

## Office of Operations, USDA

## § 2812.10

NOTE: Requests for items in FSC Groups or Classes other than the above should be referred to the agency head for consideration and approval.

(b) Excess personal property/equipment may be donated for cannibalization purposes, provided the donee submits a supporting statement which clearly indicates that cannibalizing the requested property for secondary use has greater potential benefit than utilization of the item in its existing form.

### § 2812.6 Title.

Title to excess personal property/equipment donated under this Part will automatically pass to the donee once the sponsoring agency receives the SF-122 indicating that the donee has received the property.

### § 2812.7 Costs.

Donated excess personal property/equipment is free of charge. However, the donee must pay all costs associated with packaging and transportation, unless the sponsoring agency has made other arrangements. The donee should specify the method of shipment.

### § 2812.8 Accountability and record-keeping.

USDA requires that property requested by a donee be placed into use by the donee within a year of receipt and used for at least 1 year thereafter. Donees must maintain accountable records for such property during this time period.

### § 2812.9 Disposal.

When the property is no longer needed by the donee, it may be used in support of other Federal projects or sold and the proceeds used for technical and scientific education and research activities.

### § 2812.10 Liabilities and losses.

USDA assumes no liability with respect to accidents, bodily injury, illness, or any other damages or loss related to excess personal property/equipment donated under this part. The donee is advised to insure or otherwise protect itself and others as appropriate.



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

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**PART 2900—ESSENTIAL AGRICULTURAL USES AND VOLUMETRIC REQUIREMENTS—NATURAL GAS POLICY ACT**

- Sec.
- 2900.1 General.
- 2900.2 Definitions.
- 2900.3 Essential agricultural uses.
- 2900.4 Natural gas requirements.
- 2900.6 Effective date.

AUTHORITY: Pub. L. 95-621, Nov. 9, 1978.

SOURCE: 44 FR 28786, May 17, 1979, unless otherwise noted.

**§ 2900.1 General.**

Section 401(c) of the Natural Gas Policy Act of 1978 (NGPA) requires the Secretary of Agriculture to determine the essential uses of natural gas, and to certify to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) the natural gas requirements, expressed either as volumes or percentages of use, of persons, or classes thereof, for essential agricultural uses in order to meet requirements of full food and fiber production. This rule covers establishments performing functions classed as essential agricultural uses whose natural gas supplies are distributed through the interstate pipeline systems even though such establishments may receive such gas directly from an intrastate pipeline or local distribution company. The rule provides to the Secretary of Energy (for purposes of Section 401(a) of the NGPA) and to the Federal Energy Regulatory Commission the following certifications:

(a) Essential agricultural uses of natural gas, expressed as classes of establishments that use gas for essential agricultural purposes; and

(b) Essential agricultural current requirements of natural gas, expressed as percentages of use.

**§ 2900.2 Definitions.**

(a) *Full food and fiber production* means the entire output of food and fiber produced for the domestic market, and for export, for building of reserves, and crops for soil building or conservation. This term also includes the processing of food and fiber into stable and storable products, and the

maintenance of food quality after processing.

(b) *Establishment* means an economic unit, generally at a single physical location where business is conducted or where service or industrial operations are performed (for example, a factory, mill, store, mine, farm, sales office, or warehouse). (Note: This is the same definition used in the Standard Industrial Classification Manual, 1972 edition).

(c) *Essential Agricultural Use Establishment* means any Establishment, or the portion of an Establishment, which performs (or has the capability to perform) activities specified in § 2900.3.

(d) *Current Natural Gas Requirements* means the amount of natural gas required by an Essential Agricultural Use Establishment to perform the activities devoted to full food and fiber production.

(Pub. L. 95-621, Nov. 8, 1979, 92 Stat. 3350, 15 U.S.C. 3301 *et seq.*)

[44 FR 28786, May 17, 1979, as amended at 46 FR 47216, Sept. 25, 1981]

**§ 2900.3 Essential agricultural uses.**

For purposes of Section 401(c) of the NGPA the following classes or portions of classes are certified as essential agricultural uses in order to meet the requirements of full food and fiber production:

**Essential Agricultural Uses**

*Industry SIC No. and Industry Description*

FOOD AND NATURAL FIBER PRODUCTION

- 01 Agricultural Production—Crops
- 02 Agricultural Production—Livestock Excluding 0272—Horses and Other Equines, and Nonfood Portions of 0279—Animal Specialties, Not Elsewhere Classified.
- 0723 Crop Preparation Services for Market, Except Cotton Ginning (see fiber processing).
- 4971 Irrigation Systems.

FERTILIZER AND AGRICULTURAL CHEMICALS

(PROCESS AND FEEDSTOCK USE ONLY)

- 1474 Potash, Soda, and Borate Materials.
- 1475 Phosphate Rock.
- 1477 Sulfur.
- 2819 Industrial Inorganic Chemicals, n.e.c. (Agricultural related only).
- 2865 Cyclic Crudes and Cyclic Intermediates, Dyes and Organic Pigments (Agricultural related only).

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- 2869 Industrial Organic Chemicals, n.e.c. (Agricultural related only).
- 287 Agricultural Chemicals.
- 2899 Chemicals and Chemical Preparations, n.e.c. (Salt—Feed grade only).
- 3274 Lime (Agricultural lime only).

### FOOD AND NATURAL FIBER PROCESSING—FOOD

20 Food and Kindred Products Except 2047 Dog, Cat and Other Pet Food, and 2048 Prepared Feeds and Feed Ingredients for Animals and Fowls, Not Elsewhere Classified.

2869 Industrial Organic Chemicals (Monosodium Glutamate, Food-grade Citric Acid and Food-grade Enzymes only).

2899 Chemicals and Chemical Preparations, n.e.c. (Salt for food use only).

### ANIMAL FEEDS, AND FOOD

(Process and Feedstock Use Only)

- 2047 Dog, Cat and Other Pet Food.
- 2048 Prepared Feeds and Feed Ingredients for Animals and Fowls, Not Elsewhere Classified.

### NATURAL FIBER

- 0724 Cotton Ginning.
- 2141 Tobacco Stemming and Redrying.
- 2299 Textile Goods, n.e.c. (wool tops, combing and converting).
- 3111 Leather Tanning and Finishing.

### FOOD QUALITY MAINTENANCE—FOOD PACKAGING

- 2641 Paper Coating and Glazing (food related only).
- 2643 Bags, Except Textile (food related only).
- 2645 Die Cut Paper and Paperboard (food related only).
- 2646 Pressed and Molded Pulp Goods (food related only).
- 2649 Converted Paper Products (food related only).
- 2651 Folding Paperboard Boxes (food related only).
- 2653 Corrugated and Solid Fiber Boxes (food related only).
- 2654 Sanitary Food Containers.
- 2655 Fiber Cans, Tubes, Drums, and Similar Products (food related only).
- 3079 Miscellaneous Plastic Products (food related only).
- 3221 Glass Containers (food related only).
- 3411 Metal Cans (food related only).
- 3412 Metal Shipping Barrels, Drums, Kegs, and Pails (food related only).
- 3466 Metal Crowns and Closures (Food Related Only).
- 3497 Metal Foil and Leaf (food related only).

Petroleum wax, synthetic petroleum wax and polyethylene wax (food grade only) as food containers.

