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## DEPARTMENT OF AGRICULTURE

### Office of Procurement and Property Management

#### 7 CFR Part 3201

RIN 0599-AA15

#### 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, to add 12 sections to designate product categories within which biobased products will be afforded Federal procurement preference, as provided for under section 9002 of the Farm Security and Rural Investment Act of 2002, as amended by the Food, Conservation, and Energy Act of 2008 (referred to in this document as “section 9002”). USDA is also establishing minimum biobased contents for each of these product categories.

**DATES:** This rule is effective December 19, 2012.

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

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

- I. Authority
- II. Background
- III. Discussion of Public Comments

#### IV. Regulatory Information

- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
- B. Regulatory Flexibility Act (RFA)
- C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights
- D. Executive Order 12988: Civil Justice Reform
- E. Executive Order 13132: Federalism
- F. Unfunded Mandates Reform Act of 1995
- G. Executive Order 12372: Intergovernmental Review of Federal Programs
- H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- I. Paperwork Reduction Act
- J. E-Government Act
- K. Congressional Review Act

#### I. Authority

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

#### II. Background

As part of the BioPreferred Program, USDA published, on June 5, 2012, a proposed rule in the **Federal Register** (FR) for the purpose of designating a total of 12 product categories for the preferred procurement of biobased products by Federal agencies (referred to hereafter in this FR notice as the “preferred procurement program”). This proposed rule can be found at 77 FR 33270. This rulemaking is referred to in this preamble as Round 9 (RIN 0599-AA15).

In the proposed rule, USDA proposed designating the following 12 product categories for the preferred procurement program: Agricultural spray adjuvants; animal cleaning products; deodorants; dethatcher products; fuel conditioners; leather, vinyl, and rubber care products; lotions and moisturizers; shaving products; specialty precision cleaners and solvents; sun care products; wastewater systems coatings; and water clarifying agents.

Today's final rule designates the proposed product categories within which biobased products will be afforded Federal procurement preference. USDA has determined that

each of the product categories being designated under today's rulemaking meets the necessary statutory requirements; that they are being produced with biobased products; and that their procurement will carry out the following objectives of section 9002: to improve demand for biobased products; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and to enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas.

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

**Subcategorization.** USDA has not created subcategories for any of the product categories designated in today's action. However, USDA will continue to gather additional data related to the categories designated today and subcategories may be created in a future rulemaking.

**Minimum Biobased Contents.** The minimum biobased contents being established with today's rulemaking are

based on products for which USDA has biobased content test data. Because the submission of product samples for biobased content testing is on a strictly voluntary basis, USDA was able to obtain samples only from those manufacturers who volunteered to invest the resources required to submit the samples. USDA has, however, begun to receive additional biobased content data associated with manufacturer's applications for certification to use the USDA Certified Biobased Product label. These test results are also considered when determining the minimum biobased content levels for designated product categories. In today's final rule, none of the minimum biobased contents are based on a single tested product. USDA will continue to gather information on the product categories designated today and if additional data on the biobased contents for products within these designated product categories are obtained, USDA will evaluate whether the minimum biobased content should be revised.

*Overlap with EPA's Comprehensive Procurement Guideline program for recovered content products under the Resource Conservation and Recovery Act (RCRA) Section 6002.* USDA does not believe that any of the product categories being designated for Federal preferred procurement in today's rulemaking overlap with an EPA-designated recovered content product. However, interested readers may obtain more information on EPA's CPG products by accessing EPA's Web site <http://www.epa.gov/epaoswer/non-hw/procure/products.htm> and then clicking on the appropriate product name.

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

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

Blind (NIB) and the National Institute for the Severely Handicapped (NISH) offer products and services for preferred procurement by Federal agencies. A search of the AbilityOne Program's online catalog ([www.abilityone.gov](http://www.abilityone.gov)) indicated that five of the product categories being designated today (deodorants; leather, vinyl, and rubber care products; lotions and moisturizers; specialty precision cleaners and solvents; and sun care products) are available through the AbilityOne Program. While there is no specific product within these product categories identified in the AbilityOne online catalog as being a biobased product, it is possible that such biobased products are available or will be available in the future. Also, because additional categories of products are frequently added to the AbilityOne Program, it is possible that biobased products within other product categories being designated today may be available through the AbilityOne Program in the future. Procurement of biobased products through the AbilityOne Program would further the objectives of both the AbilityOne Program and the preferred procurement program.

