DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

7 CFR Part 3201

RIN 0599–AA26

Designation of Product Categories for Federal Procurement

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to amend the Guidelines for Designating Biobased Products for Federal Procurement (Guidelines) to add 30 sections that will designate the product categories within which biobased products would be afforded procurement preference by Federal agencies and their contractors. These 30 product categories contain finished products that are made, in large part, from intermediate ingredients that have been proposed for designation for Federal procurement preference. USDA is also proposing minimum biobased contents for each of these product categories. Additionally, USDA is proposing to amend the existing designated product categories of general purpose de-icers, firearm lubricants, laundry products, and water clarifying agents.

DATES: USDA will accept public comments on this proposed rule until November 13, 2018.

ADDRESSES: You may submit comments by any of the following methods. All submissions received must include the agency name and Regulatory Information Number (RIN). The RIN for this rulemaking is 0599–AA26. Also, please identify submittals as pertaining to the ''Proposed Designation of Product Categories.''

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: biopreferred_support@amecfw.com.* Include RIN number 0599–AA26 and ''Proposed Designation of Product Categories'' in the subject line. Please include your name and address in your message.
- *Mail/commercial/hand delivery:* Mail or deliver your comments to: Karen Zhang, USDA, Office of Procurement and Property Management, Room 1640, USDA South Building, 1400 Independence Avenue SW, Washington, DC 20250.
- Persons with disabilities who require alternative means for communication for regulatory information (Braille, large print, audiotape, etc.) should contact the USDA TARGET Center at 202–720–2600 (voice) and 202–690–0942 (TTY).

FOR FURTHER INFORMATION CONTACT: Karen Zhang, USDA, Office of Procurement and Property Management, Room 1640, USDA South Building, 1400 Independence Avenue SW, Washington, DC 20250; email: *biopreferred_support@amecfw.com;* phone 919–765–9969. Information regarding the Federal preferred procurement program (one initiative of the BioPreferred Program) is available at *http://www.biopreferred.gov.*

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I. Authority

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

II. Background

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

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

The 2008 and 2014 Farm Bills directed USDA to expand the scope of the Guidelines to include the designation of product categories composed of both intermediate ingredients and feedstock materials and finished products made from those materials. Specifically, the 2008 Farm Bill stated that USDA shall ''designate those items (including finished products) that are or can be produced with biobased products (including biobased products for which there is only a single product or manufacturer in the category) that will be subject to'' Federal preferred procurement, ''designate those intermediate ingredients and feedstocks that are or can be used to produce items that will be subject'' to Federal preferred procurement, and ''automatically designate items composed of [designated] intermediate ingredients and feedstocks . . . if the content of the designated intermediate ingredients and feedstocks exceeds 50 percent of the item (unless the Secretary determines a different composition percentage is appropriate).''

USDA is, therefore, proposing to designate product categories that contain finished products made from biobased intermediate ingredients and feedstocks.

Once USDA designates a product category, procuring agencies are

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

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

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

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

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

In this proposed rule, USDA is proposing to subcategorize one of the product categories. That product category is concrete repair materials, and the proposed subcategories are: Concrete leveling and concrete patching. USDA created two subcategories for ''concrete repair materials'' to distinguish these products by function. Details on this proposed product category and its subcategories may be found in section IV.B of this rule. USDA requests public comment, along with supporting data, on the need to create subcategories within any of the other proposed product categories in this proposed rule. If public comments are received that support the creation of additional subcategories, USDA will consider the supporting data and may create subcategories in the final rule.

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

As a result of the public comments received on the first designated product categories rulemaking proposal, USDA decided to account for the slight imprecision of three (3) percentage points in ASTM D6866 when establishing the minimum biobased content requirement for each proposed product category. Thus, rather than establishing the minimum biobased content for a product category at the tested biobased content of the product that was selected as the basis for the minimum value, USDA is establishing

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

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

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

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

Overlap with the Environmental Protection Agency's (EPA) Comprehensive Procurement Guideline program for recovered content products under the Resource Conservation and Recovery Act (RCRA) section 6002. Some of the products that are categorized in biobased product categories that are designated for Federal preferred procurement under the BioPreferred Program may overlap with product categories that the U.S. Environmental Protection Agency (EPA) has designated under its Comprehensive Procurement Guideline (CPG) for products containing recovered (or recycled) materials. A list of the U.S. EPA Comprehensive Procurement Guideline (CPG) program's product categories may be found on its website (*https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program*) and Title 40 CFR part 247 in the CFR. In this proposed rule, some products that are categorized in the proposed product categories of concrete curing agents; concrete repair materials—concrete leveling; concrete repair materials—concrete patching; exterior paints and coatings; folders and filing products; other lubricants; playground and athletic surface materials; product packaging; rugs or floor mats; shopping and trash bags; soil amendments; and transmission fluids may also be categorized in one or more of the following product categories that are designated in EPA's CPG program:

- Construction Products: Cement and Concrete; Consolidated and Reprocessed Latex Paint for Specified Uses;
- Landscaping Products: Compost Made From Recovered Organic Materials; Fertilizer Made From Recovered Organic Materials;
- Miscellaneous Products: Mats;
- Non-Paper Office Products: Binders, Clipboards, File Folders, Clip Portfolios, and Presentation Folders; Plastic Envelopes; Plastic Trash Bags;
- Paper Products: Paperboard and Packaging;
- Parks and Recreation Products: Playground Surfaces; Running Tracks; and
- Vehicular Products: Re-Refined Lubricating Oil.

More specifics regarding this overlap are addressed in section IV.B for each of this proposed product categories that was identified above. As such, USDA is asking manufacturers and vendors of qualifying biobased products to make additional product and performance information available to Federal agencies conducting market research to assist them in determining whether the biobased products in question are the same products for the same uses as the recovered content products. Manufacturers and vendors are asked to provide information highlighting the sustainable features of their biobased products and to indicate the various suggested uses of their product and the performance standards against which a particular product has been tested. In addition, depending on the type of biobased product, manufacturers and vendors are asked to provide other types of information, such as whether the product contains fossil energy-based components (*e.g.,* petroleum, coal, or natural gas) and whether the product contains recovered materials. Federal agencies also may review available information on a product's biobased content and then use this information to make purchasing decisions based on the sustainability features of the products.

According to the Federal Acquisition Regulation, Title 48 CFR part 23.405, where a biobased product is used for the same purposes and meets the same Federal agency performance requirements as an EPA-designated recovered content product, the Federal agency must purchase the recovered content product. For example, if a biobased hydraulic fluid is to be used as a fluid in hydraulic systems and because ''lubricating oils containing re-refined oil'' have already been designated by EPA for that purpose, then the Federal agency must purchase the EPA-designated recovered content product, ''lubricating oils containing re-refined oil.'' If, on the other hand, the biobased hydraulic fluid is to be used to address a Federal agency's certain environmental or health performance requirements that the EPA-designated recovered content product would not meet, then the biobased product should be given preference, subject to reasonable price, availability, and performance considerations.

Federal Government Purchase of Sustainable Products. The Federal

government's sustainable purchasing program includes the following three mandatory preference programs for designated products: The BioPreferred Program, the EPA's CPG program, and the Environmentally Preferable Purchasing program. The Office of the Chief Sustainability Officer (OCSO) and the Office of Management and Budget (OMB) encourage agencies to implement these components comprehensively when purchasing products and services.

Other Federal Preferred Procurement Programs. Federal procurement officials should also note that many biobased products may be available for purchase by Federal agencies through the AbilityOne Program (formerly known as the Javits-Wagner-O'Day (JWOD) program). Under this program, members of organizations including the National Industries for the Blind (NIB) and SourceAmerica (formerly known as the National Industries for the Severely Handicapped) offer products and services for preferred procurement by Federal agencies.

The types of products that could be categorized in this proposed product categories could also be available for purchase in the AbilityOne Catalog (*www.abilityone.com*). USDA notes that the AbilityOne Catalog offers a combination of non-biobased and biobased products; therefore, the selection of biobased products that is currently available for purchase may be small. USDA encourages procuring agencies to first consider purchasing biobased products from the AbilityOne Catalog when fulfilling biobased product purchasing requirements.

Some biobased products that are categorized in this proposed product categories of adhesives; cleaning tools; clothing; de-icers; durable cutlery; durable tableware; exterior paints and coatings; feminine care products; folders and filing products; gardening supplies and accessories; kitchenware and accessories; other lubricants; rugs and floor mats; and toys and sporting gear could be available for purchase in one or more of the following product categories in the AbilityOne Catalog:

- Cleaning and Janitorial Products,
- Clothing,
- Furniture,
- Hardware and Paints,
- Kitchen and Breakroom Supplies,
- Mailing and Shipping Supplies,
- Office Supplies,
- Outdoor Supplies, and
- Skin and Personal Care.

As indicated previously, there currently is a small selection of biobased products in the AbilityOne Catalog. In the future, if the AbilityOne Catalog were to offer a broader selection of biobased products for procuring agencies to purchase, the objectives of both the AbilityOne Program and the Federal preferred procurement program would be furthered.

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

III. Summary of This Proposed Rule

USDA is proposing to designate the following product categories for Federal preferred procurement: Adhesives; animal habitat care products; cleaning tools; concrete curing agents; concrete repair materials; durable cutlery; durable tableware; epoxy systems; exterior paints and coatings; facial care products; feminine care products; fire logs and fire starters; folders and filing products; foliar sprays; gardening supplies and accessories; heating fuels and wick lamps; kitchenware and accessories; other lubricants; phase change materials; playground and athletic surface materials; powder coatings; product packaging; rugs and floor mats; shopping and trash bags; soil amendments; surface guards, molding, and trim; toys and sporting gear; traffic and zone marking paints; transmission fluids; and wall coverings. In addition, USDA is proposing a minimum biobased content for each of these product categories and/or subcategories. Lastly, USDA is proposing a date by which Federal agencies must incorporate these designated product categories into their procurement specifications (see section IV.E).

USDA is also proposing to amend the existing designated product categories of general purpose de-icers; firearm lubricants; laundry products; and water clarifying agents. Since USDA finalized the designation of each of these product categories, USDA has obtained additional information on products within these four categories. Thus, USDA is now proposing amendments to these four categories to more closely align the existing categories with data gathered since the categories were originally designated.

