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DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

7 CFR Part 3201

RIN 0599-AA14

Designation of Product Categories for Federal Procurement

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Final rule.

SUMMARY: In compliance with the February 21, 2012 Presidential Memorandum “Driving Innovation and Creating Jobs In Rural America through Biobased and Sustainable Product Procurement,” the U.S. Department of Agriculture (USDA) is amending the Guidelines for Designating Biobased Products for Federal Procurement, to add 13 sections to designate product categories within which biobased products will be afforded Federal procurement preference, as provided for under section 9002 of the Farm Security and Rural Investment Act of 2002, as amended by the Food, Conservation, and Energy Act of 2008 (referred to in this document as “section 9002”). USDA is also establishing minimum biobased contents for each of these product categories.

DATES: This rule is effective May 4, 2012.

FOR FURTHER INFORMATION CONTACT: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St. SW., Washington, DC 20024; email: biopreferred@usda.gov; phone (202) 205-4008. Information regarding the Federal biobased preferred procurement program (one part of the BioPreferred Program) is available on the Internet at <http://www.biopreferred.gov>.

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

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I. Authority

These product categories are designated under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), 7 U.S.C. 8102 (referred to in this document as “section 9002”).

II. Background

As part of the BioPreferred Program, USDA published, on September 14, 2011, a proposed rule in the **Federal Register** (FR) for the purpose of designating a total of 13 product categories for the preferred procurement of biobased products by Federal agencies (referred to hereafter in this final rule as the “preferred procurement program”). The proposed rule can be found at 76 FR 56884. This rulemaking is referred to in this preamble as Round 8 (RIN 0599-AA14).

In the proposed rule, USDA proposed designating the following 13 product categories for the preferred procurement program: Air fresheners and deodorizers; asphalt and tar removers; asphalt restorers; blast media; candles and wax melts; electronic components cleaners; floor coverings (non-carpet); foot care products; furniture cleaners and protectors; inks; packaging and

insulating materials; pneumatic equipment lubricants; and wood and concrete stains.

Today’s final rule designates the proposed product categories within which biobased products will be afforded Federal procurement preference. USDA has determined that each of the product categories being designated under today’s rulemaking meets the necessary statutory requirements; that they are being produced with biobased products; and that their procurement will carry out the following 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 products derived from imported oil and natural gas.

When USDA designates by rulemaking a product category (a generic grouping of products) for preferred procurement under the BioPreferred Program, manufacturers of all products under the umbrella of that product category, that meet the requirements to qualify for preferred procurement, can claim that status for their products. To qualify for preferred procurement, a product must be within a designated product category and must contain at least the minimum biobased content established for the designated item. With the designation of these specific product categories, USDA invites the manufacturers and vendors of qualifying products to provide information on the product, contacts, and performance testing for posting on its BioPreferred Web site, <http://www.biopreferred.gov>. Procuring agencies will be able to utilize this Web site as one tool to determine the availability of qualifying biobased products under a designated product category. Once USDA designates a product category, procuring agencies are required generally to purchase biobased products within the designated product category where the purchase price of the procurement product exceeds \$10,000 or where the quantity of such products or of functionally equivalent products purchased over the preceding fiscal year equaled \$10,000 or more.

Subcategorization. Within today’s final rule, USDA has subcategorized one of the product categories. That product

category is inks and the subcategories are: Specialty inks used to add extra characteristics or features to printed material; inks used for coated paper, paperboard, plastic, and foil (sheetfed—color and sheetfed—black); inks used in photocopying and laser machines (printer toner—<25 pages per minute (ppm) and printer toner—≥25 ppm); and inks used primarily in newsprint (news).

Minimum Biobased Contents. The minimum biobased contents being established with today's rulemaking are based on products for which USDA has biobased content test data. Because the submission of product samples for biobased content testing is on a strictly voluntary basis, USDA was able to obtain samples only from those manufacturers who volunteered to invest the resources required to submit the samples. In today's final rule, the minimum biobased contents for the "inks (printer toner—≥25 ppm)" and the "inks (news)" subcategories of the inks product category are based on a single tested product within each subcategory. Based on discussions with industry stakeholders, USDA believes that the tested products are representative of other products within the subcategories. Given that only one manufacturer of products within each subcategory supplied a sample for testing, USDA believes it is reasonable to set minimum biobased contents for these subcategories based on the single data point for each subcategory. USDA will continue to solicit information on these subcategories and if additional data on the biobased contents for products within these designated product subcategories is obtained, USDA will evaluate whether the minimum biobased content should be revised.

