Proposed Rules

Federal Register
Vol. 70, No. 127
Tuesday, July 5, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of Energy Policy and New Uses

7 CFR Part 2902

RIN 0503–AA26

Designation of Biobased Items for Federal Procurement

AGENCY: Office of Energy Policy and New Uses, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to amend 7 CFR part 2902, Guidelines for Designating Biobased Products for Federal Procurement, to add six sections to designate the following six items that are made with biobased products that would be afforded Federal procurement preference, as provided for under section 9002 of the Farm Security and Rural Investment Act of 2002: Mobile equipment hydraulic fluids; urethane roof coatings; water tank coatings; diesel fuel additives; penetrating lubricants; and bedding, bed linens, and towels. USDA also is proposing a minimum biobased content for each of these items. Once USDA designates an item, Federal agencies are required generally to purchase biobased products within these designated items where the purchase price of the procurement item exceeds $10,000 or where the quantity of such items or of functionally equivalent items purchased over the preceding fiscal year equaled $10,000 or more. USDA additionally proposes to revise section 2902.2 to add definitions for ''biodegradability'' and ''functional unit'' and section 2902.8 to adopt applicable ASTM International performance tests to verify biodegradability.

DATES: USDA will accept public comments on this proposed rule until September 6, 2005.

ADDRESSES: You may submit comments by any of the following methods. All submissions received must include the agency name and Regulatory Information Number (RIN). The RIN for this rulemaking is 0503–AA26. Also, please identify submittals as pertaining to the ''Proposed Designation of Items.''

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.biobased.oce.usda.gov*. Follow the instructions for submitting comments.
- E-mail: *fb4p@oce.usda.gov*. Include RIN number 0503–AA26 and ''Proposed Designation of Items'' on the subject line. Please include your name and address in your message.
- Mail/commercial/hand delivery: Mail or deliver your comments to: Marvin Duncan, USDA, Office of the Chief Economist, Office of Energy Policy and New Uses, Room 4059, South Building, 1400 Independence Avenue SW., MS–3815, Washington, DC 20250–3815.
- Persons with disabilities who require alternative means for communication for regulatory information (braille, large print, audiotape, etc.) should contact the USDA TARGET Center at (202) 720–2600 (voice) and (202) 401–4133 (TDD).

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

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

I. Authority

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

II. Background

A. Overview of Section 9002

Section 9002 of FSRIA provides for the preferred procurement of biobased products by Federal agencies. The objectives of this preferred procurement program are threefold. The first objective is to increase demand for biobased products. This would have beneficial effects, including an increase in domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products. Another important effect would be the substitution of products with a possibly more benign or beneficial environmental impact, as compared to the use of fossil energy-based products.

The second objective is to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities. Because biobased feedstocks are largely produced in rural settings and, in many cases because of their bulk require pre-processing or manufacturing close to where they are grown, increased dependence on biobased products appears likely to increase the amount of pre-processing and manufacturing of biobased products in rural regions of the Nation. This trend would help to create new investment, job formation, and income generation in these rural regions.

The third objective is to enhance the Nation's energy security by substituting biobased products for fossil energy-based products derived from imported oil and natural gas. The growing dependence of the Nation on imported oil and natural gas, along with heightened concerns about political instability in some of the oil rich regions in the world, have led the Congress to place a higher priority on domestic energy and biobased resources.

Federal agencies are required to purchase biobased products, as defined in regulations to implement the statute, for designated items costing over $10,000 each or when the quantities of functionally equivalent items purchased over the preceding fiscal year equaled $10,000 or more. Each Federal agency must procure biobased products within each designated item unless the agency determines that the items are not reasonably available within a reasonable period of time, fail to meet applicable performance standards, or are available only at an unreasonable price. Procurements by a Federal agency subject to section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962) are not subject to the requirements under section 9002 to the extent that the requirements of the two programs are inconsistent.

Section 9002 also requires USDA to provide information to Federal agencies on the availability, relative price, performance, and environmental and public health benefits of such items and, under section 9002(e)(1)(C), to recommend when appropriate the minimum level of biobased content to be contained in the procured products.

To achieve these objectives, section 9002 requires Federal agencies to develop procurement programs that give preference to the purchase of biobased products. To ensure that items composed of biobased products will be purchased to the maximum extent practicable, section 9002 requires each agency procurement program to adopt and implement one of the following options: (1) Award contracts to the vendor offering an item composed of the highest percentage of biobased products content practicable; (2) establish minimum biobased products content specifications which are set in such a way as to ensure that the biobased products content required is consistent with the requirements of section 9002; or (3) a substantially equivalent alternative. An example of a substantially equivalent alternative would be where a Federal agency elects to implement the first option for most items, but establishes the second option for a specified subset of items.

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

USDA Departmental Administration, Office of Procurement and Property Management, will issue guidance to Federal agencies regarding a model Biobased Products Preference Program, a promotion program for the Preference Program, and an annual review and monitoring of the effectiveness of an agency Preference Program. Information on the model Biobased Products Preference Program and other documents and tools is available on the USDA Federal Biobased Products Preferred Procurement Program Web site at *http://www.biobased.oce.usda.gov.*

There are a number of preference purchasing programs that Federal procurement officials must take into account when planning a procurement. There is, however, only one biobased product preferred procurement program. When USDA designates by rulemaking an item (a generic grouping of products) for preferred procurement under the Federal Biobased Products Preferred Procurement Program, manufacturers of all products under the umbrella of that item that meet the requirements to qualify for preferred procurement can claim that status for their products. USDA will invite the manufacturers of these qualifying products to post product and contact information on its Web site, *http://www.biobased.oce.usda.gov.* Federal agencies will be able to utilize this Web site as one tool to determine the availability of qualifying biobased products under a designated item. Procurement officials are encouraged to select products that fall within as many of the environmental programs as possible under the Federal Acquisition Regulation (FAR) part 23. To the extent that procurement officials will have to choose between products under different programs, procurement officials should look to the FAR for guidance regarding the relative priority of the various preferences.

As required under section 9002(e)(1), USDA consulted with the Environmental Protection Agency (EPA), the General Services Administration (GSA), and the Department of Commerce National Institute of Standards and Technology (NIST) regarding various aspects of today's proposed rulemaking. USDA also consulted with several Offices within the Defense Logistics Agency (DLA) and the USDA Departmental Administration. These consultations focused on topics such as the time frame for incorporating designated items into procurement specifications, the environmental and economic performance of designated items, the biobased content of designated items, and the availability of market demand information.

B. Development of Guidelines

On December 19, 2003, USDA published in the **Federal Register** (68 FR 70730) a proposed rule to establish guidelines implementing the provisions of section 9002. A 60-day comment period followed, during which USDA received 271 comments from 64 commenters. The comments were from private citizens, consultants, individual companies, industry organizations and trade groups, nonprofit organizations, universities, a Member of Congress, and State and Federal agencies.

After considering these comments, USDA made revisions and clarifications to the proposed guidelines. The final guidelines were published in the **Federal Register** on January 11, 2005, (70 FR 1792), along with a summary of the comments and USDA responses to those comments. The final guidelines are contained in 7 CFR part 2902, ''Guidelines for Designating Biobased Products for Federal Procurement.'' The part is divided into two subparts, ''Subpart A-General,'' and ''Subpart B-Designated Items.'' Subpart A addresses the purpose and scope of the guidelines and their applicability, provides guidance on product availability and procurement, defines terms used in the part, and addresses affirmative procurement programs and USDA funding for testing. Subpart B, which was reserved in the final guidelines, will be amended each time designated item rules (including today's proposed rule) are finalized and will identify and define the designated items, specify their minimum biobased contents, specify the time frames by which Federal agencies must incorporate the designated items into their procurement specifications, and specify any other factors relevant to specific designated items.