USDA is working with manufacturers and vendors to make all relevant product and manufacturer contact information available on the BioPreferred Program's website at *http://www.biopreferred.gov.* Steps USDA has implemented, or will implement, include the following: Making direct contact with submitting companies through email and phone conversations to encourage completion of product listings; coordinating outreach efforts with biobased product manufacturers to encourage participation of their customer base; conducting targeted outreach with industry and commodity groups to educate stakeholders on the importance of providing complete product information; participating in industry conferences and meetings to educate companies on program benefits and requirements; and communicating the potential for expanded markets beyond the Federal Government, to include State and local governments, as well as the general public markets. Section V provides instructions to agencies on how to obtain this information on products within these product categories through the BioPreferred Program's website.

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

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

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

please provide appropriate documentation to support the environmental and/or human health attributes that you describe.

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

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

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

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

A. Background

When designating product categories for Federal preferred procurement, section 9002 requires USDA to consider the following: (1) The availability of biobased products within the product categories and (2) the economic and technological feasibility of using those products.

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

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

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

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

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

To propose a product category for designation, USDA must have sufficient information on a sufficient number of products within the category to be able to assess its availability and its economic and technological feasibility. For some product categories, there may be numerous products available. For others, there may be very few products currently available. Given the infancy of the market for some product categories, it is expected that categories with only a single product will be identified. Further, given that the intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products, USDA has determined it is appropriate to designate a product category or subcategory for Federal preferred procurement even when there is only a single product with a single manufacturer or vendor. Similarly, the documented availability and benefits of even a very small percentage of all products that may exist within a product category are also considered sufficient to support designation.

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

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

B. Product Categories and Minimum Biobased Contents Proposed for Designation

In this proposed rule, USDA is proposing to designate the following: Adhesives; animal habitat care products; cleaning tools; concrete curing agents; concrete repair materials; durable cutlery; durable tableware; epoxy systems; exterior paints and coatings; facial care products; feminine care products; fire logs and fire starters; folders and filing products; foliar sprays; gardening supplies and accessories; heating fuels and wick lamps; kitchenware and accessories; other lubricants; phase change materials; playground and athletic surface materials; powder coatings; product packaging; rugs and floor mats; shopping and trash bags; soil amendments; surface guards, molding, and trim; toys and sporting gear; traffic and zone marking paints; transmission fluids; and wall coverings.

USDA has determined that each of these product categories meets the necessary statutory requirements—namely, that they are being produced with biobased materials and that their procurement by procuring agencies will carry out the following objectives of section 9002:

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

Further, this designation of finished product categories made from designated intermediate ingredients was one key addition to Section 9002 made by the 2008 Farm Bill.

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

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

1. Adhesives (Minimum Biobased Content 24 Percent)

Adhesives are compounds that temporarily or permanently bind two item surfaces together. These products include glues and sticky tapes used in construction, household, flooring, and industrial settings. This category excludes epoxy systems.

USDA identified six manufacturers and vendors of 10 biobased adhesives. These manufacturers and vendors do not include all manufacturers and vendors of biobased adhesives, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These 10 biobased adhesives have biobased contents of 27, 27, 28, 30, 30, 46, 48, 53, 71, and 71 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of the products categorized as adhesives. Thus, the proposed minimum biobased content for this product category is 24 percent, based on the products with tested biobased contents of 27 percent.

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

- ASTM E108 Standard Test Methods for Fire Tests of Roof Coverings.

USDA has been unable to obtain data on the amount of adhesives purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Adhesives may be manufactured using the following designated intermediate ingredient and feedstock categories: intermediates—binders, intermediates—chemicals, intermediates—fibers and fabrics, intermediates—plastic resins, intermediates—rubber materials, and intermediates—textile processing materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, has been collected on adhesives and may be found on the BioPreferred Program's website.

2. Animal Habitat Care Products (Minimum Biobased Content 22 Percent)

Animal habitat care products are products that are intended to improve the quality of animal habitats such as cleaning supplies, sanitizers, feeders, and products that control, mask, or suppress pet odors. This category excludes animal bedding or litter products and animal cleaning products.

USDA identified eight manufacturers and vendors of 52 biobased animal habitat care products. These manufacturers and vendors do not include all manufacturers and vendors of biobased animal habitat care products, merely those identified as

USDA Certified Biobased Products in the BioPreferred Program's database. These 52 biobased animal habitat care products range in biobased content from 25 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of the products categorized as animal habitat care products. Thus, the proposed minimum biobased content for this product category is 22 percent, based on the products with tested biobased contents of 25 percent.

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

- GS–8 Green Seal Environmental Standard for Household Cleaning Products and
- GS–37 Green Seal Standard for Industrial and Institutional Cleaners.

USDA has been unable to obtain data on the amount of animal habitat care products purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Animal habitat care products may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—cleaner components; intermediates—fibers and fabrics; intermediates—foams; intermediates—oils, fats, and waxes; intermediates—personal care product components; intermediates—plastic resins; intermediates—rubber materials; and intermediates—textile processing materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on animal habitat care products and may be found on the BioPreferred Program's website.

3. Cleaning Tools (Minimum Biobased Content 22 Percent)

Cleaning tools are objects that are used to clean a variety of surfaces or items and are designed to be used multiple times. This category includes tools such as brushes, scrapers, abrasive pads, and gloves that are used for cleaning. The expendable materials used in cleaning, such as glass cleaners, single-use wipes, and all-purpose cleaners, are excluded from this category as these materials better fit in other categories.

USDA identified five manufacturers and vendors of 21 biobased cleaning tools. These manufacturers and vendors do not include all manufacturers and vendors of biobased cleaning tools, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These 21 biobased cleaning tools range in biobased content from 25 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 22 percent, based on the product with a tested biobased content of 25 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of cleaning tools purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Cleaning tools may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—foams; intermediates—oils, fats, and waxes; intermediates—plastic resins; and intermediates—rubber materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on cleaning tools and may be found on the BioPreferred Program's website.

4. Concrete Curing Agents (Minimum Biobased Content 59 Percent)

Concrete curing agents are products that are designed to enhance and control the curing process of concrete.

USDA identified one manufacturer and vendor of one biobased concrete curing agent. This manufacturer and vendor is not the only manufacturer and vendor of biobased concrete curing agents; rather, it is the only manufacturer and vendor that was identified as USDA Certified Biobased Products in the BioPreferred Program's database. This biobased concrete curing agent contains 62 percent biobased content, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude this product. Thus, the proposed minimum biobased content for this product category is 59 percent, based on the product's tested biobased content of 62 percent.

Information supplied by this manufacturer and vendor indicates that this product is being used commercially. In addition, this manufacturer and vendor identified one additional test method (as shown below) that was used in evaluating the product within this product category. While there may be additional test methods, performance standards, product certifications, and other measures of performance applicable to products within this product category, the test method identified by this manufacturer and vendor is below:

- ASTM C309 Standard Specification for Liquid Membrane-Forming Compounds for Curing Concrete.

USDA has been unable to obtain data on the amount of concrete curing agents purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Concrete

curing agents may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—oils, fats, and waxes; and intermediates—paints and coating components.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on concrete curing agents and may be found on the BioPreferred Program's website.

Biobased concrete curing agents may overlap with the products categorized in the EPA's CPG product category of Construction Products: Cement and Concrete. USDA is requesting that manufacturers and vendors of these qualifying biobased products provide information on the USDA website regarding the intended uses of the product, whether the product contains any recovered material in addition to biobased ingredients, and other test methods or performance standards through which the product has undergone testing. This information will assist Federal agencies in determining whether qualifying biobased concrete curing agents overlap with the CPG-designated product category of Construction Products: Cement and Concrete and which product should be afforded the preference in purchasing.

5. Concrete Repair Materials (Minimum Biobased Content: 23 Percent for Concrete Leveling and 69 Percent for Concrete Patching)

Concrete leveling materials are products that are designed to repair cracks and other damage to concrete by raising or stabilizing concrete. Concrete patching materials are products that are designed to repair cracks and other damage to concrete by filling and patching the concrete.

USDA identified one manufacturer and vendor of two biobased concrete leveling products and one manufacturer and vendor of one biobased concrete patching product. These manufacturers and vendors do not include all manufacturers and vendors of biobased concrete repair materials, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. The biobased concrete repair materials—concrete leveling products—contain 26 percent and 46 percent biobased content, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product subcategory, USDA did not find a reason to exclude either of these products. Thus, the proposed minimum biobased content for this product subcategory is 23 percent, based on the product with a tested biobased content of 26 percent. The biobased concrete repair materials—concrete patching product—contains 72 percent biobased content, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude this product. Thus, the proposed minimum biobased content for this product subcategory is 69 percent, based on the product's tested biobased content of 72 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in these finished product subcategories.

USDA has been unable to obtain data on the amount of concrete repair materials purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product subcategory would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Concrete repair materials may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—foams; intermediates—oils, fats, and waxes; intermediates—paint and coating components; and intermediates—rubber materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on Concrete Repair Materials and may be found on the BioPreferred Program's website.

Biobased concrete repair materials may overlap with the products categorized in the EPA's CPG product category of Construction Products: Cement and Concrete. USDA is requesting that manufacturers and vendors of these qualifying biobased products provide information on the USDA website of qualifying biobased products about the intended uses of the product, whether the product contains any recovered material in addition to biobased ingredients, and other test methods or performance standards through which the product has undergone testing. This information will assist Federal agencies in determining whether qualifying biobased concrete repair materials overlap with the CPG-designated product category of Construction Products: Cement and Concrete and which product should be afforded the preference in purchasing.

6. Durable Cutlery (Minimum Biobased Content 28 Percent)

Durable cutlery consists of dining utensils that are designed to be used multiple times.

USDA identified one manufacturer and vendor of three biobased durable cutlery products. This manufacturer and vendor is not the only manufacturer and vendor of biobased durable cutlery; rather, it is the only one that was identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased durable cutlery products contain 31, 31, and 98 percent biobased content, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 28 percent, based on the products with tested biobased contents of 31 percent.

Information supplied by this manufacturer and vendor indicates that these products are being used commercially. While this manufacturer and vendor did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of durable cutlery purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Durable cutlery may be manufactured using the

following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—oils, fats, and waxes; intermediates—plastic resins; and intermediates—rubber materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on durable cutlery products and may be found on the BioPreferred Program's website.

7. Durable Tableware (Minimum Biobased Content 28 Percent)

Durable tableware consists of multiple-use drinkware and dishware including cups, plates, bowls, and serving platters.

USDA identified four manufacturers and vendors of 17 biobased durable tableware products. These manufacturers and vendors do not include all manufacturers and vendors of biobased durable tableware, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased durable tableware products range in biobased content from 31 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 28 percent, based on the product with a tested biobased content of 31 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of durable tableware purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Durable tableware may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—oils, fats, and waxes; intermediates—plastic resins; and intermediates—rubber materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on durable tableware products and may be found on the BioPreferred Program's website.

