

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

RIN 0503-AA30

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

**SUMMARY:** The U.S. Department of Agriculture (USDA) is proposing to amend 7 CFR part 2902, Guidelines for Designating Biobased Products for Federal Procurement, to add 10 sections to designate the following 10 items within which biobased products would be afforded Federal procurement preference, as provided for under section 9002 of the Farm Security and Rural Investment Act of 2002: Adhesive and mastic removers; insulating foam for wall construction; hand cleaners and sanitizers; composite panels; fluid-filled transformers; biodegradable containers; fertilizers; metalworking fluids; sorbents; and graffiti and grease removers. USDA also is proposing minimum biobased content for each of these items. Once USDA designates an item, procuring agencies are required generally to purchase biobased products within these designated items where the purchase price of the procurement item exceeds \$10,000 or where the quantity of such items or the functionally equivalent items purchased over the preceding fiscal year equaled \$10,000 or more.

**DATES:** USDA will accept public comments on this proposed rule until October 16, 2006.

**ADDRESSES:** You may submit comments by any of the following methods. All submissions received must include the agency name and Regulatory Information Number (RIN). The RIN for this rulemaking is 0503-AA30. Also, please identify submittals as pertaining to the "Proposed Designation of Items."

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

- E-mail: [fb4p@oce.usda.gov](mailto:fb4p@oce.usda.gov). Include RIN number 0503-AA30 and "Proposed Designation of Items" on the subject line. Please include your name and address in your message.

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

SW., MS-3815, Washington, DC 20250-3815.

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

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

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

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**I. Authority**

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

**II. Background**

Section 9002 of FSRIA, as amended by section 943 of the Energy Policy Act

of 2005, Public Law 109-58 (Energy Policy Act), provides for the preferred procurement of biobased products by procuring agencies. Section 943 of the Energy Policy Act amended the definitions section of FSRIA, 7 U.S.C. 8101, by adding a definition of "procuring agency" that includes both Federal agencies and "any person contracting with any Federal agency with respect to work performed under that contract." The amendment also made Federal contractors, as well as Federal agencies, expressly subject to the procurement preference provisions of section 9002 of FSRIA. However, because this program requires agencies to incorporate the preference for biobased products into procurement specifications, the statutory amendment makes no substantive change to the program. USDA amended the Guidelines to incorporate the new definition of "procuring agency" through an interim final rule.

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

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

Section 9002 also requires USDA to provide information to procuring agencies on the availability, relative price, performance, and environmental and public health benefits of such items

and, under section 9002(e)(1)(C), to recommend where appropriate the minimum level of biobased content to be contained in the procured products.

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

Where a biobased item is used for the same purposes and to meet the same requirements as an EPA-designated recovered content product, the Federal agency must purchase the recovered content product. For example, if a biobased hydraulic fluid is to be used as a fluid in hydraulic systems and "lubricating oils containing re-refined oil" has already been designated by EPA for that purpose, then the Federal agency must purchase the EPA-designated recovered content product, "lubricating oils containing re-refined oil." If, on the other hand, that biobased hydraulic fluid is to be used to address

certain environmental or health requirements that the EPA-designated recovered content product would not meet, then the biobased product should be given preference, subject to cost, availability, and performance.

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

In the case of cleaning products, procuring agencies should note that not all biobased products are "environmentally preferable." Unless the cleaning products contain no or reduced levels of metals and toxic and hazardous constituents, they can be harmful to aquatic life, the environment, or workers. When purchasing environmentally preferable cleaning products, many Federal agencies specify that products must meet Green Seal standards for institutional cleaning products or that products have been reformulated in accordance with recommendations from the U.S. EPA's Design for the Environment (DfE) program. Both the Green Seal standards and the DfE program identify chemicals of concern in cleaning products. These include zinc and other metals, formaldehyde, ammonia, alkylphenol ethoxylates, ethylene glycol, and volatile organic compounds. In addition, both require that cleaning products have neutral or less caustic pH.

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

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

carbon cycle and limit the introduction of new fossil carbon into the atmosphere, whereas non-biobased products derived from fossil fuels add new fossil carbon to the atmosphere.

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

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

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

### III. Summary of Today's Proposed Rulemaking

Today, USDA is proposing to designate the following 10 items for

preferred procurement: Adhesive and mastic removers; insulating foam for wall construction; hand cleaners and sanitizers; composite panels; fluid-filled transformers; biodegradable containers; fertilizers; metalworking fluids; sorbents; and graffiti and grease removers. USDA is also proposing minimum biobased content for each of these items (see Section IV.C). Lastly, USDA is proposing a date by which Federal agencies must incorporate designated items into their procurement specifications (see Section IV.D).

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

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

that the procurement agent would not be required to buy such a product. As information is available on warranties, USDA will make such information available on its FB4P Web site.

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

**Comments.** USDA invites comment on the proposed designation of these 10 items, including the definition, proposed minimum biobased content, and any of the relevant analyses performed during the selection of these items. In addition, USDA invites comments and information in the following areas:

1. Four of the items being proposed for designation (insulating foam, composite panels, fertilizers, and sorbents) may overlap with products designated under EPA's Comprehensive Procurement Guidelines for products containing recovered material. To help procuring agencies in making their purchasing decisions between biobased products within the proposed designated items that overlap with products containing recovered material, USDA is requesting from manufacturers and users product specific information on unique performance attributes, environmental and human health effects, disposal costs, and other attributes that would distinguish biobased products from products containing recovered material, as well as non-biobased products. USDA will post this information on the FB4P Web site.

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

3. We are proposing a single minimum biobased content for the item insulation foam for wall construction. The proposed minimum biobased content is based on two measured biobased contents, one for a spray foam product and one for a rigid foam product. USDA is interested in receiving comments as to whether USDA should set a minimum biobased content for spray foam products and one for rigid foam products. Please be sure to provide your rationale for your comments.

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

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

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

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

##### A. Background

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

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

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

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

Environmental performance is measured in the BEES analytical tool using the internationally-standardized and science-based life cycle assessment approach specified in the International Organization for Standardization (ISO) 14000 standards. The BEES

environmental performance analysis includes human health as one of its components. All stages in the life of a product are analyzed: Raw material production; manufacture; transportation; installation; use; and recycling and waste management. The time period over which environmental performance is measured begins with raw material production and ends with disposal (waste management). The BEES environmental performance analysis also addresses products made from biobased feedstocks.

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

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

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

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

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

In gathering information relevant to the analyses discussed above, USDA has made extensive efforts to contact and request information and product samples from representatives of all known manufacturers of products

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

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

#### *B. Items Proposed for Designation*

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

In general, items are developed and prioritized for designation by evaluating them against program criteria established by USDA and by gathering information from other government agencies, private industry groups, and

independent manufacturers. These evaluations begin by asking the following questions about the products within an item:

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

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

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

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

In today's proposed rulemaking, USDA is proposing to designate 10 items for the preferred procurement program: Adhesive and mastic removers; insulating foam for wall construction; hand cleaners and sanitizers; composite panels; fluid-filled transformers; biodegradable containers; fertilizers; metalworking fluids; sorbents; and graffiti and grease removers. USDA has determined that each of these 10 items meets the necessary statutory requirements—namely, that they are being produced with biobased products and that their procurement by procuring agencies will carry out the following objectives of section 9002:

- To increase demand for biobased products, which would in turn increase

demand for agricultural commodities that can serve as feedstocks for the production of biobased products;

- To spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and

- To enhance the nation's energy security by substituting biobased products for products derived from imported oil and natural gas.
- Further, USDA has sufficient information on these 10 items to determine their availability and to conduct the requisite analyses to determine their biobased content and their economic and technological feasibility, including life cycle costs.

*Mature Markets.* Section 2902.5(c)(2) of the final guidelines states that USDA will not designate items for preferred procurement that are determined to have mature markets. Mature markets are described as items that had significant national market penetration in 1972. USDA contacted manufacturers, manufacturing associations, and industry researchers to determine if, in 1972, biobased products had a significant market share within any of the items proposed for designation today. USDA found that biobased products within none of the 10 items proposed for designation today had a significant market share in 1972 and that, generally, the companies that produce biobased products within these proposed designated items have been in business for only 10 to 20 years.

