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DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

7 CFR Part 3201

RIN 0599-AA26

Designation of Product Categories for Federal Procurement

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Final rule.

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

DATES: This rule is effective **[insert date 30 days after date of publication in the Federal Register]**.

FOR FURTHER INFORMATION CONTACT: Karen Zhang, USDA, Office of Procurement and Property Management, Room 1640, USDA South Building, 1400 Independence Avenue SW, Washington, DC 20250; e-mail: biopreferred_support@amecfw.com; phone 919-765-9969. Information regarding the

Federal preferred procurement program (one initiative of the BioPreferred Program) is available at <http://www.biopreferred.gov>.

SUPPLEMENTARY INFORMATION:

The information presented in this preamble is organized as follows:

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 - G. Executive Order 12372: Intergovernmental Review of Federal Programs
 - H. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
 - I. Paperwork Reduction Act
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I. Authority

These product categories are designated under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill), as amended by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill), and further amended by the Agricultural Act of 2014 (the 2014 Farm Bill) and the Agricultural Improvement Act of 2018 (the 2018 Farm Bill), 7 U.S.C. 8102. (Section 9002 of the 2002 Farm Bill, as amended by the 2008, 2014, and 2018 Farm Bills, is referred to in this document as “section 9002”.)

II. Background

As part of the BioPreferred Program, USDA published, on September 14, 2018, a proposed rule in the Federal Register (FR) for the purpose of designating a total of 30 product categories for the preferred procurement of biobased products by Federal agencies (referred to hereafter in this FR document as the “preferred procurement program”). This proposed rule can be found at 83 FR 46780.

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

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

The 2008, 2014, and 2018 Farm Bills directed USDA to expand the scope of the Guidelines to include the designation of product categories composed of both intermediate ingredients and feedstock materials and finished products made from those materials. Specifically, the 2008 Farm Bill stated that USDA shall “designate those items

(including finished products) that are or can be produced with biobased products (including biobased products for which there is only a single product or manufacturer in the category) that will be subject to” Federal preferred procurement, “designate those intermediate ingredients and feedstocks that are or can be used to produce items that will be subject” to Federal preferred procurement, and “automatically designate items composed of [designated] intermediate ingredients and feedstocks ... if the content of the designated intermediate ingredients and feedstocks exceeds 50 percent of the item (unless the Secretary determines a different composition percentage is appropriate).”

In the proposed rule, USDA proposed to designate 30 product categories that contain finished products made from biobased intermediate ingredients and feedstocks. USDA also proposed to amend the existing designated product categories of general purpose de-icers, firearm lubricants, laundry products, and water clarifying agents.

This final rule designates the proposed product categories within which biobased products will be afforded Federal procurement preference. USDA has determined that each of the product categories being designated under this rulemaking meets the necessary statutory requirements; that they are being produced with biobased products; and that their procurement will carry out the following objectives of section 9002: to improve demand for biobased products; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and to enhance the Nation’s energy security by substituting biobased products for products derived from imported oil and natural gas.

When USDA designates by rulemaking a product category for preferred

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

Subcategorization. In this final rule, USDA is subcategorizing one of the product categories. That product category is concrete repair materials, and the proposed subcategories are: concrete leveling and concrete patching. USDA is also adding a new subcategory for dryer sheets to the laundry products product category that was designated previously (73 FR 27994, May 14, 2008).

Minimum Biobased Contents. The minimum biobased contents being established in this rule are based on products for which USDA has biobased content test data. USDA

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

Overlap with the U.S. Environmental Protection Agency's (EPA) Comprehensive Procurement Guideline program for recovered content products under the Resource Conservation and Recovery Act (RCRA) section 6002. Some of the products that are categorized in biobased product categories that are designated for Federal preferred procurement under the BioPreferred Program may overlap with product categories that the U.S. Environmental Protection Agency (EPA) has designated under its Comprehensive Procurement Guideline (CPG) for products containing recovered (or recycled) materials. A list of EPA's CPG program product categories may be found on its Web site (<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>) and in 40 CFR part 247. In this final rule, some products that are categorized in the product categories of concrete curing agents; concrete repair materials – concrete leveling; concrete repair materials – concrete patching; exterior paints and coatings; folders and filing products; other lubricants; playground and athletic surface materials;

product packaging; rugs or floor mats; shopping and trash bags; soil amendments; and transmission fluids may also be categorized in one or more of the following product categories that are designated in EPA's CPG program:

