

* * * * *

Dated: January 9, 2017.

Elanor Starmer,*Administrator, Agricultural Marketing Service.*

[FR Doc. 2017-00587 Filed 1-12-17; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE**Office of Procurement and Property Management****7 CFR Part 3201**

RIN 0599-AA24

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

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to amend the Guidelines for Designating Biobased Products for Federal Procurement (Guidelines) to add 12 sections that will designate 12 product categories composed of intermediate ingredient and feedstock materials within which biobased products would be afforded procurement preference by Federal agencies and their contractors. USDA is also proposing minimum biobased contents for each of these product categories.

DATES: USDA will accept public comments on this proposed rule until March 14, 2017.

ADDRESSES: You may submit comments by any of the following methods. All submissions received must include the agency name and Regulatory Information Number (RIN). The RIN for this rulemaking is 0599-AA24. Also, please identify submittals as pertaining to the "Proposed Designation of Product Categories."

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

- *Email:* biopreferred_support@amecfw.com. Include RIN number 0599-AA24 and "Proposed Designation of Product Categories" on the subject line. Please include your name and address in your message.

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

- Persons with disabilities who require alternative means for communication for regulatory

information (Braille, large print, audiotape, etc.) should contact the USDA TARGET Center at (202) 720-2600 (voice) and (202) 690-0942 (TTY).

FOR FURTHER INFORMATION CONTACT:

Marie Wheat, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St. SW., Washington, DC 20024; email: biopreferred_support@amecfw.com; phone (202) 239-4502. Information regarding the Federal preferred procurement program (one initiative of the BioPreferred Program) is available on the Internet at <http://www.biopreferred.gov>.

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

- I. Authority
- II. Background
- III. Summary of Today's Proposed Rule
- IV. Designation of Product Categories, Minimum Biobased Contents, and Time Frame
 - A. Background
 - B. Product Categories and Minimum Biobased Contents Proposed for Designation
 - C. Compliance Date for Procurement Preference and Incorporation Into Specifications
- V. Where can agencies get more information on these USDA-designated product categories?
- VI. Regulatory Information
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Regulatory Flexibility Act (RFA)
 - C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights
 - D. Executive Order 12988: Civil Justice Reform
 - E. Executive Order 13132: Federalism
 - F. Unfunded Mandates Reform Act of 1995
 - G. Executive Order 12372: Intergovernmental Review of Federal Programs
 - H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - I. Paperwork Reduction Act
 - J. E-Government Act

I. Authority

The designation of these product categories is proposed under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill), as amended by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill), and further amended by the Agricultural Act of 2014 (the 2014 Farm Bill), 7 U.S.C. 8102. (Section 9002 of the 2002 Farm Bill, as amended by the 2008 and the 2014 Farm Bills, is referred to in this document as "section 9002".)

II. Background

Section 9002 provides for the preferred procurement of biobased products by Federal procuring agencies and is referred to hereafter in this **Federal Register** notice as the "Federal preferred procurement program." Under the provisions specified in the "Guidelines for Designating Biobased Products for Federal Procurement" (7 CFR part 3201) (Guidelines), the USDA BioPreferred Program "designates" product categories to which the preferred procurement requirements apply by listing them in subpart B of 7 CFR part 3201.

The term "product category" is used as a generic term in the designation process to mean a grouping of specific products that perform a similar function. As originally finalized, the Guidelines included provisions for the designation of product categories that were composed of finished, consumer products such as mobile equipment hydraulic fluids, penetrating lubricants, or hand cleaners and sanitizers.

The 2008 and 2014 Farm Bills directed USDA to expand the scope of the Guidelines to include the designation of product categories composed of intermediate ingredients and feedstock materials. Specifically, the 2008 Farm Bill stated that USDA shall "designate those intermediate ingredients and feedstocks that are or can be used to produce items that will be subject" to the Federal preferred procurement program. The term "intermediate ingredient and feedstock" is defined in the Farm Bill as "a material or compound made in whole or in significant part from biological products, including renewable agricultural materials (including plant, animal, and marine materials) or forestry materials, that are subsequently used to make a more complex compound or product." The term "intermediates" is used in the titles of the product categories being proposed for designation today to distinguish these proposed categories from the finished, consumer products previously designated by USDA. Additionally, in section 9001 of the 2014 Farm Bill, the term "renewable chemical" is defined as "a monomer, polymer, plastic, formulated product, or chemical substance produced from renewable biomass." Thus, most products that are described as "renewable chemicals" will be eligible for the Federal preferred procurement program because they meet the definition of one or more of the intermediate product categories included in today's proposed rule.

For example, the chemical substance known as citric acid, if biobased, may be considered as a renewable chemical and an intermediate ingredient for finished products in the cleaning, personal care, or textiles industries. Thus, biobased citric acid could be categorized in one or all of the following intermediate product categories that are proposed for designation today: Intermediates—Chemicals, Intermediates—Textile Processing Materials, Intermediates—Cleaner Components, or Intermediates—Personal Care Product Components. Additionally, the chemical substance known as oleic acid may be considered as a renewable chemical and an intermediate ingredient for finished products in the cleaning, personal care, or lubricant industries. Therefore, oleic acid could be categorized in one or all of the following intermediate product categories that are proposed for designation today: Intermediates—Chemicals, Intermediates—Lubricant Components, Intermediates—Cleaner Components, or Intermediates—Personal Care Product Components. These examples show that the intermediate product categories being proposed today may accommodate a variety of renewable chemical substances.

Although the Federal government does not typically purchase large quantities of intermediate ingredients and feedstock materials, designating such materials represents a means to identify and include finished products made from such designated materials in the Federal preferred procurement program. In the August 1, 2014 **Federal Register** (79 FR 44641), USDA finalized amendments to the Guidelines establishing procedures for designating intermediate ingredient or feedstock categories. Today's proposed rule follows the established procedures for designating intermediate ingredient product categories. Soon, USDA will propose designating product categories comprised of finished products made from intermediate ingredients that may be categorized within the product categories proposed for designation in today's rule. Therefore, USDA requests manufacturers and members of the public to submit technical information related to the designation of such finished product categories to biopreferred_support@amecfw.com. Specific technical information to submit includes the following: A finished product category name, descriptions of finished products that belong in this product category, how these finished products are used, any special features of these finished products, estimated or

tested biobased contents for each finished product, applicable performance standards that the finished products meet, and which intermediate ingredient and feedstock categories are used to make these finished products. Such information will be valuable in supporting the selection of product categories for designation but will be evaluated independently from today's proposed rule. Please refer to Section IV.B. of today's proposed rule for further details on the information required to designate product categories for Federal procurement preference.