*Overlap with EPA-Designated Recovered Content Products.* In today's proposed rule, 4 of the 10 items may overlap with EPA-designated recovered content products. These four items are: Insulating foam, composite panels, fertilizers, and sorbents. For these four items, USDA is requesting that certain information on the qualifying biobased products be made available by their manufacturers to assist Federal agencies in determining if an overlap exists between the qualifying biobased product and the applicable EPA-designated recovered content product. As noted earlier in this preamble, USDA is requesting information on overlap situations to further help procuring agencies make informed decisions when faced with purchasing a recovered content material product or a biobased product. As this information is developed, USDA will make it available on the FB4P Web site.

*Exemptions.* When proposing items for preferred procurement under the FB4P, USDA will identify, on an item-by-item basis, items that would be exempt from preferred procurement on

the basis of their use in products and systems designed or procured for combat or combat-related missions. USDA believes it is inappropriate to apply the biobased purchasing requirement to tactical equipment unless the Department of Defense has documented that these products can meet the performance requirements for such equipment and are available in sufficient supply to meet domestic and overseas deployment needs. After evaluating these situations for each of the 10 items being proposed for designation, USDA is proposing to exempt fluid-filled transformers from preferred procurement under the FB4P when used in combat or combat-related missions.

USDA is proposing an exemption for all designated items when used in spacecraft systems and launch support equipment, because failure of such items could lead to catastrophic consequences. Many, if not all, items that USDA is or is planning to designate for preferred procurement are or will be used in space applications. Frequently, such applications used these items in ways that are different from their more "conventional" use on Earth. It is difficult, if not impossible, to forecast what situations may occur when these items are used in space and how they will perform. Therefore, USDA believes it is reasonable to limit the preferred procurement program to items used in more conventional applications and is proposing to exempt all designated items used in space applications from the FB4P.

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

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

#### 1. Adhesive and Mastic Removers

Adhesive and mastic removers represent that group of industrial cleaning solvent products formulated for use in removing asbestos, carpet, and ceramic tile mastics as well as adhesive materials, including glue, tape, and gum, from various surface types. Products in this item eliminate the need to sand and grind glue and adhesives from parts, floors, or walls, significantly reducing the time required on a project. These products are typically formulated from natural soy-based or citrus-based feedstocks.

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

For biobased adhesive and mastic removers, USDA identified 11 different manufacturers producing 13 individual biobased products. These 11 manufacturers do not necessarily include all manufacturers of biobased adhesive and mastic removers, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that each of these products is being used commercially. Using the procedure described earlier in this notice, no industry standard performance tests were identified by the manufacturers who submitted information on these products or others.

USDA contacted procurement officials with various procuring agencies, including the General Services Administration, several offices within the Defense Logistics Agency, OFEE, USDA Departmental Administration, the National Park Service, the EPA, Oak Ridge National Laboratory, and OMB, in an effort to gather information on the purchases of products within the 10 items proposed for designation today. Communications with these officials lead to the conclusion that obtaining credible current usage statistics and specific potential markets within the Federal government for biobased products is not possible at this time. Most of the contacted officials reported

that procurement data are reported in higher level groupings of materials and supplies than the proposed designated items. Also, the purchasing of such materials as part of contracted services and with individual purchase cards used to purchase products locally further obscures credible data on purchases of specific products.

USDA also investigated the Web site <http://www.fedbizopps.gov>, a site which lists Federal contract purchase opportunities greater than \$25,000. The information provided on this Web site, however, is for broad categories of products rather than the specific types of products that are included in today's rulemaking. Therefore, USDA has been unable to obtain data on the amount of adhesive and mastic removers purchased by procuring agencies. However, Federal agencies routinely procure building construction, renovation, cleaning, and repair services and materials, including adhesive and mastic removers. Thus, they have a need for adhesive and mastic removers and for services that require the use of adhesive and mastic removers. Designation of adhesive and mastic removers will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased adhesive and mastic removers was performed for two of the products using the BEES analytical tool. Table 1 summarizes the BEES results for the two adhesive and mastic removers. As seen in Table 1, the environmental performance score, which includes human health, ranges from 0.0257 to 0.0625 points per gallon. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one gallon of the product, expressed in 100ths of 1 percent. For example, the total amount of criteria air pollutants emitted in the U.S. in one year was divided by the total U.S. population to derive a "criteria air pollutants per person value." The production and use of one gallon of adhesive and mastic remover sample A was estimated to contribute 0.000002 percent of this value.

TABLE 1.—SUMMARY OF BEES RESULTS FOR ADHESIVE AND MASTIC REMOVERS

Parameters	Adhesive and mastic removers	
	Sample A	Sample B
BEES Environmental Performance—Total Score <sup>1</sup> .....	0.0257	0.0625
Acidification (5%) .....	0.0000	0.0000

TABLE 1.—SUMMARY OF BEES RESULTS FOR ADHESIVE AND MASTIC REMOVERS—Continued

Parameters	Adhesive and mastic removers	
	Sample A	Sample B
Criteria Air Pollutants (6%) .....	0.0002	0.0007
Ecological Toxicity (11%) .....	0.0052	0.0170
Eutrophication (5%) .....	0.0015	0.0111
Fossil Fuel Depletion (5%) .....	0.0110	0.0157
Global Warming (16%) .....	0.0035	0.0062
Habitat Alteration (16%) .....	0.0000	0.0000
Human Health (11%) .....	0.0025	0.0085
Indoor Air (11%) .....	0.0000	0.0000
Ozone Depletion (5%) .....	0.0000	0.0000
Smog (6%) .....	0.0011	0.0019
Water Intake (3%) .....	0.0007	0.0014
Economic Performance (Life Cycle Costs(\$)) <sup>2</sup> .....	15.99	17.66
First Cost .....	15.99	17.66
Future Cost (3.9%) .....	( <sup>3</sup> )	( <sup>3</sup> )
Functional Unit .....	1 gallon.	

<sup>1</sup> Numbers in parentheses indicate weighting factor.

<sup>2</sup> Costs are per functional unit.

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

When evaluating the information presented in Table 1, as well as in the subsequent tables presented in this preamble, the reader should be aware that comparisons of the environmental performance scores are valid only among products within a designated item. Thus, comparisons of the scores presented in Table 1 and the scores presented in Tables 2 through 10 for other proposed designated items in this preamble are not meaningful.

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

Life cycle costs presented in Tables 1 through 10 in this preamble are per the appropriate functional unit for the proposed designated item. The life cycle costs of the submitted adhesive and mastic removers range from \$15.99 to \$17.66 (present value dollars) per gallon. Present value dollars presented in this preamble represent the sum of all costs associated with a product over a fixed period of time, including any applicable costs for purchase, installation, replacement, operation, maintenance and repair, and disposal.

Present value dollars presented in this preamble reflect 2005 dollars. Dollars are expressed in present value terms to adjust for the effects of inflation. Future costs are discounted to present value using the OMB discount rate of 3.9 percent.

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

## 2. Insulating Foam for Wall Construction

Insulating foam for wall construction represents that group of products designed as spray-in-place insulation systems for residential or commercial construction applications. Products in this item provide a sealed thermal barrier, which significantly simplifies construction and reduces the effort required on a project. Biobased insulating foams are typically formulated from natural soy-based feedstocks.

Qualifying products within this item may overlap with the EPA-designated recovered content product: Construction—Building Insulation.

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

For biobased insulating foam for wall construction, USDA identified 14 different manufacturers producing 21 individual biobased products. These 14 manufacturers do not necessarily include all manufacturers of biobased

insulating foam for wall construction, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that each of these products has been tested against one or more industry performance standards and is being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- ASTM E84–05, Standard Test Method for Surface Burning Characteristics of Building Materials;
- ASTM C177–04, Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus;
- ASTM E283–04, Standard Test Method for Determining Rate of Air Leakage Through Exterior Windows, Curtain Walls, and Doors Under Specified Pressure Differences Across the Specimen;
- ASTM D1622–03, Standard Test Method for Apparent Density of Rigid Cellular Plastics;
- ASTM E96/E96M–05, Standard Test Methods for Water Vapor Transmission of Materials;
- ASTM 90–04, Standard Test Method for Laboratory Measurement of Airborne Sound Transmission Loss of Building Partitions and Elements;
- ASTM C423–02a, Standard Test Method for Sound Absorption and Sound Absorption Coefficients by the Reverberation Room Method;



- ASTM C518–04, Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus; and
- ASTM E84–05e1, Standard Test Method for Surface Burning Characteristics of Building Materials.