8. Epoxy Systems (Minimum Biobased Content 23 Percent)

Epoxy systems are two-component systems that are epoxy-based and are used as coatings, adhesives, surface fillers, and composite matrices.

USDA identified six manufacturers and vendors of 13 biobased epoxy systems. These manufacturers and vendors do not include all manufacturers and vendors of biobased epoxy systems, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased epoxy systems range in biobased content from 26 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 23 percent, based on the product with a tested biobased content of 26 percent.

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

- ASTM D638 Standard Test Method for Tensile Properties of Plastics,
- ASTM D790 Standard Test Methods for Flexural Properties of Unreinforced and Reinforced Plastics and Electrical Insulating Materials, and
- ASTM D2486 Standard Test Methods for Scrub Resistance of Wall Paints.

USDA has been unable to obtain data on the amount of epoxy systems purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Epoxy systems may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—oils, fats, and waxes; intermediates—paints and coating components; and intermediates—plastic resins.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on epoxy systems and may be found on the BioPreferred Program's website.

9. Exterior Paints and Coatings (Minimum Biobased Content 83 Percent)

Exterior paints and coatings are liquid products that typically contain pigments to add color and are formulated for use on outdoor surfaces. When these products dry, they typically form a protective layer and provide a coat of color to the applied surface. This category includes paint and primers but excludes wood and concrete sealers and stains and specialty coatings such as roof coatings, wastewater system coatings, and water tank coatings.

USDA identified one manufacturer and vendor of three biobased exterior paints and coatings. This manufacturer and vendor is not the only manufacturer and vendor of biobased exterior paints and coatings; rather, it is the only manufacturer and vendor that was identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased exterior paints and coatings have biobased contents of 86, 87, and 89 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 83 percent, based on the product with a tested biobased content of 86 percent.

Information supplied by this manufacturer and vendor indicates that these products are being used commercially. While this manufacturer and vendor did not identify additional test methods, performance standards, product certifications, and other measures of performance for these

products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of exterior paints and coatings purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Exterior paints and coatings may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—oils, fats, and waxes; intermediates—paint and coating components; and intermediates—plastic resins.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on exterior paints and coatings and may be found on the BioPreferred Program's website.

Biobased exterior paints and coatings may overlap with the products categorized in the EPA's CPG product category of Construction Products: Consolidated and Reprocessed Latex Paint for Specified Uses. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA website regarding the intended uses of the product, whether the product contains any recovered material in addition to biobased ingredients, and performance standards through which the product has undergone testing. This information will assist Federal agencies in determining whether qualifying biobased exterior paints and coatings overlap with the CPG-designated product category of Construction Products: Consolidated and Reprocessed Latex Paint for Specified Uses and which product should be afforded the preference in purchasing.

10. Facial Care Products (Minimum Biobased Content 88 Percent)

Facial care products are cleansers, moisturizers, and treatments specifically designed for the face. These products are used to care for the condition of the face by supporting skin integrity, enhancing its appearance, and relieving skin conditions. This category does not include tools and applicators, such as those used to apply facial care products.

USDA identified eight manufacturers and vendors of 18 biobased facial care products. These manufacturers and vendors do not include all manufacturers and vendors of biobased facial care products, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased facial care products range in biobased content from 91 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 88 percent, based on the products with tested biobased contents of 91 percent.

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

- USDA National Organic Program,
- EU Organic Certification, and
- Global Organic Textile Standard (GOTS).

USDA has been unable to obtain data on the amount of facial care products purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Facial care products may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—foams; intermediates—oils, fats, and waxes; and intermediates—personal care product components.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on facial care products and may be found on the BioPreferred Program's website.

11. Feminine Care Products (Minimum Biobased Content 65 Percent)

Feminine care products are products that are designed for maintaining feminine health and hygiene. This category includes sanitary napkins, panty liners, and tampons.

USDA identified two manufacturers and vendors of 18 biobased feminine care products. These manufacturers and vendors are not the only manufacturers and vendors of biobased feminine care products; rather, they are the only manufacturers and vendors that were identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased feminine care products range in biobased content from 68 percent to 99 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 65 percent, based on the product with a tested biobased content of 68 percent.

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

- USDA National Organic Program,
- EU Organic Certification, and
- Global Organic Textile Standard (GOTS).

USDA has been unable to obtain data on the amount of feminine care products purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Feminine care products may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders;

intermediates—chemicals; intermediates—fibers and fabrics; intermediates—foams; intermediates—personal care product components; intermediates—plastic resins; and intermediates—rubber materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on feminine care products and may be found on the BioPreferred Program's website.

12. Fire Logs and Fire Starters (Minimum Biobased Content 92 Percent)

Fire logs and fire starters are devices or substances that are used to start a fire intended for uses such as comfort heat, decoration, or cooking. Examples include fire logs and lighter fluid. This category excludes heating fuels for chafing dishes, beverage urns, warming boxes, and wick lamps.

USDA identified 10 manufacturers and vendors of 18 biobased fire logs and fire starters. These manufacturers and vendors do not include all manufacturers and vendors of biobased fire logs and fire starters, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased fire logs and fire starters range in biobased content from 95 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 92 percent, based on the product with a tested biobased content of 95 percent.

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

- ASTM D6751 Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels and
- UL 2115 Standard for Processed Solid-Fuel Firelogs.

USDA has been unable to obtain data on the amount of fire logs and fire starters purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Fire logs and fire starters may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—oils, fats, and waxes; and intermediates—plastic resins.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on fire logs and fire starters and may be found on the BioPreferred Program's website.

13. Folders and Filing Products (Minimum Biobased Content 66 Percent)

Folders and filing products are products that are designed to hold together items such as loose sheets of paper, documents, and photographs with clasps, fasteners, rings, or folders. This category includes binders, folders, and document covers.

USDA identified one manufacturer and vendor of two biobased folders and filing products. This manufacturer and vendor is not the only manufacturer and vendor of biobased folders and filing products; rather, it is the only manufacturer and vendor that was identified as USDA Certified Biobased Products in the BioPreferred Program's database. These two biobased folders and filing products each contain 69 percent biobased content, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude either of these products. Thus, the proposed minimum biobased content for this product category is 66 percent, based on the products with tested biobased contents of 69 percent.

Information supplied by this manufacturer and vendor indicates that these products are being used commercially. While this manufacturer and vendor did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of folders and filing products purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Folders and filing products may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—foams; intermediates—oils, fats, and waxes; intermediates—plastic resins; and intermediates—rubber materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on folders and filing products and may be found on the BioPreferred Program's website.

Biobased folders and filing products may overlap with the products categorized in the EPA's CPG product categories of Non-Paper Office Products: Binders, Clipboards, File Folders, Clip Portfolios, and Presentation Folders and Non-Paper Office Products: Plastic Envelopes. USDA is requesting that manufacturers and vendors of these qualifying biobased products provide information on the USDA website regarding the intended uses of the product, whether the product contains any recovered material in addition to biobased ingredients, and other test methods or performance standards through which the product has undergone testing. This information will assist Federal agencies in determining whether qualifying biobased folders and filing products overlap with the CPG-designated product categories of Non-Paper Office Products: Binders, Clipboards, File Folders, Clip Portfolios, and Presentation Folders and Non-Paper Office Products: Plastic Envelopes and which product should be afforded the preference in purchasing.

14. Foliar Sprays (Minimum Biobased Content 50 Percent)

Foliar sprays are products that are applied to the leaves of plants and provide plants with nutrients. These products may also repair plants from previous pest attacks. Examples include liquid fertilizers, foliar feeds, and micronutrient solutions.

USDA identified nine manufacturers and vendors of nine biobased foliar sprays. These manufacturers and vendors do not include all manufacturers and vendors of biobased foliar sprays, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased foliar sprays have biobased contents of 53, 74, 80, 93, 97, 97, 97, 100 and 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 50 percent, based on the product with a tested biobased content of 53 percent.

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

- ASTM D4052 Standard Test Method for Density, Relative Density, and API Gravity of Liquids by Digital Density Meter.

USDA has been unable to obtain data on the amount of foliar sprays purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Foliar sprays may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—cleaner components; and intermediates—oils, fats, and waxes.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on foliar sprays and may be found on the BioPreferred Program's website.

15. Gardening Supplies and Accessories (Minimum Biobased Content 43 Percent)

Gardening supplies and accessories are products that are used to grow plants in outdoor and indoor settings. Examples include seedling starter trays, nonwoven mats or substrates for hydroponics, and flower or plant pots. This category excludes compost activators and accelerators; erosion control materials; fertilizers, including soil inoculants; foliar sprays; mulch and compost materials; and soil amendments.

USDA identified eight manufacturers and vendors of 12 biobased gardening supplies and accessories. These manufacturers and vendors do not include all manufacturers and vendors of biobased gardening supplies and accessories, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased gardening supplies and accessories range in biobased content from 46 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 43 percent, based on the product with a tested biobased content of 46 percent.

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

- ASTM D6400 Standard Specification for Labeling of Plastics Designed to be Aerobically Composted in Municipal or Industrial Facilities.

USDA has been unable to obtain data on the amount of gardening supplies and accessories purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Gardening supplies and accessories may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—foams; and intermediates—plastic resins.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on gardening supplies and accessories and may be found on the BioPreferred Program's website.

16. Heating Fuels and Wick Lamps (Minimum Biobased Content 75 Percent)

Heating fuels and wick lamps are products that create controlled sources of heat or sustain controlled open flames that are used for warming food, portable stoves, beverage urns, or fondues. This category also includes wick lamps and their fuels that create controlled sources of light indoors and in camping or emergency preparedness situations. This category excludes fire logs and fire starters and candles and wax melts.

USDA identified three manufacturers and vendors of 12 biobased heating fuels and wick lamps. These manufacturers and vendors do not include all manufacturers and vendors of biobased heating fuels and wick lamps, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased heating fuels and wick lamps range in biobased content from 78 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 75 percent, based on the product with a tested biobased content of 78 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. In addition, one of these manufacturers and vendors identified an additional test method (as shown below) that was used in evaluating the products within this product category.

While there may be additional test methods, performance standards, product certifications, and other measures of performance applicable to products within this product category, the test method identified by this manufacturer and vendor is below:

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

USDA has been unable to obtain data on the amount of heating fuels and wick lamps purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Heating fuels and wick lamps may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—oils, fats, and waxes; and intermediates—plastic resins.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on heating fuels and wick lamps and may be found on the BioPreferred Program's website.