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

Federal Government Purchase of Sustainable Products. The Federal government's sustainable purchasing program includes the following three mandatory preference programs for designated products: the BioPreferred Program, the EPA's CPG program, and the Environmentally Preferable Purchasing program. The Council on Environmental Quality (CEQ) and the Office of Management and Budget (OMB) encourage agencies to implement these components comprehensively when purchasing products and services.

Other Federal Preferred Procurement Programs. Federal procurement officials should also note that many biobased products may be available for purchase by Federal

agencies through the AbilityOne Program (formerly known as the Javits-Wagner-O'Day (JWOD) program). Under this program, members of organizations including the National Industries for the Blind (NIB) and SourceAmerica (formerly known as the National Industries for the Severely Handicapped) offer products and services for preferred procurement by Federal agencies.

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

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

Because additional categories of products are frequently added to the AbilityOne

Program, it is possible that biobased products within other product categories being designated today may be available through the AbilityOne Program in the future. Procurement of biobased products through the AbilityOne Program would further the objectives of both the AbilityOne Program and the Federal preferred procurement program.

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

III. Discussion of Public Comments

USDA solicited comments on the proposed rule for 90 days ending on November 13, 2018. USDA received five comments by that date. All of the comments were from manufacturers of biobased products. The comments are presented below, along with USDA's responses, and are shown under the product categories to which they apply.

Concrete Repair Materials

Comment: Two commenters recommend including an additional sub-category under Concrete Repair Materials that would include products designed to preserve

concrete. The commenters note that the two subcategories that were included in the proposed rule, Concrete Repair Materials – Concrete Leveling and Concrete Repair Materials – Concrete Patching, do not take into consideration products that work to preserve the concrete instead of repairing it. The commenters suggest including a third subcategory called “Concrete Repair Materials – Concrete Preservation” that would include products that are designed to protect concrete from further deterioration.

Response: USDA thanks the commenters for their suggestions regarding an additional subcategory for the Concrete Repair Materials category. USDA agrees that Concrete Repair Materials – Concrete Preservation sounds like a reasonable subcategory. However, the commenters have not supplied enough information to designate this additional subcategory at this time. USDA will continue to collect information about concrete preservation products, and a concrete preservation subcategory will be evaluated for inclusion in future rulemaking actions. In the meantime, USDA would like to encourage manufacturers of concrete preservation products who would like to participate in the BioPreferred Program to use the product category “Wood and Concrete Sealers” found in § 3201.42.

Epoxy Systems

Comment: One commenter supports the creation of the Epoxy Systems category and agrees that biobased technologies exist that can provide performance properties that meet market requirements as well as the proposed 23 percent minimum biobased content requirement.

Response: USDA thanks the commenter for their support of the proposed

designation of the Epoxy Systems product category.

Exterior Paints and Coatings

Comment: One commenter suggests adding performance criteria to the description for this category. The commenter expresses concern that without performance test standards associated with the category, higher performing biobased products with less than 83 percent biobased content would be excluded.

Response: USDA agrees that some exterior paint and coating products may not meet the 83 percent minimum biobased content requirement; however, the data available to USDA show that there are exterior paint and coating products that are capable of meeting the 83 percent minimum. USDA does not generally consider performance criteria when establishing product categories. USDA does give manufacturers an opportunity to provide data on performance criteria as supplemental information when submitting information about their products. While this information is not considered when determining criteria for eligibility to participate in the BioPreferred Program, performance criteria may be taken into consideration when determining the need to establish subcategories. In the future, USDA may add subcategories to the Exterior Paints and Coatings category based on performance criteria if the data support this.

