

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

RIN 0503-AA32

Designation of Biobased Items for Federal Procurement**AGENCY:** Office of Energy Policy and New Uses, USDA.**ACTION:** Notice of Proposed Rulemaking.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to amend the guidelines for designating biobased products for Federal procurement, to add 10 sections to designate the following 10 items within which biobased products would be afforded Federal procurement preference, as provided for under section 9002 of the Farm Security and Rural Investment Act of 2002: Bath and tile cleaners; clothing products; concrete and asphalt release fluids; cutting, drilling, and tapping oils; de-icers; durable films; firearm lubricants; floor strippers; laundry products; and wood and concrete sealers. USDA also is proposing minimum biobased content for each of these items. Once USDA designates an item, procuring agencies are required generally to purchase biobased products within these designated items where the purchase price of the procurement item exceeds \$10,000 or where the quantity of such items or the functionally equivalent items purchased over the preceding fiscal year equaled \$10,000 or more.

DATES: USDA will accept public comments on this proposed rule until December 11, 2006.

ADDRESSES: You may submit comments by any of the following methods. All submissions received must include the agency name and Regulatory Information Number (RIN). The RIN for this rulemaking is 0503-AA32. Also, please identify submittals as pertaining to the "Proposed Designation of Items."

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

- E-mail: fb4p@oce.usda.gov. Include RIN number 0503-AA32 and "Proposed Designation of Items" on the subject line. Please include your name and address in your message.

- Mail/commercial/hand delivery: Mail or deliver your comments to: Marvin Duncan, USDA, Office of the Chief Economist, Office of Energy Policy and New Uses, Room 4059, South Building, 1400 Independence Avenue, SW., MS-3815, Washington, DC 20250-3815.

- Persons with disabilities who require alternative means for communication (braille, large print, audiotape, etc.) should contact the USDA TARGET Center at (202)720-2600 (voice) and (202)401-4133 (TDD).

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

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

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I. Authority

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

II. Background

Section 9002 of FSRIA, as amended by section 943 of the Energy Policy Act of 2005, Pub. L. 109-58 (Energy Policy Act), provides for the preferred procurement of biobased products by

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

Procuring agencies must procure biobased products within each designated item unless they determine that products within a designated item are not reasonably available within a reasonable period of time, fail to meet the reasonable performance standards of the procuring agencies, or are available only at an unreasonable price. As stated in the Guidelines, biobased products that are merely incidental to Federal funding are excluded from the preferred procurement program. In implementing the preferred procurement program for biobased products, procuring agencies should follow their procurement rules and Office of Federal Procurement Policy guidance on buying non-biobased products when biobased products exist and should document exceptions taken for price, performance, and availability.

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

Section 9002 also requires USDA to provide information to procuring agencies on the availability, relative price, performance, and environmental and public health benefits of such items and, under section 9002(e)(1)(c), to recommend where appropriate the

minimum level of biobased content to be contained in the procured products.

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

Where a biobased item is used for the same purposes and to meet the same requirements as an EPA-designated recovered content product, the Federal agency must purchase the recovered content product. For example, if a biobased hydraulic fluid is to be used as a fluid in hydraulic systems and 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 certain environmental or health requirements that the EPA-designated

recovered content product would not meet, then the biobased product should be given preference, subject to cost, availability, and performance.

Federal Government Purchase of "Green" Products. Three components of the Federal government's green purchasing program are the Biobased Products Preferred Purchasing Program, the Environmental Protection Agency's Comprehensive Procurement Guidelines for products containing recovered materials, and the Environmentally Preferable Products Program. The Office of the Federal Environmental Executive (OFEE) and the Office of Management and Budget (OMB) encourage agencies to implement these components comprehensively when purchasing products and services.

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, or workers. When purchasing environmentally preferable cleaning products, many Federal agencies specify that products must meet Green Seal standards for institutional cleaning products or that products have been reformulated in accordance with recommendations from the U.S. EPA's Design for the Environment (DfE) program. Both the Green Seal standards and the DfE program identify chemicals of concern in cleaning products. These include zinc and other metals, formaldehyde, ammonia, alkyl phenol ethoxylates, ethylene glycol, and volatile organic compounds. In addition, both require that cleaning products have neutral or less caustic pH.

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

One consideration of a product's impact on the environment is whether it introduces (and to what degree) new, fossil carbon into the atmosphere. Qualifying biobased products offer the user the opportunity to manage the carbon cycle and limit the introduction of new, fossil carbon into the atmosphere, whereas non-biobased

products derived from fossil fuels add new, fossil carbon to the atmosphere.

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

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

Interagency Council. USDA has created, and is chairing, an "interagency council," with membership selected from among Federal stakeholders to the FB4P. To augment its own research, USDA consults with this council in identifying the order of item designation, manufacturers producing and marketing products that fall within an item proposed for designation, performance standards used by Federal agencies evaluating products to be procured, and warranty information used by manufacturers of end user equipment and other products with regard to biobased products.

Other Preferred Procurement Programs. Federal procurement officials should also note that biobased products may be available for purchase by Federal agencies through the Javits-Wagner-O'Day (JWOD) program. Under this program, members of organizations including the National Industries for the Blind and the National Industries for the

Severely Handicapped offer products and services for preferred procurement by Federal agencies. A search of the JWOD online catalog (www.jwod.com) indicated that three of the items being proposed today (bath and tile cleaners, floor strippers, and laundry products) are available through the JWOD program. While none of the specific products within these items are identified in the JWOD online catalog as being biobased products, it is possible that biobased products are available or will be available in the future. Also, because additional categories of products are frequently added to the JWOD program, it is possible that biobased products within other items being proposed for designation today may be available through the JWOD program in the future. Procurement of biobased products through the JWOD program would further the objectives of both the JWOD program and the FB4P program.

III. Summary of Today's Proposed Rulemaking

Today, USDA is proposing to designate the following 10 items for preferred procurement: Bath and tile cleaners; clothing products; concrete and asphalt release fluids; cutting, drilling, and tapping oils; de-icers; durable films; firearm lubricants; floor strippers; laundry products; and wood and concrete sealers. USDA is also proposing minimum biobased content for each of these items (see Section IV.C). Lastly, USDA is proposing a date by which Federal agencies must incorporate designated items into their procurement specifications (see Section IV.D).

In today's proposed rulemaking, USDA is providing information on its findings as to the availability, economic and technical feasibility, environmental and public health benefits, and life cycle costs for each of the 10 designated items. Information on the availability, relative price, performance, and environmental and public health benefits of individual products within each of these 10 items is not presented in this notice. Further, USDA has reached an agreement with manufacturers not to publish their names in the **Federal Register** when designating items. This agreement was reached to encourage manufacturers to submit products for testing to support the designation of an item. Once an item has been designated, USDA will encourage the manufacturers of products within the designated item to voluntarily post their names and other contact information on the USDA FB4P Web site.

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

Additional Information. USDA is working with manufacturers and vendors to post all relevant product and manufacturer contact information on the FB4P Web site before a procuring agency asks for it, in order to make the preferred program more efficient. Steps USDA has implemented, or will implement, include: making direct contact with submitting companies through email and phone conversations to encourage completion of product listing; coordinating outreach efforts with intermediate material producers to encourage participation of their customer base; conducting targeted outreach with industry and commodity groups to educate stakeholders on the importance of providing complete product information; participating in industry conferences and meetings to educate companies on program benefits and requirements; and communicating the potential for expanded markets beyond the Federal government, to include State and local governments, as well as the general public markets. Section V provides instructions to agencies on how to obtain this information on products within these items through the following Web site: <http://www.biobased.oce.usda.gov>.

Comments. USDA invites comment on the proposed designation of these 10

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

1. One of the items being proposed for designation (durable plastic films) may overlap with one of the products designated under EPA's Comprehensive Procurement Guidelines for products containing recovered material. To help procuring agencies in making their purchasing decisions between biobased products within the proposed designated items that overlap with products containing recovered material, USDA is requesting 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. De-icers are used in a variety of applications and settings. In today's proposed rulemaking, this item would not apply to de-icers used at airports to de-ice airplanes and runways. USDA is seeking comment on whether this is appropriate; that is, whether there are differences in the de-icers used at airports and the de-icers used elsewhere that would preclude this item from including airport de-icers. Please provide detailed rationale and information to support your comments.