USDA attempted to gather data on the potential market for biobased products within the Federal government as described in the section on adhesive and mastic removers. These attempts were largely unsuccessful. However, Federal agencies routinely procure building construction, renovation, and repair services and materials, including

insulating foam for wall construction. Thus, they have a need for insulating foam for wall construction and for services that require the use of insulating foam for wall construction. Designation of insulating foam for wall construction will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased insulating foam for wall construction was performed for one of the products using the BEES analytical tool. Table 2 summarizes the BEES results for the one sample of

insulating foam for wall construction. As seen in Table 2, the environmental performance score, which includes human health, was 0.0018 points for a quantity of material necessary to provide one square foot of insulated wall surface for a period of 50 years. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to the quantity of material necessary to provide one square foot of insulated wall surface for a period of 50 years, expressed in 100ths of 1 percent.

TABLE 2.—SUMMARY OF BEES RESULTS FOR INSULATING FOAM FOR WALL CONSTRUCTION

Parameters	Insulating foam for wall construction
BEES Environmental Performance—Total Score <sup>1</sup>	0.0018
Acidification (5%)	0.0000
Criteria Air Pollutants (6%)	0.0000
Ecological Toxicity (11%)	0.0002
Eutrophication (5%)	0.0000
Fossil Fuel Depletion (5%)	0.0009
Global Warming (16%)	0.0002
Habitat Alteration (16%)	0.0000
Human Health (11%)	0.0003
Indoor Air (11%)	0.0000
Ozone Depletion (5%)	0.0000
Smog (6%)	0.0001
Water Intake (3%)	0.0001
Economic Performance (Life Cycle Costs(\$)) <sup>2</sup>	1.10
First Cost	1.15
Future Cost (3.9%) <sup>3</sup>	–0.05
Functional Unit	( <sup>4</sup> )

<sup>1</sup> Numbers in parentheses indicate weighting factor.

<sup>2</sup> Costs are per functional unit.

<sup>3</sup> Note that because this product has a residual (or salvage) value after its initial use, the future cost is a negative value.

<sup>4</sup> The quantity of material necessary to provide one square foot of insulated wall surface for a period of 50 years.

The life cycle cost of the submitted insulating foam for wall construction was \$1.10 (present value dollars) for a quantity of material necessary to provide one square foot of insulated wall surface for a period of 50 years.

### 3. Hand Cleaners and Sanitizers

Hand cleaners and sanitizers represent that group of personal care products formulated for use in cleaning and sanitizing human hands. Products in this item, which may be used with or without water, are used to remove a variety of different soils, greases, and bacteria. These products significantly reduce the potential for transmitting harmful bacteria. Biobased hand cleaners and sanitizers are typically formulated from natural corn, soy, or citrus-based feedstocks.

Procuring agencies should note that, as discussed in section II of this preamble, not all biobased cleaning products are “environmentally

preferable” to non-biobased products. Unless cleaning products have been formulated to contain no (or reduced levels of) metals and toxic and hazardous constituents, they can be harmful to aquatic life, the environment, or workers. When purchasing environmentally preferable cleaning products, Federal agencies must compare the “cradle-to-grave” impacts of the manufacture, use, and disposal of both biobased and non-biobased products.

As noted earlier in this preamble, USDA is requesting comment on whether there should be one or more subcategories within this item based on required performance properties of the item. For example, hand cleaners and sanitizers used in medical situations might be required to meet different performance standards from those used in households. If this is the case, then there may be differences in the level of biobased content depending on the

performance standard to be met. As proposed, USDA is not differentiating between settings in which hand cleaners and sanitizers are used.

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

For biobased hand cleaners and sanitizers, USDA identified 36 different manufacturers producing 73 individual biobased products. These 36 manufacturers do not necessarily include all manufacturers of biobased hand cleaners and sanitizers, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that each of these products has been tested against one or more industry performance standards and is being used commercially. While other applicable performance standards may exist,



applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- American Type Culture Collection Number 11229, Organism: *Escherichia coli* (Migula) Castellani, and Chalmers; and
- American Type Culture Collection Number 6539 Organism: *Salmonella enterica* subsp. *enterica* (ex Kauffmann and Edwards) Le Minor and Popoff serovar Typhi; deposited as *Salmonella typhi* (Schroeter) Warren and Scott.

Some products within this item may require “higher” standards than other products. For example, hand cleaners and sanitizers used in hospitals and medical clinics may require higher levels of performance than those used in

typical households. Procuring agencies, therefore, may need to contact the manufacturer of a biobased product or access the FB4P Web site to obtain additional information on the performance specification of a product within this item.

USDA attempted to gather data on the potential market for biobased products within the Federal government as described in the section on adhesive and mastic removers. These attempts were largely unsuccessful. However, Federal agencies routinely procure washroom and janitorial services and materials, including hand cleaners and sanitizers. Thus, they have a need for hand cleaners and sanitizers and for services that require the use of hand cleaners and sanitizers. Designation of hand cleaners and sanitizers will

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

An analysis of the environmental and human health benefits and the life cycle costs of biobased hand cleaners and sanitizers was performed for three of the products using the BEES analytical tool. Table 3 summarizes the BEES results for the three hand cleaners and sanitizers. As seen in Table 3, the environmental performance score, which includes human health, ranges from 0.0227 to 0.0412 points per gallon of hand cleaner and sanitizer. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one gallon of the product, expressed in 100ths of 1 percent.

TABLE 3.—SUMMARY OF BEES RESULTS FOR HAND CLEANERS AND SANITIZERS

Parameters	Hand cleaners and sanitizers		
	Sample A	Sample B	Sample C
BEES Environmental Performance—Total Score <sup>1</sup>	0.0227	0.0347	0.0412
Acidification (5%)	0.0000	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0001	0.0002	0.0004
Ecological Toxicity (11%)	0.0112	0.0128	0.0125
Eutrophication (5%)	0.0007	0.0034	0.0052
Fossil Fuel Depletion (5%)	0.0063	0.0077	0.0102
Global Warming (16%)	0.0015	0.0028	0.0047
Habitat Alteration (16%)	0.0000	0.0000	0.0000
Human Health (11%)	0.0017	0.0053	0.0058
Indoor Air (11%)	0.0000	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000	0.0000
Smog (6%)	0.0008	0.0015	0.0014
Water Intake (3%)	0.0004	0.0010	0.0010
Economic Performance (Life Cycle Costs (\$)) <sup>2</sup>	17.02	17.30	21.24
First Cost	17.02	17.30	21.24
Future Cost (3.9%)	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )
Functional Unit	1 gallon.		

<sup>1</sup> Numbers in parentheses indicate weighting factor.

<sup>2</sup> Costs are per functional unit.

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

The life cycle cost of the submitted hand cleaners and sanitizers range from \$17.02 to \$21.24 (present value dollars) per gallon.

#### 4. Composite Panels

Composite panels represent that group of engineered products designed for use in non-structural construction applications, including wall panels, shelving, decorative panels, lavatory dividers, and exterior signs. Biobased composite panels are typically formulated from natural wheat or rice straw, recycled or forest clean-up wood, and paper industry wastes. This item applies to both interior and exterior applications. However, some products within this item may not be applicable to all exterior applications, which may

require specific insulating values and moisture protection properties. Procuring agencies, therefore, need to assess an individual product's performance specifications before using in exterior applications.

Qualifying products within this item may overlap with the following three EPA-designated recovered content product: Construction—Laminated Paperboard and Structural Foam Board; Construction—Shower and Restroom Dividers; and Miscellaneous Products—Signage.

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

For biobased composite panels, USDA identified 26 different manufacturers producing 51 individual biobased products. These 26 manufacturers do not necessarily include all manufacturers of biobased composite panels, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that each of these products has been tested against one or more industry performance standards and is being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- ASTM C473–03, Standard Test Methods for Physical Testing of Gypsum Panel Products;
- ASTM D1037–99, Standard Test Methods for Evaluating Properties of Wood-Base Fiber and Particle Panel Materials;
- ASTM D3273–00, Standard Test Method for Resistance to Growth of Mold on the Surface of Interior Coatings in an Environmental Chamber;
- ASTM D4060–01, Standard Test Method for Abrasion Resistance of Organic Coatings by the Taber Abraser;
- ASTM E72–05, Standard Test Methods of Conducting Strength Tests of Panels for Building Construction;
- ASTM E84–05, Standard Test Method for Surface Burning Characteristics of Building Materials

- ASTM E90–04, Standard Test Method for Laboratory Measurement of Airborne Sound Transmission Loss of Building Partitions and Elements;
- ASTM E119–00a, Standard Test Methods for Fire Tests of Building Construction and Materials; and
- ASTM E413–04, Classification for Rating Sound Insulation.