Once USDA designates a product category, procuring agencies are required, with some exceptions, to purchase biobased products within these designated product categories where the purchase price of the procurement product exceeds \$10,000 or where the quantity of such products or the functionally equivalent products purchased over the preceding fiscal year equaled \$10,000 or more. Procuring agencies must procure biobased products within each product category unless they determine that products within a product category are not reasonably available within a reasonable period of time, fail to meet the reasonable performance standards of the procuring agencies, or are available only at an unreasonable price. As stated in the Guidelines, biobased products that are merely incidental to Federal funding are excluded from the Federal preferred procurement program; that is, the requirements to purchase biobased products do not apply to such purchases if they are unrelated to or incidental to the purpose of the Federal contract. For example, if a janitorial service company purchases cleaning supplies to be used in the performance of a Federal contract, the cleaning supplies would be subject to the authority of the Federal preferred procurement program. However, cleaning supplies purchased to maintain the offices from which the janitorial service company manages the Federal contract would be incidental to the performance of the contract and, as such, would not be subject to the authority of the Federal preferred procurement program. In implementing the Federal preferred procurement program for biobased products, procuring agencies should follow their procurement rules and Office of Federal Procurement Policy guidance on buying non-biobased products when biobased products exist and should document exceptions taken for price, performance, and availability. The definition of "procuring agency" in section 9002 includes both Federal agencies and "a

person that is a party to a contract with any Federal agency, with respect to work performed under such a contract." Thus, Federal contractors, as well as Federal agencies, are expressly subject to the procurement preference provisions of section 9002.

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

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

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

minimum biobased content based on the tested products within the subcategory.

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

USDA has not created subcategories for any of the product categories being proposed for designation in today's rule. USDA requests public comment, along with supporting data, on the need to create subcategories within any of the proposed product categories. If public comments are received that support the creation of subcategories, USDA will consider the supporting data and may create subcategories in the final rule.

Minimum Biobased Contents. The minimum biobased contents being proposed in this rule are based on products for which USDA has biobased content test data. USDA obtains biobased content data in conjunction with product manufacturer's applications for certification to use the USDA Certified Biobased Product label. Products that are certified to display the label must undergo biobased content testing by an independent, third party testing lab using ASTM D6866, "Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis". These test data become part of the BioPreferred Program database and their use in setting the minimum biobased content for designated product categories results in a more efficient process for both the Program and manufacturers of products within the product categories.

As a result of public comments received on the first designated product categories rulemaking proposal, USDA decided to account for the slight imprecision in the analytical method used to determine biobased content of products when establishing the minimum biobased content. Thus,

rather than establishing the minimum biobased content for a product category at the tested biobased content of the product selected as the basis for the minimum value, USDA is establishing the minimum biobased content for each product category at a level three (3) percentage points lower than the tested value. USDA believes that this adjustment is appropriate to account for the expected variations in analytical results. USDA encourages procuring agencies to seek products with the highest biobased content that is practicable in all of the proposed designated product categories.

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

USDA also considers the overall range of the tested biobased contents within a product category, groupings of similar values, and breaks (significant gaps between two groups of values) in the biobased content test data array. For example, in a previously proposed product category, the biobased contents of 7 tested products ranged from 17 to 100 percent, as follows: 17, 41, 78, 79, 94, 98, and 100 percent. Because this is a very wide range, and because there is a significant gap in the data between the 41 percent biobased product and the 78 percent biobased product, USDA reviewed the product literature to determine whether subcategories could be created within this product category. USDA found that the available product information did not justify creating a subcategory based on the 17 percent product or the 41 percent biobased content product. Further, USDA did not find any performance claims that would justify setting the minimum biobased content based on either the 17 percent or the 41 percent biobased content products. Thus, USDA set the minimum biobased content for this product category at 75 percent, based on the

product with a tested biobased content of 78 percent. USDA believes that this evaluation process allows it to establish minimum biobased contents based on a broad set of factors to assist the Federal procurement community in its decisions to purchase biobased products.

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

Overlap with EPA's Comprehensive Procurement Guideline program for recovered content products under the Resource Conservation and Recovery Act (RCRA) Section 6002. Some of the products that are within biobased product categories designated for Federal preferred procurement under this program may also be within categories the Environmental Protection Agency (EPA) has designated under the EPA's Comprehensive Procurement Guideline (CPG) for products containing recovered (or recycled) materials. Because today's proposed rule would designate intermediate ingredient product categories rather than categories of finished, consumer-use products, USDA does not believe that there is a direct overlap between these categories and CPG categories. However, if such an overlap situation is discovered, USDA is asking manufacturers of qualifying biobased products to make additional product and performance information available to Federal agencies conducting market research to assist them in determining whether the biobased products in question are, or are not, the same products for the same uses as the recovered content products. Manufacturers are asked to provide information highlighting the sustainable features of their biobased products and to indicate the various suggested uses of their product and the performance standards against which a particular product has been tested. In addition, depending on the type of biobased product, manufacturers are being asked to provide other types of information, such as whether the product contains fossil energy-based components (including petroleum, coal, and natural gas) and whether the product contains

recovered materials. Federal agencies also may review available information on a product's biobased content. Federal agencies may then use this information to make purchasing decisions based on the sustainability features of the products.

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

Federal Government Purchase of Sustainable Products. The Federal government's sustainable purchasing program includes the following three mandatory preference programs for designated products: The BioPreferred Program, the EPA's Comprehensive Procurement Guideline for products containing recovered materials, and the Environmentally Preferable Purchasing program. The Office of the Chief Sustainability Officer (OCSO) 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 or hazardous constituents, they can be harmful to aquatic life, the environment, and/or workers. Household cleaning products that are formulated to be disinfectants are required, under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), to be registered with EPA (unless they are formulated with exempt ingredients) and must meet specific labeling requirements warning of the potential risks associated with misuse of such products. When purchasing environmentally preferable cleaning products, many Federal agencies specify that products must meet Green Seal

standards for institutional cleaning products or that the products have been reformulated in accordance with recommendations from the EPA's Safer Choice Program (previously known as the "Design for the Environment" (DfE) program). Both the Green Seal standards and the Safer Choice 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 pH.

In contrast, some biobased products may be environmentally preferable to some products that meet Green Seal standards for institutional cleaning products or that have been reformulated in accordance with EPA's Safer Choice program. To fully compare products, one must look at the "cradle-to-grave" impacts of the manufacture, use, and disposal of products. USDA has been unable to perform the analyses necessary to determine the "cradle-to-grave" impacts of products within the product categories being proposed for designation because of resource constraints.