3. We are proposing a single item designation for bath and tile cleaners. We are seeking comment as to whether there are different performance standards for this item and, if so, whether USDA should consider either creating subcategories within this item, each with its own minimum biobased content, or limiting the scope of the current item and proposing one or more new items for bath and tile cleaners. In your comments, please be sure to identify specific performance standards and rationale for either subdividing the current proposed item or for limiting the scope of the current proposed item and proposing one or more new items for bath and tile cleaners.

4. We have attempted to identify relevant and appropriate performance standards and other relevant measures of performance for each of the proposed items. If you know of other such standards or relevant measures of performance for the proposed items, USDA requests that you submit information identifying such standards and measures, including their name (and other identifying information as necessary), identifying who is using the

standard/measure, and describing the circumstances under which the product is being used.

5. We are proposing a minimum biobased content for biobased clothing based on a projected blend of biobased material with non-qualifying biobased material or with non-biobased material. USDA requests information from manufacturers of biobased clothing on what blends are being used today or that might be reasonably forecast to be used in the future. Please provide specific information, including discussion on why you use or will use particular blends and what those blends levels are or are projected to be.

6. Many biobased products within the items being proposed for designation will have positive environmental and human health attributes. USDA is seeking comments on such attributes in order to provide additional information on the FB4P Web site. This information will then be available to Federal procuring agencies and will assist them in making "best value" purchase decisions. When possible, please provide appropriate documentation to support the environmental and human health attributes you describe.

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

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

A. Background

In order to designate items (generic groupings of specific products such as crankcase oils or products that contain qualifying biobased fibers) for preferred procurement, section 9002 requires USDA to consider: (1) The availability of items; and (2) the economic and technological feasibility of using the items, including the life cycle costs of the items.

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

searches to determine if an item is generally available.

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

In considering the life cycle costs of items proposed for designation, USDA uses the BEES analytical tool to test individual products within each proposed item. (Detailed information on this analytical tool can be found on the Web site <http://www.bfrl.nist.gov/oe/software/bees.html>.) The BEES analytical tool measures the environmental performance and the economic performance of a product.

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

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

USDA then utilizes the BEES results of individual products within a designated item in its consideration of the life cycle costs at the item level. There is a single unit of comparison associated with each designated item. The basis for the unit of comparison is

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

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

As discussed above, the BEES analysis includes information on the environmental performance, human health impacts, and economic performance. In addition, ASTM D7505, which manufacturers may use in lieu of the BEES analytical tool, provides similar information. USDA is working with manufacturers and vendors to post this information on the FB4P Web site before a procuring agency asks for it, in order to make the preferred procurement program more efficient. As discussed earlier, USDA has also implemented, or will implement, several other steps intended to educate the manufacturers and other stakeholders on the benefits of this program and the need to post this information, including manufacturer contact information, on the FB4P Web site to make it available to procurement officials. Additional information on specific products within the items proposed for designation may also be obtained directly from the manufacturers of the products.

USDA recognizes that information related to the functional performance of biobased products is a primary factor in making the decision to purchase these

products. USDA is gathering from manufacturers of biobased products being considered for designation information on industry standard test methods that they are using to evaluate the functional performance of their products. Additional standards are also being identified during meetings of the Interagency council and during the review process for each proposed rule. We have listed under the detailed discussion of each item proposed for designation (presented in Section IV.B) the functional performance test methods identified during the development of this **Federal Register** notice for these 10 items. While this process identifies many of the relevant standards, USDA recognizes that the performance test methods identified herein do not represent all of the methods that may be applicable for a designated item or for any individual product within the designated item. As noted earlier in this preamble, USDA is requesting identification of other relevant performance standards and measures of performance. As the program becomes fully implemented, these and other additional relevant performance standards will be available on the FB4P Web site.

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

To propose an item for designation, USDA must have sufficient information on a sufficient number of products within an item to be able to assess its availability and its economic and technological feasibility, including its life cycle costs. For some items, there may be numerous products available.

For other items, there may be very few products currently available. Given the infancy of the market for some items, it is not unexpected that even single-product items will be identified. Further, given that the intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products, USDA has determined that the identification of two or more biobased products within an item, or even a single product with two or more suppliers, is sufficient to consider the designation of that item. Similarly, the documented availability, benefits, and life cycle costs of even a very small percentage of all products that may exist within an item are also considered sufficient to support designation.

B. Items Proposed for Designation

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

In general, items are developed and prioritized for designation by evaluating them against program criteria established by USDA and by gathering information from other government agencies, private industry groups, and independent manufacturers. These evaluations begin by asking the following questions about the products within an item:

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

In addition to these primary concerns, USDA then considers the following points:

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

- Does manufacturing of products within this item increase potential for rural development?

After completing this evaluation, USDA prioritizes the list of items for designation. USDA then gathers information on products within the highest priority items and, as sufficient information becomes available for groups of approximately 10 items, a new rulemaking package will be developed to designate the items within that group. The list of items may change, with items being added or dropped, and the order in which items are proposed for designation is likely to change because the information necessary to designate an item may take more time to obtain than an item lower on the list.

In today's proposed rulemaking, USDA is proposing to designate 10 items for the preferred procurement program: Bath and tile cleaners; clothing products; concrete and asphalt release fluids; cutting, drilling, and tapping oils; de-icers; durable films; firearm lubricants; floor strippers; laundry products; and wood and concrete sealers. USDA has determined that each of these 10 items meets the necessary statutory requirements—namely, that they are being produced with biobased products and that their procurement by procuring agencies will carry out the following objectives of section 9002:

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

Further, USDA has sufficient information on these 10 items to determine their availability and to conduct the requisite analyses to determine their biobased content and their economic and technological feasibility, including life cycle costs.

Mature Markets. Section 2902.5(c)(2) of the final guidelines states that USDA will not designate items for preferred procurement that are determined to have mature markets. Mature markets are described as items that had significant national market penetration in 1972. USDA contacted manufacturers, manufacturing associations, and industry researchers to determine if, in 1972, biobased products had a significant market share within

any of the items proposed for designation today. USDA found that biobased products within none of the 10 items proposed for designation today had a significant market share in 1972 and that, generally, the companies that produce biobased products within these proposed designated items have been in business for only 10 to 20 years.

Overlap with EPA-Designated Recovered Content Products. In today's proposed rule, one of the 10 items may overlap with the EPA-designated recovered content product "Nonpaper Office Products: Plastic trash bags." This item is durable plastic films. For this item, USDA is requesting that certain information on the qualifying biobased products be made available by its manufacturers to assist Federal agencies in determining if an overlap exists between durable plastic films and plastic trash bags (the applicable EPA-designated recovered content product). As noted earlier in this preamble, USDA is requesting information on overlap situations to further help procuring agencies make informed decisions when faced with purchasing a recovered content material product or a biobased product. As this information is developed, USDA will make it available on the FB4P Web site.

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

USDA is proposing an exemption for all designated items when used in spacecraft systems and launch support equipment, because failure of such items could lead to catastrophic consequences. Many, if not all, items that USDA is or is planning to designate for preferred procurement are or will be used in space applications. Frequently, such applications used these items in ways that are different from their more "conventional" use on Earth. It is

difficult, if not impossible, to forecast what situations may occur when these items are used in space and how they will perform. Therefore, USDA believes it is reasonable to limit the preferred procurement program to items used in more conventional applications and is proposing to exempt all designated items used in space applications from the FB4P.

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

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

1. Bath and Tile Cleaners

Bath and tile cleaners are products designed to clean deposits on bath tubs, shower doors, shower curtains, bathroom tiles, floors, doors, counter tops, etc. They are available both in concentrated and ready-to-use forms.

As noted earlier in this preamble, USDA is requesting comment on whether there should be one or more subcategories within this item based on required performance properties of the item. For example, bath and tile cleaners used in medical situations might be required to meet different performance standards from those used in households. If this is the case, then there may be differences in the level of biobased content depending on the performance standard to be met. As proposed, USDA is not differentiating between settings in which bath and tile cleaners are used.

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

of the manufacture, use, and disposal of both biobased and non-biobased products.