17. Kitchenware and Accessories (Minimum Biobased Content 22 Percent)

Kitchenware and accessories are products designed for food or drink preparation. These products include cookware and bakeware, such as baking cups, cookie sheets, parchment paper, and roasting bags or pans; cooking utensils, such as brushes, tongs, spatulas, and ladles; and food preparation items, such as cutting boards, measuring cups, mixing bowls, coffee filters, food preparation gloves, and sandwich and snack bags. These products exclude kitchen appliances, such as toasters, blenders, and coffee makers; disposable tableware; disposable cutlery; disposable containers; durable tableware; durable cutlery; and cleaning tools.

USDA identified five manufacturers and vendors of 17 biobased kitchenware and accessories. These manufacturers and vendors do not include all manufacturers and vendors of biobased kitchenware and accessories, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These 17 biobased kitchenware and accessories range in biobased content from 25 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 22 percent, based on the product with a tested biobased content of 25 percent.

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

• ASTM D6400 Standard Specification for Labeling of Plastics Designed to be Aerobically Composted in Municipal or Industrial Facilities.

USDA has been unable to obtain data on the amount of kitchenware and accessories purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Kitchenware and accessories may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—foams; intermediates—oils, fats, and waxes; intermediates—plastic resins; intermediates—rubber materials; and intermediates—textile processing materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on kitchenware and accessories and may be found on the BioPreferred Program's website.

18. Other Lubricants (Minimum Biobased Content 39 Percent)

Other lubricants are lubricant products that do not fit into any of the BioPreferred Program's specific lubricant categories. This category includes lubricants that are formulated for specialized uses. Examples of other lubricants include lubricants used for sporting or exercise gear and equipment, musical instruments, and specialized equipment such as tree shakers. This category excludes lubricants that are covered by the specific lubricant categories such as chain and cable lubricants, firearm lubricants, forming lubricants, gear lubricants, multi-purpose lubricants, penetrating lubricants, pneumatic equipment lubricants, and slide way lubricants.

USDA identified five manufacturers and vendors of 14 biobased other lubricants. These manufacturers and vendors do not include all manufacturers and vendors of biobased other lubricants, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased other lubricants range in biobased content from 42 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 39 percent, based on the product with a tested biobased content of 42 percent.

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

• California Code of Regulations (CCR) Title 22, Section 66696 Static Acute Bioassay Procedures for Hazardous Waste Samples.

USDA has been unable to obtain data on the amount of other lubricants purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute

towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Other lubricants may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—cleaner components; intermediates—lubricant components; and intermediates—oils, fats, and waxes.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on other lubricants and may be found on the BioPreferred Program's website.

Biobased other lubricants may overlap with the products categorized in the EPA's CPG product category of Vehicular Products: Re-Refined Lubricating Oil. USDA is requesting that manufacturers and vendors of these qualifying biobased products provide information on the USDA website regarding the intended uses of the product, whether the product contains any recovered material in addition to biobased ingredients, and other test methods or performance standards through which the product has undergone testing. This information will assist Federal agencies in determining whether qualifying biobased Other Lubricants overlap with the CPG-designated product category of Vehicular Products: Re-Refined Lubricating Oil and which product should be afforded the preference in purchasing.

19. Phase Change Materials (Minimum Biobased Content 71 Percent)

Phase change materials are products that are capable of absorbing and releasing large amounts of thermal energy by freezing and thawing at certain temperatures. Heat is absorbed or released when the material changes from solid to liquid and vice versa. Applications may include, but are not limited to, conditioning of buildings, medical applications, thermal energy storage, or cooling of food. Materials such as animal fats and plant oils that melt at desirable temperatures are typically used to make products in this category.

USDA identified two manufacturers and vendors of eight biobased phase change materials. These manufacturers and vendors do not include all manufacturers and vendors of biobased phase change materials, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased phase change materials have biobased contents of 74, 94, 100, 100, 100, 100, 100, and 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 71 percent, based on the product with a tested biobased content of 74 percent.

Information supplied by these manufacturers and vendors indicates that this product is being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of phase change materials purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Phase change materials may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; and intermediates—oils, fats, and waxes.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on phase change materials and may be found on the BioPreferred Program's website.

20. Playground and Athletic Surface Materials (Minimum Biobased Content 22 Percent)

Playground and athletic surface materials are products that are designed for use on playgrounds and athletic surfaces. Examples include materials that are applied to the surfaces of playgrounds, athletic fields, and other sports surfaces to enhance or change the color or general appearance of the surface and to provide safety and/or performance benefits. Such materials include, but are not limited to, top coatings, primers, line marking paints, and rubberized pellets that are used on athletic courts, tracks, natural or artificial turf, and other playing surfaces. This category does not include the artificial turf or surface itself, as that is included in the carpets product category.

USDA identified two manufacturers and vendors of three biobased playground and athletic surface materials. These manufacturers and vendors are not the only manufacturers and vendors of biobased playground and athletic surface materials; rather, they are the only manufacturers and vendors that were identified through the USDA Certified Biobased Products listing in the BioPreferred Program's database. These biobased playground and athletic surface materials have biobased contents of 25, 25, and 29 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 22 percent, based on the products with tested biobased contents of 25 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of playground and athletic surface materials purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Playground and athletic surface materials may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—oils, fats, and waxes; intermediates—paint and coating components; intermediates—plastic resins; and intermediate—rubber materials.

Specific product information, including company contact, intended use, biobased content, and performance

characteristics, have been collected on playground and athletic surface materials and may be found on the BioPreferred Program's website.

Biobased playground and athletic surface materials may overlap with the products categorized in the EPA's CPG product categories of Parks and Recreation Products: Playground Surfaces and Running Tracks. USDA is requesting that manufacturers and vendors of these qualifying biobased products provide information on the USDA website regarding the intended uses of the product, whether the product contains any recovered material in addition to biobased ingredients, and other test methods or performance standards through which the product has undergone testing. This information will assist Federal agencies in determining whether qualifying biobased playground and athletic surface materials overlap with the CPG-designated product categories of Parks and Recreation Products: Playground Surfaces and Running Tracks and which product should be afforded the preference in purchasing.

21. Powder Coatings (Minimum Biobased Content 34 Percent)

Powder coatings are polymer resin systems that are combined with stabilizers, curatives, pigments, and other additives and ground into a powder. These coatings are applied electrostatically to metallic surfaces and then cured under heat. Powder coatings are typically used for coating metals, such as vehicle and bicycle parts, household appliances, and aluminum extrusions.

USDA identified one manufacturer and vendor of one biobased powder coating. This manufacturer and vendor is not the only manufacturer and vendor of biobased powder coatings; rather, it is the only manufacturer and vendor that was identified through the USDA Certified Biobased Products listing in the BioPreferred Program's database. This biobased powder coating has a biobased content of 37 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude this product. Thus, the proposed minimum biobased content for this product category is 34 percent, based on the product's tested biobased content of 37 percent.

Information supplied by this manufacturer and vendor indicates that this product is being used commercially. While this manufacturer and vendor did not identify additional test methods, performance standards, product certifications, and other measures of performance for this product, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of powder coatings purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Powder coatings may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—paint and coating components; and intermediates—plastic resins.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on powder coatings and may be found on the BioPreferred Program's website.

22. Product Packaging (Minimum Biobased Content 25 Percent)

Product packaging items are used to protect, handle, and retain a product during activities related but not limited to its storage, distribution, sale, and use. These containers are typically designed to be used once. This category excludes packing and insulating materials and shopping and trash bags.

USDA identified 21 manufacturers and vendors of 64 biobased product packagings. These manufacturers and vendors do not include all manufacturers and vendors of biobased product packaging, merely those identified through the USDA Certified Biobased Products listing in the BioPreferred Program's database. These biobased product packaging range in biobased content from 28 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 25 percent, based on the product with a tested biobased content of 28 percent.

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

- ASTM D6400 Standard Specification for Labeling of Plastics Designed to be Aerobically Composted in Municipal or Industrial Facilities,
- HACCP: Hazard and Critical Control Points,
- ISO 9001 Quality Management Systems—Requirements, and
- ISO 14001 Environmental Management Systems—Requirements with Guidance for Use.

USDA has been unable to obtain data on the amount of product packaging purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Product packaging may be manufactured using the following designated intermediate ingredient and feedstock categories: intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—foams; intermediates—oils, fats, and waxes; intermediates—paint and coating components; intermediates—plastic resins; and intermediates—rubber materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on product packaging and may be found on the BioPreferred Program's website.

Biobased product packaging may overlap with the products categorized in the EPA's CPG product category of Paper Products: Paperboard and Packaging. USDA is requesting that manufacturers and vendors of these qualifying biobased products provide information on the USDA website regarding the intended uses of the product, whether the product contains any recovered material in addition to biobased ingredients, and performance standards through which the product has undergone testing. This information

will assist Federal agencies in determining whether qualifying biobased product packaging overlaps with the CPG-designated product category of Paper Products: Paperboard and Packaging and which product should be afforded the preference in purchasing.

23. Rugs and Floor Mats (Minimum Biobased Content 23 Percent)

Rugs and floor mats are floor coverings that are used for decorative or ergonomic purposes and that are not attached to the floor. This category includes items such as area rugs, rug runners, chair mats, and bathroom and kitchen mats. This category excludes wall-to-wall carpet.

USDA identified three manufacturers and vendors of eight biobased rugs and floor mats. These manufacturers and vendors are not the only manufacturers and vendors of biobased rugs and floor mats; rather, they are the manufacturers and vendors that were identified through the USDA Certified Biobased Products listing in the BioPreferred Program's database. These biobased rugs and floor mats each have biobased contents of 26 or 30 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 23 percent, based on the products' tested biobased contents of 26 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of rugs and floor mats purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Rugs and floor mats may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—foams; intermediates—oils, fats, and waxes; intermediates—plastic resins; intermediates—rubber materials; and intermediates—textile processing materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on rugs and floor mats and may be found on the BioPreferred Program's website.

Biobased rugs and floor mats may overlap with the products categorized in the EPA's CPG product category of Miscellaneous Products: Mats. USDA is requesting that manufacturers and vendors of these qualifying biobased products provide information on the USDA website regarding the intended uses of the product, whether the product contains any recovered material in addition to biobased ingredients, and other test methods or performance standards through which the product has undergone testing. This information will assist Federal agencies in determining whether qualifying biobased rugs and floor mats overlap with the CPG-designated product category of Miscellaneous Products: Mats and which product should be afforded the preference in purchasing.

