testing Refractory Shapes at High Temperatures;

- ASTM International D18 Standard Test Method for Sieve Analysis of Fine and Coarse Aggregates; and
- ASTM International D790 Standard Test Methods for Flexural Properties of Unreinforced and Reinforced Plastics and Electrical Insulating Materials.

USDA attempted to gather data on the potential market for mulch and compost materials within the Federal government using the procedure described in the section on “disposable tableware.” These attempts were largely unsuccessful. However, many Federal agencies routinely perform activities that use these products. In addition, many Federal agencies contract for activities involving the use of such products. Thus, they have a need for mulch and compost materials and for services that use mulch. Designation of “mulch and compost materials” will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased mulch and compost materials was performed for one of the products using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 6 items, which can be found on the BioPreferred Web site.

#### 6. Multipurpose Lubricants (Minimum Biobased Content 88 Percent)

Multipurpose lubricants are products designed to reduce friction or rust in a variety of industrial settings. Products within this item are typically in liquid form. Greases, which are lubricants composed of oils thickened to a semisolid or solid consistency using soaps, polymers or other solids, or other thickeners, are not included in this item. In addition, as proposed, task-specific lubricants, such as chain and cable lubricants and gear lubricants, would not be included in this item.

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

USDA identified 16 manufacturers and suppliers of 27 biobased multipurpose lubricant products. These 16 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased multipurpose lubricants, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified several test methods and other measures of performance (as

shown below) used in evaluating products within this item. While other test methods and other measures of performance, as well as product certifications, and performance standards, applicable to products within this item may exist, those test methods and other measures of performance identified by manufacturers of products within this item and by others are:

#### *Test Methods*

- ASTM D1748, “Standard Test Method for Rust Protection By Metal Preservatives in the Humidity Cabinet;”
- ASTM D2266, “Standard Test Method for Wear Preventive Characteristics of Lubricating Grease (Four Ball Method);”
- ASTM D130, “Standard Test Method for Corrosiveness to Copper from Petroleum Products by Copper Strip Test;”
- ASTM D482, “Standard Test Method for Ash from Petroleum Products;”
- ASTM D5864, “Standard Test Method for Determining Aerobic Aquatic Biodegradation of Lubricants or Their Components;”
- ASTM D665, “Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water;”
- ASTM D92, “Standard Test Method for Flash and Fire Points by Cleveland Open Cup Tester;”
- ASTM D97, “Standard Test Method for Pour Point of Petroleum Products;”
- ASTM D972, “Standard Test Method for Evaporative Loss of Lubricating Greases and Oils;” and
- Vickers I–286–S Tests for pump wear.

#### *Product Certifications and Other Measures*

- API GL–1 Service Designation denotes lubricants intended for manual transmissions operating under such mild conditions that straight petroleum or refined petroleum oil may be used satisfactorily;
- ISO 32 Calibration in analytical chemistry and use of certified reference materials;
- ISO 68 International Standards Organization Viscosity Guide; and
- Society of Automotive Engineers SAE 30 J300 Engine Oil Viscosity Classification.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on “disposable tableware.” These attempts were largely unsuccessful. However, many Federal agencies routinely perform, or procure contract services to perform, activities

that use machinery that requires multipurpose lubricants. Thus, they have a need for multipurpose lubricants. Designation of “multipurpose lubricants” will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased multipurpose lubricants was performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 6 items, which can be found on the BioPreferred Web site.

#### 7. Office Paper (Minimum Biobased Content 95 Percent)

Office paper products are papers used in office printer and copier applications, writing, and coated papers for publications.

USDA identified 13 manufacturers and suppliers of 20 different biobased office papers. These 13 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased office paper, 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 one performance standard (as shown below) used in evaluating products within this item. While other test methods and measures of performance, as well as performance standards, applicable to products within this item may exist, the performance standard identified by manufacturers of products within this item and by others is:

#### *Performance Standard*

- JCP A230 Printing Paper—High Yield Coated Opaque Offset (Light Coating).

USDA attempted to gather data on the potential market for office paper within the Federal government as discussed in the section on “disposable tableware.” These attempts were largely unsuccessful. However, Federal agencies routinely perform activities that require the use of office paper. In addition, many Federal agencies contract for activities involving the use of such products. Thus, they have a need for office paper and for services that require the use of such products. Designation of “office paper” will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle

costs of biobased office papers was performed for one of the products using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 6 items, which can be found on the BioPreferred Web site.

