

**DEPARTMENT OF AGRICULTURE****7 CFR Part 3201**

RIN 0599-AA14

**Designation of Product Categories for Federal Procurement****AGENCY:** Office of Procurement and Property Management, USDA.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Department of Agriculture (USDA) is proposing to amend the Guidelines for Designating Biobased Products for Federal Procurement (Guidelines) to add 13 sections that will designate the following product categories within which biobased products would be afforded Federal procurement preference: Air fresheners and deodorizers; asphalt and tar removers; asphalt restorers; blast media; candles and wax melts; electronic components cleaners; floor coverings (non-carpet); foot care products; furniture cleaners and protectors; inks; packaging and insulating materials; pneumatic equipment lubricants; and wood and concrete stains. USDA is also proposing minimum biobased contents for each of these product categories.

**DATES:** USDA will accept public comments on this proposed rule until November 14, 2011.

**ADDRESSES:** You may submit comments by any of the following methods. All submissions received must include the agency name and Regulatory Information Number (RIN). The RIN for this rulemaking is 0599-AA14. Also, please identify submittals as pertaining to the "Proposed Designation of Product Categories."

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

- *E-mail:* [biopreferred@usda.gov](mailto:biopreferred@usda.gov). Include RIN number 0599-AA14 and "Proposed Designation of Product Categories" on the subject line. Please include your name and address in your message.

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

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

**FOR FURTHER INFORMATION CONTACT:** Ron Buckhalt, USDA, Office of Procurement

and Property Management, Room 361, Reporters Building, 300 7th St., SW., Washington, DC 20024; *e-mail:* [biopreferred@usda.gov](mailto:biopreferred@usda.gov); phone (202) 205-4008. Information regarding the Federal biobased products 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 product categories is proposed under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), 7 U.S.C. 8102 (referred to in this document as "section 9002").

**II. Background**

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

well as Federal agencies, are expressly subject to the procurement preference provisions of section 9002.

The term "product category" is used in the designation process to mean a generic grouping of specific products that perform a similar function, such as the various brands of foot care products or furniture cleaners. Once USDA designates a product category, procuring agencies are required generally to purchase biobased products within these designated product categories where the purchase price of the procurement product exceeds \$10,000 or where the quantity of such products or the functionally equivalent products purchased over the preceding fiscal year equaled \$10,000 or more. Procuring agencies must procure biobased products within each product category unless they determine that products within a product category are not reasonably available within a reasonable period of time, fail to meet the reasonable performance standards of the procuring agencies, or are available only at an unreasonable price. As stated in 7 CFR part 3201—"Guidelines for Designating Biobased Products for Federal Procurement" (Guidelines), biobased products that are merely incidental to Federal funding are excluded from the Federal preferred procurement program; that is, the requirements to purchase biobased products do not apply to such purchases if they are unrelated to or incidental to the purpose of the Federal contract. In implementing the Federal preferred procurement program for biobased products, procuring agencies should follow their procurement rules and Office of Federal Procurement Policy guidance on buying non-biobased products when biobased products exist and should document exceptions taken for price, performance, and availability.

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

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

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

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

Within today’s proposed rule, USDA is proposing to subcategorize one of the

product categories. That product category is inks and the proposed subcategories are: Specialty inks used to add extra characteristics or features to printed material; inks used for coated paper, paperboard, plastic, and foil (sheetfed—color and sheetfed—black); inks used in photocopying and laser machines (printer toner—<25 pages per minute (ppm) and printer toner—≥25 ppm); and inks used primarily in newsprint (news). In addition, public comments and additional data are being requested for several other product categories and subcategories may be created in a future rulemaking.

*Minimum Biobased Contents.* The minimum biobased contents being proposed with today’s rule are based on products for which USDA has biobased content test data. Because the submission of product samples for biobased content testing is on a strictly voluntary basis, USDA was able to obtain samples only from those manufacturers who volunteered to invest the resources required to submit the samples.

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

USDA also considers the overall range of the tested biobased contents within a product category, groupings of similar values, and breaks (significant gaps between two groups of values) in the biobased content test data array. For example, the biobased contents of five tested products within a product category being proposed for designation today are 14, 46, 100, 100, and 100 percent. Because this is a very wide range, and because there is a significant gap in the data between the 46 percent biobased product and the 100 percent biobased products, USDA reviewed the product literature to determine whether subcategories could be created within this product category. USDA found that

the available product information did not justify subcategorization. Further, USDA did not find any performance claims that would justify setting the minimum biobased content based on the 14 or 46 percent biobased content products. Thus, USDA is proposing to set the minimum biobased content for this product category based on the product with a tested biobased content of 100 percent. USDA believes that this evaluation process allows it to establish minimum biobased contents based on a broad set of factors to assist the Federal procurement community in its decisions to purchase biobased products.

USDA makes every effort to obtain biobased content test data on multiple products within each product category. For most designated product categories, USDA has biobased content test data on more than one product within the category. However, in some cases, USDA has been able to obtain biobased content data for only a single product within a designated product category. As USDA obtains additional data on the biobased contents for products within these designated product categories or their subcategories, USDA will evaluate whether the minimum biobased content for a designated product category or subcategory will be revised.

USDA anticipates that the minimum biobased content of a product category that is based on a single product is more likely to change as additional products within that category are identified and tested. In today’s proposed rule, the minimum biobased contents for the “inks (printer toner—≥25 ppm)” and the “inks (news)” subcategories of the inks product category are based on a single tested product within each subcategory. Based on discussions with industry stakeholders, USDA believes that the tested products are representative of other products within the subcategories, but has been unable to obtain additional products for testing. In addition to requesting comments on the appropriateness of the proposed minimum biobased contents for these subcategories, USDA requests that stakeholders provide biobased content data on their products.

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

*Overlap with EPA’s Comprehensive Procurement Guideline program for recovered content products under the Resource Conservation and Recovery*

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

Section 6002 of RCRA requires a procuring agency procuring a product designated by EPA generally to procure such a product composed of the highest percentage of recovered materials content practicable. However, a procuring agency may decide not to procure such a product based on a determination that it fails to meet the reasonable performance standards or

specifications of the procuring agency. A product with recovered materials content may not meet reasonable performance standards or specifications, for example, if the use of the product with recovered materials content would jeopardize the intended end use of the product.

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

This proposed rule designates three product categories for Federal preferred procurement for which there may be overlap with an EPA-designated recovered content product. The first is blast media, which may overlap with the EPA-designated recovered content product "Miscellaneous products—blasting grit." The second is floor coverings (non-carpet), which may overlap with the EPA-designated recovered content product "Floor tiles." The third is pneumatic equipment lubricants, which may overlap with the EPA-designated recovered content product "Re-refined lubricating oils." EPA provides recovered materials content recommendations for these recovered content products in Recovered Materials Advisory Notice (RMAN) I. The RMAN recommendations for these CPG products can be found by accessing EPA's Web site <http://www.epa.gov/epaoswer/non-hw/procure/products.htm> and then clicking on the appropriate product name.

*Federal Government Purchase of Sustainable Products.* The Federal government's sustainable purchasing program includes the following three statutory preference programs for designated products: the BioPreferred Program, the EPA's Comprehensive Procurement Guideline for products containing recovered materials, and the

Environmentally Preferable Purchasing program. The Office of the Federal Environmental Executive (OFEE) and the Office of Management and Budget (OMB) encourage agencies to implement these components comprehensively when purchasing products and services.