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

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

USDA has developed a preliminary list of product categories for future designation and has posted this preliminary list on the BioPreferred Web site. While this list presents an initial prioritization of product categories for designation, USDA cannot

identify with certainty which product categories will be presented in each of the future rulemakings. In response to comments from other Federal agencies, USDA intends to give increased priority to those product categories that contain the highest biobased content. In addition, as the program matures, manufacturers of biobased products within some industry segments have become more responsive to USDA's requests for technical information than those in other segments. Thus, product categories with high biobased content and for which sufficient technical information can be obtained quickly may be added or moved up on the prioritization list.

### III. Discussion of Public Comments

USDA solicited comments on the proposed rule for 60 days ending on August 6, 2012. USDA received two comments by that date. One of the comments was from a company that provides consulting services in critical and industrial product cleaning and the other was from an individual citizen. The comments are presented below, along with USDA's responses, and are shown under the product categories to which they apply. After consideration of the comments, USDA is finalizing the designation of the 12 product categories within which biobased products will be afforded Federal procurement preference, as proposed.

#### *Specialty Precision Cleaners and Solvents*

*Comment:* One commenter is opposed to the designation of the "specialty precision cleaners and solvents" product category. The commenter provided their rationale for opposing the designation of the product category under six headings, which are presented below.

1. **Public Safety Concerns.** The commenter stated that there are likely to be widespread performance issues related to the cleaning of many high-value products or where the consequences of inadequate cleaning and residual contamination are dire. The commenter gave as an example the cleaning of single use and reusable medical devices where leachable residue from cleaning agents is unacceptable, and may be dangerous for the patient.

2. **Unestablished Performance, Need for Product Development.** The commenter stated that the suitability of a cleaning agent for a given application includes many parameters (wettability, boiling point, rinseability, residue, compatibility with materials of construction, purity of biobased

ingredients) and that the selection of a particular cleaning agent is application-specific. Because of their role in evaluating and advising clients on the many biobased products offered for sale, the commenter stated that they have actively and repeatedly sought out other contributors on the subject and have been unable to obtain definitive, scientific contributions. Based on the lack of scientific information, the commenter believes that biobased products for precision cleaning require further development.

3. **Conflict With Other Regulations.** The commenter stated that the proposed requirement is in conflict with Federal, State, and regional mandates to improve air quality. The commenter explained that most of the biobased cleaning products would be subject to VOC regulations and restrictions. The commenter also stated that the definition of precision cleaners is not in harmony with that used for precision cleaners by the EPA Significant New Alternative Policy (SNAP) program. The commenter stated that the USDA definition seems to cross over the SNAP categories that include metals, electronics, and precision cleaning.

4. **Costs to Industry and Government.** The commenter stated that requiring or favoring biobased precision cleaners will put an undue burden on industry and is detrimental to U.S. economic recovery. The commenter further stated that adopting a new cleaning agent requires extensive testing, obtaining new cleaning equipment, and training of employees. According to the commenter, these activities involve high capital and ongoing costs as well as significant engineering effort. The commenter stated that the effort and costs of demonstrating efficacy of cleaning and lack of compatibility issues should be spearheaded by the producers and suppliers of biobased products. The commenter also stated that regulatory costs, such as in-use control of VOCs and the costs of waste management, can be prohibitive.

5. **Comments, Process for Industry Investigation.** The commenter stated that the background documentation on the BioPreferred Web site for this category is very difficult to find and contains numerous inaccuracies. The commenter believes that many of the products listed are not biobased products and many are intended for household or consumer use or for janitorial use. The commenter further stated that these products are not recommended for precision cleaning because of the presence of fragrance and lotions, the lack of product support for precision applications, and the potential

for unexpected and undisclosed formulation changes.

6. **Potential for Development.** The commenter stated that biobased precision cleaners or cleaning agents for clinical cleaning could be developed. However, according to the commenter, it would be counterproductive to place the burden of such development on manufacturers of products and components who do hard-surface cleaning. The commenter stated that until such products have been developed and until cleaning efficacy and product safety has been demonstrated, their use should not be required.