#### 8. Topical Pain Relief Products (Minimum Biobased Content 91 Percent)

Topical pain relief products are balms, creams and other topical treatments for the relief of muscle, joint, headache, and nerve pain, as well as sprains, bruises, swelling, and other aches.

USDA identified 30 manufacturers of 48 biobased packaging material products. The 30 manufacturers do not necessarily include all manufacturers of biobased topical pain relief products, 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 an item for preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate an item for preferred procurement. If and when performance standards, test methods, and other relevant measures of performance are identified for this item, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for topical pain relief products within the Federal government as discussed in the section on “disposable tableware.” These attempts were largely unsuccessful. However, most Federal agencies routinely use, and procure services that use topical pain relief products. Thus, they have a need for topical pain relief products and for services that require the use of topical pain relief products. Designation of “topical pain relief products” will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased topical pain relief products was performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 6 items, which can be found on the BioPreferred Web site.

### 9. Turbine Drip Oils (Minimum Biobased Content 87 Percent)

Turbine drip oils are lubricants for use in drip lubrication systems for water well line shaft bearings, water turbine bearings for irrigation pumps, and other turbine bearing applications.

USDA identified four manufacturers and suppliers of four different biobased turbine drip oils. These four manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased turbine drip 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 test methods (as shown below) used in evaluating products within this item. While other test methods and measures of performance, as well as performance standards, applicable to products within this item may exist, the nine test methods identified by manufacturers of products within this item and by others are:

#### Test Methods

- ASTM International D2619 Standard Test Method for Hydrolytic Stability of Hydraulic Fluids (Beverage Bottle Method);
- ASTM International D2983 Standard Test Method for Low-Temperature Viscosity of Lubricants Measured by Brookfield Viscometer;
- ASTM International D5864 Standard Test Method for Determining Aerobic Aquatic Biodegradation of Lubricants or Their Components;
- ASTM International D665 Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water;
- ASTM International D892 Standard Test Method for Foaming Characteristics of Lubricating Oils;
- International Organization for Standardization ISO 32 Oil Viscosity Grade;
- International Organization for Standardization ISO 46 Oil Viscosity Grade;
- Society of Automotive Engineers SAE 10W20 J300 Engine Oil Viscosity Classification; and
- Society of Automotive Engineers SAE 10W30 J300 Engine Oil Viscosity Classification.

USDA attempted to gather data on the potential market for turbine drip oils within the Federal government as discussed in the section on “disposable tableware.” These attempts were largely unsuccessful. However, Federal

agencies have facilities that require the use of turbine drip oils. In addition, Federal agencies may procure contract maintenance services that require the use of turbine drip oils. Thus, they have a need for turbine drip oils and for services that require the use of such products. Designation of “turbine drip oils” will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased turbine drip oils was performed for one of the products using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 6 items, which can be found on the BioPreferred Web site.

#### C. Minimum Biobased Contents

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

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

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

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

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

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

#### 1. Disposable Tableware

Ten of the 65 biobased disposable tableware products identified have been tested for biobased content using ASTM D6866.<sup>2</sup> The biobased contents of these 10 biobased disposable tableware ranged from 32 percent to 100 percent, as follows: 32, 75, 90, 92, 98, and 100 percent (five products).

Considering that the range of biobased contents is large and there is a significant gap in the data points between the 32 and 75 percent biobased products, USDA evaluated the information available on these products to determine if there was justification for creating subcategories. USDA considered the possibility of creating subcategories based on product performance (e.g., high temperature versus cold temperature applications),

<sup>2</sup> ASTM D6866, “Standard Test Methods for Determining the Biobased Content of Natural Range Materials Using Radiocarbon and Isotope Ratio Mass Spectrometry Analysis,” is used to distinguish between carbon from fossil resources (non-biobased carbon) and carbon from renewable sources (biobased carbon). The biobased content is expressed as the percentage of total carbon that is biobased carbon.

formulation, biodegradability characteristics, or product function (e.g., plates, bowls, cups, cup lids). However, USDA found that there was not sufficient information to create subcategories. USDA also found no unique features found in the 32 percent biobased product that would justify considering that product when setting the minimum biobased content for the item. USDA requests that manufacturers provide information on the product characteristics mentioned above. If sufficient supporting data can be obtained, USDA will consider creating subcategories within this item in the final rule. Because of the lack of supporting data for subcategorization at this time, USDA is proposing to set the minimum biobased content for disposable tableware at 72 percent, based on the product with a tested biobased content of 75 percent.

## 2. EPS Foam Recycling Products

One of the two biobased EPS foam recycling products identified has been tested for biobased content using ASTM D6866. The biobased content of this EPS foam recycling product was 93 percent. USDA believes that this product adequately represents currently available products within this item and is, therefore, proposing to set the minimum biobased content for this item at 90 percent, based on the one tested product.