Overlap with EPA's Comprehensive Procurement Guideline program for recovered content products under the Resource Conservation and Recovery Act (RCRA) Section 6002. This final rule designates three product categories for Federal preferred procurement for which there may be overlap with an EPA-designated recovered content product. The first is blast media, which may overlap with the EPA-designated recovered content product "Miscellaneous products—blasting grit." The second is floor coverings (non-carpet), which may overlap with the EPA-designated recovered content product "Floor tiles." The third is pneumatic equipment lubricants, which may overlap with the EPA-designated recovered content product "Re-refined lubricating oils." EPA provides recovered materials content recommendations for these recovered

content products in Recovered Materials Advisory Notice (RMAN) I. The RMAN recommendations for these CPG products can be found by accessing EPA's Web site <http://www.epa.gov/epaoswer/non-hw/procure/products.htm> and then clicking on the appropriate product name.

Federal Government Purchase of Sustainable Products. The Federal government's sustainable purchasing program includes the following three statutory preference programs for designated products: The BioPreferred Program, the Environmental Protection Agency's Comprehensive Procurement Guideline for products containing recovered materials, and the Environmentally Preferable Purchasing program. The Office of the Federal Environmental Executive (OFEE) and the Office of Management and Budget (OMB) encourage agencies to implement these components comprehensively when purchasing products and services.

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

Outreach. To augment its own research, USDA consults with industry and Federal stakeholders to the preferred procurement program during the development of the rulemaking

packages for the designation of product categories. USDA requests stakeholder input in gathering information used in determining the order of product category designation and in identifying: Manufacturers producing and marketing products that fall within a product category proposed for designation; performance standards used by Federal agencies evaluating products to be procured; and warranty information used by manufacturers of end user equipment and other products with regard to biobased products.

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

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

III. Summary of Changes

As a result of the public comments received on the proposed rule, USDA has made changes in finalizing the proposed rule. These changes are summarized in the remainder of this section. A summary of each comment received, and USDA's response to the comment, is presented in section IV.

In the final rule, USDA has changed the name of one product category being designated. That product category was proposed as "packaging and insulating materials," but is being changed in the final rule to "packing and insulating materials." After the proposed rule was published, USDA learned of a potential

issue involving the name and description of the proposed product category. It was USDA's intent that the product category would include "pre-formed or molded materials used to hold package contents in place during shipping" (76 FR 56894, September 14, 2011). As an example of the types of products intended to be included in the proposed category, USDA referred to the foam "peanuts" that are used to protect and prevent the movement of products that are placed in cardboard or other types of containers for shipment. It was not USDA's intent that the product category would include the outside container (e.g., the cardboard box) into which the "peanuts" or molded foam packing materials are placed. USDA has concluded that the term "packaging" is too broad for the purpose of defining the product category and is likely to be interpreted as including the outside box or container into which "packing" material is placed. For this reason, USDA is finalizing the product category with the name "packing and insulating materials."

In addition to revising the name of the proposed product category to "packing and insulating materials," USDA has lowered the minimum biobased content for this product category to 74 percent. At proposal, the recommended minimum biobased content was 82 percent and was based on a product with a tested biobased content of 85 percent. After the proposed rule was published, the manufacturer of this particular product re-tested the biobased content of the product as part of the application process to obtain certification to use the USDA Certified Biobased Product label. The results of the re-test showed a biobased content of 77 percent. USDA does not have any additional information to indicate which of the testing results (85 percent biobased or 77 percent biobased) are more accurate. Because of this uncertainty, and because the difference between the two values is not large, USDA decided that it was reasonable to use the lower tested value to establish the minimum biobased content in the final rule. Therefore, the minimum biobased content for the "packing and insulating materials" product category in the final rule is 74 percent (the 77 percent tested value minus 3 percentage points to account for variability in the testing procedure).

USDA has also revised the minimum biobased content for the "furniture cleaners and protectors" product category from the proposed level of 77 percent to 71 percent in the final rule. At the time the proposed minimum biobased content for this product

category was established, USDA had test data on six products. The biobased content of these six furniture cleaners and protectors ranged from 9 percent to 100 percent, as follows: 9, 28, 80, 91, 98, and 100 percent. As explained in the preamble to the proposed rule (76 FR 56897), USDA decided to set the minimum biobased content for the product category at 77 percent, based on the product with the tested biobased content of 80 percent.