24. Shopping and Trash Bags (Minimum Biobased Content 22 Percent)

Shopping and trash bags are open-ended bags that are typically made of thin, flexible film and are used for containing and transporting items such as consumer goods and waste. Examples include trash bags, can liners, shopping or grocery bags, pet waste bags, compost bags, and yard waste bags. This category does not include product packaging, disposable containers, or semi-durable and non-durable films.

USDA identified six manufacturers and vendors of nine shopping and trash bags. These manufacturers and vendors do not include all manufacturers and vendors of biobased shopping and trash bags, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased shopping and trash bags have biobased contents of 25, 26, 26, 38, 47, 48, 75, 88 and 99 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any products. Thus, the proposed minimum biobased content for this product category is 22 percent, based on the product with a tested biobased content of 25 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of shopping and trash bags purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Shopping and trash bags may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—oils, fats, and waxes; intermediates—paint and coating components; and intermediates—plastic resins.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on shopping and trash bags and may be found on the BioPreferred Program's website.

Biobased shopping and trash bags may overlap with the products categorized in the EPA's CPG product category of Non-Paper Office Products: Plastic Trash Bags. USDA is requesting that manufacturers and vendors of these qualifying biobased products provide information on the USDA website regarding the intended uses of the product, whether the product contains any recovered material in addition to biobased ingredients, and performance standards through which the product has undergone testing. This information will assist Federal agencies in determining whether qualifying biobased shopping and trash bags overlap with the CPG-designated product category of Non-Paper Office Products: Plastic Trash Bags and which product should be afforded the preference in purchasing.

25. Soil Amendments (Minimum Biobased Content 72 Percent)

Soil amendments are materials that enhance the physical characteristics of soil through improving water retention or drainage, improving nutrient cycling, promoting microbial growth, or changing the soil's pH. This category excludes foliar sprays and chemical fertilizers.

USDA identified 15 manufacturers and vendors of 17 biobased soil amendments. These manufacturers and vendors do not include all manufacturers and vendors of biobased soil amendments, merely those identified through the USDA Certified Biobased Products listingin the BioPreferred Program's database. These biobased soil amendments range in biobased content from 75 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 72 percent, based on the product with a tested biobased content of 75 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. In addition, two of these manufacturers and vendors identified additional test methods or product certifications (as shown below) that were used in evaluating the products within this product category. While there may be additional test methods, performance standards, product certifications, and other measures of performance that are applicable to products within this product category, the product certification identified by these manufacturers and vendors includes the following:

- ASTM D6868 Standard Specification for Labeling of End Items that Incorporate Plastics and Polymers as Coatings or Additives with Paper and Other Substrates Designed to be Aerobically Composted in Municipal or Industrial Facilities and
- US Composting Council Seal of Testing Assurance.

USDA has been unable to obtain data on the amount of soil amendments purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Soil amendments may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; and intermediates—fibers and fabrics.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on soil amendments and may be found on the BioPreferred Program's website.

Biobased soil amendments may overlap with the products categorized in the EPA's CPG product categories of Landscaping Products: Compost Made From Recovered Organic Materials and Landscaping Products: Fertilizer Made From Recovered Organic Materials. USDA is requesting that manufacturers and vendors of these qualifying biobased products provide information on the USDA website regarding the intended uses of the product, whether the product contains any recovered material, in addition to biobased ingredients, and other test methods or performance standards through which the product has undergone testing. This information will assist Federal agencies in determining whether qualifying biobased soil amendments overlap with the CPG-designated product categories of Landscaping Products: Compost Made From Recovered Organic Materials and Landscaping Products: Fertilizer Made From Recovered Organic Materials and which product should be afforded the preference in purchasing.

26. Surface Guards, Molding, and Trim (Minimum Biobased Content 26 Percent)

Surface guards, molding, and trim products are typically used during construction or manufacturing. These products are designed to protect surfaces, such as walls and floors, from damage or to cover the exposed edges of furniture or floors.

USDA identified two manufacturers and vendors of two surface guards, molding, and trim products. These manufacturers and vendors do not include all manufacturers and vendors of biobased surface guards, molding, and trim products, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased surface guards, molding, and trim products have biobased contents of 29 percent and 35 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any products. Thus, the proposed minimum biobased content for this product category is 26 percent, based on the products with tested biobased contents of 29 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of surface guards, molding, and trim purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Surface guards, molding, and trim may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—oils, fats, and waxes; intermediates—plastic resins; and intermediates—rubber materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on surface guards, molding, and trim products and may be found on the BioPreferred Program's website.

27. Toys and Sporting Gear (Minimum Biobased Content 32 Percent)

Toys and sporting gear are products that are designed for indoor or outdoor recreational use including, but not limited to, toys; games; and sporting equipment and accessories such as balls, bats, racquets, nets, and bicycle seats. This category does not include products such as cleaners, lubricants, and oils that are used to maintain or clean toys and sporting gear.

USDA identified two manufacturers and vendors of seven toys and sporting gear. These manufacturers and vendors do not include all manufacturers and vendors of biobased toys and sporting gear, merely those identified as USDA Certified Biobased Products in the

BioPreferred Program's database. These biobased toys and sporting gear have biobased contents ranging from 35 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any products. Thus, the proposed minimum biobased content for this product category is 32 percent, based on the products with tested biobased contents of 35 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of toys and sporting gear purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Toys and sporting gear may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—foams; intermediates—lubricant components; intermediates—oils, fats, and waxes; intermediates—paint and coating components; intermediates—plastic resins; intermediates—rubber materials; and intermediates—textile processing materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on toys and sporting gear and may be found on the BioPreferred Program's website.

28. Traffic and Zone Marking Paints (Minimum Biobased Content 30 Percent)

Traffic and zone marking paints are products that are formulated and marketed for marking and striping streets, highways, or other traffic surfaces including, but not limited to, curbs, driveways, parking lots, sidewalks, and airport runways.

USDA identified one manufacturer and vendor of five traffic and zone marking paints. This manufacturer and vendor is not the only manufacturer and vendor of biobased traffic and zone marking paints; rather, it is the only one identified through the USDA Certified Biobased Products listing in the BioPreferred Program's database. These biobased traffic and zone marking paints have biobased contents of 33, 33, 34, 35, and 38 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any products. Thus, the proposed minimum biobased content for this product category is 30 percent, based on the products with tested biobased contents of 33 percent.

Information supplied by this manufacturer and vendor indicates that these products are being used commercially. While this manufacturer and vendor did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of traffic and zone marking paints purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Traffic and zone marking paints may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—oils, fats, and waxes; intermediates—paint and coating components; and intermediates—plastic resins.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on traffic and zone marking paints and may be found on the BioPreferred Program's website.

29. Transmission Fluids (Minimum Biobased Content 60 Percent)

Transmission fluids are liquids that lubricate and cool the moving parts in a transmission to prevent wearing and to ensure smooth performance.

USDA identified two manufacturers and vendors of two transmission fluids. These manufacturers and vendors do not include all manufacturers and vendors of biobased transmission fluids, merely those identified through the USDA Certified Biobased Products listing in the BioPreferred Program's database. These biobased transmission fluids have biobased contents of 63 percent and 96 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude either product. Thus, the proposed minimum biobased content for this product category is 60 percent, based on the product with a tested biobased content of 63 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of transmission fluids purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Transmission fluids may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—lubricant components; and intermediates—oils, fats, and waxes.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on transmission fluids and may be found on the BioPreferred Program's website.

Biobased transmission fluids may overlap with the products categorized in the EPA's CPG product category of Vehicular Products: Re-Refined Lubricating Oil. USDA is requesting that manufacturers and vendors of these qualifying biobased products provide information on the USDA website regarding the intended uses of the product, whether the product contains any recovered material in addition to biobased ingredients, and other test methods or performance standards through which the product has undergone testing. This information will assist Federal agencies in determining whether qualifying biobased transmission fluids overlap with the CPG-designated product category of Vehicular Products: Engine Coolants and which product should be afforded the preference in purchasing.

30. Wall Coverings (Minimum Biobased Content 62 Percent)

Wall coverings are materials that are applied to walls using an adhesive. This category includes, but is not limited to, wallpaper, vinyl wall coverings, and wall fabrics. This category excludes all types of paints or coatings.

USDA identified one manufacturer and vendor of five wall coverings. This manufacturer and vendor is not the only manufacturer and vendor of biobased wall coverings; rather, it is the only manufacturer and vendor that was identified through the USDA Certified Biobased Products listing in the BioPreferred Program's database. These biobased wall coverings have biobased contents of 65, 68, 89, 89, and 89 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any products. Thus, the proposed minimum biobased content for this product category is 62 percent, based on the product with a tested biobased content of 65 percent.

Information supplied by this manufacturer and vendor indicates that these products are being used commercially. In addition, this manufacturer and vendor identified an additional performance standard (as shown below) that was used in evaluating the products within this product category. While there may be additional test methods, performance standards, product certifications, and other measures of performance applicable to products within this product category, the performance standard identified by this manufacturer and vendor is below:

- ACT Physical Properties Performance Guideline.

USDA has been unable to obtain data on the amount of wall coverings purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Wall coverings may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—plastic resins; intermediates—rubber materials; and intermediates—textile processing materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on wall coverings and may be found on the BioPreferred Program's website.

C. Proposed Amendments to Previously Designated Product Categories

In this proposed rule, USDA is proposing to amend the previously designated product categories of general purpose de-icers; firearm lubricants; laundry products; and water clarifying agents. The proposed amendments are discussed in the following sections.

1. General Purpose De-Icers

Since the designation of the general purpose de-icers product category, USDA has gathered more information on de-icers intended for general purpose use and/or specialized use. In reviewing this information, USDA found that there is no significant difference in formulation or biobased content of de-icers intended for general purpose or specialized use. As a result, USDA concluded that it is reasonable to include these products in a single, revised category for de-icers. USDA is proposing to revise the previously designated general purpose de-icers category to include both general purpose and specialized de-icers, as follows:

De-Icers (Minimum Biobased Content 93 Percent)

De-icers are chemical products (*e.g.,* salts, fluids) that are designed to aid in the removal of snow and/or ice, and/or in the prevention of the buildup of snow and/or ice, by lowering the freezing point of water.

USDA identified five manufacturers and vendors of 13 biobased de-icers. These manufacturers and vendors do not include all manufacturers and vendors of biobased de-icers, merely those identified through the USDA Certified Biobased Products in the BioPreferred Program's database. These biobased de-icers have biobased contents ranging from 96 percent to 100 percent, as measured by ASTM D6866. USDA is not proposing a change to the minimum biobased content of the existing designated category. Thus, the proposed minimum biobased content for this product category is 93 percent.