Rugs and Floor Mats

Comment: One commenter believes that the proposed minimum biobased content (23 percent) will be extremely difficult to achieve for fiber-based rugs, runners, and floor mats due to the carpet-like structure of these types of floor coverings. The commenter states that the carpet structure of carpet-based rugs, which does not lend itself to be

coated with a backing system with enough biobased formulation to reach the 23 percent biobased content requirement, accounts for 70 percent of the structure of the rug. Thus, the commenter recommends adding language to clarify that carpet-like rugs and floor coverings be included in the previously designated Carpets category rather than in the proposed Rugs and Floor Mats category. The commenter believes that non-fiber-based chair pads or floor mats would not have this issue and would be able to meet the 23 percent biobased content requirement.

Response: USDA reviewed the commenter's suggestions and agreed that it would add clarity to revise the definition. USDA's intent was not to supersede the designated product category "Carpets" (found in § 3201.33) for products composed of woven, tufted, or knitted fiber and a backing system, regardless of whether or not they are wall-to-wall carpet products. USDA has revised the proposed definition to clarify that products that include backing systems would fall under the Carpets category rather than the Rugs and Floor Mats category. Loose fiber, woven rugs or plastic-type floor mats will fall under the Rugs and Floor Mats category.

Traffic and Zone Marking Paints

Comment: One commenter suggests that the category name be changed to "Parking Lot and Road Marking Paints." The commenter states that while "Traffic and Zone Marking Paints" is common verbiage in the pavement maintenance industry, the phrase does not adequately convey the types of products that might fall into the category to individuals who are not overly familiar with the industry, including federal purchasing agents and specifiers. The commenter believes that changing the category name to

“Parking Lot and Road Marking Paints” will make it more obvious to specifiers that biobased alternatives exist for their parking lot and road marking projects. The commenter also suggests changing the minimum biobased content to 32 percent rather than the proposed 30 percent.

Response: USDA agrees that finding a name for a product category that will be familiar to all users of these types of products is difficult. Because “Traffic and Zone Marking Paints” is a common phrase used by those in the industry, and it has been used for the Voluntary Labeling initiative for a significant period of time, USDA believes this is a reasonable name for the category. Although the name of the product category will not be revised, USDA agrees that the definition of the category can be revised to clarify the types of products that are included in this category. To promote awareness of newly designated product categories, USDA prepares “Fact Sheets” describing the new designated categories and their definitions and posts this information on the BioPreferred Web site so that it is available to federal purchasing agents. Procuring agencies will be able to utilize the information available on the Web site as one tool to determine and become familiar with the categories of products that are designated for Federal procurement preference, as well as the availability of qualifying biobased products under a designated product category.

USDA did not revise the proposed minimum biobased content for this product category. As discussed in the Preamble to the proposed rule, USDA has biobased content data on five traffic and zone marking paints, and these products have biobased contents ranging from 33 to 38 percent. USDA set the minimum for this category based on the

products with tested biobased contents of 33 percent, taking into account the slight imprecision of three percentage points in the ASTM D6866 test method used to measure biobased content.

IV. Summary of Changes

After consideration of the public comments received in response to the proposed rule, USDA made some changes in the final rule. These changes are summarized below.

In the final rule, USDA has revised the definitions of the categories Rugs and Floors Mats and Traffic and Zone Marking Paints. These changes were made to clarify or add examples of the types of products that will be included or excluded in each of these categories. The definition for the Rugs and Floor Mats category has been revised to clarify that products composed of woven, tufted, or knitted fiber and a backing system are excluded from this category as they are already included in the designated product category “Carpets.” The definition for the Traffic and Zone Marking Paints category has been revised to clarify the types of products (and the common usages of these products) that would fall into this category for those who may not be familiar with the traffic and zone marking paint industry.