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### MARKETING AND DISTRIBUTION

- 4221 Farm Product Warehousing and Storage.
- 4222 Refrigerated Warehousing.
- 514 Groceries and Related Products.
- 5153 Farm Product Raw Materials—Grain.
- 54 Food Stores.

### ENERGY PRODUCTION

(1) Agricultural production on set-aside acreage or acreage diverted from the production of a commodity (as provided under the Agricultural Act of 1949) to be devoted to the production of any commodity for conversion into alcohol or hydrocarbons for use as motor fuel or other fuels;

(2) Sugar refining for production of alcohol; and

(3) Distillation of fuel-grade alcohol from food grains and other biomass by facilities in existence on June 30, 1980 which do not have the installed capability to burn coal lawfully, for a period ending June 29, 1985.

(Pub. L. 95–621, Nov. 8, 1978, 92 Stat. 3350; 15 U.S.C. 3301 *et seq.*)

[44 FR 28786, May 17, 1979, as amended at 45 FR 5298, Jan. 23, 1980; 45 FR 45887, 45888, July 8, 1980; 45 FR 50550, July 30, 1980; 47 FR 25320, June 11, 1982; 48 FR 43670, Sept. 26, 1983; 49 FR 37733, Sept. 26, 1984]

### § 2900.4 Natural gas requirements.

For purposes of Section 401(c), NGPA, the natural gas requirements for each Essential Agricultural Use Establishment, whether such Essential Agricultural Use Establishment is in existence on the effective date of this rule or comes into existence thereafter, are certified to be 100 percent of Current Natural Gas Requirements.

### § 2900.6 Effective date.

This rule shall become effective on May 14, 1979.

## PART 2901—ADMINISTRATIVE PROCEDURES FOR ADJUSTMENTS OF NATURAL GAS CURTAILMENT PRIORITY

- Sec.
- 2901.1 Purpose and scope.
- 2901.2 Definitions.
- 2901.3 Oral presentation.
- 2901.4 Interpretations.
- 2901.5 Modifications and rescissions.
- 2901.6 Exceptions and exemptions.
- 2901.7 Review of denials.
- 2901.8 Judicial review.
- 2901.9 Effective date.

AUTHORITY: Secs. 502, 507, Pub. L. 95-621, 92 Stat. 3397, 3405, Nov. 9, 1978.

SOURCE: 44 FR 55803, Sept. 28, 1979, unless otherwise noted.

#### § 2901.1 Purpose and scope.

The purpose of this part 2901 is to provide procedures for the making of certain adjustments to the Secretary of Agriculture's Essential Agricultural Uses and Requirements regulations in accordance with section 502(c) of the Natural Gas Policy Act of 1978, in order to prevent special hardship, inequity, or an unfair distribution of burdens. The procedures in this part 2901 apply to any person seeking an interpretation of, modification of, rescission of, exception of, or exemption from the Essential Agricultural Uses and Requirements regulations in part 2900 of this chapter.

#### § 2901.2 Definitions.

(a) *Person* means any individual, firm, sole proprietorship, partnership, association, company, joint venture or corporation.

(b) *Director* means the Director of the Office of Energy, U.S. Department of Agriculture.

(c) *Secretary* means the Secretary of the U.S. Department of Agriculture.

(d) *Adjustment* means an interpretation, modification, rescission of, exception to or exemption from the Essential Agricultural Uses and Requirements regulations, part 2900 of this chapter.

(e) *NGPA* means the Natural Gas Policy Act of 1978, Pub. L. 95-621.

(f) *Petitioner* means any person seeking an adjustment under this part 2901.

#### § 2901.3 Oral presentation.

Any person seeking an adjustment under this part 2901 shall be given an opportunity to make an oral presentation of data, views and arguments in support of the request for an adjustment, provided that a request to make an oral presentation is submitted in writing with the request for the adjustment. An official of the Department of Agriculture shall preside at such oral presentation.

#### § 2901.4 Interpretations.

(a) *Request for an interpretation.* (1) Any person seeking an interpretation of the Essential Agricultural Uses and Requirements regulations in part 2900 shall file a formal written request with the Director. The request should contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the request and to the action sought, and should state the special hardship, inequity, or unfair distribution of burdens that will be prevented by the interpretation sought and why the interpretation is consistent with the purposes of NGPA. The Director shall publish a notice in the FEDERAL REGISTER advising the public that a request for an interpretation has been received and that written comments will be accepted with respect thereto, if received within 20 days of the notice. The FEDERAL REGISTER notice will provide that copies of the request for interpretation from which confidential information has been deleted in accordance with paragraph (a)(2) of this section may be obtained from the petitioner.

(2) If the petitioner wishes to claim confidential treatment for any information contained in the request or other documents submitted under this part 2901, such person shall file together with the document a second copy of the document from which has been deleted the information for which such person wishes to claim confidential treatment. The petitioner shall indicate in the original document that it is confidential or contains confidential information and may file a statement specifying the justification for non-disclosure of the information for which non-disclosure is sought. The Director shall consider such requests, and subject to the Freedom of Information Act, 5 U.S.C. 552 and other applicable laws and regulations, shall treat such information as confidential.

(b) *Investigations.* The Director may initiate an investigation of any statement in a request and utilize in his evaluation any relevant facts obtained in such investigation. The Director may accept submissions from third persons relevant to any request for interpretation provided that the petitioner

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is afforded an opportunity to respond to all such submissions. In evaluating a request for interpretation, the Director may consider any other source of information.

(c) *Applicability.* Any interpretation issued hereunder shall be issued on the basis of the information provided on the request, as supplemented by other information brought to the attention of the Director during the consideration of the request. The interpretation shall, therefore, depend for its authority on the accuracy of the factual statement and may be relied upon only to the extent that the facts of the actual situation correspond to those upon which the interpretation was based.

(d) *Issuance of an interpretation.* Upon consideration of the request for interpretation and other relevant information received or obtained by the Director, the Director may issue a written interpretation. A copy of the written interpretation shall be provided to FERC and the Secretary of Energy. Notice of the issuance of the written interpretation shall be published in the FEDERAL REGISTER. The granting of a request for issuance of an interpretation shall be considered final agency action for purposes of judicial review under § 2901.8.

(e) *Denial of an interpretation.* An interpretation shall be considered denied for purpose of review of such denial under § 2901.7 only if:

(1) The Director notifies the petitioner in writing that the request is denied and that an interpretation will not be issued; or

(2) The Director does not respond to a request for an interpretation, by (i) issuing an interpretation, or (ii) giving notice of when an interpretation will be issued within 45 days of the date of receipt of the request, or within such extended time as the Director may prescribe by written notice within the 45-day period.

(f) For purposes of this part 2901 the word *interpretation* shall not be deemed to include a simple clarification of an actual or purported ambiguity in part 2900. The Director reserves the right to determine whether a request involves simple clarification and shall advise the requester of his decision.

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### § 2901.5 Modifications and rescissions.

(a) *Request for modification or rescission.* (1) Any person seeking a modification or a rescission of the Essential Agricultural Uses and Requirements regulations of part 2900 shall file a formal written request with the Director. The request shall contain a full and complete statement of all relevant facts pertaining to the circumstance, act or transaction that is the subject of the request and to the action sought. The request should state the special hardship, inequity or unfair distribution of burdens that will be prevented by making the modification or rescission.