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

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

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

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

*Other Federal Preferred Procurement Programs.* Federal procurement officials should also note that biobased products may be available for purchase by Federal agencies through the AbilityOne Program (formerly known as the Javits-Wagner-O'Day (JWOD) program). Under this program, members of organizations including the National Industries for the Blind (NIB) and 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 product categories being proposed today (air fresheners and deodorizers, blast media, floor coverings, and inks (printer toner—<25 ppm)) are available through the AbilityOne Program. While there is no specific product within these product categories identified in the AbilityOne online catalog as being a biobased product, it is possible that such biobased products are available or will be available in the future. Also, because additional categories of products are frequently added to the AbilityOne Program, it is possible that biobased products within other product categories being proposed for designation today may be available through the AbilityOne Program in the future. Procurement of biobased products through the AbilityOne Program would further the objectives of both the AbilityOne Program and the Federal preferred procurement program.

*Outreach.* To augment its own research, USDA consults with industry and Federal stakeholders to the Federal preferred procurement program during the development of the rulemaking packages for the designation of product categories. USDA consults with stakeholders to gather information used in determining the order of product category designation and in identifying: Manufacturers producing and marketing products that fall within a product

category proposed for designation; performance standards used by Federal agencies evaluating products to be procured; and warranty information used by manufacturers of end user equipment and other products with regard to biobased products.

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

In the preamble to the first six product categories designated for Federal preferred procurement (71 FR 13686, March 16, 2006), USDA stated that it planned to identify approximately 10 product categories in each future rulemaking. In an effort to finalize the designation of more product categories in a shorter time period, USDA now plans to increase the number of product categories in each rulemaking, whenever possible. Thus, today's proposed rulemaking would designate 13 product categories for Federal preferred procurement.

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

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

USDA is proposing to designate the following product categories for Federal preferred procurement: Air fresheners

and deodorizers; asphalt and tar removers; asphalt restorers; blast media; candles and wax melts; electronic components cleaners; floor coverings (non-carpet); foot care products; furniture cleaners and protectors; inks, including specialty inks, inks (sheetfed—color), inks (sheetfed—black), inks (printer toner—<25 ppm), inks (printer toner—≥25 ppm), and inks (news) as subcategories; packaging and insulating materials; pneumatic equipment lubricants; and wood and concrete stains. USDA is also proposing minimum biobased content for each of these product categories. Lastly, USDA is proposing a date by which Federal agencies must incorporate these designated product categories 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 product categories. Information on the availability, relative price, performance, and environmental and public health benefits of individual products within each of these product categories is not presented in this notice. Further, USDA has reached an understanding with manufacturers not to publish their names in conjunction with specific product data published in the **Federal Register** when designating product categories. This understanding was reached to encourage manufacturers to submit products for testing to support the designation of a product category. Once a product category has been designated, USDA will encourage the manufacturers of products within the product category to voluntarily make their names and other contact information available for the BioPreferred Web site.

*Warranties.* Some of the product categories being proposed for designation today may affect original equipment manufacturers (OEMs) warranties for equipment in which the product categories are used. For example, the manufacturer of a piece of equipment that requires lubrication typically includes a list of recommended lubricants in the owner/operators manual that accompanies the equipment when purchased. If the purchaser of the equipment uses a lubricant (including a biobased lubricant) that is not among the lubricants recommended by the equipment manufacturer, the manufacturer may cite that as a reason not to honor the warranty on the equipment. At this time, USDA does not

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

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

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

1. Three of the product categories being proposed for designation (blast media, floor coverings, and pneumatic equipment lubricants) 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 product categories 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 product categories. If you know of other such standards or relevant measures of performance for any of the proposed product categories, USDA requests that you submit information identifying such standards and measures, including their name (and other identifying information as necessary), identifying who is using the standard/measure, and describing the circumstances under which the product is being used.

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

4. Several product categories (*e.g.*, air fresheners and deodorizers, electronic components cleaners, floor coverings, inks, and wood and concrete stains) have wide ranges of tested biobased contents. For the reasons discussed later in this preamble, USDA is proposing a minimum biobased content that would allow many of the tested products to be eligible for Federal preferred procurement. USDA welcomes comments on the appropriateness of the proposed minimum biobased contents for these product categories and whether there are potential subcategories within the product categories that should be considered.

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

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

To assist you in developing your comments, the background information used in proposing these product categories for designation has been assembled in a technical support document (TSD), "Technical Support for Proposed Rule—Round 8 Designated Product Categories," which is available on the BioPreferred Web site. The TSD document can be located by clicking on the "Federal Procurement Preference" link on the right side of the BioPreferred Web site's home page (<http://www.biopreferred.gov>) and then on the "Rules and Regulations" link. At the next screen, click on the Supporting Documentation link under Round 8

Designation under the Proposed Regulations section.

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

##### A. Background

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

In considering 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 product categories being considered for designation. USDA uses the results of these same searches to determine if an item is generally available.

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

In considering the life-cycle costs of product categories proposed for designation, USDA has obtained the necessary input information (on a voluntary basis) from manufacturers of biobased products and has used the BEES analytical tool to analyze individual products within each proposed product category. The BEES analytical tool measures the environmental performance and the economic performance of a product. The environmental performance scores,

impact values, and economic performance results for products within the Round 8 designated product categories analyzed using the BEES analytical tool can be found in "Technical Support for Proposed Rule—Round 8 Designated Product Categories," 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 Federal preferred procurement program more efficient.

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

USDA recognizes that information related to the functional performance of biobased products is a primary factor in making the decision to purchase these products. USDA is gathering information on industry standard test methods and performance standards that manufacturers are using to evaluate the functional performance of their products. (Test methods are procedures used to provide information on a certain attribute of a product. For example, a test method might determine how many bacteria are killed. Performance standards identify the level at which a

product must perform in order for it to be "acceptable" to the entity that set the performance standard. For example, a performance standard might require that a certain percentage (e.g., 95 percent) of the bacteria must be killed through the use of the product.) The primary sources of information on these test methods and performance standards are manufacturers of biobased products within these product categories. Additional test methods and performance standards are also identified during meetings of the Interagency council and during the review process for each proposed rule. We have listed, under the detailed discussion of each product category proposed for designation (presented in Section IV.B), the functional performance test methods, performance standards, product certifications, and other measures of performance associated with the functional aspects of products identified during the development of this **Federal Register** notice for these product categories.

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

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

presented are all the data that were submitted in response to USDA requests for information from manufacturers of the products within the product categories proposed for designation. While USDA would prefer to have complete data on the full range of products within each product category, the data that were submitted support designation of the product categories in today's proposed rule.

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

#### *B. Product Categories Proposed for Designation*

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

In general, product categories are developed and prioritized for designation by evaluating them against program criteria established by USDA and by gathering information from other

government agencies, private industry groups, and manufacturers. These evaluations begin by looking at the cost, performance, and availability of products within each product category. USDA then considers the following points:

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

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

In today's proposed rule, USDA is proposing to designate the following product categories for the Federal preferred procurement program: Air fresheners and deodorizers; asphalt and tar removers; asphalt restorers; blast media; candles and wax melts; electronic components cleaners; floor coverings (non-carpet); foot care products; furniture cleaners and protectors; inks, including specialty inks, inks (sheetfed—color), inks (sheetfed—black), inks (printer toner—<25 ppm), inks (printer toner—≥25 ppm), and inks (news) as subcategories; packaging and insulating materials; pneumatic equipment lubricants; and wood and concrete stains. USDA has determined that each of these product categories meets the necessary statutory requirements—namely, that they are being produced with biobased products and that their procurement by procuring

agencies will carry out the following objectives of section 9002:

- To increase demand for biobased products, which would in turn increase demand for agricultural commodities that can serve as feedstocks for the production of biobased products;
- To spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and
- To enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas.