## 3. Heat Transfer Fluids

Three of the six biobased heat transfer fluids identified have been tested for biobased content using ASTM D6866. The biobased contents of these three biobased heat transfer fluids range from 37 percent to 99 percent as follows: 37, 92, and 99 percent. There is a significant break between the 37 percent biobased product and the 92 percent product, and USDA found no performance features claimed for the 37 percent product that justified setting the minimum biobased content based on that product. Because the biobased contents of the remaining two products are within a narrow range, USDA is proposing to set the minimum biobased content for heat transfer fluids at 89 percent, based on the product with a tested biobased content of 92 percent.

## 4. Ink Removers and Cleaners

Five of the 15 biobased ink removers and cleaners identified have been tested for biobased content using ASTM D6866. The biobased contents of these five biobased ink removers and cleaners are 5, 22, 31, 82, and 85 percent.

The tested biobased contents of the five products, as shown above, range from 5 to 85 percent. Because this is a

very wide range, and because there is a significant gap in the data between the 31 percent biobased product and the 82 percent biobased product, USDA reviewed the product literature to determine whether subcategories could be created within this item. USDA found that the available product information did not justify subcategorization. Further, USDA did not find any performance claims that would justify setting the minimum biobased content based on the 5, 22, or 31 percent biobased content products. Thus, USDA is proposing to set the minimum biobased content for this item at 79 percent, based on the product with a tested biobased content of 82 percent. While USDA does not currently have data to support subcategories within this item, we continue to question whether products designed for continuous cleaning operations and those designed for infrequent use (such as in periodic maintenance) should be in different subcategories. USDA requests that manufacturers of products within this item provide information regarding the need to create subcategories within this item.

## 5. Mulch and Compost Materials

Seven of the 232 biobased mulch and compost materials identified have been tested for biobased content using ASTM D6866. The biobased contents of these seven biobased mulch and compost materials ranged from 98 percent to 100 percent, as follows: 98, 98, 100, 100, 100, 100, and 100.

Because the biobased contents of the seven products are within a narrow range, USDA is proposing to set the minimum biobased content for mulch and compost materials at 95 percent, based on the two products with tested biobased contents of 98 percent.

## 6. Multipurpose Lubricants

Four of the 30 biobased multipurpose lubricants identified have been tested for biobased content using ASTM D6866. The biobased contents of these four biobased multipurpose lubricants ranged from 91 percent to 100 percent as follows: 91, 93, 100, and 100 percent.

Because the range of biobased contents among the tested products is so small, USDA is proposing to set the minimum biobased content for this item at 88 percent based on the product with a tested biobased content of 91 percent.

## 7. Office Paper

Seven of the 20 biobased office paper products identified have been tested for biobased content using ASTM D6866. The biobased contents of these seven biobased office paper products range

from 98 to 100 percent, as follows: 98, 99, 100, 100, 100, 100 and 100 percent. Because the range of these seven values is very narrow, USDA is proposing to set the minimum biobased content for this item at 95 percent, based on the product with a tested biobased content of 98 percent.

## 8. Topical Pain Relief Products

Five of the 48 biobased topical pain relief products identified have been tested for biobased content using ASTM D6866. The biobased contents of these five biobased topical pain relief products range from 94 to 100 percent, as follows: 94, 99, 100, 100 and 100 percent. Because the biobased contents of the five tested products are within a narrow range and the values are high, USDA is proposing to set the minimum biobased content for topical pain relief products at 91 percent, based on the product with a tested biobased content of 94 percent.

## 9. Turbine Drip Oils

Three of the four biobased turbine drip oils identified have been tested for biobased content using ASTM D6866. The biobased contents of these three biobased turbine drip oils are as follows: 90, 95, and 96 percent. Because the biobased contents of the three tested products are within a narrow range and the values are high, USDA is proposing to set the minimum biobased content for turbine drip oils at 87 percent, based on the product with a tested biobased content of 90 percent.

### *D. Compliance Date for Procurement Preference and Incorporation Into Specifications*

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

USDA is proposing a one-year period before the procurement preferences would take effect based on recognizing that Federal agencies will need time to incorporate the preferences into procurement documents and to revise existing standardized specifications. Section 9002(a)(3) and section 2902(c) of 7 CFR part 2902 explicitly acknowledge the latter need for Federal agencies to have sufficient time to revise the affected specifications to give preference to biobased products when purchasing the designated items. Procuring agencies will need time to evaluate the economic and

technological feasibility of the available biobased products for their agency-specific uses and for compliance with agency-specific requirements, including manufacturers' warranties for machinery in which the biobased products would be used.