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

- AMS1476B SAE International Deodorant, Aircraft Toilet Specification,
- ASTM D1177 Standard Test Method for Freezing Point of Aqueous Engine Coolants,
- ASTM D1384 Standard Test Method for Corrosion Test for Engine Coolants in Glassware,
- Boeing D6–17487R Revision R Toilet Flushing Fluids,
- EPA 2007.0 Acute Toxicity WET Method of Mysid, *Americamysis bahia,* and
- FBC System Compatible Lubrizol Test Method-2009—NSF CPVC.

USDA has been unable to obtain data on the amount of de-icers purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. De-icers may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders and intermediates—chemicals.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on

de-icers and may be found on the BioPreferred Program's website.

2. Firearm Lubricants

Since the designation of the firearm lubricants category, USDA has gathered more information on firearm lubricants, as well as other firearm care products, such as cleaners and protectants. In reviewing the information now available, USDA determined that firearm cleaners, lubricants, protectants, and products that are formulated as any combination thereof are similar in formulation and biobased content. Additionally, USDA found that many of these products are advertised as performing well in cleaning, lubricating, and protecting firearms. USDA concluded that it is reasonable to include these products in a single, revised category for firearm care products. Thus, USDA is proposing to revise the firearm lubricants category to include additional firearm care products, such as cleaners and protectants, as follows:

Firearm Cleaners, Lubricants, and Protectants (Minimum Biobased Content 32 Percent)

Firearm cleaners, lubricants, and protectants are products that are designed to care for firearms by cleaning, lubricating, protecting, or any combination thereof. Examples include products that are designed for use in firearms to reduce the friction and wear between the moving parts of a firearm, to keep the weapon clean, and/or to prevent the formation of deposits that could cause the weapon to jam.

USDA identified 14 manufacturers and vendors of 31 biobased firearm cleaners, lubricants, and protectants. These manufacturers and vendors do not include all manufacturers and vendors of biobased firearm cleaners, lubricants, and protectants, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased firearm cleaners, lubricants, and protectants range in biobased content from 35 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 32 percent, based on the product with a tested biobased content of 35 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of firearm cleaners, lubricants, and protectants purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Firearm cleaners, lubricants, and protectants may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—cleaner components; intermediates—lubricant components; and intermediates—oils, fats, and waxes.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, has been collected on firearm cleaners, lubricants, and protectants and may be found on the BioPreferred Program's website.

3. Laundry Products

USDA previously finalized the designation of the laundry products category. This category included two subcategories. Since that time, USDA has obtained additional information on products within this category and is now proposing to add one new subcategory within the laundry products category, as follows:

Laundry Products—Dryer Sheets (Minimum Biobased Content 90 Percent)

Laundry products—dryer sheets are products that are designed to clean, condition, or otherwise affect the quality of the laundered material. Such products include but are not limited to laundry detergents, bleach, stain removers, and fabric softeners. These are small sheets that are added to laundry in clothes dryers to eliminate static cling, soften fabrics, or otherwise improve the characteristics of the fabric. These products are scented or unscented.

USDA identified five manufacturers and vendors of seven biobased laundry products—dryer sheets. These manufacturers and vendors do not include all manufacturers and vendors of biobased laundry products—dryer sheets, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased laundry products—dryer sheets have biobased contents of 93, 96, 97, 97, 100, 100 and 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 90 percent, based on the product with a tested biobased content of 93 percent.

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

- FSC–STD–40 Forest Stewardship Council Standard for Chain of Custody Certification.

USDA has been unable to obtain data on the amount of laundry products—dryer sheets purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Laundry products—dryer sheets may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—oils, fats, and waxes; intermediates—plastic resins; and intermediates—textile processing materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on laundry products—dryer sheets and

may be found on the BioPreferred Program's website.

4. Water Clarifying Agents

USDA is proposing the revise the designated water clarifying agents category by expanding the definition so that the category includes water treatment chemicals, as well as water clarifying agents. Since the designation of the water clarifying agents product category, USDA has gathered more information about water clarifying agents, as well as other types of water or wastewater treatment chemicals. In reviewing the information available, USDA determined that these types of products are similar in formulation, biobased content, and use. USDA concluded that it is reasonable to include these products in a single, revised category for water or wastewater treatment chemicals. Therefore, USDA is proposing to revise the Water Clarifying Agents category as follows:

Water or Wastewater Treatment Chemicals (Minimum Biobased Content 87 Percent)

Water or wastewater treatment chemicals are chemicals that are specifically formulated to purify raw water or to treat and purify wastewater from residential, commercial, industrial, and agricultural systems. Examples include coagulants, flocculants, neutralizing agents, activated carbon, or defoamers. This category excludes microbial cleaning products.

USDA identified five manufacturers and vendors of seven water or wastewater treatment chemicals. These manufacturers and vendors do not include all manufacturers and vendors of biobased water and wastewater treatment chemicals, merely those identified through the USDA Certified Biobased Products listing in the BioPreferred Program's database. These biobased water or wastewater treatment chemicals have biobased contents of 90, 97, 98, 100, 100, 100, and 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any products. Thus, the proposed minimum biobased content for this product category is 87 percent, based on the product with a tested biobased content of 90 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of water or wastewater treatment chemicals purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Water or wastewater treatment chemicals may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—plastic resins; and intermediates—rubber materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, has been collected on water or wastewater treatment chemicals and may be found on the BioPreferred Program's website.

D. Compliance Date for Procurement Preference and Incorporation Into Specifications

USDA intends for the final rule to take effect thirty (30) days after publication of the final rule. However, USDA is proposing that procuring agencies would have a one-year transition period, starting from the date of publication of the final rule, before the procurement preference for biobased products within a designated product category would take effect.

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

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

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

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

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

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

By accessing the BioPreferred Program's website, agencies may also be able to obtain any voluntarily-posted information on each product concerning the following: Relative price; life-cycle costs; hot links directly to a manufacturer's or vendor's website (if available); performance standards (industry, government, military, ASTM/ISO) that the product has been tested against; and environmental and public health information.

VI. Regulatory Information

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

Executive Order 12866, as supplemented by Executive Order 13563, requires agencies to determine whether a regulatory action is ''significant.'' The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may: ''(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

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

1. Summary of Impacts

This proposed rule is expected to have both positive and negative impacts to individual businesses, including small businesses. USDA anticipates that the Federal preferred procurement program will ultimately provide additional opportunities for businesses and manufacturers to begin supplying products under the proposed designated biobased product categories to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their contractors. USDA is unable to determine the number of businesses, including small businesses, that may be adversely affected by this proposed rule. The proposed rule, however, will not affect existing purchase orders, nor will it preclude businesses from modifying their product lines to meet new requirements for designated biobased products. Because the extent to which procuring agencies will find the performance, availability and/or price of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of the rule.

2. Benefits of the Proposed Rule

The designation of these product categories would provide 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, this proposed rule can result in expanding and strengthening markets for biobased materials used in these product categories.

3. Costs of the Proposed Rule

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

B. Regulatory Flexibility Act (RFA)

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

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

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

The intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products. Because the program continues to evolve, 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 an emerging market for products that are alternatives to traditional products with well-established market shares, only a small percentage of all manufacturers, large or small, are expected to develop and market biobased products. Thus,

the number of small businesses manufacturing biobased products affected by this rulemaking is not expected to be substantial.

The Federal preferred procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. Most manufacturers of non-biobased products within the product categories being proposed for designation for Federal preferred procurement in this rule are expected to be included under the following North American Industry Classification System (NAICS) codes:

- 314 Textile Product Mills;
- 3169 Other Leather and Allied Product Manufacturing;
- 32419 Other Petroleum and Coal Products Manufacturing;
- 3255 Paint, Coating, and Adhesive Manufacturing;
- 3256 Soap, Cleaning Compound, and Toilet Preparation Manufacturing;
- 325212 Synthetic Rubber Manufacturing;
- 325998 All Other Miscellaneous Chemical Product and Preparation Manufacturing;
- 325220 Artificial and Synthetic Fibers and Filaments Manufacturing;
- 32611 Plastics Packaging Materials and Unlaminated Film and Sheet Manufacturing;
- 32614 Polystyrene Foam Product Manufacturing;
- 32615 Urethane and Other Foam Product (except Polystyrene) Manufacturing;
- 32616 Plastics Bottle Manufacturing;
- 32619 Other Plastics Product Manufacturing;
- 3262 Rubber Product Manufacturing;
- 3322 Cutlery and Handtool Manufacturing;
- 3324 Boiler, Tank, and Shipping Container Manufacturing;
- 3328 Coating, Engraving, Heat Treating, and Allied Activities;
- 33992 Sporting and Athletic Goods Manufacturing;
- 33993 Doll, Toy, and Game Manufacturing;
- 33994 Office Supplies (except Paper) Manufacturing;
- 339994 Broom, Brush, and Mop Manufacturing; and
- 339999 All Other Miscellaneous Manufacturing.

USDA obtained information on these 24 NAICS categories from the U.S. Census Bureau's Economic Census database. USDA found that in 2012, the Survey of Business Owners data indicate that there were about 42,365 firms with paid employees within these 24 NAICS categories. When considering the 2012 Business Patterns Geography Area Series data in conjunction, these firms owned a total of about 48,532 individual establishments. Thus, the average number of establishments per company is about 1.15. The 2012 Business Patterns Geography Area Series data also reported that of the 48,532 individual establishments, about 48,306 (99.5 percent) had fewer than 500 paid employees. USDA also found that the average number of paid employees per firm among these industries was about 35. Thus, nearly all of the businesses meet the Small Business Administration's definition of a small business (less than 500 employees, in most NAICS categories).

USDA does not have data on the potential adverse impacts on manufacturers of non-biobased products within the product categories being proposed today but believes that the impact will not be significant. The ratio of the total number of companies with USDA Certified Biobased Products that are categorized in this proposed product categories to the total number of firms with paid employees in each of the NAICS codes listed above is 0.0038. Thus, USDA believes that the number of small businesses manufacturing non-biobased products within this proposed product categories and selling significant quantities of those products to government agencies that would be affected by this rulemaking to be relatively low. Also, this proposed rule will not affect existing purchase orders, and it will not preclude procuring agencies from continuing to purchase non-biobased products when biobased products do not meet the availability, performance, or reasonable price criteria. This proposed rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials.