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

Other Federal Preferred Procurement Programs. Federal procurement officials should also note that many biobased products may be available for purchase by Federal agencies through the AbilityOne Program (formerly known as the Javits-Wagner-O'Day (JWOD) program). Under this program, members of organizations including the National Industries for the Blind (NIB) and SourceAmerica (formerly known as the National Industries for the Severely Handicapped) offer products and services for preferred procurement by Federal agencies. A search of the AbilityOne Program's online catalog (www.abilityone.gov) indicated that the types of intermediate ingredient product categories being proposed for designation in today's proposed rule are not available through the AbilityOne Program. USDA notes, however, that if such materials are offered at some point in the future, their procurement through

the AbilityOne Program would further the objectives of both the AbilityOne Program and the Federal preferred procurement program.

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

III. Summary of Today's Proposed Rule

USDA is proposing to designate the following product categories for Federal preferred procurement: Intermediates—Plastic Resins; Intermediates—Chemicals; Intermediates—Paint and Coating Components; Intermediates—Textile Processing Materials; Intermediates—Foams; Intermediates—Fibers and Fabrics; Intermediates—Lubricant Components; Intermediates—Binders; Intermediates—Cleaner Components; Intermediates—Personal Care Product Components; Intermediates—Oils, Fats, and Waxes; and Intermediates—Rubber Materials. In addition, USDA is proposing a minimum biobased content for each of these product categories and subcategories. Lastly, USDA is proposing a date by which Federal agencies must incorporate these designated product categories into their procurement specifications (see Section IV.E).

USDA is working with manufacturers and vendors to make all relevant product and manufacturer contact information available on the BioPreferred Program's Web site. Steps USDA has implemented, or will implement, include: Making direct contact with submitting companies through email and phone conversations to encourage completion of product listing; coordinating outreach efforts with intermediate material producers to encourage participation of their customer base; conducting targeted outreach with industry and commodity groups to educate stakeholders on the importance of providing complete product information; participating in industry conferences and meetings to educate companies on program benefits

and requirements; and communicating the potential for expanded markets beyond the Federal government, to include State and local governments, as well as the general public markets. Section V provides instructions to agencies on how to obtain this information on products within these product categories through the BioPreferred Program's Web site: <http://www.biopreferred.gov>.

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

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

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

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

4. Today's proposed rule is expected to have both positive and negative

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

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

5. As stated in Section II of today's proposed rule, USDA will soon propose designating product categories comprised of finished products made from intermediate ingredients that may be categorized within the product categories proposed for designation in today's rule. Therefore, USDA requests manufacturers and members of the public to submit technical information related to the designation of such finished product categories to biopreferred_support@amecfw.com. Specific technical information to submit includes the following: A finished product category name, descriptions of finished products that belong in this product category, how these finished products are used, any special features of these finished products, estimated or tested biobased contents for each finished product, applicable performance standards that the finished products meet, and which intermediate ingredient and feedstock categories are used to make these finished products. Such information will be valuable in supporting the selection of product categories for designation but will be evaluated independently from today's proposed rule. Please refer to Section IV.B. of today's proposed rule for further details on the information required to designate product categories for Federal procurement preference.

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

A. Background

When designating product categories for Federal preferred procurement,

section 9002 requires USDA to consider: (1) The availability of biobased products within the product categories and (2) the economic and technological feasibility of using those products.

In considering a product's availability, USDA uses several sources of information. The primary source of information for the product categories being proposed for designation is USDA's database of manufacturers and products that have been certified to display the USDA Certified Biobased Product label. In addition, USDA performs Internet searches, contacts trade associations and commodity groups, and contacts manufacturers and vendors to identify those with biobased products within product categories being considered for designation. USDA uses the results of these same searches to determine if a product category is generally available.

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

As discussed earlier, USDA has implemented, or will implement, several steps intended to educate the manufacturers and other stakeholders on the benefits of this program and the need to make relevant information, including manufacturer contact information, available to procurement officials via the BioPreferred Program Web site. Additional information on specific products within the product categories proposed for designation may also be obtained directly from the manufacturers of the products. USDA has also provided information on the BioPreferred Program Web site for manufacturers and vendors who wish to position their businesses as biobased product vendors to the Federal Government. This information can be accessed by clicking on the "Selling Biobased" tab on the left side of the home page of the BioPreferred Program's Web site.

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

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

To propose a product category for designation, USDA must have sufficient information on a sufficient number of products within the category to be able to assess its availability and its economic and technological feasibility. For some product categories, there may be numerous products available. For others, there may be very few products currently available. Given the infancy of the market for some product categories,

it is expected that categories with only a single product will be identified.

Further, given that the intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products, USDA has determined it is appropriate to designate a product category or subcategory for Federal preferred procurement even when there is only a single product with a single supplier. Similarly, the documented availability and benefits of even a very small percentage of all products that may exist within a product category are also considered sufficient to support designation.

Exemptions. Products that are exempt from the biobased procurement preference are military equipment, defined as any product or system designed or procured for combat or combat-related missions, and spacecraft systems and launch support equipment. However, USDA points out that it is not the intent of these exemptions to imply that biobased products are inferior to non-biobased products and agencies are encouraged to purchase biobased products wherever performance, availability and reasonable price indicates that such purchases are justified.

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

B. Product Categories and Minimum Biobased Contents Proposed for Designation

In today’s proposed rule, USDA is proposing to designate the following product categories for the Federal preferred procurement program:

Intermediates—Plastic Resins; Intermediates—Chemicals; Intermediates—Paint and Coating Components; Intermediates—Textile Processing Materials; Intermediates—Foams; Intermediates—Fibers and Fabrics; Intermediates—Lubricant Components; Intermediates—Binders; Intermediates—Cleaner Components; Intermediates—Personal Care Product Components; Intermediates—Oils, Fats, and Waxes; and Intermediates—Rubber Materials.

USDA has determined that each of these product categories meets the necessary statutory requirements—namely, that they are being produced with biobased materials 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 anticipates that the designation of these intermediate ingredient product categories will facilitate the designation of the many categories of finished consumer products that are made from these biobased intermediate ingredients. This designation of finished products made from designated ingredients was one key addition to Section 9002 made by the 2008 Farm Bill.

In addition, because of the participation by the manufacturers of these products in the voluntary labeling initiative, USDA has sufficient information on these product categories to determine their availability and to conduct the requisite analyses to determine their biobased content and their economic and technological feasibility.

The proposed designated product categories are discussed in the following sections.

1. Intermediates—Plastic Resins (Minimum Biobased Content 22 Percent)

Intermediates—Plastic Resins are materials that are typically viscous liquids with the ability to harden permanently and may exist in liquid or solid (powder or pellets) states. Intermediates—Plastic Resins may be

used in a variety of finished products neat, consisting of a single resin, or as a homogeneous blend of two or more neat resins, or composite, containing two or more distinct materials such as fiber-reinforced resins. Additionally, Intermediates—Plastic Resins may be used in finished products as additives such as plasticizers, pigments, thermal stability agents, or impact modifiers.