*Response:* USDA agrees with the commenter's general position that biobased specialty precision cleaners and solvents have not been demonstrated to meet every performance need that may be encountered in precision cleaning operations. USDA recognizes that specialty precision cleaners and solvents is a product category with wide-ranging performance demands, depending on the type and end use of the product or surface on which the cleaner is being used. The commenter mentions single use and reusable medical devices as examples of applications where, according to the commenter, biobased specialty precision cleaners may not meet performance requirements. USDA points out that the intent of designating biobased specialty precision cleaners and solvents for Federal procurement preference is not to eliminate the use of traditional cleaners in cases such as those mentioned by the commenter. The intent of the designation is, rather, to require that Federal agencies give preference to biobased specialty precision cleaners and solvents in those cases where such biobased products meet the agency's performance requirements as well as availability and cost considerations. Federal agencies are not required to purchase and use biobased products if the available products are not capable of meeting reasonable performance expectations or are not priced competitively with non-biobased products. Section 9002 is very specific regarding these exceptions. However, USDA encourages Federal agencies to explore available biobased products and communicate with biobased product manufacturers regarding performance and cost issues. Reputable biobased product manufacturers should be willing to work with Federal agencies to resolve issues and they should also recognize that, even with the Federal procurement preference, they will not be successful

if their products do not perform up to expectations.

USDA recognizes that performance is the key factor in making purchasing decisions among the various types of products within most product categories. However, USDA believes that many situations exist where biobased specialty precision cleaners and solvents may perform as well as, or better, than the more traditional petroleum based cleaners and solvents. Thus, USDA believes that the designation of biobased specialty precision cleaners and solvents is consistent with the goals and objectives of the BioPreferred program and has finalized the designation in today's rulemaking.

With regard to the commenter's statements about potential conflicts with EPA VOC rules, USDA has not attempted to address other regulatory requirements for the manufacture or use of biobased products that are alternatives for petroleum based products. Manufacturers and users of biobased alternative products must still be aware of, and comply with, applicable regulations related to environmental, safety, and health concerns. USDA statutory authority for the BioPreferred program allows only the consideration of biobased content, not such factors as ozone depletion, flammability, or exposure limits. Manufacturers of specialty precision cleaners and solvents, or any other biobased product, must address such issues with the agencies having the proper jurisdiction.

USDA agrees with the commenter's position that the primary costs of demonstrating efficacy of cleaning and lack of compatibility issues should be borne by the producers and suppliers of the biobased products. However, USDA believes that the statutory authority for the BioPreferred program addresses this issue. As discussed above, Section 9002 is very specific that Federal agencies are not required to purchase and use biobased products if the available products are not capable of meeting reasonable performance expectations or are not priced competitively with non-biobased products. Thus, the burden to demonstrate to Federal purchasing agents that biobased products are competitive in terms of performance and cost is on the producers and suppliers of the biobased products.

USDA appreciates the commenter's statements concerning the background documentation provided on the BioPreferred Web site. USDA points out that the goal of the "industry investigation" is not necessarily to create a definitive list of biobased

products and their manufacturers, but to confirm that a sufficient number of biobased products are available to support the designation of the product category. To identify available biobased products, USDA often searches for (and lists) all products within a product category, including those that are made from petroleum based ingredients. Also, in performing the background searches to document the availability of biobased products within a product category, USDA often uses search terms that may return products with names or functions that sound similar to the products being investigated but that are actually very different.

After the initial list of products is generated, USDA focuses on gathering specific information from the manufacturers of products that are found to be biobased products that potentially support the designation of the product category. Thus, while USDA acknowledges that the “industry investigation” results can be somewhat misleading, USDA believes that the information used to support the final decision to designate the product category is clearly provided in other background files. For example, the “item designation report” includes biobased content information and the BEES analysis results and the “item summary” lists those products for which USDA obtained product information from the manufacturers.

In response to the commenter’s statement that the background documentation was hard to locate, USDA will consider possible clarifying revisions to the structure or the headings of the information posted on the BioPreferred Web site.