For bath and tile cleaners, USDA identified 16 different manufacturers producing 29 individual biobased products. These 16 manufacturers do not necessarily include all manufacturers of biobased bath and tile cleaners, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are typically tested against an industry performance standard and are being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- Boeing Specification #D6-7127, Cleaning Interiors of Commercial Transport Aircraft.
- Green Seal #GS-37, Green Seal Environmental Standard for General-Purpose, Bathroom, Glass, and Carpet Cleaners Used for Industrial and Institutional Purposes.

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

USDA also investigated the Web site *FEDBIZOPPS.gov*, a site which lists Federal contract purchase opportunities greater than \$25,000. The information provided on this Web site, however, is for broad categories of products rather than the specific types of products that are included in today's rulemaking. Therefore, USDA has been unable to obtain data on the amount of bath and

tile cleaners purchased by procuring agencies. However, Federal agencies routinely perform cleaning activities, or procure contract services, for cleaning their bathroom facilities. Thus, they have a need for bath and tile cleaners and for services that require the use of bath and tile cleaners. Designation of bath and tile cleaners will promote the use of biobased products, furthering the objectives of this program.

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

costs of biobased bath and tile cleaners was performed for two of the products using the BEES analytical tool. Table 1 summarizes the BEES results for the two bath and tile cleaners. As seen in Table 1, the environmental performance score, which includes human health, ranges from 0.0129 to 0.0130 points per gallon of bath and tile cleaner. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is

attributable to one gallon of the product, expressed in 100ths of 1 percent. For example, the total amount of criteria air pollutants emitted in the U.S. in one year was divided by the total U.S. population to derive a "criteria air pollutants per person value." The production and use of one gallon of bath and tile cleaner sample A was estimated to contribute 0.000002 percent of this value.

TABLE 1.—SUMMARY OF BEES RESULTS FOR BATH AND TILE CLEANERS

Parameters	Bath and tile cleaners	
	Sample A	Sample B
BEES Environmental Performance—Total Score ¹	0.0130	0.0129
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0002	0.0001
Ecological Toxicity (11%)	0.0004	0.0052
Eutrophication (5%)	0.0044	0.0003
Fossil Fuel Depletion (5%)	0.0029	0.0031
Global Warming (16%)	0.0024	0.0011
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0010	0.0013
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0015	0.0005
Water Intake (3%)	0.0002	0.0013
Economic Performance (Life Cycle Costs (\$)) ²	1.69	7.43
First Cost	1.69	7.43
Future Cost (3.9%)	(³)	(³)
Functional Unit	1 gallon of bath and tile cleaner.	

¹ Numbers in parentheses indicate weighting factor.

² Costs are per functional unit.

³ For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

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

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

lower Environmental Performance score is better than a higher score.

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

The life cycle costs of the submitted bath and tile cleaners range from \$1.69 to \$7.43 (present value dollars) per gallon. Present value dollars presented in this preamble represent the sum of all costs associated with a product over a fixed period of time, including any applicable costs for purchase, installation, replacement, operation, maintenance and repair, and disposal. Present value dollars presented in this preamble reflect 2006 dollars. Dollars are expressed in present value terms to adjust for the effects of inflation. The complete results of the BEES analysis, extrapolated to the item level, for each item proposed for designation in today's proposed rulemaking can be found at <http://www.biobased.oce.usda.gov>.

2. Clothing Products

Clothing products are coverings designed to be worn on a person's body. These products include coverings for the torso and limbs, as well as coverings for the hands, feet, and head. While this item applies to all types of clothing, some products within this item may not be applicable to specialized types of clothing, such as those categorized as person protective devices. Procuring agencies, therefore, need to assess an individual product's performance specifications for applicability for such specialized types of clothing.

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

For biobased clothing products, USDA identified 3 different manufacturers producing 5 individual biobased products. These 3

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

- NATICK Military Wicking Rate of Fabric;

- NATICK Military Air Permeability;
- NATICK Military Fabric Count;
- NATICK Military Weight;
- NATICK Military Seam Strength;
- NATICK Military Burst Strength;
- NATICK Military MVT Rate;
- NATICK Military pH; and
- NATICK Military Dimensional Stability.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on bath and tile cleaners. These attempts were largely unsuccessful. However, various Federal agencies procure clothing products for use by their employees. Thus, they have a need for clothing products. Designation of clothing products will

promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased clothing products was performed for one of the products using the BEES analytical tool. Table 2 summarizes the BEES results for the clothing product. As seen in Table 2, the environmental performance score, which includes human health, is 0.0143 points per one XL T-shirt. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one case of the product, expressed in 100ths of 1 percent.

TABLE 2.—SUMMARY OF BEES RESULTS FOR CLOTHING PRODUCTS

Parameters	Clothing products
	Sample A
BEES Environmental Performance—Total Score ¹	0.0143
Acidification (5%)	0.0000
Criteria Air Pollutants (6%)	0.0001
Ecological Toxicity (11%)	0.0010
Eutrophication (5%)	0.0002
Fossil Fuel Depletion (5%)	0.0073
Global Warming (16%)	0.0019
Habitat Alteration (16%)	0.0000
Human Health (11%)	0.0024
Indoor Air (11%)	0.0000
Ozone Depletion (5%)	0.0000
Smog (6%)	0.0006
Water Intake (3%)	0.0008
Economic Performance (Life Cycle Costs (\$)) ²	12.50
First Cost	12.50
Future Cost (3.9%)	(³)
Functional Unit	(⁴)

¹ Numbers in parentheses indicate weighting factor.

² Costs are per functional unit.

³ For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

⁴ One XL T-shirt.

The life cycle costs of the submitted clothing product is \$12.50 (present value dollars) per XL T-shirt.

3. Concrete and Asphalt Release Fluids

Concrete and asphalt release fluids are products designed to provide a lubricating barrier between the composite surface materials (e.g., concrete or asphalt) and the container (e.g., wood or metal forms, truck beds, roller surfaces, etc.). They provide a non-sticking surface to help prevent waste and to improve clean up procedures.

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

For biobased concrete and asphalt release fluids, USDA identified 23

different manufacturers producing 37 individual products. These 23 manufacturers do not necessarily include all manufacturers of biobased concrete and asphalt release fluids, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are typically tested against multiple industry performance standards and are being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- ASTM D445–04e2, Standard Test Method for Kinematic Viscosity of

Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity);

- ASTM 5864–00, Standard Test Method for Determining Aerobic Aquatic Biodegradation of Lubricants or Their Components;

- ASTM D92, Standard Test Method for Flash and Fire Points by Cleveland Open Cup Tester; and

- ASTM D97, Standard Test Method for Pour Point of Petroleum Products.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on bath and tile cleaners. These attempts were largely unsuccessful. However, Federal agencies routinely procure such products for paving and construction, or contract for paving and construction services involving the use of such products. Thus, they have a need for

concrete and asphalt release fluids and for services that use concrete and asphalt release fluids. Designation of biobased concrete and asphalt release fluids will promote the use of biobased products, furthering the objectives of this program.

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

costs of biobased concrete and asphalt release fluids was performed for two of the products using the BEES analytical tool. Table 3 summarizes the BEES results for the two biobased concrete and asphalt release fluids. As seen in Table 3, the environmental performance score, which includes human health, ranges from 0.5194 to 0.7453 points per

1000 gallons of release product (diluted and ready for use). The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to 1000 gallons of the product (diluted and ready for use), expressed in 100ths of 1 percent.

TABLE 3.—SUMMARY OF BEES RESULTS FOR CONCRETE AND ASPHALT RELEASE FLUIDS

Parameters	Concrete and asphalt release fluids	
	Sample A	Sample B
BEES Environmental Performance—Total Score ¹	0.7453	0.5194
Acidification (5%)	0.0001	0.0000
Criteria Air Pollutants (6%)	0.0077	0.0053
Ecological Toxicity (11%)	0.0827	0.0252
Eutrophication (5%)	0.0121	0.0290
Fossil Fuel Depletion (5%)	0.3097	0.2624
Global Warming (16%)	0.0927	0.0616
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.1203	0.0883
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0526	0.0123
Water Intake (3%)	0.0674	0.0353
Economic Performance (Life Cycle Costs (\$)) ²	604.82	154.97
First Cost	604.82	154.97
Future Cost (3.9%)	(³)	(³)
Functional Unit	1,000 gallons of release product (diluted and ready for use).	