USDA identified 62 manufacturers and suppliers of 150 biobased Intermediates—Plastic Resins. These manufacturers and suppliers do not include all manufacturers and suppliers of biobased Intermediates—Plastic Resins, merely those identified through the USDA Certified Biobased Products in the BioPreferred Program's database. These 150 biobased Intermediates—Plastic Resins range in biobased content from 25 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of the products categorized as Intermediates—Plastic Resins. Thus, the proposed minimum biobased content for this product category is 22 percent, based on the products with a tested biobased content of 25 percent.

Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, some of these manufacturers and suppliers identified nine test methods (as shown below) used in evaluating products within the product category. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this product category, the test methods identified by the manufacturers and suppliers include:

- ASTM D256; Standard Test Methods for Determining the Izod Pendulum Impact Resistance of Plastics,
- ASTM D638; Standard Test Method for Tensile Properties of Plastics,
- ASTM D790; Standard Test Methods for Flexural Properties of Unreinforced and Reinforced Plastics and Electrical Insulating Materials,
- ASTM D882; Standard Test Method for Tensile Properties of Thin Plastic Sheeting,
- ASTM D6400; Standard Specification for Labeling of Plastics Designed to be Aerobically Composted in Municipal or Industrial Facilities,
- ASTM D6868; Standard Specification for Labeling of End Items that Incorporate Plastics and Polymers as Coatings or Additives with Paper and Other Substrates Designed to be

Aerobically Composted in Municipal or Industrial Facilities,

- BPI Certification; Compostable in Municipal and Industrial Composting Facilities

- ISO 9001; Quality Management Systems—Requirements, and
- Vinçotte; OK COMPOST.

USDA has been unable to obtain data on the amount of Intermediates—Plastic Resins purchased by Federal procuring agencies. As discussed earlier, the primary benefit of designating intermediate ingredient product categories is not to promote their direct purchase by Federal agencies but, rather, to establish the framework for designation of the extensive number of finished products that are made from these intermediate ingredients.

Specific product information, including company contact, intended use, biobased content, and performance characteristics has been collected on 150 Intermediates—Plastic Resins and may be found on the BioPreferred Program's Web site.

2. Intermediates—Chemicals (Minimum Biobased Content: 22 Percent)

Intermediates—Chemicals are those used as reactants for organic synthesis reactions rather than for their functional properties in a chemical mixture; those used as building block chemicals and secondary chemicals such as glycerol, succinic acid, propanediol, and monomers such as lactic acid and propylene; those used for specific functional properties during manufacturing of other products such as pH regulators, flocculants, precipitants, neutralizing agents, emulsifiers, detergents, wetting agents, foaming agents, or dispersants; those that are added to end-use products for their specific functional properties including solvents for thinning and drying applications but excluding solvents used for cleaning; and those used for dyes, pigments, and scents including flavorings for non-food products such as lip balm.

USDA identified 27 manufacturers and suppliers of 70 biobased Intermediates—Chemicals. These 27 manufacturers and suppliers do not necessarily include all manufacturers and suppliers of Intermediates—Chemicals, merely those identified through the USDA Certified Biobased Products in the BioPreferred Program's database. These 70 biobased Intermediates—Chemicals range in biobased content from 25 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to

exclude any of the products categorized as Intermediates—Chemicals. Thus, the proposed minimum biobased content for this product category is 22 percent, based on the products with a tested biobased content of 25 percent.

Relevant product information supplied by these manufacturers and suppliers indicates that these products are being used commercially. However, these 27 manufacturers and suppliers did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of a product category for Federal preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate a product category for Federal preferred procurement. If and when performance standards, test methods, and other relevant measures of performance are identified for this product category, USDA will provide such information on the BioPreferred Program's Web site.

USDA has been unable to obtain data on the amount of Intermediates—Chemicals purchased by Federal procuring agencies. As discussed earlier, the primary benefit of designating intermediate ingredient product categories is not to promote their direct purchase by Federal agencies but, rather, to establish the framework for designation of the extensive number of finished products that are made from these intermediate ingredients.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, has been collected on these 70 Intermediate—Chemicals products and is available on the BioPreferred Program's Web site.

3. Intermediates—Paint and Coating Components (Minimum Biobased Content 22 Percent)

Intermediates—Paint and Coating Components are ingredients used to formulate finished waterborne or solvent borne paint and coating products. Examples of Intermediates—Paint and Coating Components include binders, pigments thickeners, curing agents, modifiers, alkyd latex resins, polyols, reactive oligomers, or reactive diluents.

USDA identified 13 manufacturers and suppliers of 51 biobased Intermediates—Paint and Coating Components. These manufacturers and suppliers do not include all manufacturers and suppliers of biobased

Intermediates—Paint and Coating Components, merely those identified through the USDA Certified Biobased Products in the BioPreferred Program's database. These 51 biobased Intermediates—Paint and Coating Components range in biobased content from 25 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of the products categorized as Intermediates—Paint and Coating Components. Thus, the proposed minimum biobased content for this product category is 22 percent, based on the products with a tested biobased content of 25 percent.

Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. However, these manufacturers and suppliers did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of a product category for Federal preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate a product category for Federal preferred procurement. If and when performance standards, test methods, and other relevant measures of performance are identified for this product category, USDA will provide such information on the BioPreferred Program's Web site.

USDA has been unable to obtain data on the amount of Intermediates—Paint and Coating Components purchased by Federal procuring agencies. As discussed earlier, the primary benefit of designating intermediate ingredient product categories is not to promote their direct purchase by Federal agencies but, rather, to establish the framework for designation of the extensive number of finished products that are made from these intermediate ingredients.

Specific product information, including company contact, intended use, biobased content, and performance characteristics has been collected on these 51 Intermediates—Paint and Coating Components and may be found on the BioPreferred Program's Web site.

4. Intermediates—Textile Processing Materials (Minimum Biobased Content 22 Percent)

Intermediates—Textile Processing Materials are used to treat or finish textiles for the purposes of altering

textile characteristics such as color, fading, wrinkle resistance, texture, or moisture management.

USDA identified four manufacturers and suppliers of 24 biobased Intermediates—Textile Processing Materials. These manufacturers and suppliers do not include all manufacturers and suppliers of biobased Intermediates—Textile Processing Materials, merely those identified through the USDA Certified Biobased Products in the BioPreferred Program's database. These 24 biobased Intermediates—Textile Processing Materials range in biobased content from 25 percent to 98 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of the products categorized as Intermediates—Textile Processing Materials. Thus, the proposed minimum biobased content for this product category is 22 percent, based on the products with a tested biobased content of 25 percent.

Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. However, these manufacturers and suppliers did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of a product category for Federal preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate a product category for Federal preferred procurement. If and when performance standards, test methods, and other relevant measures of performance are identified for this product category, USDA will provide such information on the BioPreferred Program's Web site.

USDA has been unable to obtain data on the amount of Intermediates—Textile Processing Materials purchased by Federal procuring agencies. As discussed earlier, the primary benefit of designating intermediate ingredient product categories is not to promote their direct purchase by Federal agencies but, rather, to establish the framework for designation of the extensive number of finished products that are made from these intermediate ingredients.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, has been collected on these 24 Intermediates—Textile

Processing Materials and may be found on the BioPreferred Program's Web site.

5. Intermediates—Foams (Minimum Biobased Content 22 Percent)

Intermediates—Foams are dry polymer foams used for non-construction purposes, such as cushions for furniture.

USDA identified seven manufacturers and suppliers of eight biobased Intermediates—Foams. These manufacturers and suppliers do not include all manufacturers and suppliers of biobased Intermediates—Foams, merely those identified through the USDA Certified Biobased Products in the BioPreferred Program's database. These eight biobased Intermediates—Foams were each measured by ASTM D6866 to have 25, 30, 30, 33, 33, 40, 53, and 53 percent biobased contents. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of the products categorized as Intermediates—Foams. Thus, the proposed minimum biobased content for this product category is 22 percent, based on the product with a tested biobased content of 25 percent.

Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, some of these manufacturers and suppliers identified three test methods (as shown below) used in evaluating products within the product category. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this product category, the test methods identified by the manufacturers and suppliers include:

- ASTM D97; Standard Test Method for Pour Point of Petroleum Products,
- ASTM D6868; Standard Specification for Labeling of End Items that Incorporate Plastics and Polymers as Coatings or Additives with Paper and Other Substrates Designed to be Aerobically Composted in Municipal or Industrial Facilities, and
- California Technical Bulletin 117; Requirements, Test Procedure and Apparatus for Testing the Flame Retardance of Resilient Filling Materials Used In Upholstered Furniture.

USDA has been unable to obtain data on the amount of Intermediates—Foams purchased by Federal procuring agencies. As discussed earlier, the primary benefit of designating intermediate ingredient product categories is not to promote their direct purchase by Federal agencies but, rather, to establish the framework for

designation of the extensive number of finished products that are made from these intermediate ingredients.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, has been collected on these eight Intermediates—Foams and may be found on the BioPreferred Program's Web site.

6. Intermediates—Fibers and Fabrics (Minimum Biobased Content 25 Percent)

Intermediates—Fibers and Fabrics encompasses plant and animal fibers, fibers made from plant-derived polymers that are not yet formed into more complex products such as carpet or fabrics, fabrics made from natural fibers, fabrics made from synthetic fibers, or fabrics made from a blend of the two. These materials are used to manufacture finished products such as clothing, upholstery, or drapes.

USDA identified 16 manufacturers and suppliers of 48 biobased Intermediates—Fibers and Fabrics. These manufacturers and suppliers do not include all manufacturers and suppliers of biobased Intermediates—Fibers and Fabrics, merely those identified through the USDA Certified Biobased Products in the BioPreferred Program's database. These 48 biobased Intermediates—Fibers and Fabrics range in biobased content from 28 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of the products categorized as Intermediates—Fibers and Fabrics. Thus, the proposed minimum biobased content for this product category is 25 percent, based on the product with a tested biobased content of 28 percent.

Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, some of these manufacturers and suppliers identified seven test methods (as shown below) used in evaluating products within the product category. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this product category, the test methods identified by the manufacturers and suppliers include:

- AATCC 79; Absorbency of Textiles,
- AATCC 197; Vertical Wicking of Textiles,
- AATCC 198; Horizontal Wicking of Textiles,

- ACT Physical Properties Performance Guidelines,
- ASTM D737; Standard Test Method for Air Permeability of Textile Fabrics,
- ASTM D6868; Standard Specification for Labeling of End Items that Incorporate Plastics and Polymers as Coatings or Additives with Paper and Other Substrates Designed to be Aerobically Composted in Municipal or Industrial Facilities, and
- Oeko-Tex Standard 100; Tests for Harmful Substances in Textiles.

USDA has been unable to obtain data on the amount of Intermediates—Fibers and Fabrics purchased by Federal procuring agencies. As discussed earlier, the primary benefit of designating intermediate ingredient product categories is not to promote their direct purchase by Federal agencies but, rather, to establish the framework for designation of the extensive number of finished products that are made from these intermediate ingredients.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, has been collected on 48 Intermediates—Fibers and Fabrics and may be found on the BioPreferred Program's Web site.

7. Intermediates—Lubricant Components (Minimum Biobased Content 44 Percent)

Intermediates—Lubricant Components are ingredients that used specifically to formulate finished lubricant products. Examples of Intermediates—Lubricant Components include base oils, base fluids, additives, or friction modifiers.

USDA identified nine manufacturers and suppliers of 35 biobased Intermediates—Lubricant Components. These manufacturers and suppliers do not include all manufacturers and suppliers of biobased Intermediates—Lubricant Components, merely those identified through the USDA Certified Biobased Products in the BioPreferred Program's database. These 35 biobased Intermediates—Lubricant Components range in biobased content from 47 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of the products categorized as Intermediates—Lubricants. Thus, the proposed minimum biobased content for this product category is 44 percent, based on the products with a tested biobased content of 47 percent.

Information supplied by these manufacturers and suppliers indicates

that these products are being used commercially. In addition, one of these manufacturers and suppliers identified one test method used in evaluating products within the product category. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this product category, the test method identified by the manufacturer and supplier is NSF H1 Nonfood Compound Product Registration Program.

USDA has been unable to obtain data on the amount of Intermediates—Lubricant Components purchased by Federal procuring agencies. As discussed earlier, the primary benefit of designating intermediate ingredient product categories is not to promote their direct purchase by Federal agencies but, rather, to establish the framework for designation of the extensive number of finished products that are made from these intermediate ingredients.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, has been collected on these 35 Intermediates—Lubricant Components and may be found on the BioPreferred Program's Web site.

8. Intermediates—Binders (Minimum Biobased Content 47 Percent)

Intermediates—Binders are materials used to provide cohesiveness throughout an entire finished product. The product category does not include adhesives and glues that are finished products used to attach the surfaces of two or more distinct and separate components to one another.

USDA identified one manufacturer and supplier of one biobased Intermediates—Binders. This manufacturer and supplier is not expected to be the only manufacturer and supplier of biobased Intermediates—Binders, merely the only one that was identified through the USDA Certified Biobased Products in the BioPreferred Program's database. The biobased content of this Intermediates—Binders product is 50 percent, as measured by ASTM D6866. As discussed earlier, the tested value was reduced by 3 percentage points to account for the inherent variability in the test method. Thus, the proposed minimum biobased content for this product category is 47 percent.