III. Summary of Today's Proposed Rulemaking

Today, USDA is proposing to designate the following six items for preferred procurement by Federal agencies: mobile equipment hydraulic fluids; urethane roof coatings; water tank coatings; diesel fuel additives; penetrating lubricants; and bedding, bed linens, and towels (see Section IV.B). USDA is also proposing a minimum biobased content for each of these items (see Section IV.C). USDA is also proposing to establish a time frame for Federal agencies to incorporate designated items into their procurement specifications (see Section IV.D).

USDA is also proposing in today's proposed rulemaking to amend section 2902.2, to add definitions of the terms ''biodegradability'' and ''functional unit'', and to amend section 2902.8 to require the use of applicable ASTM performance tests to verify manufacturer or vendor claims that their biobased products are biodegradable.

In today's proposed rulemaking, USDA is providing information on its findings as to the availability, economic and technical feasibility, environmental and public health benefits, and life cycle costs for each of the six designated items. Information on the availability, relative price, performance, and environmental and public health benefits of products within each of these six items is not presented in this notice. Instead, Section V provides instructions to agencies on how to obtain this information on products within these items through the following Web site: *http://www.biobased.oce.usda.gov.*

Finally, today's proposed rulemaking is the first in a series of actions to designate items. USDA invites comment on the proposed designation of these items, including the definition, proposed minimum biobased content, time frame for incorporation into Federal agencies' procurement specifications, requirement for determining biodegradability, and any of the relevant analyses performed during the selection of these items. Comments should be submitted as directed in the **ADDRESSES** section above.

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

A. Background

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

In considering an item's availability, USDA used several sources of information. The initial source of information USDA used was a report entitled ''USDA Biobased Products Sourcebook Outreach: An Evaluation of Industry Perspectives on Proposed Biobased Product Content Guidelines,'' April 2002. This report was prepared for USDA by Concurrent Technologies Corporation and is referred to as the ''CTC Report.'' (USDA has posted the CTC Report on its informational Web site, *http://www.biobased.oce.usda.gov.* The report can also be viewed at the Office of Energy Policy and New Uses, Room 4059, South Building, 1400 Independence Avenue, SW., MS–3815, Washington, DC 20250–3815. To arrange a viewing, contact Marvin Duncan at (202) 401–0461.) The purpose of the CTC Report was to provide descriptions of biobased items (generic groupings of products), including a proposed biobased content level. Then, USDA performed Internet searches, contacted trade associations (such as the Biobased Manufacturers Association) and commodity groups, searched the Thomas Register (a database, used as a resource for finding companies and products manufactured in North America, containing over 173,000 entries), and contacted individual manufacturers and vendors to identify those manufacturers and vendors with biobased products within items being considered for designation. USDA used the results of these same searches to determine if an item was generally available.

In considering an item's economic and technological feasibility, USDA examined evidence pointing to the general commercial use of an item and cost and performance characteristics. This information was obtained from the sources used to assess an item's availability. Commercial use, in turn, was evidenced by any or all of the following: (1) An item being listed in the CTC Report; (2) manufacturer and vendor information on the availability, relative prices, and performance of their products; and (3) evidence of an item being purchased by a Federal agency or other entity, where available. In sum, USDA considered an item economically and technologically feasible for purposes of designation if products within that item are being offered and used in the marketplace.

In considering the life cycle costs of items proposed for designation, USDA used the National Institute of Standards and Technology Building for Environmental and Economic Sustainability (BEES) analysis to test individual products within each proposed item. (Detailed information on this analytical tool can be found on the Web site *http://www.bfrl.nist.gov/oae/software/bees.html.*) The BEES analysis measures the environmental performance and the economic performance of a product.

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

In addition to the information provided by the BEES environmental performance analysis, or by the alternative ASTM International (ASTM) D7075 ''Standard Practice for Evaluating and Reporting Environmental Performance of Biobased Products,'' the biodegradability of certain biobased products may be a key environmental consideration in the selection of a product for purchase by Federal agencies. For example, mobile equipment hydraulic fluids may be used in environmentally sensitive areas such as wetlands or National Forests, and the biodegradability of biobased fluids may be of interest to the users. Similarly, the biodegradability of biobased lubricants would be a key environmental attribute to be considered. Single use, short life packaging and consumer plastics, and coated paper products may beneficially be composted along with other biowastes to generate much needed compost for land application. In such cases, the biodegradability of the products under composting conditions is a key environmental consideration.

To deter manufacturers from making false or unproven claims of product biodegradability, USDA is proposing that, if biodegradability is claimed by the manufacturer as a characteristic of a biobased product, the product must meet the appropriate, product-specific ASTM biodegradability standard(s). ASTM biodegradability standards include: D5864 ''Standard Test Method

for Determining the Aerobic Aquatic Biodegradation of Lubricants or Their Components''; D6139 ''Standard Test Method for Determining the Aerobic Aquatic Biodegradation of Lubricants or Their Components Using the Gledhill Shake Flask''; D6006 ''Standard Guide for Assessing Biodegradability of Hydraulic Fluids''; D6400 ''Standard Specification for Compostable Plastics'' and the standards cited therein; and D6868 ''Standard Specification for Biodegradable Plastics Used as Coatings on Paper and Other Compostable Substrates.''

USDA is proposing to adopt ASTM biodegradability standards because there are no other biodegradability standards in the U.S. written by any other standards writing organizations, because ASTM standards are already in use within industry, and because ASTM is the oldest and most well-established standards writing organization in the world. In addition, ASTM standards are widely used and referenced for both regulatory and procurement purposes by the Federal government.

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

USDA then utilized the BEES results of individual products within a designated item in its consideration of the life cycle costs at the item level. There is a single unit of comparison associated with each designated item. The basis for the unit of comparison is the ''functional unit,'' defined so that the products compared are true substitutes for one another. If significant differences have been identified in the useful lives of alternative products within a designated item (*e.g.*, if one product lasts twice as long as another) the functional unit will include reference to a time dimension to account for the frequency of product replacement. The functional unit also will account for products used in different amounts for equivalent service. For example, one urethane roof coating product may be environmentally and economically preferable to another on a pound-for-pound basis, but may require twice the mass to cover one square foot of roof, and last half as long, as the other product. To account for these performance differences, the functional unit for the urethane roof coating item would be ''one square foot of application for 50 years'' instead of ''one pound of urethane roof coating.'' The functional unit provides the critical reference point to which all BEES results for products within an item are scaled. Because functional units vary from item to item, performance comparisons are valid only among products within a designated item.

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

To propose an item for designation, USDA must have sufficient information on a sufficient number of products within an item to be able to assess its availability and its economic and technological feasibility, including its life cycle costs. For some items, there may be numerous products available. For other items, there may be only one product currently available. USDA has determined that the number of products available in an item, by itself, is not critical in determining whether or not to propose the item for designation. Given the infancy of the market for some items, it is not unexpected that single product items will be identified. Further, given that the intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products, USDA has determined that the identification of even a single biobased product within an item is sufficient to consider the designation of that item. Similarly, the documented availability, benefits, and life cycle costs of even a very small percentage of all products that may exist within an item are also considered sufficient to support designation.