After the proposed rule was published, USDA received biobased content data on an additional product within this product category. The biobased content of this product is 74 percent, which is 6 percentage points lower than the product originally selected as the basis for the minimum biobased content. With the new data point included, the data fall into two obvious groups, with a significant gap between them. The two lowest data points are 9 and 28 percent and the five highest data points are 74, 80, 91, 98, and 100 percent. USDA believes it is reasonable to set the minimum biobased content in the final rule based on the product with the 74 percent biobased content. Therefore, the minimum biobased content for the "furniture cleaners and protectors" product category in the final rule is 71 percent (the 74 percent tested value minus 3 percentage points to account for variability in the testing procedure). As is the case for all product categories, USDA will continue to gather and consider new biobased content testing data. When found to be necessary, USDA will revise the minimum biobased content of product categories through established notice and comment rulemaking procedures.

IV. Discussion of Public Comments

USDA solicited comments on the proposed rule for 60 days ending on November 14, 2011. USDA received eight comments by that date. Four of the comments were from individual citizens, two were from trade groups, one was from a biobased product manufacturer, and one was from a Federal agency commenter. The comments are presented below, along with USDA's response, and are grouped by the product categories to which they apply.

Blast Media

Comment: One trade group commenter recommended that USDA reconsider designating the blast media product category for Federal procurement. The commenter stated that they do not believe that biobased abrasives are always the best choice

when selecting an environmentally friendly abrasive because of performance limitations that can cause decreased coating life expectancies. The commenter explained that the selection of an abrasive for a particular project is based on a life cycle assessment that includes an examination of the economic and environmental health and safety impacts. The commenter presented information on the properties of an abrasive that must be considered, including the shape, hardness, durability, density, and size of the abrasive. The commenter also presented information on the relationship between these properties of the abrasive and the surface profile that is created on the substrate when a variety of abrasive materials are used. The commenter stated that The Society for Protective Coatings recommends biobased abrasives for removing single layers of paint, fine scale and other surface contaminants when there is no technical need to alter the metal substrate. The commenter further stated that when it is necessary to meet a surface preparation standard to remove multiple layers of paint and produce an acceptable surface profile for optimal coating adhesion, harder abrasives need to be specified. According to the commenter, biobased abrasives are environmentally friendly, but are well below the minimum hardness value needed to achieve an acceptable surface profile for protecting industrial structures and typically are not reusable. The commenter concluded by saying that using biobased abrasives in lieu of standard abrasives will result in coating system failure or, at best, will significantly reduce the overall life expectancy and sustainability of the coating due to poor surface profile and coating adhesion.

Response: USDA agrees with the commenter's general position that traditional abrasives are needed in many applications. The commenter mentions industrial structures and the U.S. Navy fleet as examples of applications where, according to the commenter, biobased blast media will not meet surface coating specifications and performance requirements. USDA recognizes that blast media is a product category with wide-ranging performance demands, depending on the type and end use of the substrate to which the blast media is being applied. USDA points out that the intent of designating biobased blast media for Federal procurement preference is not to eliminate the use of traditional blast media in cases such as those mentioned by the commenter. The intent of the designation is, rather, to require that Federal agencies give

preference to biobased blast media in those cases where such blast media meet the agency's performance requirements as well as availability and cost considerations. USDA recognizes that performance is the key factor in making purchasing decisions among the various types of products within most product categories. However, USDA believes that many situations exist where blast media are used to clean or prepare substrates that are less durable than structural steel. In many of these applications, biobased blast media may perform better than the more abrasive metallic types of media described by the commenter. Thus, USDA believes that the designation of biobased blast media is consistent with the goals and objectives of the BioPreferred program and has finalized the designation in today's rulemaking.

Floor Coverings (Non-Carpet)

Comment: One biobased product manufacturer requested that their product be added as a subcategory under the floor coverings product category. The commenter explained that their product is manufactured using an innovative thermal technology that results in wood that has many advantages over traditional chemically treated wood. The commenter stated that their product can be used in any flooring application and is non-toxic, dimensionally stable, and has a 30-year warranty against rot. The commenter also stated that their product is environmentally preferable to most other wood products because it is manufactured without the use of toxic chemicals and is a 100 percent biobased product.

Response: USDA agrees with the commenter that their product has many beneficial attributes. USDA also believes that, in some cases, this manufacturer's product may be a very desirable option for use as a floor covering. However, USDA does not believe that the creation of a separate subcategory under the floor covering (non-carpet) product category is justified.

As explained in the preamble to the proposed rule, USDA intends to establish subcategories based on the existence of "groups" of products with different performance requirements or different functional uses. In the case of floor coverings, USDA did not identify specific performance requirements that the commenter's product could meet that could not be met by one or more of the other available biobased products.

Another consideration for establishing subcategories is the presence of a product or group of products with some unique desirable characteristics not

found in the other products and whose biobased content differs considerably from other products in the category. The 91 percent minimum biobased content that has been established for the product category is sufficiently high that USDA does not believe it is reasonable to create a subcategory based on biobased content differences. The 91 percent minimum biobased content ensures that products that qualify for the procurement preference are truly legitimate biobased products with only minimal non-biobased ingredients.