USDA attempted to gather data on the potential market for biobased products within the Federal government as described in the section on adhesive and mastic removers. These attempts were largely unsuccessful. However, Federal agencies routinely procure building construction, renovation, and repair services and materials, including composite panels. Thus, they have a need for composite panels and for services that require the use of

composite panels. Designation of composite panels will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased composite panels was performed for two of the products using the BEES analytical tool. Table 4 summarizes the BEES results for the two composite panels. As seen in Table 4, the environmental performance score, which includes human health, ranges from 0.0085 to 0.0113 points per square foot of partition for a period of 50 years. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one square foot of partition for a period of 50 years, expressed in 100ths of 1 percent.

TABLE 4.—SUMMARY OF BEES RESULTS FOR COMPOSITE PANELS

Parameters	Composite panels	
	Sample A	Sample B
BEES Environmental Performance—Total Score <sup>1</sup>	0.0085	0.0113
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0001	0.0001
Ecological Toxicity (11%)	0.0004	0.0010
Eutrophication (5%)	0.0001	0.0001
Fossil Fuel Depletion (5%)	0.0044	0.0055
Global Warming (16%)	0.0012	0.0016
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0017	0.0026
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0004	0.0004
Water Intake (3%)	0.0002	0.0000
Economic Performance (Life Cycle Costs (\$)) <sup>2</sup>	2.37	4.96
First Cost	2.37	4.96
Future Cost (3.9%)	( <sup>3</sup> )	( <sup>3</sup> )
Functional Unit	one square foot of partition over 50 years.	

<sup>1</sup> Numbers in parentheses indicate weighting factor.

<sup>2</sup> Costs are per functional unit.

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

The life cycle cost of the submitted composite panels range from \$2.37 to \$4.96 (present value dollars) per square foot of partition for a period of 50 years.

#### 5. Fluid-Filled Transformers

Fluid-filled transformers represent that group of electric power transformers designed to utilize a dielectric (non-conducting) fluid as a means of insulating and cooling the electro-mechanical equipment inside the transformer.

The electro-mechanical components of a fluid-filled transformer are the same between fluid-filled transformers, with only the type of fluid varying. The dielectric fluid used in fluid-filled transformers is the only component that

is a biobased material. Therefore, the information presented in this preamble is based on analyses performed on biobased transformer fluids. However, USDA is proposing to designate the item as “fluid-filled transformers,” because end users generally purchase ready-to-use transformers rather than purchasing the electro-mechanical components separately from the fluid. Biobased transformer fluids are typically formulated from vegetable oils, such as soybean oil.

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

in spacecraft systems and launch support equipment.

USDA identified 5 different manufacturers producing 12 individual biobased products that are used as transformer fluids in fluid-filled transformers. These five manufacturers do not necessarily include all manufacturers of biobased transformer fluids, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that each of these products has been tested against one or more industry performance standards and is being used commercially. While other applicable performance standards may exist, applicable industry performance

standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- ASTM D287–92 (2000) e1, Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method);
- ASTM D2882–00, Standard Test Method for Indicating the Wear Characteristics of Petroleum and Non-Petroleum Hydraulic Fluids in Constant Volume Vane Pump (Withdrawn 2003);
- American Petroleum Institute API GL–3, Lubricant with light EP effect for transmissions and non-hypoid gear drives;
- General Motors GM LS–2, General Motors Maintenance Lubricant Standard LS–2 for Industrial Equipment and Machine Tools;
- German Institute for Standardization DIN51524, Pressure fluids; hydraulic oils; HL, HLP, and HVLP hydraulic oils; minimum requirements.
- ASTM D1816, Standard Test Method for Dielectric Breakdown Voltage of Insulating Oils of Petroleum Origin Using VDE Electrodes;
- ASTM D877–02e1, Standard Test Method for Dielectric Breakdown Voltage of Insulating Liquids Using Disk Electrodes;
- ASTM D924–04, Standard Test Method for Dissipation Factor (or Power Factor) and Relative Permittivity (Dielectric Constant) of Electrical Insulating Liquids;
- ASTM D1169–02, Standard Test Method for Specific Resistance (Resistivity) of Electrical Insulating Liquids;
- ASTM D3300–00, Standard Test Method for Dielectric Breakdown Voltage of Insulating Oils of Petroleum Origin Under Impulse Conditions;
- ASTM D2300–00, Standard Test Method for Gassing of Insulating

Liquids Under Electrical Stress and Ionization (Modified Pirelli Method);

- ASTM D1298–99 (2005), Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method;
- ASTM D971–99a (2004), Standard Test Method for Interfacial Tension of Oil Against Water by the Ring Method;
- EPA 9045C, Corrosivity and pH Determination;
- ASTM D974–04, Standard Test Method for Acid and Base Number by Color-Indicator Titration;
- ASTM D445–04e2, Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity);
- ASTM 1533B, Water in Insulating Fluids;
- CPS Method, Percent Saturation of Moisture;
- ASTM D2779–92 (2002), Standard Test Method for Estimation of Solubility of Gases in Petroleum Liquids;
- ASTM D1524–94 (2004), Standard Test Method for Visual Examination of Used Electrical Insulating Oils of Petroleum Origin in the Field;
- ASTM D1500–04a, Standard Test Method for ASTM Color of Petroleum Products (ASTM Color Scale);
- ASTM D93–02a, Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester;
- ASTM D92–05a, Standard Test Method for Flash and Fire Points by Cleveland Open Cup Tester;
- ASTM D97–05a, Standard Test Method for Pour Point of Petroleum Products;
- ASTM D2766–95 (2005), Standard Test Method for Specific Heat of Liquids and Solids;
- ASTM E1269–05 Standard Test Method for Determining Specific Heat

Capacity by Differential Scanning Calorimetry;

- APHA SM 5210B, (APHA = American Public Health Association)
- Biochemical Oxygen Demand (BOD);
- EPA OPPTS 835.3100, Fate, Transport, and Transformation Test Guidelines for Aerobic Aquatic Biodegradation and Anaerobic Biodegradability of Organic Chemicals; and
- OECD G.L 203, Acute Toxicity Test (Trout Fry).

USDA attempted to gather data on the potential market for biobased products within the Federal government as described in the section on adhesive and mastic removers. These attempts were largely unsuccessful. However, many Federal facilities utilize, or contract for services that utilize, transformers as part of their electrical distribution systems. Thus, Federal agencies have a need for fluid-filled transformers and for services that require the use of fluid-filled transformers. Designation of fluid-filled transformers will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased transformer fluids was performed for two of the products using the BEES analytical tool. Table 5 summarizes the BEES results for the two biobased transformer fluids. As seen in Table 5, the environmental performance score, which includes human health, ranges from 0.0198 to 0.0581 points per gallon of the transformer fluids. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to 1 gallon of transformer fluid, expressed in 100ths of 1 percent.

TABLE 5.—SUMMARY OF BEES RESULTS FOR FLUID-FILLED TRANSFORMERS

Parameters	Transformer fluids	
	Sample A	Sample B
BEES Environmental Performance—Total Score <sup>1</sup>	0.0198	0.0581
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0002	0.0003
Ecological Toxicity (11%)	0.0046	0.0204
Eutrophication (5%)	0.0007	0.0066
Fossil Fuel Depletion (5%)	0.0066	0.0130
Global Warming (16%)	0.0033	0.0052
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0029	0.0047
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0007	0.0040
Water Intake (3%)	0.0008	0.0039
Economic Performance (Life Cycle Costs (\$)) <sup>2</sup>	8.50	9.10
First Cost	8.50	9.10

TABLE 5.—SUMMARY OF BEES RESULTS FOR FLUID-FILLED TRANSFORMERS—Continued

Parameters	Transformer fluids	
	Sample A	Sample B
Future Cost (3.9%) .....	( <sup>3</sup> )	( <sup>3</sup> )
Functional Unit .....	1 gallon.	

<sup>1</sup> Numbers in parentheses indicate weighting factor.

<sup>2</sup> Costs are per functional unit.

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

The life cycle cost of the submitted biobased transformer fluids range from \$8.50 to \$9.10 (present value dollars) per gallon of transformer fluid.