(2) If the petitioner wishes to claim confidential treatment for any information contained in the request or other documents submitted under this part 2901, such person shall file together with the document a second copy of the document from which has been deleted the information for which such person wishes to claim confidential treatment. The petitioner shall indicate in the original document that it is confidential or contains confidential information and may file a statement specifying the justification for non-disclosure of the information for which non-disclosure is sought. The Director shall consider such requests, and subject to the Freedom of Information Act, 5 U.S.C. 552 and other applicable laws and regulations, shall treat such information as confidential.

(3) The request shall be filed as a petition for rulemaking and treated in accordance with the procedures, as applicable, of 7 CFR part 1, subpart B.

(b) *Institution of rulemaking.* Upon consideration of the request for modification or rescission and other relevant information received or obtained by the Director, the Director may institute rulemaking proceedings in accordance with the Administrative Procedures Act 5 U.S.C. 551 *et seq.* and applicable regulations.

(c) *Denial of a modification or rescission.* If the Director (1) denies the request for modification or rescission in writing by notifying the petitioner that he does not intend to institute rulemaking proceedings as proposed and stating the reasons therefor, or (2) does not respond to a request for a

modification or rescission in accordance with paragraph (b) of this section or (3) notifies the petitioner in writing that the matter is under continuing consideration and that no decision can be made at that time because of the inadequacy of available information, changing circumstances or other reasons as set forth therein, within 45 days of the date of the receipt thereof, or within such extended time as the Director may prescribe by written notice within that 45-day period, the request shall be considered denied for the purpose of review of such denial under § 2901.7.

#### § 2901.6 Exceptions and exemptions.

##### (a) *Request for exception or exemption.*

(1) Any person seeking an exception or exemption from the Essential Agricultural Uses and Requirements regulations in part 2900 shall file a formal written request with the Director. The request shall contain a full and complete statement of all relevant facts pertaining to the circumstance, act, or transaction that is the subject of the request and to the action sought. The request should state the special hardship, inequity or unfair distribution of burdens that will be prevented by making the exception or exemption. The Director shall publish a notice in the FEDERAL REGISTER advising the public that a request for an exception or exemption has been received and that written comments will be accepted with respect thereto if received within 20 days of the notice. The FEDERAL REGISTER notice will provide that copies of the request from which confidential information has been deleted in accordance with paragraph (a)(2) of this section may be obtained from the petitioner. The Petitioner shall be afforded an opportunity to respond to such submissions.

(2) If the petitioner wishes to claim confidential treatment for any information contained in the request or other documents submitted under this part 2901, such person shall file together with the document a second copy of the document from which has been deleted the information for which such person wishes to claim confidential treatment. The petitioner shall indicate in the original document that it

is confidential or contains confidential information and may file a statement specifying the justification for non-disclosure of the information for which non-disclosure is sought. The Director shall consider such requests, and subject to the Freedom of Information Act, 5 U.S.C. 552 and other applicable laws and regulations, shall treat such information as confidential.

(b) *Decision and order.* Upon consideration of the request for an exception or exemption and other relevant information received or obtained during the proceedings, the Director shall issue an order granting or denying the request. The Director shall publish a notice in the FEDERAL REGISTER of the issuance of a decision and order on the request. The granting of a request for an exception or exemption shall be considered final agency action for purposes of judicial review under § 2901.8.

(c) *Denial of an exception or exemption.* A request for an exception or exemption shall be considered denied for purposes of review of such denial under § 2901.7 only if:

(1) The Director has notified the petitioner in writing that the request is denied under paragraph (b) of this section; or

(2) The Director does not respond to a request for an exception or exemption by (i) granting the request for an exception or exemption under paragraph (b) of this section or (ii) giving notice of when a decision will be made within 45 days of the receipt of the request, or with such extended time as the Director may prescribe by written notice within the 45-day period.

#### § 2901.7 Review of denials.

(a) *Request for review.* (1) Any person aggrieved or adversely affected by a denial of a request for any interpretation under § 2901.4 may request a review of the denial by the Secretary, within 30 days from the date of the denial.

(2) Any person aggrieved or adversely affected by a denial of a request for a modification or rescission under § 2901.5, may request a review of the denial by the Secretary within 30 days from the date of the denial.

(3) Any person aggrieved or adversely affected by a denial of a request for an exception or an exemption under

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§ 2901.6, may request a review of the denial by the Secretary within 30 days from the date of the denial.

(b) *Procedures.* Any request for review under § 2901.7(a) shall be in writing and shall set forth the specific ground upon which the request is based. There is no final agency action for purposes of judicial review under § 2901.8 until that request has been acted upon. If the request for review has not been acted upon within 30 days after it is received, the request shall be deemed to have been denied. That denial shall then constitute final agency action for the purpose of judicial review under § 2901.8.

### § 2901.8 Judicial review.

Any person aggrieved or adversely affected by a final agency action taken on a request for an adjustment under this section may obtain judicial review in accordance with section 506 of the Natural Gas Policy Act of 1978.

### § 2901.9 Effective date.

This rule shall become effective on October 29, 1979.

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

### Subpart A—General

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  - 2902.3 Applicability to Federal procurements.
  - 2902.4 Procurement programs.
  - 2902.5 Item designation.
  - 2902.6 Providing product information to Federal agencies.
  - 2902.7 Determining biobased content.
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  - 2902.9 Funding for testing.

### Subpart B—Designated Items

- 2902.10 Mobile equipment hydraulic fluids.
- 2902.11 Roof coatings.
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- 2902.17 Plastic insulating foam for residential and commercial construction.

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- 2902.18 Hand cleaners and sanitizers.
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- 2902.24 Graffiti and grease removers.
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- 2902.29 Disposable cutlery.
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- 2902.31 Greases.
- 2902.32 Dust suppressants.
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- 2902.36 Concrete and asphalt release fluids.
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- 2902.38 Firearm lubricants.
- 2902.39 Floor strippers.
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- 2902.41 Metalworking fluids.
- 2902.42 Wood and concrete sealers.
- 2902.43 Chain and cable lubricants.
- 2902.44 Corrosion preventatives.
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- 2902.46 Forming lubricants.
- 2902.47 Gear lubricants.
- 2902.48 General purpose household cleaners.
- 2902.49 Industrial cleaners.
- 2902.50 Multipurpose cleaners.
- 2902.51 Parts wash solutions.
- 2902.52 Disposable tableware.
- 2902.53 Expanded polystyrene foam recycling products.
- 2902.54 Heat transfer fluids.
- 2902.55 Ink removers and cleaners.
- 2902.56 Mulch and compost materials.
- 2902.57 Multipurpose lubricants.
- 2902.58 [Reserved]
- 2902.59 Topical pain relief products.
- 2902.60 Turbine drip oils.

SOURCE: 70 FR 1809, Jan. 11, 2005, unless otherwise noted.

AUTHORITY: 7 U.S.C. 8102.

### Subpart A—General

#### § 2902.1 Purpose and scope.

(a) *Purpose.* The purpose of the guidelines in this part is to assist procuring agencies in complying with the requirements of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), Public Law 107–171, 116 Stat. 476 (7 U.S.C. 8102), as they apply to the procurement of the items designated in subpart B of this part.