B. Items Proposed for Designation

In today's proposed rulemaking, USDA is proposing to designate six items for the preferred procurement program: mobile equipment hydraulic fluids; urethane roof coatings; water tank coatings; diesel fuel additives; penetrating lubricants; and bedding, bed linens, and towels. USDA has determined that each of these six items meets the necessary statutory requirements—that they are being produced with biobased products and that their procurement will carry out the objectives of section 9002:

- To improve demand for biobased products;
- To spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and
- To enhance the Nation's energy security by substituting biobased products for fossil energy-based products derived from imported oil and natural gas.

Further, USDA has sufficient information on these six items to determine their availability and to conduct the requisite analyses to determine their biobased content and their economic and technological feasibility, including life cycle costs. USDA selected these six items for this notice of proposed rulemaking because USDA was able to expeditiously identify and analyze these items.

Finally, in proposing ''bedding, bed linens, and towels'' as a designated item, USDA is using information on the availability of biobased fibers produced by two manufacturers. Currently blankets are being produced using one of these manufacturer's biobased fibers. USDA is unaware of any products within this item being produced with the other manufacturer's biobased fibers. Based on the production of these blankets with biobased fibers and information on the potential use of either manufacturer's biobased fibers in similar products, USDA thinks that using the information available on biobased blankets to create a broader item designation (*i.e.*, bedding, bed linens, and towels) is reasonable. In addition, USDA thinks that the broader designation will further hasten development and use of biobased products within this item. USDA solicits comments on the appropriateness of creating this broader item designation.

Section 2902.5(c)(2) of the final guidelines states that USDA will not designate items for preferred procurement that are determined to

have mature markets. Mature markets are described as items that had significant national market penetration in 1972. USDA contacted manufacturers, manufacturing associations, and industry researchers to determine if any of the items proposed for designation today had a significant market share in 1972. The USDA research found that none of the six items proposed for designation today had a significant market share in 1972 and that, generally, products within these proposed designated items have only been available for 10 to 15 years.

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

1. *Mobile Equipment Hydraulic Fluids*

Mobile equipment hydraulic fluids represent that group of hydraulic fluid products formulated for use in non-stationary equipment such as tractors, end loaders, or backhoes.

For biobased mobile equipment hydraulic fluids, USDA identified 10 different manufacturers producing 32 individual products. These 10 manufacturers do not necessarily include all manufacturers of biobased mobile equipment hydraulic fluids, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that each of these products has been tested against one or more industry performance standards and is being used commercially. USDA contacted procurement officials with various Federal agencies including GSA, several offices within DLA, the Office of the Federal Environmental Executive (OFEE), USDA Departmental Administration, and the Office of Management and Budget (OMB) in an effort to gather information on the purchases of products within the six items proposed for designation today. Communications with these officials lead to the conclusion that obtaining credible current usage statistics and specific potential markets within the Federal government for biobased products is not possible at this time. Most of the contacted officials reported that procurement data are reported in higher level groupings of materials and supplies than the proposed designated items. Also, the purchasing of such materials as part of contracted services and with individual purchase cards used to purchase products locally further obscures credible data on purchases of specific products. USDA also investigated the Web site *FEDBIZOPPS.gov*, a site which lists Federal contract purchase opportunities greater than $25,000. The information provided on this Web site, however, is for broad categories of products rather than the specific types of products that are included in today's rulemaking. Therefore, USDA has been unable to obtain data on the amount of mobile equipment hydraulic fluids purchased by Federal agencies. However, USDA is aware that the various Federal agencies, including USDA, operate non-stationary equipment, such as construction or agricultural machinery, with hydraulic cylinders. In addition, many Federal agencies contract for services involving the use of such equipment. Thus, Federal agencies have a need for mobile equipment hydraulic fluids and for services which require the use of mobile equipment hydraulic fluids. Therefore, designation of mobile equipment hydraulic fluids will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased mobile equipment hydraulic fluid was performed for three of the products using the BEES analytical tool. Table 1 summarizes the BEES results for the three mobile equipment hydraulic fluid products. As seen in Table 1, the environmental performance score, which includes human health, ranges from 2.46 to 3.22 points per 55 gallon drum of fluid. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to 1 drum (55 gallons) of the product, expressed in 100ths of 1 percent. For example, the total amount of criteria air pollutants emitted in the U.S. in one year was divided by the total U.S. population to derive a ''criteria air pollutants per person value.'' The production and use of one drum of Fluid A was estimated to contribute 0.000088 percent of this value.

TABLE 1.—SUMMARY OF BEES RESULTS FOR MOBILE EQUIPMENT HYDRAULIC FLUID

Parameters	Mobile equipment hydraulic fluid		
	Fluid A	Fluid B	Fluid C
BEES Environmental Performance—Total Score [1] [2]	2.8411	2.4611	3.2248
Acidification (5%)	0.0002	0.0001	0.0003
Criteria Air Pollutants (6%)	0.0088	0.0076	0.0107
Ecological Toxicity (11%)	0.4573	0.3201	0.5826
Eutrophication (5%)	0.8642	0.5203	1.1129
Fossil Fuel Depletion (5%)	0.4630	0.7958	0.3617
Global Warming (16%)	0.2759	0.1949	0.3507
Habitat Alteration (16%)	0.0000	0.0000	0.0000
Human Health (11%)	0.1968	0.2571	0.0662
Indoor Air (11%)	0.0000	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000	0.0000
Smog (6%)	0.2200	0.1554	0.2820
Water Intake (3%)	0.3549	0.2098	0.4577
Economic Performance (Life Cycle Costs($))	768.61	497.14	470.25
First Cost [3]	768.61	497.14	470.25
Future Cost (3.9%)	([4])	([4])	([4])
Functional Unit	one 55-gallon drum		

[1] Performance comparisons are valid only among products within a designated item.

[2] Numbers in parentheses indicate weighting factor. The weighting factors represent the relative importance of the 12 environmental impacts, including human health impacts, that contribute to the BEES Environmental Score. They are derived from lists of the relative importance of these impacts developed by the EPA Science Advisory Board for the purpose of advising EPA as to how best to allocate its limited resources among environmental impact areas. Note that a lower Environmental Performance score is better than a higher score.

[3] Costs are per functional unit.

[4] Future costs are discounted to present value using the OMB discount rate of 3.9 percent. For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle costs of the submitted mobile equipment hydraulic fluids range from $470 to $769 (present value dollars) per 55 gallon drum of fluid. Present value dollars represent the sum of all costs associated with a product over a fixed period of time, including any applicable costs for purchase, installation, replacement, operation, maintenance and repair, and disposal. Present value dollars presented here reflect 2004 dollars. Dollars are expressed in present value terms to adjust for the effects of inflation. The complete results of the BEES analysis, extrapolated to the item level, can be found at *http://www.biobased.oce.usda.gov*.

2. Urethane Roof Coatings

Urethane roof coatings represent that group of coating products formulated for use in commercial roof deck systems to provide a single coat monolith roof coating system. These products are typically applied as a spray coating and can be incorporated with mesh substrates to provide a reinforced surface. Urethane roof coatings can be applied over traditional roof systems, polyurethane foams, and expanded polystyrene insulation materials to provide a tough resilient protective system.