In addition, USDA has revised the minimum biobased content requirement for the Folders and Filing Products category to account for new data that USDA obtained. After the proposed rule was published, USDA obtained new biobased content data regarding the products upon which the proposed minimum for this category was set. These products were reformulated and now each contain 59 percent biobased content, as measured by ASTM D6866. USDA did not find a reason to exclude either of these

products and has determined that it is reasonable to change the minimum biobased content for this category to include these products. Thus, the minimum biobased content for this product category is 56 percent, based on the products with tested biobased content of 59 percent.

V. Regulatory Information

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

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

This final rule has been determined by the Office of Management and Budget to be not significant for purposes of Executive Order 12866. We are not able to quantify the annual economic effect associated with this final rule. USDA attempted to obtain information on the Federal agencies’ usage within the proposed new product categories

being added and the existing categories being amended. These efforts were largely unsuccessful. Therefore, attempts to determine the economic impacts of this final rule would require estimation of the anticipated market penetration of biobased products based upon many assumptions. In addition, because agencies have the option of not purchasing products within designated product categories if price is “unreasonable,” the product is not readily available, or the product does not demonstrate necessary performance characteristics, certain assumptions may not be valid. While facing these quantitative challenges, USDA relied upon a qualitative assessment to determine the impacts of this final rule.

1. Summary of Impacts

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

and/or price of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of the rule.

2. Benefits of the Final Rule

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

3. Costs of the Final Rule

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

B. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601-602, generally requires an agency to prepare a regulatory

flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

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

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

The intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products. Because the program continues to evolve, however, it is unknown how many businesses will ultimately be affected. While USDA has no data on the number of small businesses that may choose to develop and market biobased products within the product categories designated by this

rulemaking, the number is expected to be small. Because biobased products represent an emerging market for products that are alternatives to traditional products with well-established market shares, only a small percentage of all manufacturers, large or small, are expected to develop and market biobased products. Thus, the number of small businesses manufacturing biobased products affected by this rulemaking is not expected to be substantial.

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

- 314 Textile Product Mills;
- 3169 Other Leather and Allied Product Manufacturing;
- 32419 Other Petroleum and Coal Products Manufacturing;
- 3255 Paint, Coating, and Adhesive Manufacturing;
- 3256 Soap, Cleaning Compound, and Toilet Preparation Manufacturing;
- 325212 Synthetic Rubber Manufacturing;
- 325998 All Other Miscellaneous Chemical Product and Preparation Manufacturing;
- 325220 Artificial and Synthetic Fibers and Filaments Manufacturing;

- 32611 Plastics Packaging Materials and Unlaminated Film and Sheet Manufacturing;
- 32614 Polystyrene Foam Product Manufacturing;
- 32615 Urethane and Other Foam Product (except Polystyrene) Manufacturing;
- 32616 Plastics Bottle Manufacturing;
- 32619 Other Plastics Product Manufacturing;
- 3262 Rubber Product Manufacturing;
- 3322 Cutlery and Handtool Manufacturing;
- 3324 Boiler, Tank, and Shipping Container Manufacturing;
- 3328 Coating, Engraving, Heat Treating, and Allied Activities;
- 33992 Sporting and Athletic Goods Manufacturing;
- 33993 Doll, Toy, and Game Manufacturing;
- 33994 Office Supplies (except Paper) Manufacturing;
- 339994 Broom, Brush, and Mop Manufacturing; and
- 339999 All Other Miscellaneous Manufacturing.

USDA obtained information on these 24 NAICS categories from the U.S. Census Bureau's Economic Census database. USDA found that in 2012, the Survey of Business Owners data indicate that there were about 42,365 firms with paid employees within these 24 NAICS categories. When considering the 2012 Business Patterns Geography Area Series data in conjunction, these firms owned a total of about 48,532 individual establishments. Thus, the average number of establishments per company is about 1.15.

The 2012 Business Patterns Geography Area Series data also reported that of the 48,532 individual establishments, about 48,306 (99.5 percent) had fewer than 500 paid employees. USDA also found that the average number of paid employees per firm among these industries was about 35. Thus, nearly all of the businesses meet the Small Business Administration's definition of a small business (less than 500 employees, in most NAICS categories).