(b) *Scope.* The guidelines in this part designate items that are or can be produced with biobased products and

whose procurement by procuring agencies will carry out the objectives of section 9002 of FSRIA.

[71 FR 42575, July 27, 2006]

### § 2902.2 Definitions.

These definitions apply to this part:

*Agricultural materials.* Agricultural-based, including plant, animal, and marine materials, raw materials or residues used in the manufacture of commercial or industrial, nonfood/nonfeed products.

*ASTM International.* ASTM International, a nonprofit organization organized in 1898, is one of the largest voluntary standards development organizations in the world with about 30,000 members in over 100 different countries. ASTM provides a forum for the development and publication of voluntary consensus standards for materials, products, systems, and services.

*BEES.* An acronym for “Building for Environmental and Economic Sustainability,” an analytic tool used to determine the environmental and health benefits and life cycle costs of items, developed by the U.S. Department of Commerce National Institute of Standards and Technology, with support from the U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics (BEES 3.0, Building for Environmental and Economic Sustainability Technical Manual and User Guide, NISTIR 6916, National Institute of Standards and Technology, U.S. Department of Commerce, October 2002). Also, see [http://www.bfrl.nist.gov/oe/software/bees\\_USDA.html](http://www.bfrl.nist.gov/oe/software/bees_USDA.html) for a discussion of how biobased feedstocks are addressed in the BEES Analysis.

*Biobased components.* Any intermediary biobased materials or parts that, in combination with other components, are functional parts of the biobased product.

*Biobased content.* Biobased content shall be determined based on the amount of biobased carbon in the material or product as a percent of weight (mass) of the total organic carbon in the material or product.

*Biobased product.* A product determined by USDA to be a commercial or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products

or renewable domestic agricultural materials (including plant, animal, and marine materials) or forestry materials.

*Biodegradability.* A quantitative measure of the extent to which a material is capable of being decomposed by biological agents, especially bacteria.

*Biological products.* Products derived from living materials other than agricultural or forestry materials.

*Designated item.* A generic grouping of biobased products identified in subpart B that is eligible for the procurement preference established under section 9002 of FSRIA.

*Diluent.* A substance used to diminish the strength, scent, or other basic property of a substance.

*Engineered wood products.* Products produced with a combination of wood, food fibers and adhesives.

*EPA-designated recovered content product.* A product, designated under the Resource Conservation and Recovery Act, that is subject to Federal procurement as specified in section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962), whereby Federal agencies must give preferred procurement to those products composed of the highest percentage of recovered materials practicable, subject to availability, cost, and performance.

*Federal agency.* Any executive agency or independent establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect’s direction).

*Filler.* A substance added to a product to increase the bulk, weight, viscosity, strength, or other property.

*Forest thinnings.* Refers to woody materials removed from a dense forest, primarily to improve growth, enhance forest health, or recover potential mortality. (To recover potential mortality means to remove trees that are going to die in the near future.)

*Forestry materials.* Materials derived from the practice of planting and caring for forests and the management of growing timber. Such materials must come from short rotation woody crops (less than 10 years old), sustainably managed forests, wood residues, or forest thinnings.

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*Formulated product.* A product that is prepared or mixed with other ingredients, according to a specified formula and includes more than one ingredient.

*FSRIA.* The Farm Security and Rural Investment Act of 2002, Public Law 107–171, 116 Stat. 134 (7 U.S.C. 8102).

*Functional unit.* A measure of product technical performance that provides a common reference to which all environmental and economic impacts of the product are scaled. This reference is necessary to ensure comparability of performance results across competing products. Comparability of results is critical when competing product alternatives are being assessed to ensure that such comparisons are made on a common basis. For example, the functional unit for competing interior paint products may be defined as “protecting one square foot of interior wall surface for 50 years.”

*Ingredient.* A component; part of a compound or mixture; may be active or inactive.

*ISO.* The International Organization for Standardization, a network of national standards institutes from 145 countries working in partnership with international organizations, governments, industries, business, and consumer representatives.

*Neat product.* A product that is made of only one ingredient and is not diluted or mixed with other substances.

*Procuring agency* means any Federal agency that is using Federal funds for procurement or any person contracting with any Federal agency with respect to work performed under the contract.

*Relative price.* The price of a product as compared to the price of other products on the market that have similar performance characteristics.

*Residues.* That which remains after a part is taken, separated, removed, or designated; a remnant; a remainder; and, for this purpose, is from agricultural materials, biological products, or forestry materials.

*Secretary.* The Secretary of the United States Department of Agriculture.

*Small and emerging private business enterprise.* Any private business which will employ 50 or fewer new employees and has less than \$1 million in projected annual gross revenues.

*Sustainably managed forests.* Refers to the practice of a land stewardship ethic that integrates the reforestation, management, growing, nurturing, and harvesting of trees for useful products while conserving soil and improving air and water quality, wildlife, fish habitat, and aesthetics.

[70 FR 1809, Jan. 11, 2005, as amended at 71 FR 13704, Mar. 16, 2006; 71 FR 42575, July 27, 2006]

#### § 2902.3 Applicability to Federal procurements.

(a) *Applicability to procurement actions.* The guidelines in this part apply to all procurement actions by procuring agencies involving items designated by USDA in this part, where the procuring agency purchases \$10,000 or more worth of one of these items during the course of a fiscal year, or where the quantity of such items or of functionally equivalent items purchased during the preceding fiscal year was \$10,000 or more. The \$10,000 threshold applies to Federal agencies as a whole rather than to agency subgroups such as regional offices or subagencies of a larger Federal department or agency.

(b) *Exception for procurements subject to EPA regulations under the Solid Waste Disposal Act.* For any procurement by any procuring agency that is subject to regulations of the Administrator of the Environmental Protection Agency under section 6002 of the Solid Waste Disposal Act as amended by the Resource Conservation Act of 1976 (40 CFR part 247), these guidelines do not apply to the extent that the requirements of this part are inconsistent with such regulations.

(c) *Procuring items composed of highest percentage of biobased products.* FSRIA section 9002(c)(1) requires procuring agencies to procure designated items composed of the highest percentage of biobased products practicable or such items that comply with the regulations issued under section 103 of Public Law 100–556 (42 U.S.C. 6914b–1), consistent with maintaining a satisfactory level of competition, considering these guidelines. Procuring agencies may decide not to procure such items if they are not reasonably priced or readily

available or do not meet specified or reasonable performance standards.

(d) This guideline does not apply to purchases of designated items that are unrelated to or incidental to Federal funding; *i.e.*, not the direct result of a contract or agreement with persons supplying items to a procuring agency or providing support services that include the supply or use of items.

(e) *Exemptions.* The following applications are exempt from the preferred procurement requirements of this part:

(1) Military equipment: Products or systems designed or procured for combat or combat-related missions.

(2) Spacecraft systems and launch support equipment.

[71 FR 42575, July 27, 2006, as amended at 73 FR 27953, May 14, 2008]

#### § 2902.4 Procurement programs.

(a) *Integration into the Federal procurement framework.* The Office of Federal Procurement Policy, in cooperation with USDA, has the responsibility to coordinate this policy's implementation in the Federal procurement regulations. These guidelines are not intended to address full implementation of these requirements into the Federal procurement framework. This will be accomplished through revisions to the Federal Acquisition Regulation.