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

*Overlap with EPA's Comprehensive Procurement Guideline program for recovered content products.* In today's proposed rule, three product categories may overlap with EPA-designated recovered content products. The first is blast media, which may overlap with the EPA-designated recovered content product "Miscellaneous products—blasting grit." The second is floor coverings (non-carpet), which may overlap with the EPA-designated recovered content product "Floor tiles." The third is pneumatic equipment lubricants, which may overlap with the EPA-designated recovered content product "Re-refined lubricating oils."

For these product categories, USDA is requesting information on overlap situations to further help procuring agencies make informed decisions when faced with purchasing a recovered content material product or a biobased product. As this information is developed, USDA will make it available on the BioPreferred Web site.

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

Although each product category in today's proposed rule would be exempt from the procurement preference requirement when used in spacecraft systems or launch support application or in military equipment used in combat and combat-related applications, this exemption does not extend to contractors performing work other than

direct maintenance and support of the spacecraft or launch support equipment or combat or combat-related missions. For example, if a contractor is applying furniture cleaners and protectors to the furniture in an office building on a military base, the furniture cleaners and protectors the contractor purchases and uses in the office building should be a qualifying biobased furniture cleaner and protector. The exemption does apply, however, if the product being purchased by the contractor is for use in combat or combat-related missions or for use in space or launch applications. After reviewing the regulatory requirement and the relevant contract, where contractors have any questions on the exemption, they should contact the cognizant contracting officer.

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

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

#### 1. Air Fresheners and Deodorizers (Minimum Biobased Content 97 Percent)<sup>1</sup>

Air fresheners and deodorizers are products used to alleviate the experience of unpleasant odors by chemical neutralization, absorption, anesthetization, or masking.

USDA identified 44 manufacturers and suppliers of 77 air fresheners and deodorizers. These 44 manufacturers and suppliers do not necessarily include all manufacturers of air fresheners and deodorizers, 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 test methods (as shown below) used in evaluating products within this product category. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this

product category, the two test methods identified by the manufacturers are:

#### Test Methods

- Environmental Protection Agency (EPA), 40 CFR part 797.1300, Daphnid Acute Toxicity Test. Method used to determine the concentration of a substance that produces a toxic effect; and
- EPA, 40 CFR part 797.1400, Fish Acute Toxicity Test. Method used to determine the concentration of a substance that produces a toxic effect.

USDA contacted procurement officials with various policy-making and procuring agencies in an effort to gather information on the purchases of air fresheners and deodorizers, as well as information on products within the other 12 product categories proposed for designation today. These agencies included GSA, several offices within the DLA, OFEE, USDA Departmental Administration, the National Park Service, EPA, a Department of Energy laboratory, and OMB. Communications with these Federal officials led to the conclusion that obtaining current usage statistics and specific potential markets within the Federal government for biobased products within the 13 proposed designated product categories is not possible at this time.

Most of the contacted officials reported that procurement data are appropriately reported in higher level groupings of Federal Supply Codes<sup>2</sup> for materials and supplies, which is higher level coding than the proposed designated product categories. Using terms that best match the product categories in today's proposed rule, USDA queried the GSA database for Federal purchases of products within today's proposed product categories. The results indicate purchases of products within product categories in today's proposed rule. The results of this inquiry can be found in the TSD 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 leads to less accurate data on purchases of specific products.

USDA also investigated the Web site *FEDBIZOPPS.gov*, a site which lists Federal contract purchase opportunities and awards greater than \$25,000. The information provided on this Web site,

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

however, is for broad categories of services and products rather than the specific types of products that are included in today's proposed rule. Therefore, USDA has been unable to obtain data on the amount of air fresheners and deodorizers purchased by procuring agencies. However, Federal agencies routinely procure such products and contract for lodging, cleaning, and health care related services involving the use of such products. Thus, they have a need for air fresheners and deodorizers and for services that use these products. Designation of air fresheners and deodorizers will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on 14 air fresheners and deodorizers. Analyses of the environmental and human health benefits and the life-cycle costs of biobased air fresheners were performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 8 product categories, which can be found on the BioPreferred Web site.

#### 2. Asphalt and Tar Removers (Minimum Biobased Content 80 Percent)

Asphalt and tar removers are products designed to remove asphalt or tar from equipment, roads, or various surfaces.

USDA identified 13 manufacturers and suppliers of 16 asphalt and tar removers. The 13 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased asphalt and tar removers, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of a product category for Federal preferred procurement because it is not one of the criteria section 9002 requires USDA to consider. If and when performance standards, test methods, and other relevant measures of performance are identified for this product category, USDA will provide such information on the BioPreferred Web site.

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

USDA attempted to gather data on the potential market for asphalt and tar remover products within the Federal government, as discussed in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, Federal agencies routinely procure such products and perform, or procure contract services to perform, the types of cleaning activities that would use these products. Thus, they have a need for asphalt and tar removers and for services that require the use of asphalt and tar removers. Designation of asphalt and tar removers will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on eight asphalt and tar removers. Analyses of the environmental and human health benefits and the life-cycle costs of asphalt and tar removers were performed for two products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 8 product categories, which can be found on the BioPreferred Web site.

### 3. Asphalt Restorers (Minimum Biobased Content 68 Percent)

Asphalt restorers are products designed to seal, protect, or restore poured asphalt and concrete surfaces and are typically applied through spraying immediately after pouring of concrete or asphalt.

USDA identified five manufacturers and suppliers of seven asphalt restorers. The five manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased asphalt restorers, 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 test method (as shown below) used in evaluating products within this product category. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this product category, the one test method identified by the manufacturers is:

#### Test Method

- ASTM D2170—Standard Test Method for Kinematic Viscosity of Asphalts (Bitumens).

USDA attempted to gather data on the potential market for asphalt restorer

products within the Federal government, as discussed in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, many Federal agencies routinely perform, or procure contract services to perform, the types of paving activities that would use these products. Thus, they have a need for asphalt restorers and for services that require the use of asphalt restorers. Designation of asphalt restorers will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on five asphalt restorers. An analysis of the environmental and human health benefits and the life-cycle costs of asphalt restorers was performed for one product using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 8 product categories, which can be found on the BioPreferred Web site.

### 4. Blast Media (Minimum Biobased Content 94 Percent)

Blast media are abrasive particles sprayed forcefully to clean, remove contaminants, or condition surfaces, often preceding coating.

USDA identified 7 manufacturers and suppliers of 13 different blast media. These seven manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased blast media, 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 test method (as shown below) used in evaluating products within this product category. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this product category, the one test method identified by the manufacturers is:

#### Test Method

- ASTM International D2240 Standard Test Method for Rubber Property—Durometer Hardness.