#### 6. Biodegradable Containers

Biodegradable containers represent that group of products capable of complying with the specifications established in the biodegradability standard ASTM D6400 “Standard Specifications for Compostable Plastics” and designed to be used for temporary storage or transportation of materials, such as food items. Products in this item are typically used by quick-serve restaurants, food management companies, universities, and government organizations. Biobased biodegradable containers are typically produced from natural starch-based or synthetic corn-based feedstocks and are readily biodegradable through composting.

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

For biobased biodegradable containers, USDA identified four

different manufacturers producing six individual biobased products. These four manufacturers do not necessarily include all manufacturers of biobased biodegradable containers, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that each of these products has been tested against one or more industry performance standards and is being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- ASTM D6400–04, Standard Specification for Compostable Plastics; and
- Biodegradable Products Institute Certified Compostable plastic products will biodegrade and compost satisfactorily in actively managed compost facilities.

USDA attempted to gather data on the potential market for biobased products within the Federal government as described in the section on adhesive

and mastic removers. These attempts were largely unsuccessful. However, Federal agencies routinely perform, or procure contract services to perform, activities such as food preparation and materials storage that utilize containers. Thus, they have a need for containers and for services that require the use of containers. Designation of biodegradable containers will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased biodegradable containers was performed for two of the products using the BEES analytical tool. Table 6 summarizes the BEES results for the two biodegradable containers. As seen in Table 6, the environmental performance score, which includes human health, ranges from 0.0003 to 0.0008 points per biodegradable container. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one biodegradable container, expressed in 100ths of 1 percent.

TABLE 6.—SUMMARY OF BEES RESULTS FOR BIODEGRADABLE CONTAINERS

Parameters	Biodegradable containers	
	Sample A	Sample B
BEES Environmental Performance—Total Score <sup>1</sup> .....	0.0003	0.0008
Acidification (5%) .....	0.0000	0.0000
Criteria Air Pollutants (6%) .....	0.0000	0.0000
Ecological Toxicity (11%) .....	0.0002	0.0001
Eutrophication (5%) .....	0.0000	0.0000
Fossil Fuel Depletion (5%) .....	0.0001	0.0004
Global Warming (16%) .....	0.0000	0.0001
Habitat Alteration (16%) .....	0.0000	0.0000
Human Health (11%) .....	0.0000	0.0001
Indoor Air (11%) .....	0.0000	0.0000
Ozone Depletion (5%) .....	0.0000	0.0000
Smog (6%) .....	0.0000	0.0000
Water Intake (3%) .....	0.0000	0.0001
Economic Performance (Life Cycle Costs (\$)) <sup>2</sup> .....	0.05	0.10
First Cost .....	0.05	0.10
Future Cost (3.9%) .....	( <sup>3</sup> )	( <sup>3</sup> )
Functional Unit .....	1 biodegradable container.	

<sup>1</sup> Numbers in parentheses indicate weighting factor.

<sup>2</sup> Costs are per functional unit.

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

The life cycle cost of the submitted biodegradable containers range from \$0.05 to \$0.10 (present value dollars) per biodegradable container.

#### 7. Fertilizers

Fertilizers represent that group of products formulated or processed for use in soil improvement applications. Products in this item provide moisture holding capacity, nutrients for plant growth, and/or beneficial bacteria to convert nutrients into plant usable forms. These products are used to provide added nutrition to the sports turf, golf course, organic farming, horticulture, lawn care, landscape, and nursery industries. Biobased fertilizers are typically produced from natural agricultural waste feedstocks such as meat and poultry by-products, animal wastes, grocery scraps, restaurant grease, and bakery wastes.

Qualifying products within this item may overlap with the EPA-designated recovered content product: Fertilizers Made From Recovered Organic Materials.

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

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

For biobased fertilizers, USDA identified 15 different manufacturers producing 30 individual biobased products. These 15 manufacturers do not necessarily include all manufacturers of biobased fertilizers, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that each of these products has been tested against one or more industry performance standards and is being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- Organic Materials Review Institute, listed seal assures the stability of a product for certified organic production, handling, and processing; and
- United States Composting Council Seal of Testing Assurance.

USDA attempted to gather data on the potential market for biobased products within the Federal government as described in the section on adhesive

and mastic removers. These attempts were largely unsuccessful. However, Federal agencies routinely perform, or procure contract services to perform, activities such as landscape maintenance and the production of agricultural products that require the use of fertilizers. Thus, they have a need for fertilizers and for services that require the use of fertilizers. Designation of fertilizers will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased fertilizers was performed for two of the products using the BEES analytical tool. Table 7 summarizes the BEES results for the two fertilizers. As seen in Table 7, the environmental performance score, which includes human health, ranges from 0.3299 to 0.9576 points per the quantity of fertilizer recommended for 1 acre over 3 years of use. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to the quantity of fertilizer recommended for 1 acre over 3 years of use, expressed in 100ths of 1 percent.

TABLE 7.—SUMMARY OF BEES RESULTS FOR FERTILIZERS

Parameters	Fertilizers	
	Sample A	Sample B
BEES Environmental Performance—Total Score <sup>1</sup>	0.3299	0.9576
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0020	0.0039
Ecological Toxicity (11%)	0.0212	0.1754
Eutrophication (5%)	0.0061	0.0407
Fossil Fuel Depletion (5%)	0.1455	0.1203
Global Warming (16%)	0.0493	0.4941
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0809	0.0753
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0249	0.0221
Water Intake (3%)	0.0000	0.0258
Economic Performance (Life Cycle Costs (\$)) <sup>2</sup>	17.64	195.43
First Cost	17.64	132.00
Future Cost (3.9%)	0.00	63.43
Functional Unit	(3)	

<sup>1</sup> Numbers in parentheses indicate weighting factor.

<sup>2</sup> Costs are per functional unit.

<sup>3</sup> The quantity of fertilizer recommended for 1 acre over 3 years of use.

The life cycle cost of the submitted fertilizers range from \$17.64 to \$195.43 (present value dollars) for the quantity of fertilizer recommended for 1 acre over 3 years of use.

#### 8. Metalworking Fluids

Metalworking fluids represent that group of products formulated to provide cooling, lubrication, and corrosion

prevention when applied to metal feedstock during operations such as grinding and machining. These products are designed for continuous use in systems that re-circulate the fluid through the use of a reservoir. These products are typically formulated from vegetable seed oils and are sold as concentrates designed to be diluted with

water or other solvents prior to application.

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

For biobased metalworking fluids, USDA identified 16 different manufacturers producing 45 individual

biobased products. These 16 manufacturers do not necessarily include all manufacturers of biobased metalworking fluids, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that each of these products has been tested against one or more industry performance standards and is being used commercially. While other applicable performance standards may exist, applicable industry performance standards and other relevant measurements of performance against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- ASTM D3233–93 (2003), Standard Test Methods for Measurement of Extreme Pressure Properties of Fluid Lubricants (Falex Pin and Vee Block Methods);

- ASTM D3946–92 (1997), Standard Test Method for Evaluating the Bacteria Resistance of Water-Dilutable Metalworking Fluids (Withdrawn 2004); and

- Readily Biodegradable EPA 560/6–82–003, monitors the conversion of the test material carbon to carbon dioxide, the product must biodegrade in 28 days to pass.

USDA attempted to gather data on the potential market for biobased products within the Federal government as described in the section on adhesive and mastic removers. These attempts were largely unsuccessful. However, Federal agencies routinely own and operate fabrication and repair facilities that utilize the types of metal machining equipment that require the use of metalworking fluids. In addition, many Federal agencies contract for services involving the use of such facilities and equipment. Thus, they have a need for

metalworking fluids and for services that require the use of metalworking fluids. Designation of metalworking fluids will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased metalworking fluids was performed for two of the products using the BEES analytical tool. Table 8 summarizes the BEES results for the two biobased metalworking fluids. As seen in Table 8, the environmental performance score, which includes human health, ranges from 0.0018 to 0.0036 points per gallon of diluted and ready to use fluid. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one diluted and ready to use gallon of fluid, expressed in 100ths of 1 percent.