(b) *Federal agency preferred procurement programs.* (1) On or before January 11, 2006, each Federal agency shall develop a procurement program which will assure that items composed of biobased products will be purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement laws. Each procurement program shall contain:

(i) A preference program for purchasing designated items.

(ii) A promotion program to promote the preference program; and

(iii) Provisions for the annual review and monitoring of the effectiveness of the procurement program.

(2) In developing the preference program, Federal agencies shall adopt one of the following options, or a substantially equivalent alternative, as part of the procurement program:

(i) A policy of awarding contracts to the vendor offering a designated item

composed of the highest percentage of biobased product practicable except when such items:

(A) Are not available within a reasonable time;

(B) Fail to meet performance standards set forth in the applicable specifications, or the reasonable performance standards of the Federal agency; or

(C) Are available only at an unreasonable price.

(ii) A policy of setting minimum biobased products content specifications in such a way as to assure that the biobased products content required is consistent with section 9002 of FSRIA and the requirements of the guidelines in this part except when such items:

(A) Are not available within a reasonable time;

(B) Fail to meet performance standards for the use to which they will be put, or the reasonable performance standards of the Federal agency; or

(C) Are available only at an unreasonable price.

(3) In implementing the preference program, Federal agencies shall treat as eligible for the preference biobased products from "designated countries," as that term is defined in section 25.003 of the Federal Acquisition Regulation, provided that those products otherwise meet all requirements for participation in the preference program.

(c) *Procurement specifications.* After the publication date of each designated item, Federal agencies that have the responsibility for drafting or reviewing specifications for items procured by Federal agencies shall ensure within a specified time frame that their specifications require the use of designated items composed of biobased products, consistent with the guidelines in this part. USDA will specify the allowable time frame in each designation rule. The biobased content of a designated item may vary considerably from product to product based on the mix of ingredients used in its manufacture. In procuring designated items, the percentage of biobased product content should be maximized, consistent with

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achieving the desired performance for the product.

[70 FR 1809, Jan. 11, 2005, as amended at 71 FR 42575, July 27, 2006]

### § 2902.5 Item designation.

(a) *Procedure.* Designated items are listed in subpart B. In designating items, USDA will designate items composed of generic groupings of specific products and will identify the minimum biobased content for each listed item. As items are designated for procurement preference, they will be added to subpart B. Items are generic groupings of specific products. Products are specific products offered for sale by a manufacturer or vendor. Although manufacturers and vendors may submit recommendations to USDA for future item designations at any time, USDA does not have a formal process for such submissions or for responding to such submissions.

(b) *Considerations.* In designating items, USDA will consider the availability of such items and the economic and technological feasibility of using such items, including life cycle costs. USDA will gather information on individual products within an item and extrapolate that product information to the item level for consideration in designating items. In considering these factors, USDA will use life cycle cost information only from tests using the BEES analytical method.

(c) *Exclusions.* (1) Motor vehicle fuels and electricity are excluded by statute from this program.

(2) USDA additionally will not designate items for preferred procurement that are determined to have mature markets. USDA will determine mature market status by whether the item had significant national market penetration in 1972.

### § 2902.6 Providing product information to Federal agencies.

(a) *Informational Web site.* An informational USDA Web site implementing section 9002 can be found at: <http://www.biobased.oce.usda.gov>. USDA will maintain a voluntary Web-based information site for manufacturers and vendors of designated items produced with biobased products and Federal agencies to exchange product information. This

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Web site will provide information as to the availability, relative price, biobased content, performance and environmental and public health benefits of the designated items. USDA encourages manufacturers and vendors to provide product, business contacts, and product information for designated items. Instructions for posting information are found on the Web site itself. USDA also encourages Federal agencies to utilize this Web site to obtain current information on designated items, contact information on manufacturers and vendors, and access to information on product characteristics relevant to procurement decisions. In addition to any information provided on the Web site, manufacturers and vendors are expected to provide relevant information to Federal agencies, upon request, with respect to product characteristics, including verification of such characteristics if requested.

(b) *Advertising, labeling and marketing claims.* Manufacturers and vendors are reminded that their advertising, labeling, and other marketing claims, including claims regarding health and environmental benefits of the product, must conform to the Federal Trade Commission Guides for the Use of Environmental Marketing Claims, 16 CFR part 260.

### § 2902.7 Determining biobased content.

(a) *Certification requirements.* For a product offered for preferred procurement, manufacturers and vendors must certify that the product meets the biobased content requirements for the designated item within which the product falls. Paragraph (c) of this section addresses how to determine biobased content. Upon request, manufacturers and vendors must provide USDA and Federal agencies information to verify biobased content for products certified to qualify for preferred procurement.

(b) *Minimum biobased content.* Unless specified otherwise in the designation of a particular item, the minimum biobased content requirements in a specific item designation refer to the biobased portion of the product, and not the entire product.

(c) *Determining biobased content.* Verification of biobased content must be based on third party ASTM/ISO

compliant test facility testing using the ASTM International Radioisotope Standard Method D 6866. ASTM International Radioisotope Standard Method D 6866 determines biobased content based on the amount of biobased carbon in the material or product as percent of the weight (mass) of the total organic carbon in the material or product.

(d) *Products with the same formulation.* In the case of products that are essentially the same formulation, but marketed under a variety of brand names, biobased content test data need not be brand-name specific.

**§ 2902.8 Determining life cycle costs, environmental and health benefits, and performance.**

(a) *Providing information on life cycle costs and environmental and health benefits.* When requested by Federal agencies, manufacturers and vendors must provide information on life cycle costs and environmental and health benefits based on tests using either of two analytical approaches: The BEES analytical tool along with the qualifications of the independent testing entity that performed the tests; or either a third-party or an in-house conducted analysis using the ASTM standard for evaluating and reporting on environmental performance of biobased products D7075. Both BEES and the ASTM standard are in accordance with ISO standards, are focused on testing of biobased products, and will provide the life cycle assessment and life cycle cost information Federal agencies might require. As with biobased content, test data using the above analytical methods need not be brand-name specific.

(b) *Performance test information.* In assessing performance of qualifying biobased products, USDA requires that procuring agencies rely on results of performance tests using applicable ASTM, ISO, Federal or military specifications, or other similarly authoritative industry test standards. Such testing must be conducted by an ASTM/ISO compliant laboratory. The procuring official will decide whether performance data must be brand-name specific in the case of products that are essentially of the same formulation.

(c) *Biodegradability information.* If biodegradability is claimed by the manufacturer of a qualifying biobased product as a characteristic of that product, USDA requires that, if requested by procuring agencies, these claims be verified using the appropriate, product-specific ASTM biodegradability standard(s). Such testing must be conducted by an ASTM/ISO-compliant laboratory. The procuring official will decide whether biodegradability data must be brand-name specific in the case of products that are essentially of the same formulation. ASTM biodegradability standards include:

(1) D5338 “Standard Test Method for Determining Aerobic Biodegradation of Plastic Materials Under Controlled Composting Conditions”;

(2) D5864 “Standard Test Method for Determining the Aerobic Aquatic Biodegradation of Lubricants or Their Components”;

(3) D6006 “Standard Guide for Assessing Biodegradability of Hydraulic Fluids”;

(4) D6400 “Standard Specification for Compostable Plastics” and the standards cited therein;

(5) D6139 “Standard Test Method for Determining the Aerobic Aquatic Biodegradation of Lubricants or Their Components Using the Gledhill Shake Flask”;

(6) D6868 “Standard Specification for Biodegradable Plastics Used as Coatings on Paper and Other Compostable Substrates”; and

(7) D7081 “Standard Specification for Non-Floating Biodegradable Plastics in the Marine Environment.”