¹ Numbers in parentheses indicate weighting factor.

² Costs are per functional unit.

³ For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted concrete and asphalt release fluids was \$154.97 to \$604.82 (present value dollars) per 1000 gallons of product, diluted and ready for use.

4. Cutting, Drilling, and Tapping Oils

Cutting, drilling, and tapping oils are products designed to provide lubrication and reduce wear and friction on the contact parts for cutting, drilling, and tapping machinery, helping these parts last longer. This item only applies to neat oils, and does not apply to water emulsions.

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

For biobased cutting, drilling, and tapping oils, USDA identified 13 different manufacturers producing 33 individual biobased products. These 13 manufacturers do not necessarily include all manufacturers of biobased cutting, drilling, and tapping oils, merely those identified during USDA

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

- ASTM D130, Standard Test Method for Corrosiveness to Copper from Petroleum Products by Copper Strip Test;
- ASTM D1401–02, Standard Test Method for Water Separability of Petroleum Oils and Synthetic Fluids;
- ASTM D1748–02, Standard Test Method for Rust Protection by Metal Preservatives in the Humidity Cabinet;
- ASTM D2266–01, Standard Test Method for Wear Preventive Characteristics of Lubricating Grease (Four-Ball Method);
- ASTM D2270–04, Standard Practice for Calculating Viscosity Index From Kinematic Viscosity at 40 and 100 °C;

- ASTM D2783–03, Standard Test Method for Measurement of Extreme-Pressure Properties of Lubricating Fluids (Four-Ball Method);
- ASTM D287–92(2000)e1, Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method);
- ASTM D2982–98(2004), Standard Test Method for Detecting Glycol-Base Antifreeze in Used Lubricating Oils;
- ASTM D2983–04a, Standard Test Method for Low-Temperature Viscosity of Lubricants Measured by Brookfield Viscometer;
- ASTM D3233–93(2003), Standard Test Methods for Measurement of Extreme Pressure Properties of Fluid Lubricants (Falex Pin and Vee Block Methods);
- ASTM D455, Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity);
- ASTM D56–05, Standard Test Method for Flash Point by Tag Closed Cup Tester;
- ASTM D5864–00, 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 D665, Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water;
- ASTM D92, Standard Test Method for Flash and Fire Points by Cleveland Open Cup Tester;
- ASTM D97, Standard Test Method for Pour Point of Petroleum Products;
- Environmental Protection Agency #600/4-90-027, Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms; and

• Environmental Protection Agency #560/6-82-003, Biodegradability.
 USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on bath and tile cleaners. These attempts were largely unsuccessful. However, Federal agencies routinely own and operate cutting, drilling, and tapping machinery. In addition, many Federal agencies contract for services involving the use of such equipment. Thus, they have a need for cutting, drilling, and tapping oils and for services that require the use of machinery which requires cutting, drilling, and tapping oils. Designation of cutting, drilling, and tapping oils will promote the use of

biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of cutting, drilling, and tapping oils was performed for two of the products using the BEES analytical tool. Table 4 summarizes the BEES results for the two tapping oils. As seen in Table 4, the environmental performance score, which includes human health, ranges from 0.0296 to 0.0607 points per gallon of tapping oil. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one gallon of tapping oil, expressed in 100ths of 1 percent.

TABLE 4.—SUMMARY OF BEES RESULTS FOR CUTTING, DRILLING, AND TAPPING OILS

Parameters	Cutting, drilling, and tapping oils	
	Sample A	Sample B
BEES Environmental Performance—Total Score ¹	0.0607	0.0296
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0002	0.0002
Ecological Toxicity (11%)	0.0018	0.0067
Eutrophication (5%)	0.0003	0.0051
Fossil Fuel Depletion (5%)	0.0163	0.0070
Global Warming (16%)	0.0334	0.0038
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0068	0.0027
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0012	0.0017
Water Intake (3%)	0.0007	0.0024
Economic Performance (Life Cycle Costs(\$)) ²	152.15	20.00
First Cost	152.15	20.00
Future Cost (3.9%)	(³)	(³)
Functional Unit	One gallon of tapping oil	

¹ Numbers in parentheses indicate weighting factor.

² Costs are per functional unit.

³ For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted tapping oils range from \$20.00 to \$152.15 (present value dollars) per gallon of tapping oil.

5. De-icers

De-icers are agents that aid in the removal of snow and ice. For the purposes of this rulemaking, this category does not include de-icers used at airports to de-ice airplanes and runways.

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

For biobased de-icers, USDA identified 3 different manufacturers

producing 9 individual biobased products. These 3 manufacturers do not necessarily include all manufacturers of biobased de-icers, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are typically tested against one or more industry performance standards and are being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- National Association of Corrosion Engineers Standard TM-01-69 (1976 rev.)—Standardizes immersion corrosion testing and provides a

consensus on the technology in this field of laboratory corrosion testing;

- Pacific Northwest Snowfighters—Standard Methods for the Examination of Water and Wastewater; and
- American Association of State Highway & Transportation Officials.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on bath and tile cleaners. These attempts were largely unsuccessful. However, many Federal agencies routinely perform, or procure contract services to perform, snow and ice removal activities. Thus, they have a need for de-icers. Designation of biobased de-icers will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased de-icers was performed for one of the products using the BEES analytical tool. Table 5 summarizes the BEES results for this

biobased de-icer. As seen in Table 5, the environmental performance score, which includes human health, is 0.0173 points per 1,500 square yards of surface area. The environmental performance score indicates the share of annual per

capita U.S. environmental impacts that is attributable to 1,500 square yards of surface area, expressed in 100ths of 1 percent.

TABLE 5.—SUMMARY OF BEES RESULTS FOR DE-ICERS

Parameters	De-icer
	Sample A
BEES Environmental Performance—Total Score ¹	0.0173
Acidification (5%)	0.0000
Criteria Air Pollutants (6%)	0.0001
Ecological Toxicity (11%)	0.0025
Eutrophication (5%)	0.0002
Fossil Fuel Depletion (5%)	0.0072
Global Warming (16%)	0.0024
Habitat Alteration (16%)	0.0000
Human Health (11%)	0.0037
Indoor Air (11%)	0.0000
Ozone Depletion (5%)	0.0000
Smog (6%)	0.0010
Water Intake (3%)	0.0002
Economic Performance (Life Cycle Costs(\$)) ²	3.75
First Cost	3.75
Future Cost (3.9%)	(³)
Functional Unit	(⁴)

¹ Numbers in parentheses indicate weighting factor.

² Costs are per functional unit.

³ For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

⁴ 1,500 square yards of surface area.

The life cycle cost of the submitted biodegradable cutlery was \$3.75 (present value dollars) per 1,500 square yards of surface area.

6. Durable Plastic Films

Durable plastic films are products such as bags and packaging materials. They are designed to resist water, ammonia, and other compounds, and do not readily biodegrade. This item applies to all types of applications, including construction barriers. However, some products within this item may not be applicable to all applications, such as construction barriers, which may require specific moisture protection properties. Procuring agencies, therefore, need to assess an individual product's performance specifications before using in specific applications, such as construction barriers.

Qualifying products within this item may overlap with the EPA-designated recovered content product: Nonpaper Office Products: Plastic trash bags.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement

under the FB4P when used in spacecraft systems and launch support equipment.

For biobased durable plastic films, USDA identified 2 different manufacturers producing 2 individual biobased products. These 2 manufacturers do not necessarily include all manufacturers of biobased durable plastic films, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are typically tested against one relevant measure of performance and are being used commercially. While applicable performance standards and other measures of performance may exist, applicable industry performance standards and relevant measures of performance against which these products have been typically tested, as identified by manufacturers of products within this item and by others, include:

- Building Performance Institute, Inc.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on bath and tile cleaners. These attempts were largely

unsuccessful. However, Federal agencies routinely utilize durable plastic films in a variety of applications, including building cleaning and maintenance, landscaping and construction activities, and packaging activities, or procure services that use these products. Thus, they have a need for durable plastic films and for services that require the use of durable plastic films. Designation of durable plastic films will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased durable plastic films was performed for one of the products using the BEES analytical tool. Table 6 summarizes the BEES results for this durable plastic film. As seen in Table 6, the environmental performance score, which includes human health, is 0.0125 per kilogram of durable film. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one kilogram of durable film, expressed in 100ths of 1 percent.