#### *Water Clarifying Agents*

**Comment:** One commenter stated that carbon and other biobased media should be considered as part of the water clarifying agents category. The commenter stated that any of these biobased media require consideration for the BioPreferred status, because of the fact that these are the most capable to achieve the desired end result—treated water.

**Response:** The primary criteria that must be met by products to qualify for the procurement preference under the BioPreferred program is the minimum biobased content established for the product category into which the products fall. Products within the water clarifying agents product category must have a minimum biobased content of at least 92 percent, based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the

finished product. The biobased content must be demonstrated by testing using ASTM D6866.<sup>1</sup> Thus, if the water clarifying agents mentioned by the commenter meet the minimum biobased content criteria, they would qualify for preferred procurement under the BioPreferred program.

#### **IV. Regulatory Information**

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

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

Today’s final rule has been determined by the Office of Management and Budget to be not significant for purposes of Executive Order 12866. We are not able to quantify the annual economic effect associated with today’s final rule. As discussed in the preamble to the proposed rulemaking, USDA made extensive efforts to obtain information on the Federal agencies’ usage within the 12 designated product categories, including their subcategories. These efforts were largely unsuccessful. Therefore, attempts to determine the economic impacts of today’s final rule would require estimation of the anticipated market penetration of biobased products based upon many assumptions. In addition, because agencies have the option of not purchasing biobased products within designated product

categories if price is “unreasonable,” the product is not readily available, or the product does not demonstrate necessary performance characteristics, certain assumptions may not be valid. While facing these quantitative challenges, USDA relied upon a qualitative assessment to determine the impacts of today’s final rule. Consideration was also given to the fact that agencies may choose not to procure designated items due to unreasonable price.

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

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

##### **2. Benefits of the Final Rule**

The designation of these 12 product categories provides the benefits outlined in the objectives of section 9002; to increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products, and to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities. On a national and regional level, today’s final rule can result in expanding and strengthening markets for biobased materials used in these product categories.

##### **3. Costs of the Final Rule**

Like the benefits, the costs of today’s final rule have not been quantified. Two types of costs are involved: Costs to producers of products that will compete with the preferred products and costs to

<sup>1</sup> ASTM D6866, “Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis,” is used to distinguish between carbon from fossil resources (non-biobased carbon) and carbon from renewable sources (biobased carbon). The biobased content is expressed as the percentage of total carbon that is biobased carbon.

Federal agencies to provide procurement preference for the preferred products. Producers of competing products may face a decrease in demand for their products to the extent Federal agencies refrain from purchasing their products. However, it is not known to what extent this may occur. Pre-award procurement costs for Federal agencies may rise minimally as the contracting officials conduct market research to evaluate the performance, availability and price reasonableness of preferred products before making a purchase.

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

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

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

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

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

biobased products represent a small emerging market, only a small percentage of all manufacturers, large or small, are expected to develop and market biobased products. Thus, the number of small businesses manufacturing biobased products affected by this rulemaking is not expected to be substantial.

The preferred procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. Most manufacturers of non-biobased products within the product categories being proposed for designation for Federal preferred procurement in this rule are expected to be included under the following NAICS codes: 325320 (pesticide and other agricultural chemicals manufacturing), 325411 (medicinal and botanical manufacturing), 325412 (pharmaceutical preparation manufacturing), 325510 (paint and coating manufacturing), 325612 (polish and other sanitation goods manufacturing), and 325620 (toilet preparation manufacturing). USDA obtained information on these six NAICS categories from the U.S. Census Bureau's Economic Census database. USDA found that the Economic Census reports about 3,756 companies within these 6 NAICS categories and that these companies own a total of about 4,374 establishments. Thus, the average number of establishments per company is about 1.2. The Census data also reported that of the 4,374 individual establishments, about 4,258 (97.3 percent) have fewer than 500 employees. USDA also found that the overall average number of employees per company among these industries is about 92 and that the pharmaceutical preparation manufacturing segment (with an average of about 250) is the only segment reporting an average of more than 100 employees per company. Thus, nearly all of the businesses fall within the Small Business Administration's definition of a small business (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, but believes that the impact will not be significant. Most of the product categories being designated in this rulemaking are typical consumer products widely used by the general public and by industrial/commercial establishments that are not subject to this rulemaking. Thus, USDA believes that the number of small businesses manufacturing non-biobased products

within the product categories being designated and selling significant quantities of those products to government agencies affected by this rulemaking to be relatively low. Also, this final rule will not affect existing purchase orders and it will not preclude procuring agencies from continuing to purchase non-biobased products when biobased products do not meet the availability, performance, or reasonable price criteria. This final rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials.