[70 FR 1809, Jan. 11, 2005, as amended at 71 FR 13704, Mar. 16, 2006; 71 FR 42575, July 27, 2006]

**§ 2902.9 Funding for testing.**

(a) *USDA use of funds for biobased content and BEES testing.* USDA will use funds to support testing for biobased content and conduct of BEES testing for products within items USDA has selected to designate for preferred procurement through early regulatory action. USDA initially will focus on gathering the necessary test information on a sufficient number of products within an item (generic grouping of products)

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to support regulations to be promulgated to designate an item or items for preferred procurement under this program. USDA may accept cost sharing for such testing to the extent consistent with USDA product testing decisions. During this period USDA will not consider cost sharing in deciding what products to test. When USDA has concluded that a critical mass of items have been designated, USDA will exercise its discretion, in accordance with the competitive procedures outlined in paragraph (b) of this section, to allocate a portion of the available USDA testing funds to give priority to testing of products for which private sector firms provide cost sharing for the testing.

(b) *Competitive program for cost sharing for determining life cycle costs, environmental and health benefits, and performance.* (1) Subject to the availability of funds and paragraph (a) of this section, USDA will announce annually the solicitation of proposals for cost sharing for life cycle costs, environmental and health benefits, and performance testing of biobased products in accordance with the standards set forth in § 2902.8 to carry out this program. Information regarding the submission of proposals for cost sharing also will be posted on the USDA informational Web site, <http://www.biobased.ocs.usda.gov>.

(2) Proposals will be evaluated and assigned a priority rating. Priority ratings will be based on the following criteria:

(i) A maximum of 25 points will be awarded a proposal based on the market readiness;

(ii) A maximum of 20 points will be awarded a proposal based on the potential size of the market for that product in Federal agencies;

(iii) A maximum of 25 points will be awarded based on the financial need for assistance of the manufacturer or vendor;

(iv) A maximum of 20 points will be awarded a proposal based on the product's prospective competitiveness in the market place;

(v) A maximum of 10 points will be awarded a proposal based on its likely benefit to the environment.

(3) Cost-sharing proposals will be considered first for high priority prod-

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ucts of small and emerging private business enterprises. If funds remain to support further testing, USDA will consider cost sharing proposals for products of all other producers of biobased items as well as the remaining proposals for products of small and emerging private business enterprises. Proposals will be selected based on priority rating until available funds for the fiscal year are committed.

(4)(i) For products selected for life cycle costs and environmental and health benefits testing under this paragraph, USDA could provide up to 50 percent of the cost of determining the life cycle costs and environmental and health effects, up to a maximum of \$5,000 of assistance per product.

(ii) For products selected for performance testing under this paragraph, USDA could provide up to 50 percent of the cost for performance testing, up to \$100,000 of assistance per product for up to two performance tests (measures of performance) per product.

(5) For selected proposals, USDA will enter into agreements with and provide the funds directly to the testing entities.

(6) Proposals submitted in one fiscal year, but not selected for cost sharing of testing in that year, may be resubmitted to be considered for cost sharing in the following year.

### Subpart B—Designated Items

SOURCE: 71 FR 13705, Mar. 16, 2006, unless otherwise noted.

#### § 2902.10 Mobile equipment hydraulic fluids.

(a) *Definition.* Hydraulic fluids formulated for general use in non-stationary equipment, such as tractors, end loaders, or backhoes.

(b) *Minimum biobased content.* The minimum biobased content is 44 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference effective date.* No later than March 16, 2007, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased mobile equipment

hydraulic fluids. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased mobile equipment hydraulic fluids.

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

NOTE TO PARAGRAPH (d): Mobile equipment hydraulic fluid products within this designated item can compete with similar lubricating oils containing re-refined oil. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated lubricating oils containing re-refined oil as items 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.

[71 FR 13705, Mar. 16, 2006, as amended at 73 FR 27953, May 14, 2008]

#### § 2902.11 Roof coatings.

(a) *Definition.* Coatings formulated for use in commercial roof deck systems to provide a single-coat monolith coating system.

(b) *Minimum biobased content.* The minimum biobased content is 20 percent and shall be based on the entire product.

(c) *Preference effective date.* No later than March 16, 2007, procuring agencies, in accordance with this part, will

give a procurement preference for qualifying biobased roof coatings. 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 roof coatings.

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

NOTE TO PARAGRAPH (d): Roof coating products within this designated item can compete with similar roofing material products. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated roofing material containing recycled material as items 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.

[71 FR 13705, Mar. 16, 2006, as amended at 73 FR 27953, May 14, 2008]

#### § 2902.12 Water tank coatings.

(a) *Definition.* Coatings formulated for use in potable water storage systems.

(b) *Minimum biobased content.* The minimum biobased content is 59 percent and shall be based on the entire product.

(c) *Preference effective date.* No later than November 20, 2007, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased water tank coatings. By that date, Federal agencies

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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 water tank coatings.

[71 FR 13705, Mar. 16, 2006, as amended at 71 FR 67032, Nov. 20, 2006]

### § 2902.13 Diesel fuel additives.

(a) *Definition.* (1) Any substance, other than one composed solely of carbon and/or hydrogen, that is intentionally added to diesel fuel (including any added to a motor vehicle's fuel system) and that is not intentionally removed prior to sale or use.

(2) Neat biodiesel, also referred to as B100, when used as an additive. Diesel fuel additive does not mean neat biodiesel when used as a fuel or blended biodiesel fuel (e.g., B20).

(b) *Minimum biobased content.* The minimum biobased content is 90 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference effective date.* No later than March 16, 2007, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased diesel fuel additives. 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 diesel fuel additives.

[71 FR 13705, Mar. 16, 2006, as amended at 73 FR 27953, May 14, 2008]

### § 2902.14 Penetrating lubricants.

(a) *Definition.* Products formulated to provide light lubrication and corrosion resistance in close tolerant internal and external applications including frozen nuts and bolts, power tools, gears, valves, chains, and cables.

(b) *Minimum biobased content.* The minimum biobased content is 68 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference effective date.* No later than March 16, 2007, procuring agen-

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cies, in accordance with this part, will give a procurement preference for qualifying biobased penetrating lubricants. 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 penetrating lubricants.

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

NOTE TO PARAGRAPH (d): Penetrating lubricant products within this designated item can compete with similar re-refined lubricating oil products. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated re-refined lubricating oils containing recycled material as items 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.

[71 FR 13705, Mar. 16, 2006, as amended at 73 FR 27953, May 14, 2008]

### § 2902.15 Bedding, bed linens, and towels.

(a) *Definition.* (1) Bedding is that group of woven cloth products used as coverings on a bed. Bedding includes products such as blankets, bedspreads, comforters, and quilts.

(2) Bed linens are woven cloth sheets and pillowcases used in bedding.

(3) Towels are woven cloth products used primarily for drying and wiping.