In summary, USDA believes that the floor covering (non-carpet) product category is defined such that Federal agencies may select from several different biobased alternative products. The decision on which biobased products to purchase will be based on a range of factors including durability, appearance, required maintenance, and cost. While the commenter's product may be a very competitive product within the floor covering category, USDA does not believe that creating a separate subcategory for it is justified.

Inks

Comment: Four commenters stated that they supported USDA efforts to encourage the use of biobased printing inks and toners. The commenters stated that the use of such products will increase the demand for agricultural products grown domestically, decrease our dependence on foreign oil, positively affect the U.S. economy, and protect our environment for future generations of Americans.

Response: USDA agrees with the commenters and thanks them for their support of the BioPreferred program.

Comment: One commenter representing a coalition of trade groups stated that USDA needs to withdraw the proposed designation of the inks product category and conduct a more detailed and thorough review to insure that the correct biobased contents for inks are recommended, as several critical elements in the review are deficient. The commenter stated that USDA has not completed a thorough investigation into existing Federal requirements and industry standards for biobased printing inks. In addition, the commenter stated that USDA has set limits without a complete understanding of the technical issues associated with biobased content in different types of printing inks. The commenter stated that another concern not adequately addressed is the financial and performance implications of requiring the use of inks with high biobased content. The commenter recommends that USDA become

familiar with the existing regulation that sets minimum standards for biobased materials in printing inks used in government agencies. The commenter stated that this regulation, the Vegetable Ink Printing Act of 1994, requires that Federal agencies use lithographic inks with a specified vegetable oil content.

The commenter also stated that USDA should look to existing industry standards for inks with biobased material content. The commenter noted that one such program is SoySeal, developed by the American Soybean Association (ASA), which has set minimum soy oil contents for a variety of different classes of inks. The commenter stated that ASA set these standards based on their research on incorporating soy oil into various types of printing inks, their unique properties, and testing of the formulations. The percentages are expressed as the percentage of soy oil out of the total formula weight of the inks.

The commenter supports the total formula weight approach taken by the SoySeal program and recommends that USDA also adopt this approach. The commenter stated that the approach taken by SoySeal to define soy content limits by weight percent is readily understood in the industry and should be adopted by USDA. The commenter stated that this method allows for straightforward determination of soy or biobased content, based on ink formulation knowledge, instead of requiring expensive testing using the ASTM D6866 standard. The commenter stated that the ASTM test method can only be conducted by one lab and costs \$600 per sample. The commenter stated that USDA did not specify in its proposal how the sampling for the test is to be conducted. According to the commenter, it is not clear if a representative formulation can be tested or if each color of each ink is to be tested and, since there are literally thousands of possible ink formulations, testing each and every ink is economically infeasible. The commenter stated that using a total ink formulation approach certified by the ink manufacturer provides a much more economical approach. Also, according to the commenter, it is unclear how the biobased content guidelines set by USDA compare to those set by the SoySeal program because the two systems (percent weight versus percent of carbonaceous material that is biobased) are not easily comparable. The commenter asked, for example, if a black news ink contains 40 percent biobased material by weight, would it meet USDA's recommendations if tested by the ASTM standard? The commenter

stated that, ideally, USDA's biobased content recommendations should mirror those recommended by the SoySeal program, as inks with these soy oil contents have been tested and proven to be effective.

The commenter explained that while the proposed offset ink limits may be achievable for four color process inks (i.e., cyan, yellow, magenta, and black), the limits will certainly have a negative impact on various blending systems used. According to the commenter, many printing inks are specially blended to make unique colors, often referred to as "spot colors" or by the trade name "Pantone Matching System," which are required to match exact colors. The commenter stated that the limits set have the potential to impact these inks, as well as Ultraviolet, Electron Beam, and many metallic and fluorescent inks that have unique properties that may require higher non-biobased content.

The commenter also stated that the category of specialty inks used in the study is far too vaguely defined and the examples given are too diverse to be listed together. In addition, according to the commenter, the imposition of a level of 66 percent biobased material is extremely demanding for some of these applications. For example, a typical scratch and sniff ink might contain 20 percent of encapsulated fragrance, none of which is biobased. This only leaves room for 14 percent of other non-biobased materials such as pigment, binders and additives. The commenter stated that these materials, many of which are carbonaceous, cannot be substituted for biobased materials and their presence in these inks will make it nearly impossible to meet the 66 percent biobased content proposed in this program.