For urethane roof coatings, USDA has identified one manufacturer producing a single biobased product. This manufacturer may not be the only manufacturer of biobased urethane roof coatings; it is merely the only one identified during USDA's information gathering activities. This product has been tested against six ASTM performance standards and is being used commercially. As discussed in the section on mobile equipment hydraulic fluids, USDA attempted to gather data on the potential market for biobased products within the Federal government. These attempts were unsuccessful. However, Federal agencies routinely procure building construction, renovation, and repair services and materials, including roof coatings. Requiring Federal agencies to give preference to the use of biobased roof coatings will advance the goals and objectives of section 9002.

An analysis of the environmental and human health benefits and the life cycle costs of biobased urethane roof coatings was performed using the BEES analytical tool (see Table 2). As seen in Table 2, the environmental performance score, which includes human health, was 0.0067 points per square foot of application (at 100 mils thickness) for 50 years. The environmental performance score indicates the share of U.S. environmental impacts attributable to 1 square foot of application (at 100 mils thickness) for 50 years, expressed in 100ths of 1 percent.

TABLE 2.—SUMMARY OF BEES RESULTS FOR URETHANE ROOF COATINGS

Parameters	Urethane roof coating
BEES Environmental Performance—Total Score [1] [2]	0.0067
Acidification (5%)	0.0000
Criteria Air Pollutants (6%)	0.0000
Ecological Toxicity (11%)	0.0017
Eutrophication (5%)	0.0010
Fossil Fuel Depletion (5%)	0.0014
Global Warming (16%)	0.0004
Habitat Alteration (16%)	0.0000
Human Health (11%)	0.0008
Indoor Air (11%)	0.0000
Ozone Depletion (5%)	0.0000
Smog (6%)	0.0002
Water Intake (3%)	0.0012
Economic Performance (Life Cycle Costs ($))	[3] 2.50 (1.25)
First Cost [4]	2.50 (1.25)
Future Cost (3.9%)	[5] 0.00
Functional Unit	([6])

[1] Performance comparisons are valid only among products within a designated item.

[2] Numbers in parentheses indicate weighting factor. The weighting factors represent the relative importance of the 12 environmental impacts, including human health impacts, that contribute to the BEES Environmental Score. They are derived from lists of the relative importance of these impacts developed by the EPA Science Advisory Board for the purpose of advising EPA as to how best to allocate its limited resources among environmental impact areas. Note that a lower Environmental Performance score is better than a higher score.

[3] Higher values associated with standard prices. Values in parentheses reflect discounted price for volume purchase.

[4] Costs are per functional unit.

[5] There are no operation, maintenance, or repair costs beyond total replacement costs. Because the projected life of the coating is 50 years, the cost of replacement, when discounted to present value using the OMB discount rate of 3.9 percent, is less than one penny. Thus, a value of zero was reported.

[6] One square foot of application for 50 years.

The life cycle cost of the submitted urethane roof coating was $2.50 (present value dollars) per square foot of application (at 100 mils thickness) for 50 years. The manufacturer also indicated that it offers high volume purchase discounts. Using the discounted price, a life cycle cost of $1.25 was calculated. Present value dollars represent the sum of all costs associated with a product over a fixed period of time, including any applicable costs for purchase, installation, replacement, operation, maintenance and repair, and disposal. Present value dollars presented here reflect 2004 dollars. Dollars are expressed in present value terms to adjust for the effects of inflation. The complete results of the BEES analysis, extrapolated to the item level, can be found at *http://www.biobased.oce.usda.gov*.

3. Water Tank Coatings

Water tank coatings represent that group of coating products formulated for use in potable water storage systems. These products are typically applied as a sprayed on thick film coating to provide a durable, maintenance-free, protective liner. Water tank coatings can be applied over both concrete and steel water tanks and reservoirs providing extended life cycle protection.

For water tank coatings, USDA identified one manufacturer producing a single biobased product. This manufacturer may not be the only manufacturer of biobased water tank coatings; it is merely the only one identified during USDA information gathering activities. This product has been tested against six ASTM performance standards and the Underwriters Laboratory Testing for Potable Water Approval standard, and is being used commercially. As discussed in the section on mobile equipment hydraulic fluids, USDA attempted to gather data on the potential market for biobased products within the Federal government. These attempts were unsuccessful. However, many Federal agencies have potable water storage tanks and reservoirs. Requiring Federal agencies to give preference to the use of biobased water tank coatings will advance the goals and objectives of section 9002.

An analysis of the environmental and human health benefits and the life cycle costs of biobased water tank coatings was performed using the BEES analytical tool (see Table 3). As seen in Table 3, the environmental performance score, which includes human health, was 0.0083 points and indicates the share of U.S. environmental impacts attributable to 1 square foot of application (at 125 mils thickness) for 30 years, expressed in 100ths of 1 percent.

TABLE 3.—SUMMARY OF BEES RESULTS FOR WATER TANK COATINGS

Parameters	Water tank coating
BEES Environmental Performance—Total Score [1] [2]	0.0083
Acidification (5%)	0.0000
Criteria Air Pollutants (6%)	0.0000
Ecological Toxicity (11%)	0.0021
Eutrophication (5%)	0.0012
Fossil Fuel Depletion (5%)	0.0017
Global Warming (16%)	0.0005

TABLE 3.—SUMMARY OF BEES RESULTS FOR WATER TANK COATINGS—Continued

Parameters	Water tank coating
Habitat Alteration (16%)	0.0000
Human Health (11%)	0.0010
Indoor Air (11%)	0.0000
Ozone Depletion (5%)	0.0000
Smog (6%)	0.0003
Water Intake (3%)	0.0015
Economic Performance (Life Cycle Costs ($))	[3] 3.12 (1.56)
First Cost [4]	3.12 (1.56)
Future Cost (3.9%)	[5] 0.00
Functional Unit	([6])

[1] Performance comparisons are valid only among products within a designated item.

[2] Numbers in parentheses indicate weighting factor. The weighting factors represent the relative importance of the 12 environmental impacts, including human health impacts, that contribute to the BEES Environmental Score. They are derived from lists of the relative importance of these impacts developed by the EPA Science Advisory Board for the purpose of advising EPA as to how best to allocate its limited resources among environmental impact areas. Note that a lower Environmental Performance score is better than a higher score.

[3] Higher values associated with standard prices. Values in parentheses reflect discounted price for volume purchase.

[4] Costs are per functional unit.

[5] There are no operation, maintenance, or repair costs beyond total replacement costs. Because the projected life of the coating is 30 years, the cost of replacement, when discounted to present value using the OMB discount rate of 3.9 percent, is less than one penny. Thus, a value of zero was reported.

[6] One square foot of application for 30 years.

The life cycle cost of the submitted water tank coating was $3.12 (present value dollars) per square foot of application (at 125 mils thickness) for 30 years. The manufacturer also indicated that it offers high volume purchase discounts. Using the discounted price, a life cycle cost of $1.56 was calculated. Present value dollars represent the sum of all costs associated with a product over a fixed period of time, including any applicable costs for purchase, installation, replacement, operation, maintenance and repair, and disposal. Present value dollars presented here reflect 2004 dollars. Dollars are expressed in present value terms to adjust for the effects of inflation. The complete results of the BEES analysis, extrapolated to the item level, can be found at *http://www.biobased.oce.usda.gov.*

4. Diesel Fuel Additives

Commercially available biobased diesel fuel additives are formulated as the mono alkyl esters of long chain fatty acids derived from renewable lipid sources. They are produced through the reaction of a vegetable oil or animal fat with methanol or ethanol in the presence of a catalyst to yield glycerin (as a byproduct) and the methyl or ethyl esters used as diesel fuel additives. Biobased diesel fuel additives are blended with petroleum diesel for use in compression ignition (diesel) engines. Its physical and chemical properties as it relates to operation of diesel engines are similar to petroleum-based diesel fuel.