TABLE 6.—SUMMARY OF BEES RESULTS FOR DURABLE PLASTIC FILMS

Parameters	Durable plastic film
	Sample A
BEES Environmental Performance—Total Score ¹	0.0125
Acidification (5%)	0.0000
Criteria Air Pollutants (6%)	0.0001
Ecological Toxicity (11%)	0.0004
Eutrophication (5%)	0.0004
Fossil Fuel Depletion (5%)	0.0077
Global Warming (16%)	0.0013
Habitat Alteration (16%)	0.0000
Human Health (11%)	0.0016
Indoor Air (11%)	0.0000
Ozone Depletion (5%)	0.0000
Smog (6%)	0.0008
Water Intake (3%)	0.0002
Economic Performance (Life Cycle Costs(\$)) ²	2.32
First Cost	2.32
Future Cost (3.9%)	(³)
Functional Unit	(⁴)

¹ Numbers in parentheses indicate weighting factor.

² Costs are per functional unit.

³ For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

⁴ One kilogram of durable film.

The life cycle cost of the submitted durable plastic film is \$2.32 (present value dollars) per kilogram of durable plastic film.

7. Firearm Lubricants

Firearm lubricants are used in firearms to reduce the friction and wear between the moving parts of a firearm. They may also help keep the weapon clean and prevent the formation of deposits that could cause the weapon to jam.

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

For biobased firearm lubricants, USDA identified 2 different manufacturers producing 2 individual biobased products. The 2 manufacturers do not necessarily include all manufacturers of biobased firearm lubricants, merely those identified during USDA information gathering activities.

Information supplied by these manufacturers indicates that these

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

- ASTM D130, Standard Test Method for Corrosiveness to Copper from Petroleum Products by Copper Strip Test;
- ASTM D445, Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity);
- ASTM D5864–00, 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 D665, Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water; and
- ASTM D93, Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on bath and tile cleaners. These attempts were largely unsuccessful. However, Federal agencies routinely use, or procure contract services to provide, the types of firearms that require the use of firearm lubricants. Thus, they have a need for firearm lubricants. Designation of firearm lubricants will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased firearm lubricants was performed for two of the products using the BEES analytical tool. Table 7 summarizes the BEES results for the two firearm lubricants. As seen in Table 7, the environmental performance score, which includes human health, ranges from 0.0236 to 0.0501 points per gallon of firearm lubricant. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one gallon of firearm lubricant, expressed in 100ths of 1 percent.

TABLE 7.—SUMMARY OF BEES RESULTS FOR FIREARM LUBRICANTS

Parameters	Firearm lubricants	
	Sample A	Sample B
BEES Environmental Performance—Total Score ¹	0.0501	0.0236
Acidification (5%)	0.0000	0.0000

TABLE 7.—SUMMARY OF BEES RESULTS FOR FIREARM LUBRICANTS—Continued

Parameters	Firearm lubricants	
	Sample A	Sample B
Criteria Air Pollutants (6%)	0.0002	0.0002
Ecological Toxicity (11%)	0.0061	0.0043
Eutrophication (5%)	0.0110	0.0007
Fossil Fuel Depletion (5%)	0.0154	0.0091
Global Warming (16%)	0.0044	0.0040
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0056	0.0035
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0032	0.0010
Water Intake (3%)	0.0042	0.0008
Economic Performance (Life Cycle Costs(\$)) ²	42.13	4.00
First Cost	42.13	4.00
Future Cost (3.9%)	(³)	(³)
Functional Unit	One gallon of firearm lubricant.	

¹ Numbers in parentheses indicate weighting factor.

² Costs are per functional unit.

³ For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted firearm lubricants ranges from \$4.00 to \$42.13 (present value dollars) per gallon of firearm lubricant.

8. Floor Strippers

Floor strippers are products formulated to loosen waxes, resins, or varnishes from floor surfaces. They can be in either liquid or gel form, and may also be used with or without mechanical assistance.

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

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

For biobased floor strippers, USDA identified 10 different manufacturers producing 12 individual biobased

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

- ASTM D6400–04, Standard Specification for Compostable Plastics;
- ASTM D877–02e1, Standard Test Method for Dielectric Breakdown Voltage of Insulating Liquids Using Disk Electrodes;
- Boeing Specification #D6–7127—Cleaning Interiors of Commercial Transport Aircraft;
- Federal Test Method Standard No. 536A;
- South Coast Air Quality Management District Method #313–91—Determination of volatile organic compounds (VOCs) by gas chromatography/mass spectrometry;
- ARP 1755B—Effect of Cleaning Agents on Aircraft Engine Material; and
- U.S. Navy #Navsea 6840—U.S. Navy surface ship (non-submarine)

authorized chemical cleaning products and dispensing systems.

- Green Seal #GS–34—Standard establishing environmental requirements for cleaning/degreasing agents;

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on bath and tile cleaners. These attempts were largely unsuccessful. However, Federal agencies routinely use, or procure contract services that use, floor strippers in cleaning and maintenance activities. Thus, they have a need for floor strippers and for services that require the use of floor strippers. Designation of floor strippers will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased floor strippers was performed for one of the products using the BEES analytical tool. Table 8 summarizes the BEES results for this floor stripper. As seen in Table 8, the environmental performance score, which includes human health, is 0.0559 points per treatment of 2,500 square feet of floor. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to 2,500 square feet of application, expressed in 100ths of 1 percent.

TABLE 8.—SUMMARY OF BEES RESULTS FOR FLOOR STRIPPERS

Parameters	Floor strippers
	Sample A
BEES Environmental Performance—Total Score ¹	0.0559
Acidification (5%)	0.0000
Criteria Air Pollutants (6%)	0.0005
Ecological Toxicity (11%)	0.0272
Eutrophication (5%)	0.0028
Fossil Fuel Depletion (5%)	0.0103
Global Warming (16%)	0.0041
Habitat Alteration (16%)	0.0000
Human Health (11%)	0.0035
Indoor Air (11%)	0.0024
Ozone Depletion (5%)	0.0000
Smog (6%)	0.0035
Water Intake (3%)	0.0016
Economic Performance (Life Cycle Costs (\$)) ²	8.50
First Cost	8.50
Future Cost (3.9%)	(³)
Functional Unit	42,500

¹ Numbers in parentheses indicate weighting factor.

² Costs are per functional unit.

³ For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

⁴ Square feet of application.

The life cycle cost of the submitted floor stripper is \$8.50 (present value dollars) per 2,500 square feet of application.

9. Laundry Products

Laundry products include laundry detergents, bleach, stain removers, fabric softeners, etc., that do not leave skin-irritating residues and that clean effectively without the use of toxic chemicals. These products are generally safe for all washable fabrics.

Based on the information acquired, USDA is proposing to subcategorize this item into two primary types as follows: (1) Pretreatment and spot remover products and (2) general purpose products. USDA believes this is reasonable because of the varying concentrations of the products required to perform satisfactorily.

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

For biobased laundry products, USDA identified 17 different manufacturers producing 45 individual biobased products. These 17 manufacturers do not necessarily include all manufacturers of biobased laundry products, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are typically tested against an industry performance standard and are being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- Boeing Specification #D6-7127—Cleaning Interiors of Commercial Transport Aircraft.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on bath and tile cleaners. These attempts were largely unsuccessful. However, Federal

agencies routinely use, or procure contract services that use, laundry products in cleaning and maintenance activities. Thus, they have a need for laundry products and for services that require the use of laundry products. Designation of laundry products will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased laundry products was performed for one of the products using the BEES analytical tool. Table 9 summarizes the BEES results for this laundry product. As seen in Table 9, the environmental performance score, which includes human health, is 0.1362 per a quantity of laundry product sufficient to wash 1,000 loads of laundry. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to washing 1,000 loads of laundry, expressed in 100ths of 1 percent.