TABLE 8.—SUMMARY OF BEES RESULTS FOR METALWORKING FLUIDS

Parameters	Metalworking fluids	
	Sample A	Sample B
BEES Environmental Performance—Total Score <sup>1</sup>	0.0018	0.0036
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0000	0.0000
Ecological Toxicity (11%)	0.0004	0.0026
Eutrophication (5%)	0.0001	0.0001
Fossil Fuel Depletion (5%)	0.0008	0.0002
Global Warming (16%)	0.0002	0.0002
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0002	0.0001
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0001	0.0000
Water Intake (3%)	0.0000	0.0004
Economic Performance (Life Cycle Costs (\$)) <sup>2</sup>	0.72	0.96
First Cost	0.72	0.96
Future Cost (3.9%)	( <sup>3</sup> )	( <sup>3</sup> )
Functional Unit	One diluted and ready to use gallon of fluid.	

<sup>1</sup> Numbers in parentheses indicate weighting factor.

<sup>2</sup> Costs are per functional unit.

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

The life cycle cost of the submitted metalworking fluids range from \$0.72 to \$0.96 (present value dollars) per gallon of diluted and ready to use fluid.

## 9. Sorbents

Sorbents represent that group of materials formulated for clean up and bioremediation of oil and chemical spills, disposal of liquid materials, and prevention of leakage or leaching in maintenance applications, shop floors, and fuel storage areas. Products in this item are normally light in weight, produce little dust, and provide absorbing capabilities through wicking

or sponge-like action. Biobased sorbents are typically produced from corncobs, cotton fibers, nut pith and other plant fiber, often combined with gelling agents.

Qualifying products within this item may overlap with the EPA-designated recovered content product: Miscellaneous—Sorbents.

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

For biobased sorbents, USDA identified 16 different manufacturers

producing 31 individual biobased products. These 16 manufacturers do not necessarily include all manufacturers of biobased sorbents, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that each of these products has been tested against one or more industry performance standards and is being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified

by manufacturers of products within this item, include:

- ASTM D726–94 (2003), Standard Test Method for Resistance of Nonporous Paper to Passage of Air;
- ASTM D2974–00, Standard Test Methods for Moisture, Ash, and Organic Matter of Peat and Other Organic Soils; and
- Canadian General Standards Board CAN/CGSB–183.94, Method for Testing Sorbents.

USDA attempted to gather data on the potential market for biobased products within the Federal government as described in the section on adhesive

and mastic removers. These attempts were largely unsuccessful. However, Federal agencies routinely perform, or procure services that perform, the types of clean-up and containment activities that would utilize sorbents. Thus, they have a need for sorbents and for services that require the use of sorbents. Designation of sorbents will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of sorbents was performed for two of the products using the BEES

analytical tool. Table 9 summarizes the BEES results for the two sorbents. As seen in Table 9, the environmental performance score, which includes human health, ranges from 0.0957 to 0.1159 points per the quantity of the analyzed sorbent required to absorb 1 barrel of light crude oil. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to the quantity of the analyzed sorbent required to absorb 1 barrel of light crude oil, expressed in 100ths of 1 percent.

TABLE 9.—SUMMARY OF BEES RESULTS FOR SORBENTS

Parameters	Sorbents	
	Sample A	Sample B
BEES Environmental Performance—Total Score <sup>1</sup>	0.0957	0.1159
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0001	0.0014
Ecological Toxicity (11%)	0.0006	0.0113
Eutrophication (5%)	0.0040	0.0018
Fossil Fuel Depletion (5%)	0.0059	0.0583
Global Warming (16%)	0.0026	0.0156
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0020	0.0221
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0024	0.0033
Water Intake (3%)	0.0781	0.0021
Economic Performance (Life Cycle Costs (\$)) <sup>2</sup>	49.94	11.83
First Cost	49.94	11.83
Future Cost (3.9%)	( <sup>3</sup> )	( <sup>3</sup> )
Functional Unit	(4)	

<sup>1</sup> Numbers in parentheses indicate weighting factor.

<sup>2</sup> Costs are per functional unit.

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

<sup>4</sup> The quantity of the analyzed sorbent required to absorb 1 barrel of light crude oil.

The life cycle cost of the submitted sorbents range from \$11.83 to \$49.94 (present value dollars) per the quantity of the analyzed sorbent required to absorb 1 barrel of light crude oil.

#### 10. Graffiti and Grease Removers

Graffiti and grease removers represent that group of industrial solvent products formulated to remove automotive, industrial, and kitchen soils and oils, including grease, paint, and other coatings, from hard surfaces. Biobased grease and graffiti removers are typically formulated from natural soy, corn, or citrus-based feedstocks and contain little to no hazardous ingredients.

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

For biobased graffiti and grease removers, USDA identified 26 different manufacturers producing 44 individual

biobased products. These 26 manufacturers do not necessarily include all manufacturers of biobased graffiti and grease removers, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that each of these products is being used commercially. While applicable performance standards and other measures of performance may exist, relevant measures of performance against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- Graffiti Performance Testing; and
- Adhesive Testing in Screen-printing.

USDA attempted to gather data on the potential market for biobased products within the Federal government as described in the section on adhesive and mastic removers. These attempts

were largely unsuccessful. However, Federal agencies routinely perform, and procure services that perform, the types of clean-up activities that would utilize graffiti and grease removers. Thus, they have a need for graffiti and grease removers and for services that require the use of graffiti and grease removers. Designation of graffiti and grease removers will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased graffiti and grease removers was performed for two of the products using the BEES analytical tool. Table 10 summarizes the BEES results for the two graffiti and grease removers. As seen in Table 10, the environmental performance score, which includes human health, ranges from 0.0446 to 0.0646 points per gallon of the graffiti and grease removers. The environmental performance score indicates the share of



annual per capita U.S. environmental impacts that is attributable to one gallon of the graffiti and grease removers, expressed in 100ths of 1 percent.

TABLE 10.—SUMMARY OF BEES RESULTS FOR GRAFFITI AND GREASE REMOVERS

Parameters	Graffiti and grease removers	
	Sample A	Sample B
BEES Environmental Performance—Total Score <sup>1</sup>	0.0446	0.0646
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0003	0.0007
Ecological Toxicity (11%)	0.0039	0.0172
Eutrophication (5%)	0.0012	0.0112
Fossil Fuel Depletion (5%)	0.0268	0.0168
Global Warming (16%)	0.0043	0.0064
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0045	0.0089
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0032	0.0021
Water Intake (3%)	0.0004	0.0013
Economic Performance (Life Cycle Costs (\$)) <sup>2</sup>	22.16	22.00
First Cost	22.16	22.00
Future Cost (3.9%)	( <sup>3</sup> )	( <sup>3</sup> )
Functional Unit	1 gallon.	

<sup>1</sup> Numbers in parentheses indicate weighting factor.

<sup>2</sup> Costs are per functional unit.

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

The life cycle cost of the submitted graffiti and grease removers range from \$22.00 to \$22.16 (present value dollars) per gallon of graffiti and grease removers.

### C. Minimum Biobased Contents

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

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

feedstocks. If misrepresentations are found, USDA will remove the subject biobased product from the preferred procurement program and may take further actions as deemed appropriate.

As a result of public comments received on the first designated items rulemaking proposal, USDA decided to account for the slight imprecision in the analytical method used to determine biobased content of products when establishing the minimum biobased content. Thus, rather than establishing the minimum biobased content for an item at the tested biobased content of the product selected as the basis for the minimum value, USDA is establishing the minimum biobased content at a level 3 percentage points less than the tested value. USDA believes that this adjustment is appropriate to account for the expected variations in analytical results.

USDA has determined that setting a minimum biobased content for designated items is appropriate. Establishing a minimum biobased content will encourage competition among manufacturers to develop products with higher biobased contents and will prevent products with de minimus biobased content from being purchased as a means of satisfying the requirements of section 9002. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary

performance attributes and allow them to compete with non-biobased products in performance and economics. Setting the minimum biobased content for an item at a level met by several of the tested products will provide more products from which procurement officials may choose, will encourage the most widespread usage of biobased products by procuring agencies, and is expected to accomplish the objectives of section 9002. Procuring agencies are encouraged to seek products with the highest biobased content that is practicable in all 10 of the proposed designated items.

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

#### 1. Adhesive and Mastic Removers

Five of the 13 biobased adhesive and mastic removers identified have been tested for biobased content using ASTM D6866.<sup>1</sup> The biobased content of these 5 samples ranged from 61 percent to 99 percent.