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

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

number of small entities.

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

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

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

D. Executive Order 12988: Civil Justice Reform

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

E. Executive Order 13132: Federalism

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

F. Unfunded Mandates Reform Act of 1995

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

G. Executive Order 12372: Intergovernmental Review of Federal Programs

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

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

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

I. Paperwork Reduction Act

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

J. E-Government Act Compliance

USDA is committed to compliance with the E-Government Act, which requires

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

K. Congressional Review Act

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

List of Subjects in 7 CFR Part 3201

Biobased products, Business and industry, Government procurement.

For the reasons stated in the preamble, the Department of Agriculture is amending 7 CFR part 3201 as follows:

PART 3201 - GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

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

Authority: 7 U.S.C. 8102.

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

§3201.37 De-Icers.

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

* * * * *

(c) Preference compliance dates. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased de-icers. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased de-icers.

3. Section 3201.38 is revised to read as follows:

§3201.38 Firearm cleaners, lubricants, and protectants.

(a) Definition. Products that are designed to care for firearms by cleaning, lubricating, protecting, or any combination thereof. Examples include products that are

designed for use in firearms to reduce the friction and wear between the moving parts of a firearm, to keep the weapon clean, and/or to prevent the formation of deposits that could cause the weapon to jam.

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

(c) Preference compliance dates. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased firearm cleaners, lubricants, and protectants. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased firearm cleaners, lubricants, and protectants.

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

§3201.40 Laundry products.

(a) * * *

(2) * * *

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

(b) * * *

(3) Dryer sheets - 90 percent.

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

(2) No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for those qualifying biobased laundry products specified in paragraph (a)(2)(iii) of this section. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased laundry products.

5. Section 3201.99 is revised to read as follows:

§3201.99 Water and wastewater treatment chemicals.

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

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased water and wastewater treatment chemicals. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased water and wastewater treatment chemicals.

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

Subpart B—Designated Product Categories and Intermediate Ingredients or Feedstocks

Sec.

* * * * *

- 3201.120 Adhesives.
- 3201.121 Animal habitat care products.
- 3201.122 Cleaning tools.
- 3201.123 Concrete curing agents.
- 3201.124 Concrete repair materials.
- 3201.125 Durable cutlery.
- 3201.126 Durable tableware.
- 3201.127 Epoxy systems.
- 3201.128 Exterior paints and coatings.
- 3201.129 Facial care products.
- 3201.130 Feminine care products.
- 3201.131 Fire logs and fire starters.
- 3201.132 Folders and filing products.
- 3201.133 Foliar sprays.
- 3201.134 Gardening supplies and accessories.
- 3201.135 Heating fuels and wick lamps.
- 3201.136 Kitchenware and accessories.
- 3201.137 Other lubricants.
- 3201.138 Phase change materials.
- 3201.139 Playground and athletic surface materials.
- 3201.140 Powder coatings.
- 3201.141 Product packaging.
- 3201.142 Rugs and floor mats.
- 3201.143 Shopping and trash bags.

3201.144 Soil amendments.
3201.145 Surface guards, molding, and trim.
3201.146 Toys and sporting gear.
3201.147 Traffic and zone marking paints.
3201.148 Transmission fluids.
3201.149 Wall coverings.

§3201.120 Adhesives.

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

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased adhesives. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased adhesives.

§ 3201.121 Animal habitat care products.

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

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased animal habitat care products. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased animal habitat care products.

§3201.122 Cleaning tools.

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

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased cleaning tools. By that date, Federal agencies responsible for drafting or reviewing

specifications for products to be procured shall ensure that the relevant specifications require the use of biobased cleaning tools.

§ 3201.123 Concrete curing agents.

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

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased concrete curing agents. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased concrete curing agents.

(d) Determining overlap with a designated product category in the EPA's Comprehensive Procurement Guideline (CPG) program. Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product category of Construction Products: Cement and Concrete. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's Web site about the intended uses of the product, information on whether the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information

will assist Federal agencies in determining whether a qualifying biobased product overlaps with the EPA's CPG-designated product category of Construction Products: Cement and Concrete and which product should be afforded the preference in purchasing.