For biobased diesel fuel additives, USDA identified 31 different manufacturers producing 42 individual products. These 31 manufacturers do not necessarily include all manufacturers of biobased diesel fuel additives, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products have been tested using ASTM D6751, Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, and are being used commercially.

The sulfur that is present in conventional diesel fuel is one of the compounds that provides necessary lubrication to certain engine components such as fuel injection pumps. Biobased diesel fuel additives provide similar lubricating properties to those provided by sulfur. As the use of low-sulfur diesel fuel is mandated by regulations implemented to reduce emissions of particulate matter and sulfur oxides, the use of diesel fuel additives to replace the lubricating properties of sulfur will be essential. According to Department of Energy (DOE) estimates of diesel fuel purchases for Federal fleet usage, there is a significant market opportunity for biobased diesel fuel additives. Therefore, designation of diesel fuel additives will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased diesel fuel additives was performed for one of the products using the BEES analytical tool. In addition, a second BEES analysis was conducted on industry average data supplied by the National Biodiesel Board. Table 4 summarizes the BEES results. As seen in Table 4, the environmental performance scores, which includes human health, were 0.023 and 0.029 points per gallon of product. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to 1 gallon of the product, expressed in 100ths of 1 percent.

TABLE 4.—SUMMARY OF BEES RESULTS FOR DIESEL FUEL ADDITIVES

Parameters	Diesel fuel additives	
	Industry average data	Additive A
BEES Environmental Performance—Total Score [1] [2]	0.0231	0.0287
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0002	0.0003
Ecological Toxicity (11%)	0.0047	0.0014
Eutrophication (5%)	0.0035	0.0026
Fossil Fuel Depletion (5%)	0.0072	0.0145
Global Warming (16%)	0.0035	0.0038
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0023	0.0048
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0008	0.0006
Water Intake (3%)	0.0009	0.0007
Economic Performance (Life Cycle Costs ($))	2.15	2.25
First Cost [3]	2.15	2.25
Future Cost (3.9%)	([4])	([4])

TABLE 4.—SUMMARY OF BEES RESULTS FOR DIESEL FUEL ADDITIVES—Continued

Parameters	Diesel fuel additives	
	Industry average data	Additive A
Functional Unit	one gallon	

[1] Performance comparisons are valid only among products within a designated item.
[2] Numbers in parentheses indicate weighting factor. The weighting factors represent the relative importance of the 12 environmental impacts, including human health impacts, that contribute to the BEES Environmental Score. They are derived from lists of the relative importance of these impacts developed by the EPA Science Advisory Board for the purpose of advising EPA as to how best to allocate its limited resources among environmental impact areas. Note that a lower Environmental Performance score is better than a higher score.
[3] Costs are per functional unit.
[4] Future costs are discounted to present value using the OMB discount rate of 3.9 percent. For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle costs for the industry average data and the one submitted diesel fuel additive were $2.15 and $2.25 (present value dollars) per gallon of product, respectively. Present value dollars represent the sum of all costs associated with a product over a fixed period of time, including any applicable costs for purchase, installation, replacement, operation, maintenance and repair, and disposal. Present value dollars presented here reflect 2004 dollars. Dollars are expressed in present value terms to adjust for the effects of inflation. The complete results of the BEES analysis, extrapolated to the item level, can be found at *http://www.biobased.oce.usda.gov.*

5. Penetrating Lubricants

Penetrating lubricants represent that group of products formulated to provide light lubrication and corrosion resistance in close tolerant internal and external applications including frozen nuts and bolts, power tools, gears, valves, chains, and cables.

For biobased penetrating lubricants, USDA identified 9 different manufacturers producing 9 individual products. These 9 manufacturers do not necessarily include all manufacturers of biobased penetrating lubricants, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicate that each of these products has been tested against one or more industry performance standards and is being used commercially. As discussed in the section on mobile equipment hydraulic fluids, USDA attempted to gather data on the potential market for biobased products within the Federal government. These attempts were unsuccessful. However, various Federal agencies, including USDA, operate or contract for the operation of overhaul facilities. Such facilities would use penetrating lubricants. Thus Federal agencies have a need for penetrating lubricants or for services which require the use of penetrating lubricants. Therefore, designation of penetrating lubricants will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased penetrating lubricants was performed for two of the products using the BEES analytical tool. Table 5 summarizes the BEES results. As seen in Table 5, the environmental performance scores, which includes human health, were 16.64 and 20.82 points per 55 gallon drum of product. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to 1 drum (55 gallons) of the product, expressed in 100ths of 1 percent.

TABLE 5.—SUMMARY OF BEES RESULTS FOR PENETRATING LUBRICANTS

Parameters	Penetrating lubricants	
	Lubricant A	Lubricant B
BEES Environmental Performance—Total Score[1] [2]	16.6355	20.8208
Acidification (5%)	0.0008	0.0014
Criteria Air Pollutants (6%)	0.1325	0.0754
Ecological Toxicity (11%)	4.6811	3.1058
Eutrophication (5%)	0.7865	5.1291
Fossil Fuel Depletion (5%)	6.4847	5.4267
Global Warming (16%)	1.6861	1.9323
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	2.1279	1.6275
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0001	0.0000
Smog (6%)	0.2843	1.4366
Water Intake (3%)	0.4515	2.0860
Economic Performance (Life Cycle Costs ($))	7,868.18	6,774.53
First Cost[3]	929.02	799.89
Future Cost (3.9%)[4]	6,939.16	5,974.64
Functional Unit	one 55-gallon drum over 10 years of use	

[1] Performance comparisons are valid only among products within a designated item.
[2] Numbers in parentheses indicate weighting factor. The weighting factors represent the relative importance of the 12 environmental impacts, including human health impacts, that contribute to the BEES Environmental Score. They are derived from lists of the relative importance of these impacts developed by the EPA Science Advisory Board for the purpose of advising EPA as to how best to allocate its limited resources among environmental impact areas. Note that a lower Environmental Performance score is better than a higher score.
[3] Costs are per functional unit.

[4] Future costs are discounted to present value using the OMB discount rate of 3.9 percent.

The life cycle costs of the two submitted penetrating lubricants were $6,775 and $7,868 (present value dollars) per 55 gallon drum of the product over 10 years of use. Present value dollars represent the sum of all costs associated with a product over a fixed period of time, including any applicable costs for purchase, installation, replacement, operation, maintenance and repair, and disposal. Present value dollars presented here reflect 2004 dollars. Dollars are expressed in present value terms to adjust for the effects of inflation. The complete results of the BEES analysis, extrapolated to the item level, can be found at *http://www.biobased.oce.usda.gov*.

6. Bedding, Bed Linens, and Towels

Bedding, bed linens, and towels represent a group of cloth products produced by weaving fibers made from qualifying biobased feedstock or by weaving fibers made from qualifying biobased feedstock in combination with other fibers. Other types of fibers with which biobased fibers may be blended include natural fibers (such as wool and cotton) and man-made textile fibers derived from petroleum-based resins. This item includes: bed coverings such as blankets, bedspreads, and comforters; sheets and pillowcases; and towels.