USDA is proposing to set the minimum biobased content for this item at 58 percent, based on the product with

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

a biobased content of 61 percent. No industry standard performance tests have been identified for this item. Thus, although all products within this item perform essentially the same function, the performance of any individual product or the range of adhesive and mastic formulations that exist is unknown. Because USDA does not have performance information to determine whether the products with biobased contents on the lower end of the range have unique or more desirable characteristics, USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

## 2. Insulating Foam for Wall Construction

Two of the 21 identified biobased insulating foam for wall construction products have been tested for biobased content using ASTM D6866. The biobased content of these two products were 11 and 65 percent.

USDA is proposing to set a minimum biobased content of 8 percent for this item, based on the product with a biobased content of 11 percent. The two products sampled provide insulating foam in two different manners. One is a "spray in place" foam and the other is a foam board. USDA believes that both products should be included in the preferred procurement program and, therefore, is proposing to set the minimum biobased content at a level that will include both of the products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. USDA also believes that setting a minimum biobased content of 8 percent for this item is reasonable given that only two samples were tested, and that the alternative of basing the minimum

biobased content on the 65 percent product could result in unforeseen limitations to the use of "spray in place" insulating foam. Lastly, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

## 3. Hand Cleaners and Sanitizers

Sixteen of the 73 biobased hand cleaners and sanitizers identified have been tested for biobased content using ASTM D6866. The biobased content of these 16 hand cleaners and sanitizers ranged from 21 percent to 95 percent.

USDA is proposing to set the minimum biobased content for this item at 18 percent, based on the product with a biobased content of 21 percent. Hand cleaners and sanitizers are formulated to meet a wide range of demands. Some are designed specifically to be used without water, while others are to be used with water; some are liquids and others are gels; some contain pumice, while others may contain moisturizers; and some are intended for use in health care facilities, while others are formulated to remove grease or similar substances. Because of this range in product characteristics, USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

## 4. Composite Panels

Eight of the 51 biobased composite panels identified have been tested for biobased content using ASTM D6866. The biobased content of these 8 composite panels ranged from 29 percent to 100 percent.

USDA is proposing to set the minimum biobased content for this item at 26 percent, based on the product with a biobased content of 29 percent. Composite panels are manufactured to meet a range of demands and may be

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

## 5. Fluid-Filled Transformers

Two of the 12 identified biobased fluids designed for use in fluid-filled transformers have been tested for biobased content using ASTM D6866. The biobased content of these two biobased fluids were 69 percent and 98 percent.

USDA is proposing to set the minimum biobased content for this item at 66 percent, based on the product with a biobased content of 69 percent. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. USDA also believes that setting a minimum biobased content of 66 percent for this item is reasonable given that only two samples were tested, and that the alternative of basing the minimum biobased content on the 98 percent product could result in unforeseen limitations to the use of biobased fluid-filled transformers. Lastly, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

## 6. Biodegradable Containers

Two of the six available biobased biodegradable containers have been tested for biobased content using ASTM D6866. The biobased content of these two biodegradable containers were 99 percent and 100 percent.

USDA is proposing to set the minimum biobased content for this item at 96 percent, based on the product with a biobased content of 99 percent. USDA believes that the slight difference between the biobased content of two products tested is insignificant, and establishing the minimum biobased content for the item based on the lower tested value offers procurement agents more choice in selecting products to purchase.

#### 7. Fertilizers

Ten of the 30 biobased fertilizers identified have been tested for biobased content using ASTM D6866. The biobased content of these 10 biobased fertilizers ranged from 74 percent to 100 percent.

USDA is proposing to set the minimum biobased content for this item at 71 percent, based on the product with a biobased content of 74 percent. Fertilizers are designed to address a range of parameters, including, application method, nutrients contents, release rate of nutrients, soil types, crop types, and desired re-application intervals. Because of this range in product characteristics, USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

#### 8. Metalworking Fluids

Seventeen of the 45 biobased metalworking fluids identified have been tested for biobased content using ASTM D6866. The biobased content of these 17 biobased metalworking fluids ranged from 43 percent to 100 percent. Because biobased metalworking fluids are typically sold as concentrates to be diluted with either water or petroleum-based solvents before use, the biobased content of the fluids must be determined before dilution.

USDA is proposing to set the minimum biobased content for this item at 40 percent, based on the product with a biobased content of 43 percent. The conditions under which metalworking

fluids must perform are widely varied. Different types of machining operations and different metal feedstocks require different characteristics in the associated metalworking fluids. In some operations the ability to dissipate heat may be the most critical characteristic, while in others corrosion prevention may be most important. The ability of a metalworking fluid to be diluted with water is desirable in many situations, but may not be significant in others. Because of this range in product characteristics, USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

#### 9. Sorbents

Seven of the 31 biobased sorbents identified have been tested for biobased content using ASTM D6866. The biobased content of these seven biobased sorbents ranged from 55 percent to 100 percent.

USDA is proposing to set the minimum biobased content for this item at 52 percent, based on the product with a biobased content of 55 percent. Sorbents are used to absorb a variety of liquid materials and the sorbent formulation affects the absorbency of the sorbent. Because of this range in product characteristics, USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

#### 10. Graffiti and Grease Removers

Eleven of the 44 biobased graffiti and grease removers identified have been tested for biobased content using ASTM D6866. The biobased content of these 11 biobased graffiti and grease removers ranged from 24 percent to 100 percent.

USDA is proposing to set the minimum biobased content for this item at 21 percent, based on the product with a biobased content of 24 percent. Graffiti and grease removers are formulated to remove a wide variety of paints and other marking materials, as well as grease, from many types of surfaces and using several different application techniques. For example, some graffiti and grease removers are sold as concentrates to be mixed with water, while others are designed to be used as purchased; some are designed to be sprayed on with power washers, while others are designed to be applied with brushes; and some are designed to provide a foaming action, while others are not. Because of this range in product characteristics, USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

#### *D. Effective Date for Procurement Preference and Incorporation Into Specifications*

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

USDA proposes a one-year period before the procurement preferences would take effect based on an understanding that Federal agencies will need time to incorporate the preferences into procurement documents and to revise existing standardized specifications. Section

9002(d) of FSRIA and section 2902(c) of 7 CFR part 2902 explicitly acknowledge the latter need for Federal agencies to have sufficient time to revise the affected specifications to give preference to biobased products when purchasing the designated items. Procuring agencies will need time to evaluate the economic and technological feasibility of the available biobased products for their agency-specific uses and for compliance with agency-specific requirements, including manufacturers' warranties for machinery in which the biobased products would be used.

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

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

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

Once the item designations in today's proposal become final, manufacturers and vendors voluntarily may post information on specific products, including product and contact information, on the USDA biobased products Web site <http://www.biobased.oce.usda.gov>. USDA will periodically audit the information displayed on the Web site and, where questions arise, contact the manufacturer or vendor to verify, correct, or remove incorrect or out-of-date information. Procuring agencies should contact the manufacturers and vendors directly to discuss specific needs and to obtain detailed information on the availability and prices of biobased products meeting those needs.

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

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

#### **VI. Regulatory Information**

##### *A. Executive Order 12866: Regulatory Planning and Review*

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

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866. The annual economic effect associated with today's proposed rule has not been quantified because the information necessary to estimate the effect does not exist. As was discussed earlier in this preamble, USDA made extensive efforts to obtain information on the Federal agencies' usage of the 10 items proposed for designation. These efforts were largely unsuccessful. Therefore, attempts to determine the economic impacts of today's proposed

rule would necessitate estimating the anticipated market penetration of biobased products, which would entail many assumptions and, thus, be of questionable value. Also, the program allows procuring agencies the option of not purchasing biobased products if the costs are deemed "unreasonable." Under this program, the determination of "unreasonable" costs will be made by individual agencies. USDA knows these agencies will consider such factors as price, life-cycle costs, and environmental benefits in determining whether the cost of a biobased product is determined to be "reasonable" or "unreasonable." However, until the program is actually implemented by the various agencies, it is impossible to quantify the impact this option would have on the economic effect of the rule. Therefore, USDA relied on a qualitative assessment to reach the judgment that the annual economic effect of the designation of these 10 items is less than \$100 million, and likely to be substantially less than \$100 million. This judgment was based primarily on the offsetting nature of the program (an increase in biobased products purchased with a corresponding decrease in petroleum products purchased) and, secondarily, on the ability of procuring agencies not to purchase these items if costs are judged unreasonable, which would reduce the economic effect.