Information supplied by this manufacturer indicates that this product is being used commercially. However, this manufacturer and supplier did not identify any applicable performance

standards, test methods, or other industry measures of performance against which this product has been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of a product category for Federal preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate a product category for Federal preferred procurement. If and when performance standards, test methods, and other relevant measures of performance are identified for this product category, USDA will provide such information on the BioPreferred Program's Web site.

USDA has been unable to obtain data on the amount of Intermediates—Binders purchased by Federal procuring agencies. As discussed earlier, the primary benefit of designating intermediate ingredient product categories is not to promote their direct purchase by Federal agencies but, rather, to establish the framework for designation of the extensive number of finished products that are made from these intermediate ingredients.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, has been collected on this one Intermediates—Binders product and may be found on the BioPreferred Program's Web site.

9. Intermediates—Cleaner Components (Minimum Biobased Content 55 Percent)

Intermediates—Cleaner Components are intermediate ingredients used specifically for formulating finished cleaning products. Examples of Intermediates—Cleaner Components include chelating agents, surfactants, hydrotropes, fatty acids, or solvents.

USDA identified eight manufacturers and suppliers of 19 different biobased Intermediates—Cleaner Components. These eight manufacturers and suppliers do not necessarily include all manufacturers and suppliers of biobased Intermediates—Cleaner Components, merely those identified through the USDA Certified Biobased Products in the BioPreferred Program's database. These 19 biobased Intermediates—Cleaner Components range in biobased content from 58 percent to 99 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of the products categorized as Intermediates—Cleaner Components. Thus, the proposed minimum biobased content for this product category is 55

percent, based on the products with a tested biobased content of 58 percent.

Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, one of the manufacturers and suppliers identified five test methods (as shown below) used in evaluating its product within the product category. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this product category, the test methods identified by the manufacturer and supplier include:

- ASTM D93; Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester,
- ASTM D1133; Standard Test Method for Kauri-Butanol Value of Hydrocarbon Solvents,
- ASTM D2887; Standard Test Method for Boiling Range Distribution of Petroleum Fractions by Gas Chromatography, and
- EPA Method 24; Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings.

USDA has been unable to obtain data on the amount of Intermediates—Cleaner Components purchased by Federal procuring agencies. As discussed earlier, the primary benefit of designating intermediate ingredient product categories is not to promote their direct purchase by Federal agencies but, rather, to establish the framework for designation of the extensive number of finished products that are made from these intermediate ingredients.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, has been collected on these 19 Intermediates—Cleaner Components and may be found on the BioPreferred Program's Web site.

10. Intermediates—Personal Care Product Components (Minimum Biobased Content 62 Percent)

Intermediates—Personal Care Product Components are ingredients used to formulate finished personal care products. Examples of Intermediates—Personal Care Product Components include surfactants, oils, humectants, emollients, or emulsifiers.

USDA identified nine manufacturers and suppliers of 37 biobased Intermediates—Personal Care Product Components. These manufacturers and suppliers do not include all manufacturers and suppliers of biobased Intermediates—Personal Care Product

Components, merely those identified through the USDA Certified Biobased Products in the BioPreferred Program's database. These 37 biobased Intermediates—Personal Care Product Components range in biobased content from 65 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of the products categorized as Intermediates—Personal Care Product Components. Thus, the proposed minimum biobased content for this product category is 62 percent, based on the products with a tested biobased content of 65 percent.

Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, some of these manufacturers and suppliers identified 3 test methods (as shown below) used in evaluating products within the product category. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this product category, the test methods identified by the manufacturers and suppliers include:

- ASTM D6868; Standard Specification for Labeling of End Items that Incorporate Plastics and Polymers as Coatings or Additives with Paper and Other Substrates Designed to be Aerobically Composted in Municipal or Industrial Facilities, and
- EPA Method 24; Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings.

USDA has been unable to obtain data on the amount of Intermediates—Personal Care Product Components purchased by Federal procuring agencies. As discussed earlier, the primary benefit of designating intermediate ingredient product categories is not to promote their direct purchase by Federal agencies but, rather, to establish the framework for designation of the extensive number of finished products that are made from these intermediate ingredients.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, has been collected on 37 Intermediates—Personal Care Product Components and may be found on the BioPreferred Program's Web site.

11. Intermediates—Oils, Fats, and Waxes (Minimum Biobased Content 65 Percent)

Intermediates—Oils, Fats, and Waxes include raw or modified fats and oils derived from plants or animals.

USDA identified five manufacturers and suppliers of 24 biobased Intermediates—Oils, Fats, and Waxes. These manufacturers and suppliers do not include all manufacturers and suppliers of biobased Intermediates—Oils, Fats, and Waxes, merely those identified through the USDA Certified Biobased Products in the BioPreferred Program's database. These 24 biobased Intermediates—Oils, Fats, and Waxes range in biobased content from 68 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of the products categorized as Intermediates—Oils, Fats, and Waxes. Thus, the proposed minimum biobased content for this product category is 65 percent, based on the products with a tested biobased content of 68 percent.

Information supplied by these manufacturers and suppliers indicates that these products are being used commercially. In addition, one of these manufacturers and suppliers identified one test method used in evaluating a product within the product category. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this product category, the test method identified by the manufacturer and supplier is California Technical Bulletin 117.

USDA has been unable to obtain data on the amount of Intermediates—Oils, Fats, and Waxes purchased by Federal procuring agencies. As discussed earlier, the primary benefit of designating intermediate ingredient product categories is not to promote their direct purchase by Federal agencies but, rather, to establish the framework for designation of the extensive number of finished products that are made from these intermediate ingredients.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, has been collected on these 24 Intermediates—Oils, Fats, and Waxes and may be found on the BioPreferred Program's Web site.

12. Intermediates—Rubber Materials (Minimum Biobased Content 96 Percent)

Intermediates—Rubber Materials are used in finished products such as rubber gloves, vehicle tires, footwear, sports apparel and equipment, bedding and pillow foams, tubing, catheters, gasketing, or cosmetic adhesives and bases.

USDA identified one manufacturer and supplier of two biobased Intermediates—Rubber Materials. This manufacturer and supplier is not expected to be the only manufacturer and supplier of biobased Intermediates—Rubber Materials, merely the only one identified through the USDA Certified Biobased Products in the BioPreferred Program's database. These two biobased Intermediates—Rubber Materials have biobased contents of 99 percent and 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of the products categorized as Intermediates—Rubber Materials. Thus, the proposed minimum biobased content for this product category is 96 percent, based on the products with a tested biobased content of 99 percent.