For bedding, bed linens, and towels, USDA identified one manufacturer producing biobased products. This manufacturer may not be the only manufacturer of biobased bedding, bed linens, and towels; it is merely the only one identified during USDA information gathering activities. The one identified manufacturer of biobased bedding, bed linens, and towels produces biobased blankets (in 12 different sizes, weights, and blends) that are commercially available on the market. These products have been tested against three ASTM performance standards and four American Association of Textile Chemists and Colorists' standards. As discussed in the section on mobile equipment hydraulic fluids, USDA attempted to gather data on the potential market for biobased products within the Federal government. These attempts were unsuccessful. However, several Federal agencies routinely procure bedding materials and towels. Requiring Federal agencies to give preference to the use of biobased bedding, bed linens, and towels will advance the goals and objectives of section 9002.

An analysis of the environmental and human health benefits and the life cycle costs of one biobased blanket was performed using the BEES analytical tool (see Table 6). As seen in Table 6, the environmental performance score, which includes human health, was 0.19 points and indicates the share of U.S. environmental impacts attributable to one blanket (average weighted size 90 inches by 96 inches, 4 pounds), expressed in 100ths of 1 percent.

TABLE 6.—SUMMARY OF BEES RESULTS FOR BEDDING, BED LINENS, AND TOWELS

Parameters	Bedding, bed linens, and towels
BEES Environmental Performance—Total Score [1] [2]	0.1901
Acidification (5%)	0.0000
Criteria Air Pollutants (6%)	0.0013
Ecological Toxicity (11%)	0.0087
Eutrophication (5%)	0.0521
Fossil Fuel Depletion (5%)	0.0747
Global Warming (16%)	0.0195
Habitat Alteration (16%)	0.0000
Human Health (11%)	0.0238
Indoor Air (11%)	0.0000
Ozone Depletion (5%)	0.0000
Smog (6%)	0.0043
Water Intake (3%)	0.0057
Economic Performance (Life Cycle Costs ($))	139.99
First Cost [3]	139.99
Future Cost (3.9%)	([4])
Functional Unit	([5])

[1] Performance comparisons are valid only among products within a designated item.

[2] Numbers in parentheses indicate weighting factor. The weighting factors represent the relative importance of the 12 environmental impacts, including human health impacts, that contribute to the BEES Environmental Score. They are derived from lists of the relative importance of these impacts developed by the EPA Science Advisory Board for the purpose of advising EPA as to how best to allocate its limited resources among environmental impact areas. Note that a lower Environmental Performance score is better than a higher score.

[3] Costs are per functional unit.

[4] Future costs are discounted to present value using the OMB discount rate of 3.9 percent. For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

[5] One blanket (average size 90 inches x 96 inches, 4 pounds).

The life cycle cost of the submitted blanket was $139.99 (present value dollars) for one blanket (average weighted size 90 by 96, 4 pounds). Present value dollars represent the sum of all costs associated with a product over a fixed period of time, including any applicable costs for purchase, installation, replacement, operation, maintenance and repair, and disposal. Present value dollars presented here reflect 2004 dollars. Dollars are expressed in present value terms to adjust for the effects of inflation. The complete results of the BEES analysis, extrapolated to the item level, can be found at *http://www.biobased.oce.usda.gov*.

C. Minimum Biobased Contents

Section 9002(e)(1)(C) directs USDA to recommend minimum biobased content levels where appropriate. In today's proposed rulemaking, USDA is proposing a minimum biobased product content for each of the six items proposed for designation based on information currently available to USDA. As discussed in Section IV.A of this preamble, USDA relied entirely on manufacturers' voluntary submission of data to support the proposed designation of these six items. The data presented in the following paragraphs are the results from all of the product samples that were submitted for analysis. Based on information supplied by the manufacturers, USDA has confirmed that the qualifying biobased content in each of the samples tested is derived, in whole or in significant part, from renewable domestic agricultural or forestry material.

USDA has identified only one product each in two of the items (urethane roof coatings and water tank coatings) proposed for designation in today's notice. USDA has determined that setting a minimum biobased content for an item, even on the basis of a single product, is appropriate. Establishing a minimum biobased content will encourage competition among manufacturers to develop products with higher biobased contents and will prevent products with de minimus biobased content from being purchased as a means of satisfying the requirements of section 9002. While USDA is proposing the minimum acceptable biobased content for each designated item, Federal agencies are encouraged to seek products with the highest biobased content that is practicable.

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

1. Mobile Equipment Hydraulic Fluids

Fourteen of the 32 mobile equipment hydraulic fluids identified have been tested for biobased content using ASTM

D6866.[1] The biobased content of these 14 fluids ranged from 24 percent to 99 percent. Thirteen of the 14 fluids tested had biobased contents higher than 47 percent.

USDA is proposing to set the minimum biobased content for this item at 24 percent, the lowest biobased content of the tested fluids. USDA is proposing this minimum content for three reasons. First, not all hydraulic fluids serve the same markets and meet the same industry standards; that is, not all fluids are interchangeable in their applications. The product containing 24 percent biobased content was formulated for use in high performance, low pour-point markets where many other biobased hydraulic fluids would not be suitable. It is in the best interests of the program for minimum biobased content to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with fossil energy based products in performance and economics. Second, the highest biobased content that is economically and technologically feasible for some markets might be substantially less than 100 percent. The designation of items should encourage the development of more biobased products for all applications that could be served by an item. The third reason for setting the minimum biobased content at the lowest level found among the sampled products is the desire to encourage the most widespread usage of biobased mobile equipment hydraulic fluid by Federal agencies. The performance characteristics found in the product with 24 percent biobased content are expected to result in its purchase and use by agencies who would not be able to use any of the competing, higher biobased content, products because those products do not meet their specific performance requirements.

2. Urethane Roof Coatings

USDA tested one sample of the one available urethane roof coating using ASTM D6866. The biobased content of this coating was 62 percent, which USDA is proposing as the minimum biobased content for this item.

As discussed earlier, USDA must establish the minimum biobased content for each item based on the information received from manufacturers of the item even when the only information available is on a single product within an item. Also as discussed earlier, this should not preclude the development of products with higher biobased contents.

3. Water Tank Coatings

USDA tested one sample of the one available water tank coating using ASTM D6866. The biobased content of this coating was 62 percent, which USDA is proposing as the minimum biobased content for this item. As discussed above, USDA is establishing the minimum biobased content based on the analysis of the only product for which information was provided.

4. Diesel Fuel Additives

Four of the 42 diesel fuel additives identified have been tested for biobased content using ASTM D6866. The biobased content of all four of the diesel fuel additives tested was from 93 percent to 95 percent. USDA has no information to indicate that other biobased diesel fuel additives would have a significantly lower biobased content. Because the range of the results is so small, USDA is proposing to set the minimum biobased content for this item at 93 percent.

5. Penetrating Lubricants

Five of the 9 penetrating lubricants identified have been tested for biobased content using ASTM D6866. The biobased content of these 5 penetrating lubricants ranged from 26 percent to 99 percent. Four of the 5 penetrating lubricants tested had biobased contents of 71 percent or higher.

USDA evaluated the information submitted by the manufacturer to determine if there was anything unique about the product that contained 26 percent biobased content, as it had done for the mobile equipment hydraulic fluid with the lowest reported biobased content. Based on the information currently available, USDA does not think that this product possesses qualities that are significantly different from the other four tested products or that enable it to be the only biobased option for a significant market segment. As indicated above, 4 of the 5 samples tested had biobased contents at or above 71 percent. Therefore, USDA is proposing to set the minimum biobased content for this item at 71 percent.