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

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

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

Information used to develop this proposed rule can be found in the technical support document, which can be accessed on the BioPreferred Web site, which is located at: <http://www.biopreferred.gov>. At the BioPreferred Web site, click on the Proposed and Final Regulations link on the left side of the page. At the next screen, click on the Supporting Documentation link under Round 6 Designated Items under the Proposed Regulations section.

Further, once the item designations in today's proposal become final, manufacturers and vendors voluntarily may make available information on specific products, including product and contact information, for posting by the Agency on the BioPreferred Web site. USDA will periodically audit the information displayed on the BioPreferred Web site and, where questions arise, contact the manufacturer or vendor to verify, correct, or remove incorrect or out-of-date information. Procuring agencies should contact the manufacturers and

vendors directly to discuss specific needs and to obtain detailed information on the availability and prices of biobased products meeting those needs.

By accessing the 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 BEE's analysis or the alternative analysis embedded in the ASTM Standard D7075, "Standard Practice for Evaluating and Reporting Environmental Performance of Biobased Products."

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

#### VI. Regulatory Information

##### A. Executive Order 12866: Regulatory Planning and Review

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

Today's proposed rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. We are not able to quantify the annual economic effect associated with today's proposed rule. As discussed earlier in this preamble, USDA made extensive efforts to obtain information on the

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

#### 1. Summary of Impacts

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

#### 2. Benefits of the Proposed Rule

The designation of these items is expected to provide benefits as outlined in the objectives of section 9002; to increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products, and to spur development of

the industrial base through value-added agricultural processing and manufacturing in rural communities. On a national and regional level, today's proposed rule can result in expanding and strengthening markets for biobased materials used in these items.

### 3. Costs of the Proposed Rule

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

#### *B. Regulatory Flexibility Act (RFA)*

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

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

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

entities that supply biobased materials to manufacturers.

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

The preferred procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. Most manufacturers of non-biobased products within the items being proposed for designation for preferred procurement in this rule are expected to be included under the following NAICS codes: 322231 (die-cut paper and paperboard office supplies manufacturing), 324191 (petroleum lubricating oil and grease manufacturing), 325211 (plastics materials and resin manufacturing), 325411 (medicinal and botanical manufacturing), 325612 (polish and other sanitation goods manufacturing), 325998 (other miscellaneous chemical products and preparation manufacturing), and 326150 (urethane and other foam product manufacturing). USDA obtained information on these seven NAICS categories from the U.S. Census Bureau's Economic Census database. USDA found that the Economic Census reports about 3,696 companies within these seven NAICS categories and that these companies own a total of about 4,478 establishments. Thus, the average number of establishments per company is about 1.2. The Census data also reported that of the 4,478 individual establishments, about 4,450 (99.3 percent) have less than 500 employees. USDA also found that the overall average number of employees per company among these industries is about 55, with the plastics materials and resins segment reporting the highest average (about 90 employees per company). 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 items being designated, but believes that the impact will not be significant. Most of the items being proposed for designation in this rulemaking are typical consumer products widely used by the general public and by industrial/commercial establishments that are not subject to this rulemaking. Thus, USDA believes that the number of small businesses manufacturing non-biobased products within the items being designated and selling significant quantities of those products to government agencies affected by this rulemaking to be relatively low. Also, this proposed rule will not affect existing purchase orders and it will not preclude procuring agencies from continuing to purchase non-biobased items when biobased items do not meet the availability, performance, or reasonable price criteria. This proposed rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials.

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

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

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

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

*D. Executive Order 13132: Federalism*

This proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

*E. Unfunded Mandates Reform Act of 1995*

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and Tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

*F. Executive Order 12372:**Intergovernmental Review of Federal Programs*

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Today's proposed rule does not significantly or uniquely affect "one or more Indian Tribes, \* \* \* the relationship between the Federal Government and Indian Tribes, or \* \* \* the distribution of power and responsibilities between the Federal Government and Indian Tribes." Thus, no further action is required under Executive Order 13175.

*H. Paperwork Reduction Act*

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

*I. e-Government Act Compliance*

USDA is committed to compliance with the e-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for

preferred procurement under each designated item. For information pertinent to e-Government Act compliance related to this rule, please contact Ron Buckhalt at (202) 205–4008.

**List of Subjects in 7 CFR Part 2902**

Biobased products, Procurement.