(b) *Minimum biobased content.* The minimum biobased content is 12 percent and shall be based on the amount of qualifying biobased carbon in the finished product as a percent of the weight (mass) of the total organic carbon in the finished product. The 12 percent biobased content must be of a qualifying biobased feedstock. Cotton, wool, linen, and silk are not qualifying biobased feedstocks for the purpose of determining the biobased content of bedding, bed linens, and towels.

(c) *Preference effective date.* No later than November 20, 2007, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased bedding, bed linens, and towels. 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 bedding, bed linens, and towels.

[71 FR 13705, Mar. 16, 2006, as amended at 71 FR 67032, Nov. 20, 2006]

**§ 2902.16 Adhesive and mastic removers.**

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

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 58 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 May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased adhesive and mastic removers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased adhesive and mastic removers.

[73 FR 27953, May 14, 2008]

**§ 2902.17 Plastic insulating foam for residential and commercial construction.**

(a) *Definition.* Spray-in-place plastic foam products designed to provide a sealed thermal barrier for residential or commercial construction applications.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 7 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 May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased plastic insulating foam for residential and commercial construction. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased plastic insulating foam for residential and commercial construction.

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

NOTE TO PARAGRAPH (d): Biobased insulating products within this designated item can compete with similar insulating products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental

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Protection Agency designated building insulation containing recovered materials as items 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. EPA provides recovered materials content recommendations for building insulation products in the Recovered Materials Advisory Notice (RMAN) published for these products. The RMAN recommendations can be found by accessing EPA's Web site <http://www.epa.gov/epaoswer/non-hw/procure/products.htm> and then clicking on the appropriate product name.

[73 FR 27953, May 14, 2008]

## § 2902.18 Hand cleaners and sanitizers.

(a) *Definitions.* (1) *Hand cleaners.* Products formulated for personal care use in removing a variety of different soils, greases, and similar substances from human hands with or without the use of water.

(2) *Hand sanitizers.* Products formulated for personal care use in removing bacteria from human hands with or without the use of water. Personal care products that are formulated for use in removing a variety of different soils, greases and similar substances and bacteria from human hands with or without the use of water are classified as hand sanitizers for the purposes of this rule.

(b) *Minimum biobased content.* The minimum biobased content requirement for all hand cleaners and/or sanitizers shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents are:

(1) Hand cleaners—64 percent.

(2) Hand sanitizers (including hand cleaners and sanitizers)—73 percent.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased hand cleaners and sanitizers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased hand cleaners and sanitizers.

[73 FR 27953, May 14, 2008]

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## § 2902.19 Composite panels.

(a) *Definitions.* (1) *Plastic lumber composite panels.* Engineered products suitable for non-structural outdoor needs such as exterior signs, trash can holders, and dimensional letters.

(2) *Acoustical composite panels.* Engineered products designed for use as structural and sound deadening material suitable for office partitions and doors.

(3) *Interior panels.* Engineered products designed specifically for interior applications and providing a surface that is impact-, scratch-, and wear-resistant and that does not absorb or retain moisture.

(4) *Structural interior panels.* Engineered products designed for use in structural construction applications, including cabinetry, casework, paneling, and decorative panels.

(5) *Structural wall panels.* Engineered products designed for use in structural walls, curtain walls, floors and flat roofs in commercial buildings.

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

(1) Plastic lumber composite panels—23 percent.

(2) Acoustical composite panels—37 percent.

(3) Interior panels—55 percent.

(4) Structural interior panels—89 percent.

(5) Structural wall panels—94 percent.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased composite panels. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased composite panels.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases,

overlap with the following EPA-designated recovered content products: Laminated Paperboard and Structural Fiberboard; Shower and Restroom Dividers; and Signage. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated laminated paperboard, structural fiberboard, shower and restroom dividers, and signage, and which product should be afforded the preference in purchasing.

NOTE TO PARAGRAPH (d): Composite panel products within this designated item can be made with recycled material. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated laminated paperboard and structural fiberboard, shower and restroom dividers, and signage containing recovered materials as items 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. EPA provides recovered materials content recommendations for laminated paperboard and structural fiberboard, shower and restroom dividers, and signage in the Recovered Materials Advisory Notice (RMAN) published for these products. The RMAN recommendations can be found by accessing EPA's Web site <http://www.epa.gov/epaoswer/non-hw/procure/products.htm> and then clicking on the appropriate product name.

[73 FR 27953, May 14, 2008]

#### § 2902.20 Fluid-filled transformers.

(a) *Definition.* (1) *Synthetic ester-based fluid-filled transformers.* Electric power transformers that are designed to utilize a synthetic ester-based dielectric (non-conducting) fluid to provide insulating and cooling properties.

(2) *Vegetable oil-based fluid-filled transformers.* Electric power transformers that are designed to utilize a vegetable oil-based dielectric (non-conducting) fluid to provide insulating and cooling properties.

(b) *Minimum biobased content.* The minimum biobased content requirement for all fluid-filled transformers shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents are:

(1) Synthetic ester-based fluid-filled transformers—66 percent.

(2) Vegetable oil-based fluid-filled transformers—95 percent.

(c) *Preference compliance date.* (1) *Synthetic ester-based fluid-filled transformers.* Determination of the compliance date for synthetic ester-based fluid-filled transformers is deferred until USDA identifies two or more manufacturers of synthetic ester-based fluid-filled transformers. At that time, USDA will publish a document in the FEDERAL REGISTER announcing that Federal agencies have one year from the date of publication to give procurement preference to biobased synthetic ester-based fluid-filled transformers.

(2) *Vegetable oil-based fluid-filled transformers.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased vegetable oil-based fluid-filled transformers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased vegetable oil-based fluid-filled transformers.

[73 FR 27953, May 14, 2008]

#### § 2902.21 Disposable containers.

(a) *Definition.* Products designed to be used for temporary storage or transportation of materials including, but not limited to, food items.

(b) *Minimum biobased content.* The preferred procurement product must have a 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 weight (mass) of the total organic carbon in the finished product.

(c) *Biodegradability.* At the time a manufacturer offers a product under this item for Federal purchase under

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the BioPreferred Program, the preferred procurement product must be capable of meeting the current version of ASTM D6400 if disposed of in a non-marine environment, the current version of ASTM D7081 if disposed of in a marine environment, or other appropriate and applicable standard for biodegradability.

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

NOTE TO PARAGRAPH (d): Disposable containers can include boxes and packaging made from paper. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated paper and paper products containing recovered materials as items 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. EPA provides recovered materials content recommendations for paper and paper products in the Recovered Materials Advisory Notice (RMAN) published for these products. The RMAN recommendations can be found on EPA's Web site <http://www.epa.gov/epaoswer/non-hw/procure/products.htm> and then clicking on the appropriate product name.

(e) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased disposable containers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that

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the relevant specifications require the use of biobased disposable containers.

[73 FR 27953, May 14, 2008]

### § 2902.22 Fertilizers.

(a) *Definition.* Products formulated or processed to provide nutrients for plant growth and/or beneficial bacteria to convert nutrients into plant usable forms. Biobased fertilizers, which are likely to consist mostly of biobased components, may include both biobased and chemical components.

NOTE TO PARAGRAPH (a): Biobased fertilizers, as well as other fertilizers, may be made with recycled hazardous waste. Such fertilizers need to meet applicable land disposal restriction standards for any hazardous constituents they contain, as required under 40 CFR 266.20(d).