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

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

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

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

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

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

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

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

responsibilities among the various government levels.

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

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

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

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

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

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

#### *I. Paperwork Reduction Act*

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

#### *J. E-Government Act Compliance*

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

#### *K. Congressional Review Act*

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

#### **List of Subjects in 7 CFR Part 3201**

Biobased products, Procurement.

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

#### **CHAPTER XXXII—OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT**

#### **PART 3201—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT**

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

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

- 2. Add §§ 3201.88 through 3201.99 to subpart B to read as follows:

Sec.	
3201.88	Agricultural spray adjuvants.
3201.89	Animal cleaning products.
3201.90	Deodorants.
3201.91	Dethatcher products.
3201.92	Fuel conditioners.
3201.93	Leather, vinyl, and rubber care products.
3201.94	Lotions and moisturizers.
3201.95	Shaving products.
3201.96	Specialty precision cleaners and solvents.
3201.97	Sun care products.
3201.98	Wastewater systems coatings.
3201.99	Water clarifying agents.

#### **§ 3201.88 Agricultural spray adjuvants.**

(a) *Definition.* Products mixed in the spray tank with the herbicide, pesticide, or fertilizer formulas that will improve the efficiency and the effectiveness of the chemicals, including sticking agents, wetting agents, etc.

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

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased agricultural spray adjuvants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased agricultural spray adjuvants.

#### **§ 3201.89 Animal cleaning products.**

(a) *Definition.* Products designed to clean, condition, or remove substances from animal hair or other parts of an animal.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 57 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased animal cleaning products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased animal cleaning products.

#### **§ 3201.90 Deodorants.**

(a) *Definition.* Products that are designed for inhibiting or masking perspiration and other body odors and that are often combined with an antiperspirant.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 73 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased deodorants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased deodorants.

#### **§ 3201.91 Dethatchers.**

(a) *Definition.* Products used to remove non-decomposed plant material accumulated in grassy areas.

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

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased dethatchers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased dethatchers.

#### **§ 3201.92 Fuel conditioners.**

(a) *Definition.* Products formulated to improve the performance and efficiency of engines by providing benefits such as removing accumulated deposits, increasing lubricity, removing moisture, increasing the cetane number, and/or preventing microbial growths within the fuel system.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 64 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased fuel conditioners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased fuel conditioners.

#### **§ 3201.93 Leather, vinyl, and rubber care products.**

(a) *Definition.* Products that help clean, nourish, protect, and restore leather, vinyl, and rubber surfaces, including cleaners, conditioners, protectants, polishes, waxes, etc.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 55 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased leather, vinyl, and rubber care products. By that date, Federal agencies that have the

responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased leather, vinyl, and rubber care products.

#### **§ 3201.94 Lotions and moisturizers.**

(a) *Definition.* Creams and oils used to soften and treat damaged skin.

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

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased lotions and moisturizers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased lotions and moisturizers.

#### **§ 3201.95 Shaving products.**

(a) *Definition.* Products designed for every step of the shaving process, including shaving creams, gels, soaps, lotions, and aftershave balms.

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

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased shaving products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased shaving products.

#### **§ 3201.96 Specialty precision cleaners and solvents.**

(a) *Definition.* Cleaners and solvents used in specialty applications. These materials may be used in neat solution, diluted with water, or in hand wiping applications.

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

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased specialty precision cleaners and solvents. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased specialty precision cleaners and solvents.

#### **§ 3201.97 Sun care products.**

(a) *Definition.* Products including sunscreens, sun blocks, and suntan lotions that are topical products that absorb or reflect the sun's ultraviolet radiation to protect the skin.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 53 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased sun care products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased sun care products.