The Information supplied by this manufacturer and supplier indicates that these products are being used commercially. However, this manufacturer and supplier did not identify any applicable performance standards, test methods, or other industry measures of performance against which these products have been tested. USDA points out that the lack of identified performance standards is not relevant to the designation of a product category for Federal preferred procurement because it is not one of the criteria section 9002 requires USDA to consider in order to designate a product category for Federal preferred procurement. If and when performance standards, test methods, and other relevant measures of performance are identified for this product category, USDA will provide such information on the BioPreferred Program's Web site.

USDA has been unable to obtain data on the amount of Intermediates—Rubber Materials purchased by Federal procuring agencies. As discussed earlier, the primary benefit of designating intermediate ingredient product categories is not to promote their direct purchase by Federal agencies but, rather, to establish the framework for designation of the extensive number of finished products

that are made from these intermediate ingredients.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, has been collected on these two Intermediates—Rubber Materials and may be found on the BioPreferred Program's Web site.

C. Compliance Date for Procurement Preference and Incorporation Into Specifications

USDA intends for the final rule to take effect thirty (30) days after publication of the final rule. USDA proposes that starting from the date of publication of the final rule, procuring agencies have a one-year transition period before the procurement preference for biobased products within a designated product category takes effect. This proposed timeframe is based on section 9002(a)(3)(B)(viii) of the 2014 Farm Bill, which clearly provides a compliance date for amendments to the Guidelines of up to one year after publication of a final rule.

Therefore, USDA is proposing a one-year period before the procurement preferences would take effect because, as indicated in 7 CFR 3201.4(c), it recognizes that Federal agencies will need sufficient time to incorporate the preferences into procurement documents and to revise existing standardized specifications. Additionally, 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.

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

Therefore, USDA proposes that the mandatory preference for biobased products under the designated product categories take effect one year after promulgation of the final rule, which will provide 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. Some agencies may be able to complete these processes more expeditiously and not all uses will require extensive analysis or revision of existing specifications. Although it is allowing up to one year, USDA encourages procuring agencies to implement the procurement preferences

as early as practicable for procurement actions involving any of the designated product categories.

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

The information used to develop this proposed rule was voluntarily submitted by the manufacturers of products that are categorized within the product categories being proposed. These manufacturers sought to participate in the BioPreferred Program's USDA Certified Biobased Product labeling initiative and submitted product information necessary for certification. Information on each of these products can be found on the BioPreferred Program's Web site (<http://www.biopreferred.gov>).

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

By accessing the BioPreferred Program's Web site, agencies may also be able to obtain any 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.

VI. Regulatory Information

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

Executive Order 12866, as supplemented by Executive Order 13563, requires agencies to determine whether a regulatory action is "significant." The Order defines a "significant regulatory action" as one that is likely to result in a rule that may: "(1) Have an annual effect on the economy of \$100 million or more or

adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

Today's proposed rule has been determined by the Office of Management and Budget to be not significant for purposes of Executive Order 12866. We are not able to quantify the annual economic effect associated with today's proposed rule. USDA attempted to obtain information on the Federal agencies' usage within the 12 designated product categories. These efforts were largely unsuccessful. Therefore, attempts to determine the economic impacts of today's proposed rule would require estimation of the anticipated market penetration of biobased products based upon many assumptions. In addition, because agencies have the option of not purchasing products within designated product categories if price is "unreasonable," the product is not readily available, or the product does not demonstrate necessary performance characteristics, certain assumptions may not be valid. While facing these quantitative challenges, USDA relied upon a qualitative assessment to determine the impacts of today's proposed rule. Consideration was also given to the fact that agencies may choose not to procure products within designated product categories due to unreasonable price.

1. Summary of Impacts

Today's proposed rule is expected to have both positive and negative impacts to individual businesses, including small businesses. These positive and negative impacts are expected to be minimized because Federal agencies do not typically purchase significant quantities of the types of intermediate ingredient products that are the subject of today's proposed rule. However, USDA anticipates that the Federal preferred procurement program will ultimately provide additional opportunities for businesses and manufacturers to begin supplying products under the proposed designated biobased product categories to Federal agencies and their contractors. However,

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

2. Benefits of the Proposed Rule

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

3. Costs of the Proposed Rule

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

B. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601–602, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies

that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

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

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

The intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products. Because the biobased product industry as a whole is still a developing market, it is unknown how many businesses will ultimately be affected by today's proposed rule. While USDA has no data on the number of small businesses that may choose to develop and market biobased products within the product categories designated by this rulemaking, the number is expected to be small because this industry is still materializing. As such, USDA anticipates that only a small percentage of all manufacturers, large or small, are expected to develop and market biobased products. Thus, the number of small businesses manufacturing biobased products affected by this rulemaking is not expected to be substantial.

The Federal preferred procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. Most manufacturers of non-biobased products within the product categories being proposed for designation for Federal preferred procurement in this rule are expected to be included under the following NAICS codes: 324191 (petroleum lubricating oil and grease manufacturing), 325320

(pesticide and other agricultural chemicals manufacturing), 325411 (medicinal and botanical manufacturing), 325412 (pharmaceutical preparation manufacturing), 325510 (paint and coating manufacturing), 325612 (polish and other sanitation goods manufacturing), and 325620 (toilet preparation manufacturing). USDA obtained information on these seven NAICS categories from the U.S. Census Bureau's Economic Census database. USDA found that the Economic Census reports about 4,756 companies within these 7 NAICS categories and that these companies own a total of about 5,374 establishments. Thus, the average number of establishments per company is about 1.13. The Census data also reported that of the 5,374 individual establishments, about 5,228 (97.3 percent) have fewer than 500 employees. USDA also found that the overall average number of employees per company among these industries is about 92 and that the pharmaceutical preparation manufacturing segment (with an average of about 250) is the only segment reporting an average of more than 100 employees per company. Thus, nearly all of the businesses meet the Small Business Administration's definition of a small business (less than 500 employees, in most NAICS categories).

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

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

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

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

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

D. Executive Order 12988: Civil Justice Reform

This 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

This proposed rule does not significantly or uniquely affect “one or more Indian tribes . . . the relationship between the Federal Government and Indian tribes, or . . . the distribution of power and responsibilities between the Federal Government and Indian tribes.” Thus, no further action is required under Executive Order 13175.

I. Paperwork Reduction Act

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

J. E-Government Act Compliance

USDA is committed to compliance with the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for Federal preferred procurement under each designated product category. For information pertinent to E-Government Act compliance related to this rule, please contact Marie Wheat at (202) 239-4502.

List of Subjects in 7 CFR Part 3201

Biobased products, Procurement.

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

CHAPTER XXXII—OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT

PART 3201—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

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

Authority: 7 U.S.C. 8102.