USDA attempted to gather data on the potential market for blast media within the Federal government, as discussed in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, many Federal agencies routinely use blast media in cleaning and painting

operations. In addition, Federal agencies may contract for services involving the use of such products. Thus, they have a need for blast media and for services that require the use of blast media. Designation of blast media will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 13 blast media products. Analyses of the environmental and human health benefits and the life-cycle costs of blast media were performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 8 product categories, which can be found on the BioPreferred Web site.

### 5. Candles and Wax Melts (Minimum Biobased Content 88 Percent)

Candles and wax melts are products that are in the form of a solid mass that either has an embedded wick that is burned to provide light or aroma, or is wickless and melts when heated to produce just aroma.

USDA identified 267 manufacturers and suppliers of 708 candles and wax melts. These 267 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased candles and wax melts, 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 test method (as shown below) used in evaluating products within this product category. While other test methods and measures of performance, as well as performance standards, applicable to products within this product category may exist, the only test method identified by manufacturers is:

#### Test Method

- ASTM International F2417, Standard Specification for Fire Safety for Candles.

USDA attempted to gather data on the potential market for candles and wax melts within the Federal government, as discussed in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, many Federal agencies routinely maintain, or procure contract services to maintain, residential facilities that use candles and wax melts. Thus, they have a need for these products. Designation of candles and wax melts will promote the use of

biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 85 candles and wax melts. Analyses of the environmental and human health benefits and the life-cycle costs of candles and wax melts were performed for two of the products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 8 product categories, which can be found on the BioPreferred Web site.

#### 6. Electronic Components Cleaners (Minimum Biobased Content 91 Percent)

Electronic components cleaners are products used to wash or remove dirt or extraneous matter from electronic parts, devices, circuits, or systems.

USDA identified seven manufacturers and suppliers of eight electronic components cleaners. These seven manufacturers and suppliers do not necessarily include all manufacturers and suppliers of electronic components cleaners, 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 test method (as shown below) used in evaluating products within this product category. While other test methods and measures of performance, as well as performance standards, applicable to products within this product category may exist, the only test method identified by manufacturers is:

##### Test Method

- ASTM International D86, Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.

USDA attempted to gather data on the potential market for electronic components cleaners within the Federal government, as discussed in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, most Federal agencies routinely procure electronic components cleaners, or procure services that use these products. Thus, they have a need for electronic components cleaners and for services that require the use of electronic components cleaners. Designation of electronic components cleaners will promote the use of biobased products,

furthering the objectives of this program.

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

#### 7. Floor Coverings (Non-Carpet) (Minimum Biobased Content 91 Percent)

Floor coverings that are designed for use as the top layer on a floor and that are not carpet products. Examples are bamboo, hardwood, and cork tiles.

USDA identified 38 manufacturers and suppliers of 343 floor coverings. These 38 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of floor coverings, 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 test method (as shown below) used in evaluating products within this product category. While other test methods and measures of performance, as well as performance standards, applicable to products within this product category may exist, the only test method identified by manufacturers is:

##### Test Method

- ASTM E1333—Standard Test Method for Determining Formaldehyde Concentrations in Air and Emission Rates from Wood Products Using a Large Chamber.

USDA attempted to gather data on the potential market for floor coverings within the Federal government, as discussed in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, many Federal agencies routinely procure floor coverings, or contract with services that procure these products. Thus, they have a need for floor coverings and for services that require the use of floor coverings. Designation of floor coverings will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 45 floor coverings. An analysis of the environmental and human health benefits and the life-cycle costs of biobased floor coverings was performed for one product using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 8 product categories, which can be found on the BioPreferred Web site.

#### 8. Foot Care Products (Minimum Biobased Content 83 Percent)

Foot care products are products used in the soothing or cleaning of feet.

USDA identified 36 manufacturers and suppliers of 62 foot care products. These 36 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of foot care products, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified three test methods (as shown below) used in evaluating products within this product category. While other test methods and measures of performance, as well as performance standards, applicable to products within this product category may exist, the three test methods identified by manufacturers are:

##### Test Methods

- ASTM International E1207—Standard Practice for the Sensory Evaluation of Axillary Deodorancy;
- ASTM International E1909—Standard Guide for Time-Intensity Evaluation of Sensory Attributes; and
- ASTM International F2412—Standard Test Methods for Foot Protection.

USDA attempted to gather data on the potential market for foot care products within the Federal government, as discussed in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, Federal agencies procure foot care products for use in medical care or similar types of facilities, or they procure the services that use these products. Thus, they have a need for foot care products and for services that require the use of foot care products. Designation of foot care products will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended

use, biobased content, and performance characteristics have been collected on 13 foot care products. An analysis of the environmental and human health benefits and the life-cycle costs of biobased foot care products was performed for one product using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 8 product categories, which can be found on the BioPreferred Web site.

#### 9. Furniture Cleaners and Protectors (Minimum Biobased Content 77 Percent)

Furniture cleaners and protectors are cleaning agents designed to clean, protect, and increase the life of household furniture, not including upholstery.

USDA identified 24 manufacturers and suppliers of 36 furniture cleaner and protector products. These 24 manufacturers and suppliers do not necessarily include all manufacturers of furniture cleaners and protectors, merely those identified during USDA information gathering activities. Information supplied by the manufacturers and suppliers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of a product category for Federal preferred procurement because it is not one of the criteria section 9002 requires USDA to consider. If and when performance standards, test methods, and other relevant measures of performance are identified for this product category, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for furniture cleaners and protectors within the Federal government using the procedure described in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, Federal agencies routinely engage in operations where furniture cleaners and protectors are used. In addition, many Federal agencies contract for lodging and housekeeping activities involving the use of such products. Thus, they have a need for furniture cleaners and protectors and for services that use furniture cleaners and protectors. Designation of furniture cleaners and protectors will promote the use of biobased products, furthering the objectives of this program.

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

10. Inks (Minimum Biobased Content: 66 percent for Specialty Inks; 67 Percent for Inks (Sheetfed—Color); 49 Percent for Inks (Sheetfed—Black); 34 Percent for Inks (Printer Toner—< 25 ppm); 20 Percent for Inks (Printer Toner—≥ 25 ppm); and 32 Percent for Inks (News)

Specialty inks are products used by printers to add extra characteristics to their prints, for special effects or functions, including CD printing, erasable, PDA compliant, invisible, magnetic, OCR, RFID, scratch & sniff, thermochromic and tree-marking inks. Inks (sheetfed—color) and inks (sheetfed—black) are inks used on coated and uncoated paper, paperboard, some plastic and foil to print items such as annual reports, brochures, and labels. Inks (printer toner—< 25 ppm) and (printer toner—≥ 25 ppm) are a powdered chemical, used in photocopying machines and laser printers, which is transferred onto paper to form the printed image. These inks are usually stored in a cartridge which is placed in the printer. Inks (news) are inks used primarily to print newspapers.

USDA identified 11 manufacturers and suppliers of 31 different biobased specialty inks; 17 manufacturers of 53 biobased inks (sheetfed); 28 manufacturers and suppliers of 40 different biobased inks (printer toner); and 8 manufacturers and suppliers of 24 different biobased inks (news). These manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased inks, merely those identified during USDA information gathering activities. Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. However, manufacturers and stakeholders contacted by USDA did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of a product category for Federal preferred

procurement because it is not one of the criteria section 9002 requires USDA to consider. If and when performance standards, test methods, and other relevant measures of performance are identified for this product category, USDA will provide such information on the BioPreferred Web site.