#### **§ 3201.98 Wastewater systems coatings.**

(a) *Definition.* Coatings that protect wastewater containment tanks, liners, roofing, flooring, joint caulking, manholes and related structures from corrosion. Protective coatings may cover the entire system or be used to fill cracks in systems.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 47 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased wastewater systems coatings. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased wastewater systems coatings.



**§ 3201.99 Water clarifying agents.**

(a) *Definition.* Products designed to clarify and improve the quality of water by reducing contaminants such as excess nitrites, nitrates, phosphates, ammonia, and built-up sludge from decaying waste and other organic matter.

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

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased water clarifying agents. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased water clarifying agents.

Dated: November 9, 2012.

**Gregory L. Parham,**

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

[FR Doc. 2012–28045 Filed 11–16–12; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG–2012–0518]

RIN 1625–AA00

#### Safety Zone; Water Main Crossing; Choctawhatchee Bay; Santa Rosa Beach, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard has established a temporary safety zone for a portion of the Gulf Intracoastal Waterway in Choctawhatchee Bay, Santa Rosa Beach, FL. This action is necessary for the protection of persons and vessels, on navigable waters, during the construction of a subaqueous water main. Entry into or transiting in this zone will be prohibited to all vessels, mariners, and persons unless specifically authorized by the Captain of the Port Mobile or a designated representative.

**DATES:** This rule is effective in the CFR on November 19, 2012 through

November 30, 2012. This rule is effective with actual notice for purposes of enforcement on October 12, 2012. This rule will remain in effect through November 30, 2012.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2012–0518. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the “SEARCH” box and click “SEARCH”. Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or email LT Lenell J. Carson, Sector Mobile, Waterways Division, U.S. Coast Guard; telephone 251–441–5940, email [Lenell.J.Carson@uscg.mil](mailto:Lenell.J.Carson@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of Proposed Rulemaking  
GICW Gulf Intracoastal Waterway  
COTP Captain of the Port  
LLNR Light List Number  
TFR Temporary Final Rule

#### A. Regulatory History and Information

The Coast Guard published a NPRM in the **Federal Register** on July 10, 2012 (77 FR 40541), providing proper notice and opportunity to comment on this rule. No comments were received nor were there any requests for a public meeting. The Coast Guard also published a TFR in the **Federal Register** on September 14, 2012 (77 FR 56772).

The Coast Guard is making this rule effective less than 30 days after publication in the **Federal Register** pursuant to authority the Administrative Procedure Act (APA) (5 U.S.C. 533(d)). This provision authorizes an agency to make a rule effective less than 30 days after publication in the **Federal Register** when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after

publication in the **Federal Register**. This action is necessary for the protection of persons and vessels, on navigable waters, during the construction of a subaqueous water main that begun in June 2012. It would be contrary to public interest to delay the effective date of the rule.

#### B. Basis and Purpose

A 36” subaqueous water main is being constructed across the Choctawhatchee Bay to improve water system delivery. The water main will cross the GICW, a federally maintained navigable channel. Construction of the water main and the required use of turbidity silt curtains pose significant safety hazards to both vessels and mariners operating in or near the GICW. The COTP Mobile is establishing a temporary safety zone for a portion of GICW in Choctawhatchee Bay, Santa Rosa Beach, FL. This temporary safety zone is deemed necessary to protect persons and vessels during construction of the water main across the GICW. The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory safety zones.

The COTP anticipates some impact on vessel traffic due to this regulation. However, the temporary safety zone is deemed necessary for the protection of life and property within the COTP Mobile zone.

#### C. Discussion of Comments, Changes and the Temporary Final Rule

The regulatory text for this rule has been amended reflecting an updated effective period and anticipated closure times for the safety zone. The original effective date of September 14, 2012 to October 14, 2012 has been amended to read; October 12, 2012 to November 30, 2012. This amendment is necessary to reflect changes in the project’s timeline due to delays caused by severe tropical weather.

The Coast Guard has established a temporary safety zone for a portion of the GICW in Choctawhatchee Bay from the Highway 331 fixed bridge west to the Red Nun Buoy “26” (LLNR 31510), to include the entire width of the channel. This rule will protect the safety of life and property in this area. Entry into or transiting in this zone will be prohibited to all vessels, mariners, and persons unless specifically authorized by the COTP Mobile or a designated