The commenter stated that, for toner ink systems, biobased toners are not commonly available in the U.S. market. Currently, biobased xerographic inks make up less than 1 percent of the U.S. market, and are not available for xerographic colored inks.

The commenter also stated that, in terms of cost and performance, it must be recognized that there are significant issues associated with high levels of biobased materials in printing inks. According to the commenter, these types of ink are almost always significantly more expensive than their non-biobased alternatives and, even with the current high costs of petroleum-based oils, soy oil still commands close to a 50 percent premium. In addition, the commenter stated that it is common knowledge within the graphic arts community that

biobased often results inferior technical performance [color reproduction] and reduced press speeds to allow for longer drying times. The commenter explained that solvent based inks cannot be easily replaced with bio-derived oils because the oils do not volatilize quickly enough.

The commenter stated that there is no indication that an assessment of the cost difference between conventional and biobased inks was completed and that, in order to create biobased purchasing preferences, USDA needs to quantify the environmental benefit of using a biobased ink and assure that it is cost effective.

The commenter stated that many of the underlying assumptions used by USDA to determine the specific limits and ink types in the proposal are not transparent or justified. The commenter asked, as an example, of the 148 biobased inks identified by USDA, how was a sample size of 19 selected to be tested for biobased content by the ASTM standard? Also, of the biobased inks identified, how was a sample size of 3 to be analyzed by BEES determined? The commenter stated that, given the large number of inks that are on the market, it is not clear how USDA concluded that its work was representative or statistically significant. The commenter stated that they do not believe that these sample sizes are large enough to show significant findings. The commenter also stated that it is unclear if the sampling was random, as should be the case, or if the inks tested were considered to be state-of-the-art biobased inks. According to the commenter, one of the difficulties in interpreting the results of the study was that the units used to complete the BEES assessment were unclear, as the sample size was identified as 300 square inches, but not if those 300 square inches were actual ink, or if it was 300 square inches of printed material.

Another concern expressed by the commenter is the use of the Building for Environmental and Economic Sustainability (BEES) model for testing the environmental impact of printing ink. The commenter stated that USDA does not indicate how a software program designed to assess the impact of building materials is applicable to an industrial/consumer commodity such as ink. The commenter also stated that the study doesn't indicate that a comparison of the BEES impact of conventional and biobased inks was conducted and that while it is assumed that a material with more biobased content would be better, this needs to actually be confirmed.

The commenter provided a summary of recommendations on the proposed

biobased designations for inks, as follows:

1. Refine the categories to better cover the various types of printing inks used from a broad perspective such as process and spot or inks as well as specific applications such as heatset web offset lithographic, gravure (water & solvent), and flexographic (water & solvent). Energy curable (ultraviolet and electron beam), water-based and inkjet inks should have their own, separate categories.

2. Refine the specialty ink category. The current Specialty ink category is much too broad to be able to assign a biobased content across the board. While some specialty inks could be formulated to contain the 66 percent, many others cannot.

3. Utilize the SoySeal limits as the basis for the biobased content guidelines.

4. Revise the standards to indicate the total portion of the ink that is biobased, rather than the total carbonaceous portion of the ink that is biobased. This will allow for more cost effective determination of biobased content based on ink formulation information, and is already the accepted standard for comparing biobased content in printing inks.

5. Allow for the ink manufacturer to certify the biobased content based on formulation and not testing using the ASTM D6866 test.

6. Biobased inks, as proposed, should be evaluated to determine if they can meet basic performance standards and be required to meet the same performance standards as conventional inks. Manufacturers should not be given the opportunity to gain a market advantage based on production of inks with high biobased content but a poor image quality.

7. Conduct a true economic impact analysis comparing the costs of the proposed biobased materials as compared to conventional materials.

8. To better understand the life-cycle cost section, identify the "usage unit" for which price is specified.

9. To better understand the BEES results, a functional unit of 300 square inches was identified. Please clarify if this is 300 square inches of ink, or 300 square inches of printed material.

Response: USDA appreciates the interest and concerns expressed by the commenter in the inks product category. Unfortunately, many of the comments and recommendations made by the commenter would require USDA to conduct studies and analyses that are beyond the scope of the BioPreferred program's mandate to designate product categories for federal procurement

preference. Under section 9002, USDA is directed to request from biobased product manufacturers the technical information that is used in the designation process, but is not given the authority to require that such information be supplied. Thus, USDA must rely on the voluntary submittal of technical information from product manufacturers. During the development of the proposed rule, USDA requested information from many soy ink manufacturers but received information from only a few. USDA developed the proposed rule based on the information available from those biobased ink manufacturers who chose to voluntarily supply it. Generally, the procedures employed, and the types and level of detail of the analyses performed, for the inks product category were the same as for the more than 60 product categories designated to date. USDA will, however, welcome the opportunity to meet with this commenter and any other representatives of the inks product category to discuss ways in which today's final rule can be improved.