USDA attempted to gather data on the potential market for inks within the Federal government as discussed in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, many Federal agencies perform printing operations, or procure services that perform printing operations, that use various types of inks. Thus, they have a need for inks and for services that require the use of inks. Designation of inks will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 67 inks. Analyses of the environmental and human health benefits and the life-cycle costs of biobased inks were performed for three inks using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 8 product categories, which can be found on the BioPreferred Web site.

#### 11. Packaging and Insulating Materials (Minimum Biobased Content 82 Percent)

Packaging and insulating materials are pre-formed or molded materials used to hold package contents in place during shipping or for insulating and sound-proofing applications. Examples include; packaging “peanuts,” foam packaging that is molded into specific shapes to surround electronic items, and material molded into sheets that are used as sound-proofing insulation for home theaters.

USDA identified 16 manufacturers of 23 biobased packaging and insulating material products. The 16 manufacturers do not necessarily include all manufacturers of biobased packaging and insulating materials, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified 10 methods (as shown below) used in evaluating products within this product category. While other test methods and other measures of performance, as well as performance standards, applicable to

products within this product category may exist, those test methods and other measures of performance identified by manufacturers are:

#### Test Methods

- ASTM International D6400—Standard Specification for Compostable Plastics;
- ASTM International D4169—Standard Practice for Performance Testing of Shipping Containers and Systems;
- Military Specification MIL-P-1120b Cushioning material. Uncompressed bound fiber;
- Military Specification MIL-P-1120c Cushioning material. Uncompressed bound fiber (Metric measurements);
- ASTM C1338—Standard Test Method for Determining Fungi Resistance of Insulation Materials and Facings;
- ASTM D4168—Standard Test Methods for Transmitted Shock Characteristics of Foam-in-Place Cushioning Materials;
- ASTM D4236—Standard Practice for Labeling Art Materials for Chronic Health Hazards;
- ASTM D5338—Standard Test Method for Determining Aerobic Biodegradation of Plastic Materials Under Controlled Composting Conditions;
- ASTM D6868—Standard Specification for Biodegradable Plastics used as Coatings on Paper and Other Compostable Substrates; and
- ASTM D963—Specification for Copper Phthalocyanine Blue Pigment.

USDA attempted to gather data on the potential market for packaging and insulating materials within the Federal government, as discussed in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, most Federal agencies routinely use, and procure services that use packaging and insulating materials. Thus, they have a need for packaging and insulating materials and for services that require the use of these materials. Designation of packaging and insulating materials will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 15 packaging and insulating materials. An analysis of the environmental and human health benefits and the life-cycle costs of biobased packaging and insulating materials was performed for two products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 8

product categories, which can be found on the BioPreferred Web site.

#### 12. Pneumatic Equipment Lubricants (Minimum Biobased Content 67 Percent)

Lubricants designed specifically for pneumatic equipment including air compressors, vacuum pumps, in-line lubricators, rock drills, jackhammers, *etc.*

USDA identified 11 manufacturers and suppliers of 25 pneumatic equipment lubricants. These 11 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of pneumatic equipment 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 20 test methods (as shown below) used in evaluating products within this product category. While other test methods and measures of performance, as well as performance standards, applicable to products within this product category may exist, the only test methods identified by manufacturers are:

#### Test Methods

- ASTM D130—Standard Test Method for Corrosiveness to Copper from Petroleum Products by Copper Strip Test;
- ASTM D2266—Standard Test Method for Wear Preventive Characteristics of Lubricating Grease (Four-Ball Method);
- ASTM D2270—Standard Practice for Calculating Viscosity Index From Kinematic Viscosity at 40 and 100°C;
- ASTM D2272—Standard Test Method for Oxidation Stability of Steam Turbine Oils by Rotating Pressure Vessel;
- ASTM D2619—Standard Test Method for Hydrolytic Stability of Hydraulic Fluids (Beverage Bottle Method);
- ASTM D287—Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method);
- ASTM D2982—Standard Test Methods for Detecting Glycol-Base Antifreeze in Used Lubricating Oils;
- ASTM D2983—Standard Test Method for Low-Temperature Viscosity of Lubricants Measured by Brookfield Viscometer;
- ASTM D445—Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Viscosity);

- ASTM D5864—Standard Test Method for Determining Aerobic Aquatic Biodegradation of Lubricants or Their Components;
- ASTM D5985—Standard Test Method for Pour Point of Petroleum Products (Rotational Method);
- ASTM D6400—Standard Specification for Compostable Plastics;
- ASTM D665—Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water;
- ASTM D892—Standard Test Method for Foaming Characteristics of Lubricating Oils;
- ASTM D92—Standard Test Method for Flash and Fire Points by Cleveland Open Cup Tester;
- ASTM D93—Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester;
- ASTM D97—Standard Test Method for Pour Point of Petroleum Products;
- ISO 32—Calibration in analytical chemistry and use of certified reference materials;
- ISO VG-46—Designates oil viscosity grade; and
- SAE 30—J3000 Engine Oil Viscosity Classification.

USDA attempted to gather data on the potential market for pneumatic equipment lubricants within the Federal government, as discussed in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, many Federal agencies routinely procure pneumatic equipment lubricants, or contract with services that procure these products. Thus, they have a need for pneumatic equipment lubricants and for services that require the use of pneumatic equipment lubricants. Designation of pneumatic equipment lubricants will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on 12 pneumatic equipment lubricants. Analyses of the environmental and human health benefits and the life-cycle costs of biobased pneumatic equipment lubricants were performed for two products using the BEES analytical tool. The results of those analyses are presented in the TSD for the Round 8 product categories, which can be found on the BioPreferred Web site.

#### 13. Wood and Concrete Stains (Minimum Biobased Content 39 Percent)

A finish for concrete and wood surfaces that contains a dye or pigment

to change the color without concealing the grain pattern or surface texture.

USDA identified 15 manufacturers and suppliers of 48 wood and concrete stains. These 15 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of wood and concrete stains, 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 two test methods (as shown below) used in evaluating products within this product category. While other test methods and measures of performance, as well as performance standards, applicable to products within this product category may exist, the test methods identified by manufacturers are:

#### Test Method

- GREENGUARD Indoor Air Quality Certified® standard for indoor air quality.
- DIN EN 71-3 “Safety of Toys” certified as suitable for use on toys.

USDA attempted to gather data on the potential market for wood and concrete stains within the Federal government, as discussed in the section on air fresheners and deodorizers. These attempts were largely unsuccessful. However, many Federal agencies routinely procure wood and concrete stains, or contract with services that procure these products. Thus, they have a need for wood and concrete stains and for services that require the use of wood and concrete stains. Designation of wood and concrete stains will promote the use of biobased products, furthering the objectives of this program.

Specific product information, including company contact, intended use, biobased content, and performance characteristics have been collected on three wood and concrete stains. An analysis of the environmental and human health benefits and the life-cycle costs of biobased wood and concrete stains was performed for one product using the BEES analytical tool. The results of that analysis are presented in the TSD for the Round 8 product categories, which can be found on the BioPreferred Web site.