■ 2. Add §§ 3201.108 through 3201.119 to subpart B to read as follows:

- Sec.
 3201.108 Intermediates—Plastic Resins.
 3201.109 Intermediates—Chemicals.
 3201.110 Intermediates—Paint and Coating Components.
 3201.111 Intermediates—Textile Processing Materials.
 3201.112 Intermediates—Foams.
 3201.113 Intermediates—Fibers and Fabrics.
 3201.114 Intermediates—Lubricant Components.
 3201.115 Intermediates—Binders.
 3201.116 Intermediates—Cleaner Components.
 3201.117 Intermediates—Personal Care Product Components.
 3201.118 Intermediates—Oils, Fats, and Waxes.
 3201.119 Intermediates—Rubber Materials.

§ 3201.108 Intermediates—Plastic Resins.

(a) *Definition.* Intermediates—Plastic Resins are materials that are typically viscous liquids with the ability to harden permanently and may exist in liquid or solid (powder or pellets) states. Intermediates—Plastic Resins may be used in a variety of finished products neat, consisting of a single resin, or a homogeneous blend of two or more neat resins, or composite, containing two or more distinct materials such as fiber-reinforced resins.

Additionally, Intermediates—Plastic Resins may be used in finished products as additives such as plasticizers, pigments, thermal stability agents, or impact modifiers.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 22 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

§ 3201.109 Intermediates—Chemicals.

(a) *Definition.* Intermediates—Chemicals are those used as reactants for organic synthesis reactions rather than for their functional properties in a chemical mixture; those used as

building block chemicals and secondary chemicals such as glycerol, succinic acid, propanediol, and monomers such as lactic acid and propylene; those used for specific functional properties during manufacturing of other products such as pH regulators, flocculants, precipitants, neutralizing agents, emulsifiers, detergents, wetting agents, foaming agents, or dispersants; those that are added to end-use products for their specific functional properties including solvents for thinning and drying applications but excluding solvents used for cleaning; and those used for dyes, pigments, and scents including flavorings for non-food products such as lip balm.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 22 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

§ 3201.110 Intermediates—Paint and Coating Components.

(a) *Definition.* Intermediates—Paint and Coating Components are ingredients used to formulate finished waterborne or solvent borne paint and coating products. Examples of Intermediates—Paint and Coating Components include binders, pigments thickeners, curing agents, modifiers, alkyd latex resins, polyols, reactive oligomers, or reactive diluents.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 22 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased Intermediates—Paint and Coating Components. By that date, Federal agencies responsible for drafting or reviewing specifications for products to

be procured shall ensure that the relevant specifications require the use of biobased Intermediates—Paint and Coating Components.

§ 3201.111 Intermediates—Textile Processing Materials.

(a) *Definition.* Intermediates—Textile Processing Materials are used to treat or finish textiles for the purposes of altering textile characteristics such as color, fading, wrinkle resistance, texture, or moisture management.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 22 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

§ 3201.112 Intermediates—Foams.

(a) *Definition.* Intermediates—Foams are dry polymer foams used for non-construction purposes, such as cushions for furniture.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 22 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

§ 3201.113 Intermediates—Fibers and Fabrics.

(a) *Definition.* Intermediates—Fibers and Fabrics encompasses plant and animal fibers, fibers made from plant-derived polymers that are not yet formed into more complex products

such as carpet or fabrics, fabrics made from natural fibers, fabrics made from synthetic fibers, or fabrics made from a blend of the two. These materials are used to manufacture finished products such as clothing, upholstery, or drapes.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 25 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

§ 3201.114 Intermediates—Lubricant Components.

(a) *Definition.* Intermediates—Lubricant Components are ingredients that used specifically to formulate finished lubricant products. Examples of Intermediates—Lubricant Components include base oils, base fluids, additives, or friction modifiers.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 44 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

§ 3201.115 Intermediates—Binders.

(a) *Definition.* Intermediates—Binders are materials used to provide cohesiveness throughout an entire finished product. The product category does not include adhesives and glues that are finished products used to attach the surfaces of two or more distinct and separate components to one another.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 47 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

§ 3201.116 Intermediates—Cleaner Components.

(a) *Definition.* Intermediates—Cleaner Components are intermediate ingredients used specifically for formulating finished cleaning products. Examples of Intermediates—Cleaner Components include chelating agents, surfactants, hydrotropes, fatty acids, or solvents.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 55 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

§ 3201.117 Intermediates—Personal Care Product Components.

(a) *Definition.* Intermediates—Personal Care Product Components are ingredients used to formulate finished personal care products. Examples of Intermediates—Personal Care Product Components include surfactants, oils, humectants, emollients, or emulsifiers.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 62 percent, which shall be based on the amount of qualifying biobased carbon in the product as a

percent of the weight (mass) of the total organic carbon in the finished product.

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

§ 3201.118 Intermediates—Oils, Fats, and Waxes.

(a) *Definition.* Intermediates—Oils, Fats, and Waxes include raw or modified fats and oils derived from plants or animals.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 65 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

§ 3201.119 Intermediates—Rubber Materials.

(a) *Definition.* Intermediates—Rubber Materials are used in finished products such as rubber gloves, vehicle tires, footwear, sports apparel and equipment, bedding and pillow foams, tubing, catheters, gasketing, or cosmetic adhesives and bases.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 96 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

Intermediates—Rubber Materials. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased Intermediates—Rubber Materials.

Dated: December 16, 2016.

Gregory L. Parham,

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

[FR Doc. 2016-31128 Filed 1-12-17; 8:45 am]

BILLING CODE 3410-93-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2016-9443; Airspace Docket No. 16-ASO-17]

Proposed Amendment of Class E Airspace; Kyle-Oakley Field Airport, Murray, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Murray, KY, as the Calloway Non-Directional Beacon (NDB) has been decommissioned, requiring airspace reconfiguration at Kyle-Oakley Field Airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the airport. This action also would update the geographic coordinates of the airport, and update the designation header.

DATES: Comments must be received on or before February 27, 2017.

ADDRESSES: Send comments on this proposal to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Bldg. Ground Floor Rm. W12-140, Washington, DC 20590; Telephone: 1-800-647-5527, or 202-366-9826. You must identify the Docket No. FAA-2016-9443; Airspace Docket No. 16-ASO-17, at the beginning of your comments. You may also submit and review received comments through the Internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed

on line at http://www.faa.gov/air_traffic/publications/. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202-267-8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202-741-6030, or go to http://www.archives.gov/federal-register/code_of_federal-regulations/ibr_locations.html.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Kyle-Oakley Field Airport, Murray, KY.

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. You may also submit comments through the Internet at <http://www.regulations.gov>.