With regard to the commenter's points dealing with the Vegetable Ink Printing Act, USDA recognizes that many federal agencies' printing operations are covered by this Act. USDA points out that the designation of biobased products under section 9002 is not meant to replace or revise the requirements of the Vegetable Ink Printing Act. Instead, the designation under section 9002 is meant to extend the use of biobased printing inks to those printing operations that are not subject to the Vegetable Ink Printing Act. Under today's final rule, such printing operations must be performed using complying biobased inks to the extent that biobased inks meeting the performance and cost criteria are available.

The commenter also presented numerous points regarding the methodology used to determine biobased content and the levels set as the minimum biobased contents in the proposed rule. USDA acknowledges that the biobased content determined by ASTM D6866 does not directly compare to soy content determinations using the SoySeal procedure. However, the use of ASTM D6866 to determine biobased content has been consistently required for all designated product categories and USDA believes it is appropriate for the inks product category as well. As pointed out by the commenter, inks are typically formulated from solvents, pigments, binders, and other additives. USDA believes that using ASTM D6866 to determine the biobased content of inks will encourage the development of

biobased versions of each type of ingredient in the ink. As for the number of inks tested for biobased content and the resulting proposed minimum biobased contents, USDA relied on its standard methodology of requesting that manufacturers submit samples for testing and then evaluating the results of the testing to determine the proposed minimum biobased content (see "Minimum Biobased Contents" discussion in the proposal preamble at 76 FR 56885). Additional information regarding the biobased content testing can also be found in the preamble to proposed rule at 76 FR 56896. USDA also notes that the BioPreferred program Guidelines (7 CFR 3201.7) allows that "products that are essentially the same formulation" need not be tested individually.

The commenter offered recommendations as to how USDA should redefine the inks subcategories in the final rule. USDA developed the proposed inks subcategories based on discussions with, and information provided by, ink manufacturers. There are, no doubt, many approaches that could be taken in subcategorizing the inks product category. USDA believes that the proposed subcategories will be sufficient for the initial efforts to designate the inks product category. USDA notes that the final rule does not take effect for one year after the publication date and, as mentioned above, welcomes the opportunity to meet with the commenter and others to discuss revising, refining, or expanding the subcategories at the earliest opportunity. Once a consensus has been reached between USDA and participating industry representatives, USDA will develop a rulemaking package to propose changes to the subcategories, if needed.

The commenter also questioned the performance and cost of available biobased inks. USDA recognizes that performance and cost are key factors in selecting the types of inks used in printing/copying operations. As discussed in several other responses in this preamble, federal agencies are required to consider designated biobased products but are not required to purchase and use them if the available products are not capable of meeting reasonable performance expectations or are not priced competitively with non-biobased products. Section 9002 is very specific regarding these exceptions. However, USDA encourages federal agencies to explore available biobased products and communicate with biobased product manufacturers regarding performance and cost issues. Reputable biobased

product manufacturers should be willing to work with federal agencies to resolve issues and they should also recognize that, even with the federal procurement preference, they will not be successful if their products do not perform up to expectations. In response to the commenter's question about the BEES functional unit, the 300 square inches used for the BEES analyses is 300 square inches of ink.

In summary, USDA acknowledges that, because of time and budget considerations, today's designation of inks is not based on exhaustive studies and analyses. USDA also recognizes that some elements of the designation rule are subject to change as federal agencies and biobased ink manufacturers gain a better understanding of what is needed to substitute biobased inks for traditional inks. USDA invites the commenter and any other representatives of the ink manufacturing industry to submit information and to meet to discuss in detail future revisions that may be needed to the designation rule.

Packaging and Insulating Materials

Comment: One Federal agency commenter expressed concern regarding the proposed product category "Packaging and Insulating Materials" and its potential impact on the agency's hazardous waste contracting and disposal efforts. Specifically, the commenter requested clarification on whether the biobased content requirements in proposed section 3201.85, Packaging and Insulating Materials, would apply to DOT/UN combination shipping packages for Hazardous Material/Hazardous Waste shipments or whether DOT/UN combination shipping packages might be excluded. The commenter further stated that if the proposed biobased requirements were determined to apply to such shipping packages, they would need to know how the implementation would affect such shipping.