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

**CHAPTER XXIX—OFFICE OF ENERGY POLICY AND NEW USES****PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT**

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

**Authority:** 7 U.S.C. 8102.

2. Add §§ 2902.52 through 2902.60 to subpart B to read as follows:

Sec.

- 2902.52 Disposable tableware.
- 2902.53 Expanded polystyrene (EPS) foam recycling products.
- 2902.54 Heat transfer fluids.
- 2902.55 Ink removers and cleaners.
- 2902.56 Mulch and compost materials.
- 2902.57 Multipurpose lubricants.
- 2902.58 Office paper.
- 2902.59 Topical pain relief products.
- 2902.60 Turbine drip oils.

**§ 2902.52 Disposable tableware.**

(a) *Definition.* Products used in dining, such as drink ware and dishware, including but not limited to cups, plates, bowls, and serving platters, and that are designed for one-time use. This item does not include disposable cutlery, which is a separate item.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 72 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 disposable tableware. 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 disposable tableware.

**§ 2902.53 Expanded polystyrene (EPS) foam recycling products.**

(a) *Definition.* Products formulated to dissolve EPS foam to reduce the volume of recycled or discarded EPS items.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 90 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 EPS foam recycling products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased EPS foam recycling products.

**§ 2902.54 Heat transfer fluids.**

(a) *Definition.* Products with high thermal capacities used to facilitate the transfer of heat from one location to another, including coolants or refrigerants for use in HVAC applications, internal combustion engines, personal cooling devices, thermal energy storage, or other heating or cooling closed-loops.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 89 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 heat transfer fluids. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased heat transfer fluids.

**§ 2902.55 Ink removers and cleaners.**

(a) *Definition.* Chemical products designed to remove ink, haze, glaze, and other residual ink contaminants from the surfaces of equipment, such as rollers, used in the textile and printing industries.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 79 percent, which shall be based

on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

#### § 2902.56 Mulch and compost materials.

(a) *Definition.* Products designed to provide a protective covering placed over the soil, primarily to keep down weeds and to improve the appearance of landscaping. Compost is the aerobically decomposed remnants of organic materials used in gardening and agriculture as a soil amendment, and commercially by the landscaping and container nursery industries.

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

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

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying products within this item may overlap with the EPA-designated recovered content product: Landscaping products—“compost” and “hydraulic mulch”. 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 landscaping products and which product should be afforded the preference in purchasing.

**Note to paragraph (d):** Biobased mulch and compost materials within this designated item can compete with similar landscaping products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated landscaping products containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.15.

#### § 2902.57 Multipurpose lubricants.

(a) *Definition.* Products designed to provide lubrication under a variety of conditions and in a variety of industrial settings to prevent friction or rust. Greases, which are lubricants composed of oils thickened to a semisolid or solid consistency using soaps, polymers or other solids, or other thickeners, are not included in this item. In addition, task-specific lubricants, such as chain and cable lubricants and gear lubricants, are not included in this item.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 88 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 multipurpose lubricants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased multipurpose lubricants.

(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 BioPreferred Web site about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining

whether or not a qualifying biobased product overlaps with EPA-designated re-refined lubricating oils and which product should be afforded the preference in purchasing.

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

#### § 2902.58 Office paper.

(a) *Definition.* Paper products used in office printer and copier applications, writing, and coated papers for publications.

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

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased office paper. 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 office paper.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying products within this item may overlap with the EPA-designated recovered content product: Paper and paper products. 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 paper and paper products and which product should be afforded the preference in purchasing.

**Note to paragraph (d):** Biobased office paper within this designated item can

compete with similar paper and paper products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated paper and paper products containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.10.

**§ 2902.59 Topical pain relief products.**

(a) *Definition.* Products that can be balms, creams and other topical treatments used for the relief of muscle, joint, headache, and nerve pain, as well as sprains, bruises, swelling, and other aches.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 91 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 topical pain relief products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased topical pain relief products.

**§ 2902.60 Turbine drip oils.**

(a) *Definition.* Products that are lubricants for use in drip lubrication systems for water well line shaft bearings, water turbine bearings for irrigation pumps, and other turbine bearing applications.

(b) *Minimum biobased content.* The preferred procurement product must

have a minimum biobased content of at least 87 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 turbine drip oils. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased turbine drip oils.

Dated: February 2, 2010.

**Pearlie S. Reed,**

*Assistant Secretary for Administration, U.S. Department of Agriculture.*

[FR Doc. 2010-2651 Filed 2-9-10; 8:45 am]

**BILLING CODE 3410-93-P**