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

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

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

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

D. Executive Order 12988: Civil Justice Reform

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

E. Executive Order 13132: Federalism

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

F. Unfunded Mandates Reform Act of 1995

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

G. Executive Order 12372: Intergovernmental Review of Federal Programs

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

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

This proposed rule does not significantly or uniquely affect ''one or more Indian tribes . . . the relationship between the Federal Government and

Indian tribes, or . . . the distribution of power and responsibilities between the Federal Government and Indian tribes.'' Thus, no further action is required under Executive Order 13175.

I. Paperwork Reduction Act

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

J. E-Government Act Compliance

USDA is committed to compliance with the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for Federal preferred procurement under each designated product category. For information pertinent to E-Government Act compliance related to this rule, please contact Karen Zhang at (202) 401–4747.

List of Subjects in 7 CFR Part 3201

Biobased products, Business and industry, Government procurement.

For the reasons stated in the preamble, the Department of Agriculture proposes to amend 7 CFR part 3201 as follows:

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. Section 3201.37 is amended by revising the section heading and paragraphs (a) and (c) to read as follows:

§ 3201.37 De-Icers.

(a) *Definition.* Chemical products (*e.g.,* salts, fluids) that are designed to aid in the removal of snow and/or ice, and/or in the prevention of the buildup of snow and/or ice, by lowering the freezing point of water.

* * * * *

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

■ 3. Section 3201.38 is revised to read as follows:

§ 3201.38 Firearm cleaners, lubricants, and protectants.

(a) *Definition.* Products that are designed to care for firearms by cleaning, lubricating, protecting, or any combination thereof. Examples include products that are designed for use in firearms to reduce the friction and wear between the moving parts of a firearm, to keep the weapon clean, and/or to prevent the formation of deposits that could cause the weapon to jam.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 32 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

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

■ 4. Section 3201.40 is amended by adding paragraphs (a)(2)(iii) and b(3) and revising paragraph (c) to read as follows:

§ 3201.40 Laundry products.

(a) * * *

(2) * * *

(iii) *Dryer sheets.* These are small sheets that are added to laundry in clothes dryers to eliminate static cling, soften fabrics, or otherwise improve the characteristics of the fabric.

(b) * * *

(3) *Dryer sheets*—90 percent.

(c) *Preference compliance dates.* (1) No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for those qualifying biobased laundry products specified in paragraphs (a)(2)(i) through (ii) of this section. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased laundry products.

(2) No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for those qualifying biobased laundry products specified in paragraph (a)(2)(iii) of this section. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased laundry products.

■ 5. Section 3201.99 is revised to read as follows:

§ 3201.99 Water and wastewater treatment chemicals.

(a) *Definition.* Chemicals that are specifically formulated to purify raw water or to treat and purify wastewater from residential, commercial, industrial, and agricultural systems. Examples include coagulants, flocculants, neutralizing agents, activated carbon, or defoamers. This category excludes microbial cleaning products.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 87 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

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

■ 6. Add §§ 3201.120 through 3201.149 to subpart B to read as follows:

Subpart B—Designated Product Categories and Intermediate Ingredients or Feedstocks

Sec.

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3201.120 Adhesives.
3201.121 Animal habitat care products.
3201.122 Cleaning tools.
3201.123 Concrete curing agents.
3201.124 Concrete repair materials.
3201.125 Durable cutlery.
3201.126 Durable tableware.
3201.127 Epoxy systems.
3201.128 Exterior paints and coatings.
3201.129 Facial care products.
3201.130 Feminine care products.
3201.131 Fire logs and fire starters.
3201.132 Folders and filing products.
3201.133 Foliar sprays.

3201.134 Gardening supplies and accessories.
3201.135 Heating fuels and wick lamps.
3201.136 Kitchenware and accessories.
3201.137 Other lubricants.
3201.138 Phase change materials.
3201.139 Playground and athletic surface materials.
3201.140 Powder coatings.
3201.141 Product packaging.
3201.142 Rugs and floor mats.
3201.143 Shopping and trash bags.
3201.144 Soil amendments.
3201.145 Surface guards, molding, and trim.
3201.146 Toys and sporting gear.
3201.147 Traffic and zone marking paints.
3201.148 Transmission fluids.
3201.149 Wall coverings.

§ 3201.120 Adhesives.

(a) *Definition.* Adhesives are compounds that temporarily or permanently bind two item surfaces together. These products include glues and sticky tapes used in construction, household, flooring, and industrial settings. This category excludes epoxy systems.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 24 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

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

§ 3201.121 Animal habitat care products.

(a) *Definition.* Animal habitat care products are products that are intended to improve the quality of animal habitats such as cleaning supplies, sanitizers, feeders, and products that control, mask, or suppress pet odors. This category excludes animal bedding or litter products and animal cleaning products.

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

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

§ 3201.122 Cleaning tools.

(a) *Definition.* Cleaning tools are objects that are used to clean a variety of surfaces or items and can be used multiple times. This category includes tools such as brushes, scrapers, abrasive pads, and gloves that are used for cleaning. The expendable materials used in cleaning, such as glass cleaners, single-use wipes, and all-purpose cleaners, are excluded from this category, as these materials better fit in other categories.

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

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

§ 3201.123 Concrete curing agents.

(a) *Definition.* Concrete curing agents are products that are designed to enhance and control the curing process of concrete.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 59 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

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

(d) *Determining overlap with a designated product category in the EPA's CPG program.* Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product category of Construction Products: Cement and Concrete. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's website about the intended uses of the product, information on whether 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 a qualifying biobased product overlaps with the EPA's CPG-designated product category of Construction Products: Cement and Concrete and which product should be afforded the preference in purchasing.

Note to Paragraph (d): Concrete curing agents within this designated product category can compete with similar concrete curing agents with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated Construction Products: Cement and Concrete 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 247.12.

§ 3201.124 Concrete repair materials.

(a) *Definition.* (1) Products that are designed to repair cracks and other damage to concrete.

(2) Concrete repair materials for which preferred procurement applies are:

(i) *Concrete repair materials—concrete leveling.* Concrete repair materials—concrete leveling are products that are designed to repair cracks and other damage to concrete by raising or stabilizing concrete.

(ii) *Concrete repair materials—concrete patching.* Concrete repair materials—concrete patching are products that are designed to repair cracks and other damage to concrete by filling and patching the concrete.

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

(1) Concrete repair materials—concrete leveling—23 percent.

(2) Concrete repair materials—concrete patching—69 percent.

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

(d) *Determining overlap with a designated product category in the EPA's CPG program.* Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product category of Construction Products: Cement and Concrete. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's website about the intended uses of the product, information on whether 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 a qualifying biobased product overlaps with the EPA's CPG-designated product category of Construction Products: Cement and Concrete and which product should be afforded the preference in purchasing.

Note to Paragraph (d): Concrete repair materials within this designated product category can compete with similar concrete repair materials with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated Construction Products: Cement and Concrete 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 247.12.

§ 3201.125 Durable cutlery.

(a) *Definition.* Durable cutlery consists of dining utensils that are designed to be used multiple times.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 28 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

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

§ 3201.126 Durable tableware.

(a) *Definition.* Durable tableware consists of multiple-use drinkware and dishware including cups, plates, bowls, and serving platters.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 28 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

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

§ 3201.127 Epoxy systems.

(a) *Definition.* Epoxy systems are two-component systems that are epoxy-based and are used as coatings, adhesives, surface fillers, and composite matrices.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 23 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

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

§ 3201.128 Exterior paints and coatings.

(a) *Definition.* Exterior paints and coatings are pigmented liquid products that typically contain pigments to add color and are formulated for use on outdoor surfaces. When these products dry, they typically form a protective layer and provide a coat of color to the applied surface. This category includes paint and primers but excludes wood and concrete sealers and stains and specialty coatings such as roof coatings, wastewater system coatings, and water tank coatings.

(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 total organic carbon in the finished product.

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

(d) *Determining overlap with a designated product category in the EPA's CPG program.* Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product category of Construction Products: Consolidated and Reprocessed Latex Paint for Specified Uses. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's website about the intended uses of the product, information on whether 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 a qualifying biobased product overlaps with the EPA's CPG-designated product category of Construction Products: Consolidated and Reprocessed Latex Paint for Specified Uses and which product should be afforded the preference in purchasing.

Note to Paragraph (d): Exterior paints and coatings within this designated product category can compete with similar exterior paints and coatings with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated Construction Products: Consolidated and Reprocessed Latex Paint for Specified Uses 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 247.12.

§ 3201.129 Facial care products.

(a) *Definition.* Facial care products are cleansers, moisturizers, and treatments specifically designed for the face. These products are used to care for the condition of the face by supporting skin integrity, enhancing its appearance, and relieving skin conditions. This category does not include tools and applicators, such as those used to apply facial care products.

(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 total organic carbon in the finished product.

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

§ 3201.130 Feminine care products.

(a) *Definition.* Feminine care products are products that are designed for maintaining feminine health and hygiene. This category includes sanitary napkins, panty liners, and tampons.

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

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

§ 3201.131 Fire logs and fire starters.

(a) *Definition.* Fire logs and fire starters are devices or substances that are used to start a fire intended for uses such as comfort heat, decoration, or cooking. Examples include fire logs and lighter fluid. This category excludes heating fuels for chafing dishes, beverage urns, warming boxes, and wick lamps.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 92 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

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

§ 3201.132 Folders and filing products.

(a) *Definition.* Folders and filing products are products that are designed to hold together items such as loose sheets of paper, documents, and photographs with clasps, fasteners, rings, or folders. This category includes binders, folders, and document covers.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 66 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

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

(d) *Determining overlap with a designated product category in the EPA's CPG program.* Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product categories of Non-Paper Office Products: Binders, Clipboards, File Folders, Clip Portfolios, and Presentation Folders and Non-Paper Office Products: Plastic Envelopes. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's website about the intended uses of the product, information on whether 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 a qualifying biobased product overlaps with the EPA's CPG-designated product categories of Non-Paper Office Products: Binders, Clipboards, File Folders, Clip Portfolios, and Presentation Folders and Non-Paper Office Products: Plastic Envelopes and which product should be afforded the preference in purchasing.

Note to Paragraph (d): Biobased folders and filing products within this designated product category can compete with similar folders and filing products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated Non-Paper Office Products: Binders, Clipboards, File Folders, Clip Portfolios, and Presentation Folders and Non-Paper Office Products: Plastic Envelopes 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 247.16.

§ 3201.133 Foliar sprays.