NOTE 1 TO PARAGRAPH (d): Concrete curing agents within this designated product category can compete with similar concrete curing agents with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated Construction Products: Cement and Concrete containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.12.

§3201.124 Concrete repair materials.

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

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

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

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

(b) Minimum biobased content. The minimum biobased content for all concrete repair materials shall be based on the amount of qualifying biobased carbon in the

product as a percent of the total organic carbon in the finished product. The applicable minimum biobased contents are:

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

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased concrete repair materials. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased concrete repair materials.

(d) Determining overlap with a designated product category in the EPA's CPG program. Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product category of Construction Products: Cement and Concrete. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's Web site about the intended uses of the product, information on whether the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether a qualifying biobased product overlaps with the EPA's CPG-designated product category of Construction Products: Cement and Concrete and which product should be afforded the preference in purchasing.

NOTE 1 TO PARAGRAPH (d): Concrete repair materials within this designated product category can compete with similar concrete repair materials with recycled

content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated Construction Products: Cement and Concrete containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.12.

§ 3201.125 Durable cutlery.

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

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased durable cutlery. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased durable cutlery.

§ 3201.126 Durable tableware.

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

(b) Minimum biobased content. The Federal preferred procurement product must have a minimum biobased content of at least 28 percent, which shall be based on the

amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased durable tableware. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased durable tableware.

§3201.127 Epoxy systems.

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

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased epoxy systems. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased epoxy systems.

§3201.128 Exterior paints and coatings.

(a) Definition. Exterior paints and coatings are pigmented liquid products that typically contain pigments to add color and are formulated for use on outdoor surfaces.

When these products dry, they typically form a protective layer and provide a coat of color to the applied surface. This category includes paint and primers but excludes wood and concrete sealers and stains and specialty coatings such as roof coatings, wastewater system coatings, and water tank coatings.

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased exterior paints and coatings. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased exterior paints and coatings.

(d) Determining overlap with a designated product category in the EPA's CPG program. Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product category of Construction Products: Consolidated and Reprocessed Latex Paint for Specified Uses. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's Web site about the intended uses of the product, information on whether the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether a qualifying biobased product

overlaps with the EPA's CPG-designated product category of Construction Products: Consolidated and Reprocessed Latex Paint for Specified Uses and which product should be afforded the preference in purchasing.

NOTE 1 TO PARAGRAPH (d): Exterior paints and coatings within this designated product category can compete with similar exterior paints and coatings with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated Construction Products: Consolidated and Reprocessed Latex Paint for Specified Uses containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.12.

§3201.129 Facial care products.

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

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies,

in accordance with this part, will give a procurement preference for qualifying biobased facial care products. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased facial care products.

§3201.130 Feminine care products.

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

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased feminine care products. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased feminine care products.

§3201.131 Fire logs and fire starters.

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

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased fire logs and fire starters. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased fire logs and fire starters.

§ 3201.132 Folders and filing products.

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

(b) Minimum biobased content. The Federal preferred procurement product must have a minimum biobased content of at least 56 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased folders and filing products. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased folders and filing products.

(d) Determining overlap with a designated product category in the EPA's CPG program. Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product categories of Non-Paper Office Products: Binders, Clipboards, File Folders, Clip Portfolios, and Presentation Folders and Non-Paper Office Products: Plastic Envelopes. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's Web site about the intended uses of the product, information on whether the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether a qualifying biobased product overlaps with the EPA's CPG-designated product categories of Non-Paper Office Products: Binders, Clipboards, File Folders, Clip Portfolios, and Presentation Folders and Non-Paper Office Products: Plastic Envelopes and which product should be afforded the preference in purchasing.