Response: As discussed in section III of this preamble, USDA has changed the name of this product category in the final rule to "packing and insulating materials." However, USDA believes that the name change has no bearing on the public comment or on the USDA response to it. The final rule does not provide a specific exemption from the requirements of section 3201.85 based on the types of material being shipped. As proposed, biobased packaging (packing) products receive the procurement preference regardless of the contents to be placed in the shipping packages. USDA considered the possibility of providing a specific

exemption for hazardous material/hazardous waste shipping activities, but did not provide such an exemption in the final rule. USDA decided that such an exemption was not necessary considering the language in the BioPreferred Program Guidelines. As stated in section 3201.3(c) of the Guidelines: "Procuring agencies may decide not to procure such products if they are not reasonably priced or readily available or do not meet specified or reasonable performance standards." With regard to the commenter's concerns related to the shipping of hazardous material/hazardous waste, the DOT requirements for the packaging of such materials are spelled out in 49 CFR part 178. The burden to perform testing to demonstrate that their products are capable of meeting the requirements of part 178 fall on those biobased packaging material manufacturers who wish to sell their products to the Federal government. Only if such a demonstration of acceptable performance can be made are Federal agencies obligated to give a procurement preference to those products and, even then, only if they are available at reasonable costs. USDA believes that with these provisions already in the BioPreferred Program Guidelines, the specific exemption requested by the commenter is unnecessary. If acceptable biobased packing materials are available, they should be given preference. However, if the biobased alternatives are not acceptable (in terms of performance, availability, and cost), the agency may continue to use the packing materials currently in use. Thus, USDA is finalizing the designation of "packing and insulating materials" without any specific exemptions.

V. Regulatory Information

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

Executive Order 12866, as supplemented by Executive Order 13563, requires agencies to determine whether a regulatory action is "significant." The Order defines a "significant regulatory action" as one that is likely to result in a rule that may: "(1) Have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere

with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

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

1. Summary of Impacts

Today's final rule 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 and manufacturers to begin supplying products under the designated biobased product categories to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their contractors. USDA is unable to determine the number of businesses, including small businesses, that may be adversely affected by today's final rule. The final rule, however, will not affect existing purchase orders, nor will it preclude businesses from modifying their product lines to meet new

requirements for designated biobased products. Because the extent to which procuring agencies will find the performance, availability and/or price of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of the rule.

2. Benefits of the Final Rule

The designation of these 13 product categories provides the benefits outlined in the objectives of section 9002; to increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products, and to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities. On a national and regional level, today's final rule can result in expanding and strengthening markets for biobased materials used in these product categories.

3. Costs of the Final Rule

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

B. Regulatory Flexibility Act (RFA)

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

USDA evaluated the potential impacts of its designation of these product categories to determine whether its actions would have a significant impact on a substantial number of small entities. Because the preferred procurement program established under section 9002 applies only to Federal

agencies and their contractors, small governmental (city, county, etc.) agencies are not affected. Thus, the proposal, if promulgated, will not have a significant economic impact on small governmental jurisdictions.

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

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

The preferred procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. Most manufacturers of non-biobased products within the product categories being designated for preferred procurement in this rule are expected to be included under the following NAICS codes: 321918 (other millwork, including flooring), 324191 (petroleum lubricating oil and grease manufacturing), 325411 (medicinal and botanical manufacturing), 325510 (paint and coating manufacturing), 325612 (polish and other sanitation goods manufacturing), 325620 (toilet preparation manufacturing), 325910 (printing ink manufacturing), 325998 (other miscellaneous chemical products and preparation manufacturing), 326150 (urethane and other foam product manufacturing), and 313113 (thread mill products). USDA obtained information on these 10 NAICS categories from the U.S. Census Bureau's Economic Census database. USDA found that the Economic Census reports about 6,963

companies within these 10 NAICS categories and that these companies own a total of about 8,139 establishments. Thus, the average number of establishments per company is about 1.2. The Census data also reported that of the 8,139 individual establishments, about 8,096 (99.5 percent) have fewer than 500 employees. USDA also found that the overall average number of employees per company among these industries is about 42, with none of the segments reporting an average of more than 100 employees per company. Thus, nearly all of the businesses fall within the Small Business Administration's definition of a small business (fewer than 500 employees, in most NAICS categories).

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

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

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

creating business and employment opportunities that enhance local, regional, and national economies.

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

This final 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 rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this final 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 final 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 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 final 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 final rule is currently approved under OMB control number 0503–0011.

J. E-Government Act Compliance

USDA is committed to compliance with the E-Government Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for preferred procurement under each designated item. For information pertinent to E-Government Act compliance related to this rule, please contact Ron Buckhalt at (202) 205–4008.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, that includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. USDA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

List of Subjects in 7 CFR Part 3201

Biobased products, Procurement.