(a) *Definition.* Foliar sprays are products that are applied to the leaves of plants and provide plants with nutrients. These products may also repair plants from previous pest attacks. Examples include liquid fertilizers, foliar feeds, and micronutrient solutions.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 50 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

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

§ 3201.134 Gardening supplies and accessories.

(a) *Definition.* Gardening supplies and accessories are products that are used to grow plants in outdoor and indoor settings. Examples include seedling starter trays, nonwoven mats or substrates for hydroponics, and flower

or plant pots. This category excludes compost activators and accelerators; erosion control materials; fertilizers, including soil inoculants; foliar sprays; mulch and compost materials; and soil amendments.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 43 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

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

§ 3201.135 Heating fuels and wick lamps.

(a) *Definition.* Heating fuels and wick lamps are products that create controlled sources of heat or sustain controlled open flames that are used for warming food, portable stoves, beverage urns, or fondue pots. This category also includes wick lamps and their fuels that create controlled sources of light indoors and in camping or emergency preparedness situations. This category excludes fire logs and fire starters and candles and wax melts.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 75 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

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

§ 3201.136 Kitchenware and accessories.

(a) *Definition.* Kitchenware and accessories are products designed for food or drink preparation. These products include cookware and bakeware, such as baking cups, cookie sheets, parchment paper, and roasting bags or pans; cooking utensils, such as brushes, tongs, spatulas, and ladles; and food preparation items, such as cutting boards, measuring cups, mixing bowls, coffee filters, food preparation gloves, and sandwich and snack bags. These products exclude kitchen appliances, such as toasters, blenders, and coffee makers; disposable tableware; disposable cutlery; disposable containers; durable tableware; durable cutlery; and cleaning tools.

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

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

§ 3201.137 Other lubricants.

(a) *Definition.* Other lubricants are lubricant products that do not fit into any of the BioPreferred Program's specific lubricant categories. This category includes lubricants that are formulated for specialized uses. Examples of other lubricants include lubricants used for sporting or exercise gear and equipment, musical instruments, and specialized equipment such as tree shakers. This category excludes lubricants that are covered by the specific lubricant categories such as chain and cable lubricants, firearm lubricants, forming lubricants, gear lubricants, multi-purpose lubricants, penetrating lubricants, pneumatic equipment lubricants, and slide way lubricants.

(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 total organic carbon in the finished product.

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

(d) *Determining overlap with a designated product category in the EPA's CPG program.* Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product category of Vehicular Products: Re-Refined Lubricating Oil. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's website about the intended uses of the product, information on whether 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 a qualifying biobased product overlaps with the EPA's CPG-designated product category of Vehicular Products: Re-Refined Lubricating Oil and which product should be afforded the preference in purchasing.

Note to Paragraph (d): Other lubricants within this designated product category can compete with similar other lubricants with recycled content. According to the Resource Conservation and Recovery Act of 1976, section 6002, Federal agencies must give preference in their purchasing programs for the U.S. Environmental Protection Agency's CPG-designated Vehicular Products: Re-Refined Lubricating Oil containing recovered materials as products. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.11.

§ 3201.138 Phase change materials.

(a) *Definition.* Phase change materials are products that are capable of absorbing and releasing large amounts of thermal energy by freezing and thawing at certain temperatures. Heat is absorbed or released when the material changes from solid to liquid and vice versa. Applications may include, but are not limited to, conditioning of buildings, medical applications, thermal energy storage, or cooling of food. Materials such as animal fats and plant oils that melt at desirable temperatures are typically used to make products in this category.

(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 total organic carbon in the finished product.

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

§ 3201.139 Playground and athletic surface materials.

(a) *Definition.* Playground and athletic surface materials are products that are designed for use on playgrounds and athletic surfaces. Examples include materials that are applied to the surfaces of playgrounds, athletic fields, and other sports surfaces to enhance or change the color or general appearance of the surface and to provide safety and/or performance benefits. Such materials include, but are not limited to, top coatings, primers, line marking paints, and rubberized pellets that are used on athletic courts, tracks, natural or artificial turf, and other playing surfaces. This category does not include the artificial turf or surface itself, as that is included in the carpets product category.

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

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

(d) *Determining overlap with a designated product category in the EPA's CPG program.* Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product categories of Parks and Recreation Products: Playground Surfaces and Running Tracks. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's website about the intended uses of the product, information on whether 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 a qualifying biobased product overlaps with the EPA's CPG-designated product categories of Parks and Recreation Products: Playground Surfaces and Running Tracks and which product should be afforded the preference in purchasing.

Note to Paragraph (d): Playground and athletic surface materials within this designated product category can compete with similar playground and athletic surface materials with recycled content. According to the Resource Conservation and Recovery Act of 1976, section 6002, Federal agencies must give preference in their purchasing programs for the U.S. Environmental Protection Agency's CPG-designated product categories of Parks and Recreation Products: Playground Surfaces and Running Tracks containing recovered materials as products. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.10.

§ 3201.140 Powder coatings.

(a) *Definition.* Powder coatings are polymer resin systems that are combined with stabilizers, curatives, pigments, and other additives and ground into a powder. These coatings are applied electrostatically to metallic surfaces and then cured under heat. Powder coatings are typically used for coating metals, such as vehicle and bicycle parts, household appliances, and aluminum extrusions.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 34 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

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

§ 3201.141 Product packaging.

(a) *Definition.* Product packaging items are used to protect, handle, and retain a product during activities related but not limited to its storage, distribution, sale, and use. These containers are typically designed to be used once. This category excludes packing and insulating materials and shopping and trash bags.

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

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

(d) *Determining overlap with a designated product category in the EPA's CPG program.* Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product category of Paper Products: Paperboard and Packaging. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's website about the intended uses of the product, information on whether 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 a qualifying biobased product overlaps with the EPA's CPG-designated product category of Paper Products: Paperboard and Packaging and which product should be afforded the preference in purchasing.

Note to Paragraph (d): Product packaging within this designated product category can compete with similar product packaging with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated Paper Products: Paperboard and Packaging 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 247.10.

§ 3201.142 Rugs and floor mats.

(a) *Definition.* Rugs or floor mats are floor coverings that are used for decorative or ergonomic purposes and that are not attached to the floor. This category includes items such as area

rugs, rug runners, chair mats, and bathroom and kitchen mats. This category excludes wall-to-wall carpet.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 23 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

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

(d) *Determining overlap with a designated product category in the EPA's CPG program.* Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product category of Miscellaneous Products: Mats. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's website about the intended uses of the product, information on whether 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 a qualifying biobased product overlaps with the EPA's CPG-designated product category of Miscellaneous Products: Mats and which product should be afforded the preference in purchasing.

Note to Paragraph (d): Rugs and floor mats within this designated product category can compete with similar rugs or floor mats with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated Miscellaneous Products: Mats 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.

§ 3201.143 Shopping and trash bags.

(a) *Definition.* Shopping and trash bags are open-ended bags that are typically made of thin, flexible film and are used for containing and transporting items such as consumer goods and waste. Examples include trash bags, can liners, shopping or grocery bags, pet waste bags, compost bags, and yard waste bags. This category does not include product packaging, disposable containers, or semi-durable and non-durable films.

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

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

(d) *Determining overlap with a designated product category in the EPA's CPG program.* Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product category of Non-Paper Office Products: Plastic Trash Bags. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's website about the intended uses of the product, information on whether 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 a qualifying biobased product overlaps with the EPA's CPG-designated product category of Non-Paper Office Products: Trash Bags and which product should be afforded the preference in purchasing.

Note to Paragraph (d): Shopping and trash bags within this designated product category can compete with similar shopping and trash bags with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated Non-Paper Office Products: Trash Bags 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.

§ 3201.144 Soil amendments.

(a) *Definition.* Soil amendments are materials that enhance the physical characteristics of soil through improving water retention or drainage, improving nutrient cycling, promoting microbial growth, or changing the soil's pH. This category excludes foliar sprays and chemical fertilizers.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 72 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

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

(d) *Determining overlap with a designated product category in the EPA's CPG program.* Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product categories of Landscaping Products: Compost Made From Recovered Organic Materials and Landscaping Products: Fertilizer Made From Recovered Organic Materials. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's website about the intended uses of the product, information on whether 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 a qualifying biobased product overlaps with the EPA's CPG-designated product categories Landscaping Products: Compost Made From Recovered Organic Materials and Landscaping Products: Fertilizer Made From Recovered Organic Materials and which product should be afforded the preference in purchasing.

Note to Paragraph (d): Soil amendments within this designated product category can compete with similar soil amendments with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated Landscaping Products: Compost Made From Recovered Organic Materials and Landscaping Products: Fertilizer Made From Recovered Organic Materials 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 247.15.

§ 3201.145 Surface guards, molding, and trim.

(a) *Definition.* Surface guards, molding, and trim products are typically used during construction or manufacturing. These products are designed to protect surfaces, such as walls and floors, from damage or to cover the exposed edges of furniture or floors.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 26 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

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

§ 3201.146 Toys and sporting gear.

(a) *Definition.* Toys and sporting gear are products that are designed for indoor or outdoor recreational use including, but not limited to, toys; games; and sporting equipment and accessories such as balls, bats, racquets, nets, and bicycle seats. This category does not include products such as cleaners, lubricants, and oils that are used to maintain or clean toys and sporting gear.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 32 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

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

§ 3201.147 Traffic and zone marking paints.

(a) *Definition.* Traffic and zone marking paints are products that are formulated and marketed for marking and striping streets, highways, or other traffic surfaces including, but not limited to, curbs, driveways, parking lots, sidewalks, and airport runways.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 30 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

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

§ 3201.148 Transmission fluids.

(a) *Definition.* Transmission fluids are liquids that lubricate and cool the moving parts in a transmission to prevent wearing and to ensure smooth performance.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 60 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

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

(d) *Determining overlap with a designated product category in the EPA's CPG program.* Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product category of Vehicular Products: Re-refined Lubricating Oil. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's website about the intended uses of the product, information on whether 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 a qualifying biobased product overlaps with the EPA's CPG-designated Vehicular Products: Re-Refined Lubricating Oil and which product should be afforded the preference in purchasing.

Note to Paragraph (d): Transmission fluids within this designated product category can compete with similar transmission fluids with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated product categories Vehicular Products: Re-Refined Lubricating Oil 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 247.11.

§ 3201.149 Wall coverings.

(a) *Definition.* Wall coverings are materials that are applied to walls using an adhesive. This category includes, but is not limited to, wallpaper, vinyl wall coverings, and wall fabrics. This category excludes all types of paints or coatings.

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

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

Dated: August 31, 2018.

Donald K. Bice,

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

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