NOTE 1 TO PARAGRAPH (d): Biobased folders and filing products within this designated product category can compete with similar folders and filing products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated Non-Paper Office Products: Binders, Clipboards, File Folders, Clip Portfolios, and Presentation Folders and Non-Paper Office Products: Plastic Envelopes containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.16. §3201.133 Foliar sprays.

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

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased foliar sprays. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased foliar sprays.

§3201.134 Gardening supplies and accessories.

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

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

carbon in the finished product.

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased gardening supplies and accessories. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased gardening supplies and accessories.

§3201.135 Heating fuels and wick lamps.

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

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased heating fuels and wick lamps. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased heating fuels and wick lamps.

§ 3201.136 Kitchenware and accessories.

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

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased kitchenware and accessories. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased kitchenware and accessories.

§3201.137 Other lubricants.

(a) Definition. Other lubricants are lubricant products that do not fit into any of the BioPreferred Program's specific lubricant categories. This category includes lubricants that are formulated for specialized uses. Examples of other lubricants include

lubricants used for sporting or exercise gear and equipment, musical instruments, and specialized equipment such as tree shakers. This category excludes lubricants that are covered by the specific lubricant categories such as chain and cable lubricants, firearm lubricants, forming lubricants, gear lubricants, multi-purpose lubricants, penetrating lubricants, pneumatic equipment lubricants, and slide way lubricants.

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased other lubricants. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased other lubricants.

(d) Determining overlap with a designated product category in the EPA's CPG program. Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product category of Vehicular Products: Re-Refined Lubricating Oil. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's Web site about the intended uses of the product, information on whether the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether a

qualifying biobased product overlaps with the EPA's CPG-designated product category of Vehicular Products: Re-Refined Lubricating Oil and which product should be afforded the preference in purchasing.

NOTE 1 TO PARAGRAPH (d): Other lubricants within this designated product category can compete with similar other lubricants with recycled content. According to the Resource Conservation and Recovery Act of 1976, section 6002, Federal agencies must give preference in their purchasing programs for the U.S. Environmental Protection Agency's CPG-designated Vehicular Products: Re-Refined Lubricating Oil containing recovered materials as products. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.11.

§3201.138 Phase change materials.

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

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased phase change materials. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased phase change materials.

§3201.139 Playground and athletic surface materials.

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

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased playground and athletic surface materials. By that date, Federal agencies responsible for

drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased playground and athletic surface materials.

(d) Determining overlap with a designated product category in the EPA's CPG program. Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product categories of Parks and Recreation Products: Playground Surfaces and Running Tracks. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's Web site about the intended uses of the product, information on whether the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether a qualifying biobased product overlaps with the EPA's CPG-designated product categories of Parks and Recreation Products: Playground Surfaces and Running Tracks and which product should be afforded the preference in purchasing.

NOTE 1 TO PARAGRAPH (d): Playground and athletic surface materials within this designated product category can compete with similar playground and athletic surface materials with recycled content. According to the Resource Conservation and Recovery Act of 1976, section 6002, Federal agencies must give preference in their purchasing programs for the U.S. Environmental Protection Agency's CPG-designated product categories of Parks and Recreation Products: Playground Surfaces and Running Tracks containing recovered materials as products. The designation can be found in the

Comprehensive Procurement Guideline, 40 CFR 247.10.

§3201.140 Powder coatings.

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

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased powder coatings. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased powder coatings.

§3201.141 Product packaging.

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

(b) Minimum biobased content. The Federal preferred procurement product must

have a minimum biobased content of at least 25 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased product packaging. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased product packaging.

(d) Determining overlap with a designated product category in the EPA's CPG program. Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product category of Paper Products: Paperboard and Packaging. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's Web site about the intended uses of the product, information on whether the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether a qualifying biobased product overlaps with the EPA's CPG-designated product category of Paper Products: Paperboard and Packaging and which product should be afforded the preference in purchasing.

NOTE 1 TO PARAGRAPH (d): Product packaging within this designated product category can compete with similar product packaging with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S.

Environmental Protection Agency CPG-designated Paper Products: Paperboard and Packaging containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.10.