6. Bedding, Bed Linens, and Towels

USDA tested one sample of a biobased blanket using ASTM D6866. The biobased content of this blanket was 100 percent. However, the manufacturer of the blanket sampled also manufactures blankets using blends of biobased synthetic fibers and wool. One of the key objectives of section 9002 is to encourage the development of new and emerging products manufactured with biobased materials. For example, because USDA considers wool and cotton products such as blankets to be mature products, the wool and cotton portion of these blankets is not considered to be a qualifying biobased feedstock. While ASTM D6866 can be used to distinguish the fossil-based carbon content in a product from the biobased carbon content, it cannot be used to distinguish among biobased materials. Thus, the method cannot be used to determine what percentage of the biobased content of a product is a non-qualifying feedstock such as wool or cotton. In cases where the biobased portion of a product is a combination of qualifying and non-qualifying biobased feedstocks, USDA must rely on manufacturer's product formulation data to determine the qualifying portion of the total biobased content of the product. According to information provided by the manufacturer, the minimum amount of biobased synthetic fibers used in any of their blends is 50 percent.

USDA also has received information on another synthetic fiber, made with 37 percent qualifying biobased feedstock, that can be used in the manufacture of bedding, bed linens, and towels. Combining the 37 percent qualifying biobased fibers with wool or cotton fibers in a 50/50 blend would result in a finished product with a qualifying biobased content of about 18 percent. Based on product information on these two biobased synthetic fibers, USDA is proposing that the minimum biobased content for this designated item be 18 percent (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 product). The biobased content of this designated item would be based on ASTM D6866 to determine the total biobased content of the product and, when the product is a blend of qualifying and non-qualifying biobased feedstocks, the manufacturer's formulation data to determine the percentage of the total biobased content that is qualifying biobased materials.

D. Effective Date for Procurement Preference and Incorporation Into Specifications

USDA intends for the final rule to take effect thirty (30) days after publication. The changes to sections 2902.2 and 2902.8 would take effect at that time. However, under the terms of

[1] ASTM D6866 (Standard Test Methods for Determining the Biobased Content of Natural Range Materials Using Radiocarbon and Isotope Ratio Mass Spectrometry Analysis) is used to distinguish betwen carbon from fossil resources (non-biobased carbon) and carbon from renewable sources (biobased carbon). The biobased content is expressed as the percentage of total carbon that is biobased carbon.

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

USDA proposes a one-year period before the preferences would take effect based on an understanding that Federal agencies will need time to incorporate the preferences into procurement documents and to revise existing standardized specifications. Section 9002(d) and section 2902(c) explicitly acknowledge the latter need for Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items to be procured by Federal agencies to have sufficient time to complete the necessary processes to revise the affected specifications to give preference to biobased products when purchasing the designated items. Federal agencies will need time to evaluate the economic and technological feasibility of the available biobased products for their agency-specific uses and for compliance with agency-specific requirements, including manufacturers' warranties for machinery in which the biobased products would be used. For these reasons, USDA proposes that the mandatory preference for biobased products under the designated items take effect one year after promulgation of the final rule. The one-year period provides these agencies with ample time to evaluate the economic and technological feasibility of biobased products for a specific use and to revise the specifications accordingly. However, some agencies may be able to complete these processes more expeditiously, and not all uses will require extensive analysis or revision of existing specifications. Although allowing up to one year, USDA encourages Federal agencies to implement the procurement preferences as early as practicable for procurement actions involving one or more of the designated items.

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

Once the item designations in today's proposal become final, manufacturers and vendors voluntarily may post information on specific products, including product and contact information, on the USDA biobased products Web site *http://www.biobased.oce.usda.gov.* USDA will periodically audit the information displayed on the Web site and, where questions arise, contact the manufacturer or vendor to verify, correct, or remove incorrect or out-of-date information. Federal 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 new Web site, agencies will also be able to obtain the voluntarily-posted information on each product concerning: Relative price; life cycle costs; hot links directly to a manufacturer's or vendor's Web site (if available); performance standards (industry, government, military, ASTM/ISO) that the product has been tested against; and detailed environmental and public health information from the BEES analysis or the alternative analysis embedded in the ASTM Standard D7075, ''Standard Practice for Evaluating and Reporting Environmental Performance of Biobased Products.''

VI. Regulatory Information

A. Executive Order 12866: Regulatory Planning and Review

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

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866. The annual economic effect associated with today's proposed rule has not been quantified because the information necessary to estimate the effect does not exist. As was discussed earlier in this preamble, USDA made extensive efforts to obtain information on the Federal agencies' usage of the six items proposed for designation. These efforts were unsuccessful. Therefore, attempts to determine the economic impacts of today's proposed rule would necessitate estimating the anticipated market penetration of biobased products, which would entail many assumptions and, thus, be of questionable value. Also, the proposed program allows Federal agencies the option of not purchasing biobased products if the costs are deemed ''unreasonable.'' Because USDA has no information on how the various agencies will determine what is ''unreasonable,'' it is impossible to quantify the impact this option would have on the economic effect of the rule. Therefore, USDA relied on a qualitative assessment to reach the judgment that the annual economic effect of the designation of these six items is less than $100 million, and likely to be substantially less than $100 million. This judgment was based primarily on the offsetting nature of the program (an increase in biobased products purchased with a corresponding decrease in petroleum products purchased) and, secondarily, on the ability of Federal agencies not to purchase these items if costs are judged unreasonable, which would reduce the economic effect.

1. Summary of Impacts

Today's proposed rulemaking is expected to have both positive and negative impacts to individual businesses, including small businesses. USDA anticipates that the biobased preferred procurement program will provide additional opportunities for businesses to begin supplying biobased materials to manufacturers of mobile equipment hydraulic fluids, urethane roof coatings, water tank coatings, diesel fuel additives, penetrating lubricants, and bedding, bed linens, and towels and to begin supplying these products made with biobased materials to Federal agencies. In addition, other businesses, including small businesses, that do not directly contract with Federal agencies may be affected positively by the increased demand for these biobased materials and products. However, other businesses that manufacture and supply only non-qualifying products and do not offer a biobased alternative product may experience a decrease in demand for their products. Thus, today's proposed rule will likely increase the demand for biobased products, while decreasing the demand for non-qualifying products. It is anticipated that this will create a largely ''offsetting'' economic impact.

USDA is unable to determine the number of businesses, including small businesses, that may be adversely affected by today's proposed rule. If a business currently supplies mobile equipment hydraulic fluids, urethane roof coatings, water tank coatings, diesel

fuel additives, penetrating lubricants, and bedding, bed linens, and towels to a procuring agency and those products do not qualify as biobased products, the proposed rule may reduce that company's ability to compete for future contracts. However, the proposed rule will not affect existing purchase orders, nor will it preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials. Thus, many businesses, including small businesses, that market to Federal agencies have the option to modify their product lines to meet the new biobased specifications.