TABLE 9.—SUMMARY OF BEES RESULTS FOR LAUNDRY PRODUCTS

Parameters	Laundry products
	Sample A
BEES Environmental Performance—Total Score ¹	0.1362
Acidification (5%)	0.0000
Criteria Air Pollutants (6%)	0.0012
Ecological Toxicity (11%)	0.0269
Eutrophication (5%)	0.0032
Fossil Fuel Depletion (5%)	0.0609
Global Warming (16%)	0.0119

TABLE 9.—SUMMARY OF BEES RESULTS FOR LAUNDRY PRODUCTS—Continued

Parameters	Laundry products
	Sample A
Habitat Alteration (16%)	0.0000
Human Health (11%)	0.0216
Indoor Air (11%)	0.0000
Ozone Depletion (5%)	0.0000
Smog (6%)	0.0043
Water Intake (3%)	0.0062
Economic Performance (Life Cycle Costs (\$)) ²	84.54
First Cost	84.54
Future Cost (3.9%)	(³)
Functional Unit	(⁴)

¹ Numbers in parentheses indicate weighting factor.

² Costs are per functional unit.

³ For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

⁴ Amount required to wash 1,000 loads of laundry.

The life cycle cost of the submitted laundry product was \$84.54 per 1,000 loads of laundry washed.

10. Wood and Concrete Sealers

Wood and concrete sealers are products used to protect wood and/or concrete from damage caused by insects, moisture, and decaying fungi and to make surfaces water resistant.

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

For biobased wood and concrete sealers, USDA identified 17 different manufacturers producing 30 individual biobased products. These 17 manufacturers do not necessarily include all manufacturers of biobased wood and concrete sealers, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are typically tested against multiple measures of performance and are being used commercially. While other

relevant measurements of performance may exist, applicable relevant measurements of performance against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- ASTM D4446–05, Standard Test Method for Anti-Swelling Effectiveness of Water-Repellent Formulations and Differential Swelling of Untreated Wood When Exposed to Liquid Water Environments;
 - ASTM D5401–03, Standard Test Method for Evaluating Clear Water Repellent Coatings on Wood;
 - ASTM D92–05a, Standard Test Method for Flash and Fire Points by Cleveland Open Cup Tester; and
 - ASTM E84–05e1, Standard Test Method for Surface Burning Characteristics of Building Materials.
- USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on bath and tile cleaners. These attempts were largely unsuccessful. However, Federal

agencies routinely perform, and procure services that perform, the types of construction and paving activities that utilize wood and concrete sealers. Thus, they have a need for wood and concrete sealers and for services that require the use of wood and concrete sealers. Designation of wood and concrete sealers will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased wood and concrete sealers was performed for two of the products using the BEES analytical tool. Table 10 summarizes the BEES results for the two wood and concrete sealers. As seen in Table 10, the environmental performance score, which includes human health, ranges from 0.0336 to 2.4769 points per 250 square feet of surface area sealed. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to 250 square feet of surface area sealed, expressed in 100ths of 1 percent.

TABLE 10.—SUMMARY OF BEES RESULTS FOR WOOD AND CONCRETE SEALERS

Parameters	Wood and concrete sealers	
	Sample A	Sample B
BEES Environmental Performance—Total Score ¹	0.0336	2.4769
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0003	0.0027
Ecological Toxicity (11%)	0.0048	0.0397
Eutrophication (5%)	0.0017	0.3876
Fossil Fuel Depletion (5%)	0.0144	0.0559
Global Warming (16%)	0.0047	0.0203
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0054	1.9630
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0016	0.0050
Water Intake (3%)	0.0007	0.0027
Economic Performance (Life Cycle Costs(\$)) ²	18.00	200.00

TABLE 10.—SUMMARY OF BEES RESULTS FOR WOOD AND CONCRETE SEALERS—Continued

Parameters	Wood and concrete sealers	
	Sample A	Sample B
First Cost	18.00	200.00
Future Cost (3.9%)	(³)	(³)
Functional Unit	250 square feet of surface area sealed.	

¹ Numbers in parentheses indicate weighting factor.

² Costs are per functional unit.

³ For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted wood and concrete sealers range from \$18.00 to \$200.00 (present value dollars) per 250 square feet of surface area sealed.

C. Minimum Biobased Contents

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

As discussed in Section IV.A of this preamble, USDA relied entirely on manufacturers’ voluntary submission of samples to support the proposed designation of these 10 items. The data presented in the following paragraphs are the test results from all of the product samples that were submitted for analysis. It is the responsibility of the manufacturers to “self-certify” that each product being offered as a biobased product for preferred procurement contains qualifying feedstock. As contained in the Guidelines, the FB4P program will consider qualifying feedstocks for biobased products as originating from “designated countries” (as that term is defined in the Federal Acquisition Regulation (FAR) § 25.003)) as well as from the United States. USDA will develop a monitoring process for these self-certifications to ensure manufacturers are using qualifying feedstocks. If misrepresentations are found, USDA will remove the subject biobased product from the preferred procurement program and may take further actions as deemed appropriate.

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

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

USDA has determined that setting a minimum biobased content for designated items is appropriate. Establishing a minimum biobased content will encourage competition among manufacturers to develop products with higher biobased contents and will prevent products with de minimus biobased content from being purchased as a means of satisfying the requirements of section 9002. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Setting the minimum biobased content for an item at a level met by several of the tested products will provide more products from which procurement officials may choose, will encourage the most widespread usage of biobased products by procuring agencies, and is expected to accomplish the objectives of section 9002. Procuring agencies are encouraged to seek products with the highest biobased content that is practicable in all 10 of the proposed designated items.

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

1. Bath and Tile Cleaners

Eight of the 29 biobased bath and tile cleaners identified have been tested for biobased content using ASTM D6866 ¹

¹ASTM D6866 (Standard Test Methods for Determining the Biobased Content of Natural Range Materials Using Radiocarbon and Isotope Ratio Mass Spectrometry Analysis) is used to distinguish between carbon from fossil resources (non-biobased carbon) and carbon from renewable sources

The biobased content of these 8 samples ranged from 16 percent to 100 percent.

USDA evaluated the manufacturer’s performance claims for the product whose biobased content was tested at 16 percent. The available information for this product did not indicate any unique performance characteristics or features not found in products with a higher biobased content. In addition, the tested biobased content of this product was substantially lower than the next lowest tested biobased content of 77 percent. Therefore, USDA dropped this product from consideration in setting the minimum biobased content for the item.

The remaining 7 tested products have biobased contents ranging from 77 to 100 percent. USDA is proposing to set the minimum biobased content for this item at 74 percent, based on the product with a tested biobased content of 77 percent. Setting the minimum biobased content level based on the product with a tested biobased content of 77 percent will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies. To account for possible variability in the results of ASTM D6866, as discussed earlier, the tested 77 percent value was then adjusted to 74 percent.

2. Clothing Products

Two of the 5 available biobased clothing products have been tested for biobased content using ASTM D6866. The biobased content of these two clothing products was 99 percent and 100 percent.

Both of the products tested were composed of essentially 100 percent polylactic acid (PLA) fibers, which are a 100 percent biobased material. Another synthetic fiber made with qualifying biobased material is also available for clothing manufacture. When tested for the blankets, bedding, and bed linens item, the biobased

(biobased carbon). The biobased content is expressed as the percentage of total carbon that is biobased carbon.

content of this other synthetic fiber was 29 percent. USDA knows that clothing can be and is being manufactured using this other synthetic fiber. Based on percent blends typically found in clothing, USDA believes that it is reasonable that both synthetic fibers will be used in blends where their content may be around 25 percent with the other 75 percent being non-qualifying biobased/non-biobased material.

Given the potential for the manufacture of biobased clothing as described above, USDA is proposing to set the minimum biobased content for this item at 6 percent. This is based on a clothing product composed of 25 percent of the synthetic fiber with the lower biobased content and 75 percent non-qualifying biobased content or non-biobased content. The 6 percent is calculated by lowering the 29 percent biobased content by 3 percentage points (to account for the variability in the ASTM D6866), multiply the result (*i.e.*, 26) by 25 percent, and then rounding down to the next whole integer ($26 \times 0.25 = 6.5$, rounded down to 6).