#### C. Minimum Biobased Contents

USDA has determined that setting a minimum biobased content for designated product categories is appropriate. Establishing a minimum biobased content will encourage competition among manufacturers to develop products with higher biobased

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

As discussed in Section IV.A of this preamble, USDA relied entirely on manufacturers’ voluntary submission of samples to support the proposed designation of these product categories. 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 product categories rulemaking proposal, USDA decided to account for the slight imprecision in the analytical method used to determine biobased content of products when establishing the minimum biobased content. Thus, rather than establishing the minimum biobased content for a product category at the tested biobased content of the product selected as the basis for the minimum value, USDA is establishing the minimum biobased content at a level three (3) percentage points less than the tested value. USDA believes that this adjustment is appropriate to account for the expected variations in analytical results.

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

proposed minimum biobased contents. As the market for biobased products develops and USDA obtains additional biobased content data, it will re-evaluate the established minimum biobased contents of designated product categories and consider raising them whenever justified.

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

#### 1. Air Fresheners and Deodorizers

Five of the 77 biobased air fresheners and deodorizers have been tested for biobased content using ASTM D6866.<sup>3</sup> The biobased contents of these five biobased air fresheners and deodorizers range from 14 to 100 percent, as follows: 14, 46, 100, 100, and 100. Because there is a wide range of tested biobased contents, and because there is a significant break between the values for the two products with the lowest biobased contents and the values for the three products with the highest biobased contents, USDA considered the need to subcategorize this product category. USDA found that there was not sufficient information on the performance or applicability of the products to justify subcategorization. USDA also found that the two products with the 14 and 46 percent biobased content did not claim to offer any unique performance or applicability features not offered by the products with 100 percent biobased content. Because we have data showing that at least three different products are available with a biobased content of 100 percent, we are proposing to set the minimum biobased content for air fresheners and deodorizers at 97 percent.

#### 2. Asphalt and Tar Removers

Four of the 16 biobased asphalt and tar removers identified have been tested for biobased content using ASTM D6866. The biobased contents of these four biobased asphalt and tar removers range from 83 percent to 94 percent, as follows: 83, 91, 93, and 94 percent. Because of the narrow range of these products, USDA is proposing to set the minimum biobased content for asphalt and tar removers at 80 percent, based on

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

the product with a tested biobased content of 83 percent.

### 3. Asphalt Restorers

Three of the seven biobased asphalt restorer products identified have been tested for biobased content using ASTM D6866. The biobased contents of these three biobased asphalt restorer products range from 71 percent to 88 percent, as follows: 71, 88, and 88 percent. Because the biobased contents of these three products are relatively high and they are within a narrow range, USDA is proposing to set the minimum biobased content for asphalt restorers at 68 percent, based on the product with a tested biobased content of 71 percent.

### 4. Blast Media

Five of the 13 identified biobased blast media identified have been tested for biobased content using ASTM D6866. The biobased contents of these five biobased blast media products are 97, 100, 100, 100, and 100 percent. Because the range of these values is very small and the biobased contents of all of the products are very high, USDA is proposing a minimum biobased content of 94 percent for blast media, based on the product with a tested biobased content of 97 percent.

### 5. Candles and Wax Melts

Nine of the 708 biobased candles and wax melts identified have been tested for biobased content using ASTM D6866. The biobased contents of these nine biobased candles and wax melts range from 91 percent to 100 percent as follows: 91, 91, 91, 92, 95, 96, 97, 100, and 100 percent. Because of the narrow range of these products, USDA is proposing to set the minimum biobased content for candles and wax melts at 88 percent, based on the three products with a tested biobased content of 91 percent.

### 6. Electronic Components Cleaners

Four of the eight biobased electronic components cleaners identified have been tested for biobased content using ASTM D6866. The biobased contents of these four biobased electronic components cleaners range from 52 percent to 100 percent as follows: 52, 94, 98, and 100 percent. There is a significant break between the 52 percent biobased product and the 94 percent product, and USDA found no performance features claimed for the 54 percent product that justified setting the minimum biobased content based on that product. Because the biobased contents of the remaining three products are within a narrow range, USDA is proposing to set the minimum biobased

content for electronic components cleaners at 91 percent, based on the product with a tested biobased content of 94 percent.

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

### 7. Floor Coverings (Non-Carpet)

Five of the 343 biobased floor coverings (non-carpet) identified have been tested for biobased content using ASTM D6866. The biobased contents of these five biobased floor coverings range from 9 percent to 100 percent, as follows: 9, 94, 95, 100, and 100.

There is a significant break between the 9 percent biobased product and the 94 percent product, and USDA found no performance features claimed for the 9 percent product that justified setting the minimum biobased content based on that product. Because the biobased contents of the remaining four products are within a narrow range, USDA is proposing to set the minimum biobased content for floor coverings (non-carpet) at 91 percent, based on the product with a tested biobased content of 94 percent.

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

### 8. Foot Care Products

Five of the 62 biobased foot care products identified have been tested for biobased content using ASTM D6866. The biobased contents of these five biobased foot care products range from 86 percent to 100 percent, as follows: 86, 95, 97, 97, and 100 percent. Because the biobased contents of these five products are relatively high and they are within a narrow range, USDA is proposing to set the minimum biobased content for foot care products at 83 percent, based on the product with a tested biobased content of 86 percent.

### 9. Furniture Cleaners and Protectors

Six of the 36 biobased furniture cleaners and protectors identified have been tested for biobased content using ASTM D6866. The biobased contents of these six biobased furniture cleaners and protectors range from 9 percent to 100 percent, as follows: 9, 28, 80, 91, 98, and 100.

There are two significant breaks in the range of data, one between the 9 and 28 percent biobased products and another

between the 28 and 80 percent biobased products. Considering these breaks, the tested products within the product category fall into three groups (9 percent, 28 percent, and 80 through 100 percent). USDA evaluated the available product information to determine if there were sufficient differences in formulation, performance, or applicability between these product groups to justify subcategorization. However, USDA did not find sufficient information to justify subcategories. USDA also did not find any features of the 9 or 28 percent biobased content products that would justify setting the minimum biobased content at a level that would include these products. Therefore, USDA is proposing to set the minimum biobased content for furniture cleaners and protectors at 77 percent, based on the product with the lowest biobased content of those products in the group of products with the highest tested biobased content.

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

### 10. Inks

Nineteen of the 148 biobased inks identified have been tested for biobased content using ASTM D6866. As noted earlier in this preamble, USDA is proposing to subcategorize this product category into six subcategories: "specialty inks," "inks (sheetfed—color)," "inks (sheetfed—black)," "inks (printer toner—< 25 ppm)," "inks (printer toner—≥ 25 ppm)," and "inks (news)." The following paragraphs discuss the minimum biobased content for the six subcategories.

*Specialty inks.* Six of the 31 biobased specialty inks identified have been tested for biobased content using ASTM D6866. The biobased contents of these six biobased specialty inks range from 69 to 85 percent, as follows: 69, 69, 71, 75, 78, and 85 percent. Because the biobased contents of the six tested products are within a narrow range, and there is no performance information to distinguish any one product from the others, USDA is proposing to set the minimum biobased content for this subcategory at 66 percent, based on the two products with a tested biobased content of 69 percent.

*Inks (sheetfed—color).* Four of the 53 biobased sheetfed inks tested for biobased content using ASTM D6866 have been identified as being color inks. The biobased contents of these four biobased inks range from 70 to 79

percent, as follows: 70, 71, 73, and 79 percent. Because this is a narrow range and even the lowest biobased content is a fairly high value, USDA is proposing to set the minimum biobased content for this subcategory at 67 percent, based on the product with the tested biobased content of 70 percent.