2. Summary of Benefits

The designation of these six items 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; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; to enhance the Nation's energy security by substituting biobased products for fossil energy-based products derived from imported oil and natural gas; and to substitute products with a possibly more benign or beneficial environmental impact, as compared to the use of fossil energy-based products. By purchasing these biobased products, Federal agencies can increase opportunities for all of these benefits. On a national and regional level, today's proposed rule can result in expanding and strengthening markets for biobased materials used in these six items. However, because the extent to which Federal agencies will find the performance and costs of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of today's proposed rule. USDA, however, anticipates the annual economic effect of the designation of these six items to be substantially below the $100 million threshold. In addition, today's proposed rule does not: Create serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

B. Regulatory Flexibility Act (RFA)

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

USDA evaluated the potential impacts of its proposed designations to determine whether its actions would have a significant impact on a substantial number of small entities. Because the Federal Biobased Products Preferred Procurement Program in section 9002 of FSRIA applies only to Federal agencies, small governmental (city, county, etc.) agencies are not affected. Thus, the proposal, if promulgated, will not have a significant economic impact on small governmental jurisdictions. USDA anticipates that this program will affect entities, both large and small, that manufacture or sell biobased products. For example, the designation of items for preferred procurement will provide additional opportunities for businesses to manufacture and sell biobased products to Federal agencies. Similar opportunities will be provided for entities that supply biobased materials to manufacturers. Conversely, the biobased procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. However, the proposed rule will not affect existing purchase orders and it will not preclude Federal agencies from continuing to purchase non-biobased items under certain conditions relating to the availability, performance, or cost of biobased items. Today's proposed rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials. Thus, the economic impacts of today's proposed rule are not expected to be significant.

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

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

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

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

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

D. Executive Order 12988: Civil Justice Reform

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

E. Executive Order 13132: Federalism

This proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this proposed rule will not have a substantial direct

effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

F. Unfunded Mandates Reform Act of 1995

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

G. Executive Order 12372: Intergovernmental Review of Federal Programs

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

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

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

I. Paperwork Reduction Act

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

J. Government Paperwork Elimination Act Compliance

The Office of Energy Policy and New Uses is committed to compliance with the Government Paperwork Elimination Act (GPEA) (44 U.S.C. 3504 note), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for preferred procurement under each item designated. For information pertinent to GPEA compliance related to this rule, please contact Marvin Duncan at (202) 401–0461.

List of Subjects in 7 CFR Part 2902

Biobased products, Procurement.

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

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

PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

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

Authority: 7 U.S.C. 8102.

2. Add in alphabetical order definitions for ''biodegradability'' and ''functional unit'' to § 2902.2 to read as follows:

§ 2902.2 Definitions.

* * * * *

Biodegradability. A quantitative measure of the extent to which a material is capable of being decomposed by biological agents, especially bacteria.

* * * * *

Functional unit. A measure of product technical performance that provides a common reference to which all environmental and economic impacts of the product are scaled. This reference is necessary to ensure comparability of performance results across competing products. Comparability of results is critical when competing product alternatives are being assessed to ensure that such comparisons are made on a common basis. For example, the functional unit for competing interior paint products may be defined as ''protecting one square foot of interior wall surface for 50 years.''

* * * * *

3. Add paragraph (c) to § 2902.8 to read as follows:

§ 2902.8 Determining life cycle costs, environmental and health benefits, and performance.

(c) *Biodegradability information.* If biodegradability is claimed by the manufacturer of a qualifying biobased product as a characteristic of that product, USDA requires that, if requested by Federal agencies, these claims be verified using the appropriate, product-specific ASTM biodegradability standard(s). ASTM biodegradability standards include: D5864 ''Standard Test Method for Determining the Aerobic Aquatic Biodegradation of Lubricants or Their Components''; D6139 ''Standard Test Method for Determining the Aerobic Aquatic Biodegradation of Lubricants or Their Components Using the Gledhill Shake Flask''; D6006 ''Standard Guide for Assessing Biodegradability of Hydraulic Fluids''; D6400 ''Standard Specification for Compostable Plastics'' and the standards cited therein; and D6868 ''Standard Specification for Biodegradable Plastics Used as Coatings on Paper and Other Compostable Substrates.'' Such testing must be conducted by an ASTM/ISO compliant laboratory. The procuring official will decide whether biodegradability data must be brand-name specific in the case of products that are essentially of the same formulation.

4. Add §§ 2902.10 through 2902.15 to subpart B to read as follows:

§ 2902.10 Mobile equipment hydraulic fluids.

(a) *Definition.* Hydraulic fluids formulated for use in non-stationary equipment such as tractors, end loaders, or backhoes.

(b) *Minimum biobased content.* The minimum biobased content is 24 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the product.

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

§ 2902.11 Urethane roof coatings.

(a) *Definition.* Coatings formulated for use in commercial roof deck systems to provide a single coat monolith coating system.

(b) *Minimum biobased content.* The minimum biobased content is 62 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the product.

(c) *Preference effective date.* No later than [date one year after the date of publication of the final rule], Federal agencies, in accordance with this part, will give a procurement preference for qualifying biobased urethane roof coatings. By that date, Federal agencies

that have the responsibility for drafting or reviewing specifications for procurement items to be procured by Federal agencies shall ensure that the relevant specifications require the use of biobased urethane roof coatings.

§ 2902.12 Water tank coatings.

(a) *Definition.* Coatings formulated for use in potable water storage systems.

(b) *Minimum biobased content.* The minimum biobased content is 62 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the product.

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

§ 2902.13 Diesel fuel additives.

(a) *Definition.* A group of products, formulated as the mono alkyl esters of long chain fatty acids derived from renewable lipid sources. They are produced through the reaction of a vegetable oil or animal fat with methanol or ethanol in the presence of a catalyst to yield glycerin (as a byproduct) and the methyl or ethyl esters used as diesel fuel additives. Biobased diesel fuel additives are blended with petroleum diesel for use in compression ignition (diesel) engines.

(b) *Minimum biobased content.* The minimum biobased content is 93 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the product.

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

§ 2902.14 Penetrating lubricants.

(a) *Definition.* Products formulated to provide light lubrication and corrosion resistance in close tolerant internal and external applications including frozen nuts and bolts, power tools, gears, valves, chains, and cables.

(b) *Minimum biobased content.* The minimum biobased content is 71 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the product.

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

§ 2902.15 Bedding, bed linens, and towels.

(a) *Definition.* (1) Bedding is that group of woven cloth products used as coverings on a bed. Bedding includes products such as blankets, bedspreads, comforters, and quilts.

(2) Bed linens are woven cloth sheets and pillowcases used in bedding.

(3) Towels are woven cloth products used primarily for drying and wiping.

(b) *Minimum biobased content.* The minimum biobased content is 18 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the product. The 18 percent biobased content must be of a qualifying biobased feedstock. Cotton and wool are not qualifying biobased feedstocks for the purpose of determining the biobased content of bedding, bed linens, and towels.

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

Dated: June 27, 2005.

Keith Collins,

Chief Economist, U.S. Department of Agriculture.

[FR Doc. 05–12978 Filed 7–1–05; 8:45 am]

BILLING CODE 3410–GL–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21719; Directorate Identifier 2005–NE–19–AD]

RIN 2120–AA64

Airworthiness Directives; Hamilton Sundstrand Power Systems (formerly Sundstrand Power Systems) Auxiliary Power Units Models T–62T–46C2, T–62T–46C2A, T–62T–46C3, T–62T–46C7, and T–62T–46C7A

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD). The new AD is for Hamilton Sundstrand Power Systems (formerly Sundstrand Power Systems) auxiliary power units (APUs) models T–62T–46C2, T–62T–46C2A, T–62T–46C3, T–62T–46C7, and T–62T–46C7A, with compressor impeller assembly, part number (P/N) 4502020 or 4502020A, installed. This proposed AD would require removal from service of those compressor impeller assemblies at reduced service life limits. This proposed AD results from two reports of uncontained failures of compressor impeller assemblies. We are proposing this AD to prevent an uncontained APU failure and damage to the airplane.

DATES: We must receive any comments on this proposed AD by September 6, 2005.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may examine the comments on this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*