For the reasons stated in the preamble, the Department of Agriculture is amending 7 CFR chapter XXXII as follows:

CHAPTER XXXII—OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT, DEPARTMENT OF AGRICULTURE

PART 3201—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

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

Authority: 7 U.S.C. 8102.

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

Sec.

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

§ 3201.75 Air fresheners and deodorizers.

(a) *Definition.* Products used to alleviate the experience of unpleasant odors by chemical neutralization, absorption, anesthetization, or masking.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 97 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased air fresheners and deodorizers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased air fresheners and deodorizers.

§ 3201.76 Asphalt and tar removers.

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

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 80 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased asphalt and tar removers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased asphalt and tar removers.

§ 3201.77 Asphalt restorers.

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

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 68 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased asphalt restorers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased asphalt restorers.

§ 3201.78 Blast media.

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

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 94 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased blast media. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased blast media.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying products within this item may overlap with the EPA-designated recovered content product: Miscellaneous products—blasting grit. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated blasting grit products and which product should be afforded the preference in purchasing.

Note to paragraph (d): Biobased blast media within this designated product

category can compete with similar blasting grit products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated blasting grit products containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.17.

§ 3201.79 Candles and wax melts.

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

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 88 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased candles and wax melts. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased candles and wax melts.

§ 3201.80 Electronic components cleaners.

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

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 91 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased electronic components cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased electronic components cleaners.

§ 3201.81 Floor coverings (non-carpet).

(a) *Definition.* Products, other than carpet products, that are designed for

use as the top layer on a floor. Examples are bamboo, hardwood, and cork tiles.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 91 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased floor coverings (non-carpet). By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased floor coverings (non-carpet).

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying products within this item may overlap with the EPA-designated recovered content product: Construction Products—floor tiles. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated floor tile products and which product should be afforded the preference in purchasing.

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

§ 3201.82 Foot care products.

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

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 83 percent, which shall be based on the amount of qualifying biobased carbon in the product as a

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

(c) *Preference compliance date.* No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased foot care products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased foot care products.

§ 3201.83 Furniture cleaners and protectors.

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

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 71 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased furniture cleaners and protectors. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased furniture cleaners and protectors.

§ 3201.84 Inks.

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

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

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

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

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

(iv) *Inks (printer toner—<25 pages per minute (ppm)).* Inks that are a powdered

chemical, used in photocopying machines and laser printers, which is transferred onto paper to form the printed image. These inks are formulated to be used in printers with standard fusing mechanisms and print speeds of less than 25 ppm.

(v) *Inks (printer toner—≥25 ppm)*.

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

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

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

(1) *Specialty inks*—66 percent.

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

(3) *Inks (sheetfed—black)*—49

percent.

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

(5) *Inks (printer toner—≥25 ppm)*—20 percent.

(6) *Inks (news)*—32 percent.

(c) *Preference compliance date*. No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased inks. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased inks.

§ 3201.85 Packing and insulating materials.

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

(b) *Minimum biobased content*. The Federal preferred procurement product must have a minimum biobased content of at least 74 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date*. No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased packing and insulating materials. By that date,

Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased packing and insulating materials.

§ 3201.86 Pneumatic equipment lubricants.

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

(b) *Minimum biobased content*. The Federal preferred procurement product must have a minimum biobased content of at least 67 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date*. No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased pneumatic equipment lubricants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased pneumatic equipment lubricants.

(d) *Determining overlap with an EPA-designated recovered content product*. Qualifying products within this item may overlap with the EPA-designated recovered content product: Vehicular Products—re-refined lubricating oils. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated re-refined lubricating oil products and which product should be afforded the preference in purchasing.

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

purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.17.

§ 3201.87 Wood and concrete stains.

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

(b) *Minimum biobased content*. The Federal preferred procurement product must have a minimum biobased content of at least 39 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date*. No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased wood and concrete stains. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased wood and concrete stains.

Dated: March 28, 2012.

Pearlie S. Reed,

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

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DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2010–BT–TP–0021]

RIN 1904–AC08

Energy Conservation Program: Test Procedures for Residential Clothes Washers; Correction

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; correction.

SUMMARY: The U.S. Department of Energy (DOE) is correcting a final rule establishing revised test procedures for residential clothes washers, published in the *Federal Register* on March 7, 2012, and applicable as of April 6, 2012. DOE erroneously omitted regulatory language to remove the obsolete parenthetical note from the water factor calculation section of the currently applicable test procedure.

DATES: *Effective:* April 6, 2012.

FOR FURTHER INFORMATION CONTACT: Stephen L. Witkowski, U.S. Department