§3201.142 Rugs and floor mats.

(a) Definition. Rugs or floor mats are floor coverings that are used for decorative or ergonomic purposes and that are not attached to the floor. This category includes items such as area rugs, rug runners, chair mats, and bathroom and kitchen mats. This category excludes products composed of woven, tufted, or knitted fiber and a backing system because these products fall under the “Carpets” product category.

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased rugs and floor mats. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased rugs and floor mats.

(d) Determining overlap with a designated product category in the EPA’s CPG program. Qualifying products within this product category may overlap with the EPA’s CPG-designated recovered content product category of Miscellaneous Products: Mats.

USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's Web site about the intended uses of the product, information on whether the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether a qualifying biobased product overlaps with the EPA's CPG-designated product category of Miscellaneous Products: Mats and which product should be afforded the preference in purchasing.

NOTE 1 TO PARAGRAPH (d): Rugs and floor mats within this designated product category can compete with similar rugs or floor mats with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated Miscellaneous Products: Mats containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.17.

§3201.143 Shopping and trash bags.

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

(b) Minimum biobased content. The Federal preferred procurement product must

have a minimum biobased content of at least 22 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased shopping and trash bags. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased shopping and trash bags.

(d) Determining overlap with a designated product category in the EPA's CPG program. Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product category of Non-Paper Office Products: Plastic Trash Bags. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's Web site about the intended uses of the product, information on whether the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether a qualifying biobased product overlaps with the EPA's CPG-designated product category of Non-Paper Office Products: Trash Bags and which product should be afforded the preference in purchasing.

NOTE 1 TO PARAGRAPH (d): Shopping and trash bags within this designated product category can compete with similar shopping and trash bags with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the

U.S. Environmental Protection Agency CPG-designated Non-Paper Office Products: Trash Bags containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.17.

§3201.144 Soil amendments.

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

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased soil amendments. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased soil amendments.

(d) Determining overlap with a designated product category in the EPA's CPG program. Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product categories of Landscaping Products: Compost Made From Recovered Organic Materials and Landscaping Products: Fertilizer Made

From Recovered Organic Materials. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's Web site about the intended uses of the product, information on whether the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether a qualifying biobased product overlaps with the EPA's CPG-designated product categories Landscaping Products: Compost Made From Recovered Organic Materials and Landscaping Products: Fertilizer Made From Recovered Organic Materials and which product should be afforded the preference in purchasing.

NOTE 1 TO PARAGRAPH (d): Soil amendments within this designated product category can compete with similar soil amendments with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated Landscaping Products: Compost Made From Recovered Organic Materials and Landscaping Products: Fertilizer Made From Recovered Organic Materials containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.15.

§3201.145 Surface guards, molding, and trim.

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

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased surface guards, molding, and trim. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased surface guards, molding, and trim.

§3201.146 Toys and sporting gear.

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

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased toys and sporting gear. By that date, Federal agencies responsible for drafting or

reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased toys and sporting gear.

§3201.147 Traffic and zone marking paints.

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

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased traffic and zone marking paints. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased traffic and zone marking paints.

§3201.148 Transmission fluids.

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

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

carbon in the finished product.

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased transmission fluids. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased transmission fluids.

(d) Determining overlap with a designated product category in the EPA's CPG program. Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product category of Vehicular Products: Re-refined Lubricating Oil. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's Web site about the intended uses of the product, information on whether the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether a qualifying biobased product overlaps with the EPA's CPG-designated Vehicular Products: Re-Refined Lubricating Oil and which product should be afforded the preference in purchasing.

NOTE 1 TO PARAGRAPH (d): Transmission fluids within this designated product category can compete with similar transmission fluids with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated product categories Vehicular Products: Re-Refined Lubricating Oil containing recovered materials as products for

which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.11. §3201.149 Wall coverings.

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

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

(c) Preference compliance date. No later than July 6, 2020, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased wall coverings. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased wall coverings.

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