*Inks (sheetfed—black).* Five of the 53 biobased sheetfed inks tested for biobased content using ASTM D6866 have been identified as black inks. The biobased contents of these five biobased inks range from 52 to 75 percent, as follows: 52, 56, 60, 71, and 75 percent. Because three of the five products tested have a biobased content between 52 and 60 percent, USDA is proposing to set the minimum biobased content for this subcategory at 49 percent, based on the product with the tested biobased content of 52 percent.

*Inks (printer toner—<25 ppm).* Two of the 40 biobased inks (printer toner—<25 ppm) identified have been tested for biobased content using ASTM D6866. The biobased content of both of these biobased inks is 37 percent. Because the biobased content of these two products is the same, USDA is proposing to set the minimum biobased content for this subcategory at 34 percent based on these two tested products.

*Inks (printer toner—≥ 25 ppm).* One biobased ink (printer toner—≥25 ppm) has been tested for biobased content using ASTM D6866. The biobased content of this biobased ink is 23 percent. USDA believes that the one tested product is representative of biobased inks used in this subcategory and is proposing to set the minimum biobased content for this subcategory at 20 percent based on this one tested product.

*Inks (news).* One of the 24 biobased inks (news) identified has been tested for biobased content using ASTM D6866. The biobased content of the one biobased ink is 35 percent. USDA believes that the one tested product is representative of biobased inks used in this subcategory and is proposing to set the minimum biobased content for this subcategory at 32 percent based on this one tested product.

#### 11. Packaging and Insulating Materials

Three of the 23 biobased packaging and insulating materials identified have been tested for biobased content using ASTM D6866. The biobased contents of these three biobased packaging and insulating materials are 85, 91, and 100 percent. Because the biobased contents of the three tested products are within a narrow range and all three values are high, USDA is proposing to set the minimum biobased content for

packaging and insulating materials at 82 percent, based on the product with a tested biobased content of 85 percent.

#### 12. Pneumatic Equipment Lubricants

Five of the 25 biobased pneumatic equipment lubricants identified have been tested for biobased content using ASTM D6866. The biobased contents of these five biobased pneumatic equipment lubricants range from 70 to 100 percent, as follows: 70, 79, 94, 96, and 100 percent. Because the biobased contents of the five tested products are within a fairly narrow range, all of the contents are relatively high, and there is no performance information to distinguish any one product from the others, USDA is proposing to set the minimum biobased content for pneumatic equipment lubricants at 67 percent, based on the product with a tested biobased content of 70 percent.

#### 13. Wood and Concrete Stains

Four of the 48 biobased wood and concrete stains identified have been tested for biobased content using ASTM D6866. The biobased contents of these four biobased wood and concrete stains range from 42 percent to 88 percent, as follows: 42, 57, 87, and 88.

There are two significant breaks in the range of data, one between the 42 and 57 percent biobased products and another between the 57 and 87 percent biobased products. USDA evaluated the available product information to determine if there were sufficient differences in formulation, performance, or applicability between these products to justify subcategorization. USDA did not find sufficient information to support creating subcategories at this time. However, USDA did find that the 42 percent biobased content product has been certified as complying with the German Institute for Standardization's DIN EN 71-3 "Safety of Toys." USDA believes that the ability of biobased wood stains to meet this standard, and to be used on toys and other products intended for human contact, is significant and justifies setting the minimum biobased content for this product category at a level that would include this product. Therefore, USDA is proposing to set the minimum biobased content for wood and concrete stains at 39 percent, based on the product with the tested biobased content of 42 percent.

USDA requests that stakeholders provide additional data and recommendations on the creation of subcategories for this product category. USDA will continue to gather and evaluate information on products within this product category and, if sufficient

supporting information becomes available, will consider establishing subcategories based on formulation, performance, or applicability.

#### *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 product category would take effect.

USDA is proposing a one-year period before the procurement preferences would take effect, because it recognizes that Federal agencies will need time to incorporate the preferences into procurement documents and to revise existing standardized specifications. Both section 9002(a)(3) and 7 CFR 3201(c) explicitly acknowledge the need for Federal agencies to have sufficient time to revise the affected specifications to give preference to biobased products when purchasing the designated product categories. Procuring agencies will need time to evaluate the economic and technological feasibility of the available biobased products for their agency-specific uses and for compliance with agency-specific requirements, including manufacturers' warranties for machinery in which the biobased products would be used.

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

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

actions involving any of the designated product categories.

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

Information used to develop this proposed rule can be found in the TSD, 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 "Federal Procurement Preference" link on the right side of the page and then on the "Rules and Regulations" link. At the next screen, click on the Supporting Documentation link under Round 8 Designation Product Categories under the Proposed Regulations section.

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

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

#### VI. Regulatory information

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

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 by the Office of Management and Budget to be not significant for purposes of Executive Order 12866. We are not able to quantify the annual economic effect associated with today's proposed rule. As discussed earlier in this preamble, USDA made extensive efforts to obtain information on the Federal agencies' usage within the 13 designated product categories. These efforts were largely unsuccessful. Therefore, attempts to determine the economic impacts of today's proposed rule would require estimation of the anticipated market penetration of biobased products based upon many assumptions. In addition, because agencies have the option of not purchasing products within designated product categories if price is "unreasonable," the product is not readily available, or the product does not demonstrate necessary performance characteristics, certain assumptions may not be valid. While facing these quantitative challenges, USDA relied upon a qualitative assessment to determine the impacts of today's proposed rule. Consideration was also given to the fact that agencies may choose not to procure products within designated product categories due to unreasonable price.

##### 1. Summary of Impacts

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

from Federal agencies and their contractors. USDA is unable to determine the number of businesses, including small businesses, that may be adversely affected by today's proposed rule. The proposed rule, however, will not affect existing purchase orders, nor will it preclude businesses from modifying their product lines to meet new requirements for designated biobased products. Because the extent to which procuring agencies will find the performance, availability and/or price of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of the rule.

##### 2. Benefits of the Proposed Rule

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

##### 3. Costs of the Proposed Rule

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

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

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

organizations, and small governmental jurisdictions.

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

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

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

The Federal preferred procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. Most manufacturers of non-biobased products within the product categories being proposed for designation for Federal preferred procurement in this rule are expected to be included under the following NAICS codes: 321918 (other millwork, including flooring), 324191 (petroleum lubricating oil and grease manufacturing), 325411 (medicinal and botanical manufacturing), 325510 (paint and coating manufacturing), 325612 (polish and other sanitation goods manufacturing), 325620 (toilet

preparation manufacturing), 325910 (printing ink manufacturing), 325998 (other miscellaneous chemical products and preparation manufacturing), 326150 (urethane and other foam product manufacturing), and 313113 (thread mill products). USDA obtained information on these 10 NAICS categories from the U.S. Census Bureau's Economic Census database. USDA found that the Economic Census reports about 6,963 companies within these 10 NAICS categories and that these companies own a total of about 8,139 establishments. Thus, the average number of establishments per company is about 1.2. The Census data also reported that of the 8,139 individual establishments, about 8,096 (99.5 percent) have fewer than 500 employees. USDA also found that the overall average number of employees per company among these industries is about 42, with none of the segments reporting an average of more than 100 employees per company. Thus, nearly all of the businesses fall within the Small Business Administration's definition of a small business (fewer than 500 employees, in most NAICS categories).