USDA believes that this is a reasonable methodology for setting the minimum biobased content for biobased clothing and will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies. As noted earlier in this preamble, USDA welcomes comments specifically on the methodology used to set the proposed minimum biobased content for biobased clothing.

3. Concrete and Asphalt Release Fluids

Eight of the 37 biobased concrete and asphalt release fluids identified have been tested for biobased content using ASTM D6866. The biobased content of these 8 biobased concrete and asphalt release fluids ranged from 90 percent to 98 percent.

USDA is proposing to set the minimum biobased content for this item at 87 percent, based on the product with a tested biobased content of 90 percent. Given that the range of tested biobased contents is narrow, USDA is proposing to set the minimum biobased content at the lowest tested level, which will allow all of the products sampled to meet the minimum biobased content. Setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

4. Cutting, Drilling, and Tapping Oils

Twelve of the 33 biobased cutting, drilling, and tapping oils identified have been tested for biobased content using ASTM D6866. The biobased content of these 12 biobased cutting, drilling, and tapping oils ranged from 67 percent to 100 percent.

USDA is proposing to set the minimum biobased content for this item at 64 percent, based on the product with a tested biobased content of 67. Cutting, drilling, and tapping oils can be formulated to meet a wide range of demands. For example, one of the products with a tested biobased content of 67 percent is a heavy duty oil. Because of the resulting range in product characteristics, USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

5. De-Icers

Two of the 9 biobased de-icers identified have been tested for biobased content using ASTM D6866. The biobased content of both of these biobased de-icers was 100 percent. Therefore, USDA is proposing to set the minimum biobased content for this item at 97 percent.

6. Durable Plastic Films

One of the 2 biobased durable plastic films identified have been tested for biobased content using ASTM D6866. The biobased contents of this durable plastic film was 64 percent. Therefore, USDA is proposing to set the minimum biobased content for this item at 61 percent.

7. Firearm Lubricants

Both biobased firearm lubricants identified have been tested for biobased content using ASTM D6866. The tested biobased contents for these samples ranged were 52 percent and 95 percent.

USDA is proposing to set the minimum biobased content for firearm lubricants at 49 percent, based on the product with a tested biobased content

of 52 percent. The firearm lubricant with the lower biobased content was specifically formulated for use in cold weather regions. Because of this range in product characteristics, USDA is proposing to set the minimum biobased content at a level that will include both products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

8. Floor Strippers

Three of the 12 biobased floor strippers identified have been tested for biobased content using ASTM D6866. The biobased contents of these 3 biobased floor strippers ranged from 82 percent to 96 percent.

USDA is proposing to set the minimum biobased content for this item at 79 percent, based on the product with a tested biobased content of 82 percent. USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled, including the product with 82 percent biobased content. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

9. Laundry Products

Five of the 45 biobased laundry products identified have been tested for biobased content using ASTM D6866—one pretreatment or spot remover biobased laundry product and 4 general purpose biobased laundry products. The biobased content of the one pretreatment or spot remover product was 11 percent. The biobased contents of the 4 general purpose biobased

laundry products ranged from 37 percent to 83 percent.

For pretreatment or spot remover biobased laundry products, USDA is proposing to set the minimum biobased content at 8 percent, based on the one product tested.

For general purpose biobased laundry products, USDA is proposing to set the minimum biobased content at 34 percent, based on the product with a tested biobased content of 37 percent. Three of the 4 general purpose biobased laundry products had tested biobased contents between 37 and 40 percent. While USDA knows of no performance differences between the four general purpose biobased products, USDA is proposing to set the minimum biobased content at a level that will include all of the general purpose biobased laundry products sampled. Furthermore, setting the minimum biobased content level based on the lowest level found among these sampled products will provide more products from which procurement officials may choose and will encourage the most widespread usage of biobased products by procuring agencies.

10. Wood and Concrete Sealers

Five of the 17 biobased wood and concrete sealers identified have been tested for biobased content using ASTM D6866. The biobased content of these 5 biobased wood and concrete sealers ranged from 82 percent to 91 percent.

USDA is proposing to set the minimum biobased content for this item at 79 percent, based on the products with a biobased content of 82 percent. USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

D. Effective Date for Procurement Preference and Incorporation Into Specifications

USDA intends for the final rule to take effect thirty (30) days after publication of the final rule. However, under the terms of the proposed rule,

procuring agencies would have a one-year transition period, starting from the date of publication of the final rule, before the procurement preference for biobased products within a designated item would take effect.

USDA proposes a one-year period before the procurement preferences would take effect based on an understanding that Federal agencies will need time to incorporate the preferences into procurement documents and to revise existing standardized specifications. Section 9002(d) of FSRIA and section 2902(c) of 7 CFR part 2902 explicitly acknowledge the latter need for Federal agencies to have sufficient time to revise the affected specifications to give preference to biobased products when purchasing the designated items. Procuring agencies will need time to evaluate the economic and technological feasibility of the available biobased products for their agency-specific uses and for compliance with agency-specific requirements, including manufacturers' warranties for machinery in which the biobased products would be used.

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

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

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

Once the item designations in today's proposal become final, manufacturers and vendors voluntarily may post information on specific products, including product and contact information, on the USDA biobased

products Web site <http://www.biobased.occ.usda.gov>. USDA will periodically audit the information displayed on the Web site and, where questions arise, contact the manufacturer or vendor to verify, correct, or remove incorrect or out-of-date information. Procuring agencies should contact the manufacturers and vendors directly to discuss specific needs and to obtain detailed information on the availability and prices of biobased products meeting those needs.

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

USDA has linked its Web site to DoD's list of specifications and standards, which can be used as guidance when procuring products. To access this list, go to USDA's FB4P Web site and click on the "Product Submission" tab and look for the DoD Specifications link.

VI. Regulatory Information

A. Executive Order 12866: Regulatory Planning and Review

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

It has been determined that this rule is not a “significant regulatory action” under the terms of Executive Order 12866. The annual economic effect associated with today’s proposed rule has not been quantified because the information necessary to estimate the effect does not exist. As was discussed earlier in this preamble, USDA made extensive efforts to obtain information on the Federal agencies’ usage of the 10 items proposed for designation. These efforts were largely unsuccessful. Therefore, attempts to determine the economic impacts of today’s proposed rule would necessitate estimating the anticipated market penetration of biobased products, which would entail many assumptions and, thus, be of questionable value. Also, the program allows procuring agencies the option of not purchasing biobased products if the costs are deemed “unreasonable.” Under this program, the determination of “unreasonable” costs will be made by individual agencies. USDA knows these agencies will consider such factors as price, life-cycle costs, and environmental benefits in determining whether the cost of a biobased product is determined to be “reasonable” or “unreasonable.” However, until the program is actually implemented by the various agencies, it is impossible to quantify the impact this option would have on the economic effect of the rule. Therefore, USDA relied on a qualitative assessment to reach the judgment that the annual economic effect of the designation of these 10 items is less than \$100 million, and likely to be substantially less than \$100 million. This judgment was based primarily on the offsetting nature of the program (an increase in biobased products purchased with a corresponding decrease in petroleum products purchased) and, secondarily, on the ability of procuring agencies not to purchase these items if costs are judged unreasonable, which would reduce the economic effect.

1. Summary of Impacts

Today’s proposed rulemaking is expected to have both positive and negative impacts to individual businesses, including small businesses. USDA anticipates that the biobased preferred procurement program will provide additional opportunities for businesses to begin supplying biobased materials to manufacturers of bath and tile cleaners, clothing products, concrete and asphalt release fluids, cutting, drilling, and tapping oils, de-icers, durable plastic films, firearm lubricants, floor strippers, laundry products, and wood and concrete sealers and to begin

supplying these products made with biobased materials to Federal agencies and their contractors. In addition, other businesses, including small businesses, that do not directly contract with procuring agencies may be affected positively by the increased demand for these biobased materials and products. However, other businesses that manufacture and supply only non-qualifying products and do not offer a biobased alternative product may experience a decrease in demand for their products. Thus, today’s proposed rule will likely increase the demand for biobased products, while decreasing the demand for non-qualifying products. It is anticipated that this will create a largely “offsetting” economic impact.