##### **1. Summary of Impacts**

Today's proposed rulemaking is expected to have both positive and negative impacts to individual businesses, including small businesses. USDA anticipates that the biobased preferred procurement program will provide additional opportunities for businesses to begin supplying biobased materials to manufacturers of adhesive and mastic removers, insulating foam for wall construction, hand cleaners and sanitizers, composite panels, fluid-filled transformers, biodegradable containers, fertilizers, metalworking fluids, sorbents, and graffiti and grease removers and to begin supplying these products made with biobased materials to Federal agencies and their contractors. In addition, other businesses, including small businesses, that do not directly contract with procuring agencies may be affected positively by the increased demand for these biobased materials and products. However, other businesses that manufacture and supply only non-qualifying products and do not offer a biobased alternative product may experience a decrease in demand for their products. Thus, today's proposed

rule will likely increase the demand for biobased products, while decreasing the demand for non-qualifying products. It is anticipated that this will create a largely "offsetting" economic impact.

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

## 2. Summary of Benefits

The designation of these 10 items provides the benefits outlined in the objectives of section 9002: To increase domestic demand for biobased products and, thus, for the many agricultural commodities that can serve as feedstocks for production of biobased products; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and to enhance the nation's energy security by substituting biobased products for products derived from imported oil and natural gas. The increased demand for biobased products will also lead to the substitution of products with a possibly more benign or beneficial environmental impact, as compared to the use of non-biobased products. By purchasing these biobased products, procuring agencies can increase opportunities for all of these benefits. On a national and regional level, today's proposed rule can result in expanding and strengthening markets for biobased materials used in these 10 items. However, because the extent to which procuring agencies will find the performance and costs of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of today's proposed rule. USDA, however, anticipates the annual economic effect of the designation of these 10 items to be substantially below the \$100 million threshold. In addition, today's proposed rule does not do any of the following: Create serious inconsistency or

otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

### *B. Regulatory Flexibility Act (RFA)*

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

USDA evaluated the potential impacts of its proposed designation of these 10 items to determine whether its actions would have a significant impact on a substantial number of small entities. Because the Federal Biobased Products Preferred Procurement Program in section 9002 of FSRIA applies only to Federal agencies and their contractors, small governmental (city, county, etc.) agencies are not affected. Thus, the proposal, if promulgated, will not have a significant economic impact on small governmental jurisdictions. USDA anticipates that this program will affect entities, both large and small, that manufacture or sell biobased products. For example, the designation of items for preferred procurement will provide additional opportunities for businesses to manufacture and sell biobased products to Federal agencies and their contractors. Similar opportunities will be provided for entities that supply biobased materials to manufacturers. Conversely, the biobased procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. However, the proposed rule will not affect existing purchase orders and it will not preclude procuring agencies from continuing to purchase non-biobased items under certain conditions relating to the availability, performance, or cost of biobased items. Today's proposed rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials. Thus, the

economic impacts of today's proposed rule are not expected to be significant.

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

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

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

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

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

### *D. Executive Order 12988: Civil Justice Reform*

This proposed rule has been reviewed in accordance with Executive Order

12988, Civil Justice Reform. This proposed rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

#### *E. Executive Order 13132: Federalism*

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

#### *F. Unfunded Mandates Reform Act of 1995*

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

#### *G. Executive Order 12372: Intergovernmental Review of Federal Programs*

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

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

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

#### *I. Paperwork Reduction Act*

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

#### *J. Government Paperwork Elimination Act Compliance*

The Office of Energy Policy and New Uses is committed to compliance with the Government Paperwork Elimination Act (GPEA) (44 U.S.C. 3504 note),

which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for preferred procurement under each item designated. For information pertinent to GPEA compliance related to this rule, please contact Marvin Duncan at (202) 401–0461.

#### **List of Subjects in 7 CFR Part 2902**

Biobased products, Procurement.

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

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

#### **PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT**

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

**Authority:** 7 U.S.C. 8102.

2. Add §§ 2902.16 through 2902.25 to subpart B to read as follows:

#### **Subpart B—Designated Items**

* * *	
Sec.	
2902.16	Adhesive and Mastic Removers.
2902.17	Insulating Foam for Wall Construction.
2902.18	Hand Cleaners and Sanitizers.
2902.19	Composite Panels.
2902.20	Fluid-filled Transformers.
2902.21	Biodegradable Containers.
2902.22	Fertilizers.
2902.23	Metalworking Fluids.
2902.24	Sorbents.
2902.25	Graffiti and Grease Removers.

#### **Subpart B—Designated Items**

\* \* \*

#### **§ 2902.16 Adhesive and Mastic Removers.**

(a) *Definition.* Industrial cleaning solvent products formulated for use in removing asbestos, carpet, and ceramic tile mastics as well as adhesive materials, including glue, tape, and gum, from various surface types.

(b) *Minimum biobased content.* The minimum biobased content is 58 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased adhesive and mastic removers. 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 adhesive and mastic removers.

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

#### **§ 2902.17 Insulating Foam for Wall Construction.**

(a) *Definition.* Products designed to provide a sealed thermal barrier for residential or commercial construction applications.

(b) *Minimum biobased content.* The minimum biobased content is 8 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

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

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

preferred procurement requirement for this item.

#### **§ 2902.18 Hand Cleaners and Sanitizers.**

(a) *Definition.* Personal care products formulated for use in removing a variety of different soils, greases, and bacteria from human hands with or without the use of water.

(b) *Minimum biobased content.* The minimum biobased content is 18 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

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

#### **§ 2902.19 Composite Panels.**

(a) *Definition.* Engineered products designed for use in non-structural construction applications, including wall panels, shelving, decorative panels, lavatory dividers, and exterior signs.

(b) *Minimum biobased content.* The minimum biobased content is 26 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the following EPA-designated recovered content products: Laminated Paperboard and Structural Foam Board; Shower and Restroom Dividers; and Signage. USDA is requesting that manufacturers of these

qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated laminated paperboard, structural foam board, shower and restroom dividers, and signage, and which product should be afforded the preference in purchasing.

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

#### **§ 2902.20 Fluid-filled Transformers.**

(a) *Definition.* Electric power transformers that are designed to utilize a dielectric (non-conducting) fluid to provide insulating and cooling properties.

(b) *Minimum biobased content.* The minimum biobased content is 66 percent and shall be based on the amount of qualifying biobased carbon in the dielectric fluid within the fluid-filled transformer as a percent of the weight (mass) of the total organic carbon in the fluid.

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

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

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

(2) Spacecraft systems and launch support equipment.

#### **§ 2902.21 Biodegradable Containers.**

(a) *Definition.* Products capable of complying with the specifications established in the biodegradability standard ASTM D6400 "Standard Specifications for Compostable Plastics" and designed to be used for temporary storage or transportation of materials such as food items.

(b) *Minimum biobased content.* The minimum biobased content is 96 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

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

#### **§ 2902.22 Fertilizers.**

(a) *Definition.* Products formulated or processed to provide nutrients for plant growth and/or beneficial bacteria to convert nutrients into plant usable forms.

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

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

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the EPA-designated recovered content product: Fertilizers Made From Recovered Organic Materials. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist



Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated fertilizers and which product should be afforded the preference in purchasing.

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

#### **§ 2902.23 Metalworking Fluids.**

(a) *Definition.* Products formulated for use in a re-circulating fluid system to provide cooling, lubrication, and corrosion prevention when applied to metal feedstock during operations such as grinding and machining.

(b) *Minimum biobased content.* The minimum biobased content is 40 percent and shall be based on the amount of qualifying biobased carbon in the undiluted product as a percent of the weight (mass) of the total organic carbon in the finished product. If the finished product is to be diluted before use, the biobased content of the fluid must be determined before dilution.

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

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

#### **§ 2902.24 Sorbents.**

(a) *Definition.* Materials formulated for use in the clean up and bioremediation of oil and chemical spills, the disposal of liquid materials, or the prevention of leakage or leaching in maintenance applications, shop floors, and fuel storage areas.

(b) *Minimum biobased content.* The minimum biobased content is 52 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

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

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

sorbents and which product should be afforded the preference in purchasing.

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

#### **§ 2902.25 Graffiti and Grease Removers.**

(a) *Definition.* Industrial solvent products formulated to remove automotive, industrial, or kitchen soils and oils, including grease, paint, and other coatings, from hard surfaces.

(b) *Minimum biobased content.* The minimum biobased content is 21 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. If the finished product is to be diluted before use, the biobased content of the remover must be determined before dilution.

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

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

Dated: August 10, 2006.

**Keith Collins,**

*Chief Economist, U.S. Department of Agriculture.*

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