USDA does not have data on the potential adverse impacts on manufacturers of non-biobased products within the product categories being designated, but believes that the impact will not be significant. Most of the product categories being proposed for designation in this rulemaking are typical consumer products widely used by the general public and by industrial/commercial establishments that are not subject to this rulemaking. Thus, USDA believes that the number of small businesses manufacturing non-biobased products within the product categories being designated and selling significant quantities of those products to government agencies affected by this rulemaking to be relatively low. Also, this proposed rule will not affect existing purchase orders and it will not preclude procuring agencies from continuing to purchase non-biobased products when biobased products do not meet the availability, performance, or reasonable price criteria. This proposed rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for those 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

USDA is committed to compliance with the E-Government Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for Federal preferred procurement under each designated 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 3201

Biobased products, Procurement.

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

#### Chapter XXXII—Office of Procurement and Property Management

#### PART 3201—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

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

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

2. Add §§ 3201.75 through 3201.87 to subpart B to read as follows:

3201.75	Air fresheners and deodorizers.
3201.76	Asphalt and tar removers.
3201.77	Asphalt restorers.
3201.78	Blast media.
3201.79	Candles and wax melts.
3201.80	Electronic components cleaners.
3201.81	Floor coverings (non-carpet).
3201.82	Foot care products.
3201.83	Furniture cleaners and protectors.
3201.84	Inks.
3201.85	Packaging and insulating materials.
3201.86	Pneumatic equipment lubricants.
3201.87	Wood and concrete stains.

#### § 3201.75 Air fresheners and deodorizers.

(a) *Definition.* Products used to alleviate the experience of unpleasant

odors by chemical neutralization, absorption, anesthetization, or masking.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 97 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 air fresheners and deodorizers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased air fresheners and deodorizers.

#### § 3201.76 Asphalt and tar removers.

(a) *Definition.* Cleaning agents designed to remove asphalt or tar from equipment, roads, or other surfaces.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 80 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 asphalt and tar removers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased asphalt and tar removers.

#### § 3201.77 Asphalt restorers.

(a) *Definition.* Products designed to seal, protect, or restore poured asphalt and concrete surfaces.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 68 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 asphalt restorers. By that date, Federal

agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased asphalt restorers.

#### § 3201.78 Blast media.

(a) *Definition.* Abrasive particles sprayed forcefully to clean, remove contaminants, or condition surfaces, often preceding coating.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 94 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 blast media. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased blast media.

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

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

**§ 3201.79 Candles and wax melts.**

(a) *Definition.* Products composed of a solid mass and either an embedded wick that is burned to provide light or aroma, or that are wickless and melt when heated to produce an aroma.

(b) *Minimum biobased content.* The Federal 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 candles and wax melts. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased candles and wax melts.

**§ 3201.80 Electronic components cleaners.**

(a) *Definition.* Products that are designed to wash or remove dirt or extraneous matter from electronic parts, devices, circuits, or systems.

(b) *Minimum biobased content.* The Federal 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 electronic components cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased electronic components cleaners.

**§ 3201.81 Floor coverings (non-carpet).**

(a) *Definition.* Products, other than carpet products, that are designed for use as the top layer on a floor. Examples are bamboo, hardwood, and cork tiles.

(b) *Minimum biobased content.* The Federal 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 floor coverings (non-carpet). By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased floor coverings (non-carpet).

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying products within this item may overlap with the EPA-designated recovered content product: Construction Products—floor tiles. 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 floor tile products and which product should be afforded the preference in purchasing.

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

**§ 3201.82 Foot care products.**

(a) *Definition.* Products formulated to be used in the soothing or cleaning of feet.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 83 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 foot care products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased foot care products.

**§ 3201.83 Furniture cleaners and protectors.**

(a) *Definition.* Products designed to clean and provide protection to the surfaces of household furniture other than the upholstery.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 77 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 furniture cleaners and protectors. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased furniture cleaners and protectors.

**§ 3201.84 Inks.**

(a) *Definitions.* (1) Inks are liquid or powdered materials that are available in several colors and that are used to create the visual image on a substrate when writing, printing, and copying.

(2) Inks for which Federal preferred procurement applies are:

(i) *Specialty inks.* Inks used by printers to add extra characteristics to their prints for special effects or functions. Specialty inks include, but are not limited to: CD printing, erasable, FDA compliant, invisible, magnetic, scratch and sniff, thermochromic, and tree marking inks.

(ii) *Inks (sheetfed—color).* Pigmented inks (other than black inks) used on coated and uncoated paper, paperboard, some plastic, and foil to print in color on annual reports, brochures, labels, and similar materials.

(iii) *Inks (sheetfed—black).* Black inks used on coated and uncoated paper, paperboard, some plastic, and foil to print in black on annual reports, brochures, labels, and similar materials.

(iv) *Inks (printer toner—< 25 pages per minute (ppm)).* Inks that are a powdered chemical, used in photocopying machines and laser printers, which is transferred onto paper

to form the printed image. These inks are formulated to be used in printers with standard fusing mechanisms and print speeds of less than 25 ppm.

(v) *Inks (printer toner— $\geq$  25 ppm)*. Inks that are a powdered chemical, used in photocopying machines and laser printers, which is transferred onto paper to form the printed image. These inks are formulated to be used in printers with advanced fusing mechanisms and print speeds of 25 ppm or greater.

(vi) *Inks (news)*. Inks used primarily to print newspapers.

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

(1) *Specialty inks*—66 percent.

(2) *Inks (sheetfed—color)*—67 percent.

(3) *Inks (sheetfed—black)*—49 percent.

(4) *Inks (printer toner— $<$  25 ppm)*—34 percent.

(5) *Inks (printer toner— $\geq$  25 ppm)*—20 percent.

(6) *Inks (news)*—32 percent.

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

#### **§ 3201.85 Packaging and insulating materials.**

(a) *Definition*. Pre-formed and molded materials that are used to hold package contents in place during shipping or for insulating and sound proofing applications.

(b) *Minimum biobased content*. The Federal preferred procurement product must have a minimum biobased content of at least 82 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 packaging and insulating materials. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased packaging and insulating materials.

#### **§ 3201.86 Pneumatic equipment lubricants.**

(a) *Definition*. Lubricants designed specifically for pneumatic equipment, including air compressors, vacuum pumps, in-line lubricators, rock drills, jackhammers, etc.

(b) *Minimum biobased content*. The Federal preferred procurement product must have a minimum biobased content of at least 67 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 pneumatic equipment lubricants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased pneumatic equipment 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: Vehicular Products—re-refined lubricating oils. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased

ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated re-refined lubricating oil products and which product should be afforded the preference in purchasing.

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

#### **§ 3201.87 Wood and concrete stains.**

(a) *Definition*. Products that are designed to be applied as a finish for concrete and wood surfaces and that contain dyes or pigments to change the color without concealing the grain pattern or surface texture.

(b) *Minimum biobased content*. The Federal preferred procurement product must have a minimum biobased content of at least 39 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 wood and concrete stains. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased wood and concrete stains.

Dated: September 2, 2011.

**Pearlie S. Reed,**

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

[FR Doc. 2011-23067 Filed 9-13-11; 8:45 am]

**BILLING CODE 3410-93-P**