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

2. Summary of Benefits

The designation of these 10 items provides the benefits outlined in the objectives of section 9002: To increase domestic demand for biobased products and, thus, for the many agricultural commodities that can serve as feedstocks for production of biobased products; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and to enhance the Nation’s energy security by substituting biobased products for products derived from imported oil and natural gas. The increased demand for biobased products will also lead to the substitution of products with a possibly more benign or beneficial environmental impact, as compared to the use of non-biobased products. By purchasing these biobased products, procuring agencies can increase opportunities for all of these benefits. On a national and regional level, today’s proposed rule can result in expanding and strengthening markets

for biobased materials used in these 10 items. However, because the extent to which procuring agencies will find the performance and costs of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of today’s proposed rule. USDA, however, anticipates the annual economic effect of the designation of these 10 items to be substantially below the \$100 million threshold. In addition, today’s proposed rule does not: Create serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in Executive Order 12866.

B. Regulatory Flexibility Act (RFA)

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

USDA evaluated the potential impacts of its proposed designation of these 10 items to determine whether its actions would have a significant impact on a substantial number of small entities. Because the Federal Biobased Products Preferred Procurement Program in section 9002 of FSRIA applies only to Federal agencies and their contractors, small governmental (city, county, etc.) agencies are not affected. Thus, the proposal, if promulgated, will not have a significant economic impact on small governmental jurisdictions. USDA anticipates that this program will affect entities, both large and small, that manufacture or sell biobased products. For example, the designation of items for preferred procurement will provide additional opportunities for businesses to manufacture and sell biobased products to Federal agencies and their contractors. Similar opportunities will be provided for entities that supply biobased materials to manufacturers. Conversely, the biobased procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. However, the proposed

rule will not affect existing purchase orders and it will not preclude procuring agencies from continuing to purchase non-biobased items under certain conditions relating to the availability, performance, or cost of biobased items. Today's proposed rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials. Thus, the economic impacts of today's proposed rule are not expected to be significant.

The intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products. Because the program is still in its infancy, however, it is unknown how many businesses will ultimately be affected. While USDA has no data on the number of small businesses that may choose to develop and market products within the 10 items proposed for designation by today's proposed rulemaking, the number is expected to be small. Because biobased products represent an emerging market, only a small percentage of all manufacturers, large or small, are expected to develop and market biobased products. Thus, the number of small businesses affected by today's proposed rulemaking is not expected to be substantial.

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

While not a factor relevant to determining whether the proposed rule will have a significant impact for RFA purposes, USDA has concluded that the effect of today's proposed rule would be to provide positive opportunities to businesses engaged in the manufacture of these biobased products. Purchase and use of these biobased products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies. Technological innovation associated with the use of biobased materials can translate into economic growth and increased industry competitiveness worldwide, thereby, creating opportunities for small entities.

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

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

D. Executive Order 12988: Civil Justice Reform

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

E. Executive Order 13132: Federalism

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

F. Unfunded Mandates Reform Act of 1995

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

G. Executive Order 12372: Intergovernmental Review of Federal Programs

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

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

Today's proposed rule does not significantly or uniquely affect "one or more Indian tribes," * * * the relationship between the Federal Government and Indian tribes, or * * * the distribution of power and responsibilities between the Federal Government and Indian tribes." Thus,

no further action is required under Executive Order 13175.

I. Paperwork Reduction Act

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

J. E-Government Act Compliance

The Office of Energy Policy and New Uses is committed to compliance with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for preferred procurement under each item designated. For information pertinent to GPEA compliance related to this rule, please contact Marvin Duncan at (202) 401–0461.

List of Subjects in 7 CFR Part 2902

Biobased products, Procurement.

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

CHAPTER XXIX—OFFICE OF ENERGY POLICY AND NEW USES, DEPARTMENT OF AGRICULTURE

PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

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

Authority: 7 U.S.C. 8102.

2. Add §§ 2902.36 through 2902.45 to subpart B to read as follows:

§ 2902.36 Bath and tile cleaners.

(a) *Definition.* Bath and tile cleaners are products designed to clean deposits on bath tubs, shower doors, shower curtains, bathroom tiles, floors, doors, counter tops, etc. They are available both in concentrated and ready-to-use forms.

(b) *Minimum biobased content.* The minimum biobased content is 74 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference effective date.* No later than [date one year after the date of publication of the final rule], procuring

agencies, in accordance with this part, will give a procurement preference for qualifying biobased bath and tile cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased bath and tile cleaners.

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

§ 2902.37 Clothing products.

(a) *Definition.* Clothing products are coverings designed to be worn on a person's body. These products include coverings for the torso and limbs, as well as coverings for the hands, feet, and head.

(b) *Minimum biobased content.* The minimum biobased content is 6 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

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

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

(2) Spacecraft systems and launch support equipment.

§ 2902.38 Concrete and asphalt release fluids.

(a) *Definition.* Concrete and asphalt release fluids are products designed to provide a lubricating barrier between the composite surface materials (e.g., concrete or asphalt) and the container (e.g., wood or metal forms, truck beds, roller surfaces, etc.).

(b) *Minimum biobased content.* The minimum biobased content is 87 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference effective date.* No later than [date one year after the date of

publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased concrete and asphalt release fluids. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased concrete and asphalt release fluids.

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

§ 2902.39 Cutting, drilling, and tapping oils.

(a) *Definition.* Cutting, drilling, and tapping oils are products designed to provide lubrication and reduce wear on the contact parts for cutting, drilling, and tapping machinery. This item applies only to neat oils.

(b) *Minimum biobased content.* The minimum biobased content is 64 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

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

§ 2902.40 De-icers.

(a) *Definition.* De-icers are agents that aid in the removal of snow and ice. For the purposes of this rule, de-icers do not include materials used to de-ice aircraft and airport runways.

(b) *Minimum biobased content.* The minimum biobased content is 97 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

qualifying biobased de-icers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased de-icers.

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

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

(2) Spacecraft systems and launch support equipment.

§ 2902.41 Durable plastic films.

(a) *Definition.* Durable plastic films are products typically used in the production of bags and packaging materials, and designed to resist water, ammonia, and other compounds, and to not readily biodegrade.

(b) *Minimum biobased content.* The minimum biobased content is 61 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying products within this item may overlap with the EPA-designated recovered content product: Nonpaper Office Products: Plastic trash bags. 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 nonpaper office products (plastic trash bags) and which product should be afforded the preference in purchasing.

(e) *Exemptions.* Spacecraft systems and launch support equipment applications are exempt from the

preferred procurement requirement for this item.

§ 2902.42 Firearm lubricants.

(a) *Definition.* Firearm lubricants are used in firearms to reduce the friction and wear between the moving parts of a firearm, and to keep the weapon clean and prevent the formation of deposits that could cause the weapon to jam.

(b) *Minimum biobased content.* The minimum biobased content is 49 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

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

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

(2) Spacecraft systems and launch support equipment.

§ 2902.43 Floor Strippers.

(a) *Definition.* Floor strippers are products formulated to loosen waxes, resins, or varnishes from floor surfaces. They can be in either liquid or gel form, and may also be used with or without mechanical assistance.

(b) *Minimum biobased content.* The minimum biobased content is 79 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

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

§ 2902.44 Laundry products.

(a) *Definition.* (1) Laundry products include laundry detergents, bleach, stain removers, fabric softeners, etc., that do not leave skin-irritating residues and that clean effectively without the use of toxic chemicals.

(2) The two types of laundry products for which minimum biobased contents under paragraph (b) of this section apply are:

(i) *Pretreatment or spot removers.* Laundry products specifically used to pretreat laundry to remove spots and stains.

(ii) *General purpose laundry products.* Laundry products used for regular cleaning activities.

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

(1) Pretreatment and spot removers—8 percent.

(2) General purpose laundry products—34 percent.

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

qualifying biobased laundry products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased laundry products.

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

§ 2902.45 Wood and concrete sealers.

(a) *Definition.* Wood and concrete sealers are products used to protect wood and/or concrete from damage caused by insects, moisture, and decaying fungi and to make surfaces water resistant.

(b) *Minimum biobased content.* The minimum biobased content is 79 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

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

Dated: September 26, 2006.

Roger Conway,

Director, Office of Energy Policy and New Uses, U.S. Department of Agriculture.

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