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

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased fertilizers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased fertilizers.

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

product overlaps with EPA-designated fertilizer product and which product should be afforded the preference in purchasing.

NOTE TO PARAGRAPH (d): Fertilizers within this designated item can be made with recycled materials. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated fertilizers containing recovered materials as items 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. EPA provides recovered materials content recommendations for fertilizers in the Recovered Materials Advisory Notice (RMAN) published for these products. The RMAN recommendations can be found by accessing EPA's Web site <http://www.epa.gov/epaoswer/non-hw/procure/products.htm> and then clicking on the appropriate product name.

[73 FR 27953, May 14, 2008]

#### § 2902.23 Sorbents.

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

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 89 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 May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased sorbents. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased sorbents.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the EPA-designated recovered content product: Sorbents. USDA is requesting that manufacturers of these qualifying biobased prod-

ucts provide information on the Bio-Preferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated sorbents and which product should be afforded the preference in purchasing.

NOTE TO PARAGRAPH (d): Sorbents within this designated item can be made with recycled materials. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated sorbents containing recovered materials as items 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. EPA provides recovered materials content recommendations for sorbents in the Recovered Materials Advisory Notice (RMAN) published for these products. The RMAN recommendations can be found by accessing EPA's Web site <http://www.epa.gov/epaoswer/non-hw/procure/products.htm> and then clicking on the appropriate product name.

[73 FR 27953, May 14, 2008]

#### § 2902.24 Graffiti and grease removers.

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

(b) *Minimum biobased content.* The preferred procurement product must have a 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 weight (mass) of the total organic carbon in the finished product. If the finished product is to be diluted before use, the biobased content of the remover must be determined before dilution.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying graffiti and grease removers. By that date, Federal agencies

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that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased graffiti and grease removers.

[73 FR 27953, May 14, 2008]

### § 2902.25 2-Cycle engine oils.

(a) *Definition.* Lubricants designed for use in 2-cycle engines to provide lubrication, decreased spark plug fouling, reduced deposit formation, and/or reduced engine wear.

(b) *Minimum biobased content.* The preferred procurement product must have a 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 weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased 2-cycle engine oils. 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 2-cycle engine oils.

[73 FR 27973, May 14, 2008]

### § 2902.26 Lip care products.

(a) *Definition.* Personal care products formulated to replenish the moisture and/or prevent drying of the lips.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 82 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 May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased lip care products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant

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specifications require the use of biobased lip care products.

[73 FR 27973, May 14, 2008]

### § 2902.27 Films.

(a) *Definition.* (1) Products that are used in packaging, wrappings, linings, and other similar applications.

(2) Films for which preferred procurement applies are:

(i) *Semi-durable films.* Films that are designed to resist water, ammonia, and other compounds, to be re-used, and to not readily biodegrade. Products in this item are typically used in the production of bags and packaging materials.

(ii) *Non-durable films.* Films that are intended for single use for short-term storage or protection before being discarded. Non-durable films that are designed to have longer lives when used are included in this item.

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

(1) Semi-durable films—45 percent.

(2) Non-durable films—85 percent.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased semi-durable and non-durable films. 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 semi-durable and non-durable films.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying products within the semi-durable films subcategory may overlap with the EPA-designated recovered content product: Plastic trash bags. USDA is requesting that manufacturers of these qualifying biobased products provide information for the Bio-Preferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to

biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated plastic trash bags and which product should be afforded the preference in purchasing.

NOTE TO PARAGRAPH (d): Biobased semi-durable film products within this designated item can compete with plastic trash bag products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated plastic trash bags containing recovered materials as items 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. EPA provides recovered materials content recommendations for plastic trash bags in the May 1, 1995, Recovered Materials Advisory Notice (RMAN I). The RMAN recommendations can be found on EPA's Web site <http://www.epa.gov/epaoswer/non-hw/procure/products.htm> and then clicking on the appropriate product name.

[73 FR 27973, May 14, 2008]

#### § 2902.28 Stationary equipment hydraulic fluids.

(a) *Definition.* Fluids formulated for use in stationary hydraulic equipment systems that have various mechanical parts, such as cylinders, pumps, valves, pistons, and gears, that are used for the transmission of power (and also for lubrication and/or wear, rust, and oxidation protection).

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 44 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 May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased stationary equipment hydraulic fluids. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased stationary equipment hydraulic fluids.

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

NOTE TO PARAGRAPH (d): Stationary equipment hydraulic fluid products within this designated item can compete with hydraulic fluid products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated re-refined lubricating oils containing recovered materials as items 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. EPA provides recovered materials content recommendations for re-refined lubricating oils in the May 1, 1995, Recovered Materials Advisory Notice (RMAN I). The RMAN recommendations can be found by accessing EPA's Web site <http://www.epa.gov/epaoswer/non-hw/procure/products.htm> and then clicking on the appropriate product name.

[73 FR 27973, May 14, 2008]

#### § 2902.29 Disposable cutlery.

(a) *Definition.* Hand-held, disposable utensils designed for one-time use in eating food.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 48 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 May 14, 2009, procuring agencies, in accordance with this part, will

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give a procurement preference for qualifying biobased disposable cutlery. 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 disposable cutlery.

[73 FR 27973, May 14, 2008]

### § 2902.30 Glass cleaners.

(a) *Definition.* Cleaning products designed specifically for use in cleaning glass surfaces, such as windows, mirrors, car windows, and computer monitors.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 49 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. If the finished product is to be diluted before use, the biobased content of the cleaner must be determined before dilution.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased glass cleaners. 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 glass cleaners.

[73 FR 27973, May 14, 2008]

### § 2902.31 Greases.

(a) *Definitions.* (1) Lubricants composed of oils thickened to a semisolid or solid consistency using soaps, polymers or other solids, or other thickeners.

(2) Greases for which preferred procurement applies are:

(i) *Food grade greases.* Lubricants that are designed for use on food-processing equipment as a protective anti-rust film, as a release agent on gaskets or seals of tank closures, or on machine parts and equipment in locations in which there is exposure of the lubricated part to food.

(ii) *Multipurpose greases.* Lubricants that are designed for general use.

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(iii) *Rail track greases.* Lubricants that are designed for use on railroad tracks or heavy crane tracks.

(iv) *Truck greases.* Lubricants that are designed for use on the fifth wheel of tractor trailer trucks onto which the semi-trailer rests and pivots.

(v) *Greases not elsewhere specified.* Lubricants that meet the general definition of greases as defined in paragraph (a)(1) of this section, but are not otherwise covered by paragraphs (a)(2)(i) through (iv) of this section.

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

(1) Food grade grease—42 percent.

(2) Multipurpose grease—72 percent.

(3) Rail track grease—30 percent.

(4) Truck grease—71 percent.

(5) Greases not elsewhere specified—75 percent.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased greases. 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 greases.

[73 FR 27973, May 14, 2008]

### § 2902.32 Dust suppressants.

(a) *Definition.* Products formulated to reduce or eliminate the spread of dust associated with gravel roads, dirt parking lots, or similar sources of dust, including products used in equivalent indoor applications.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 85 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. If the finished product is to be diluted before use, the biobased content of the suppressant must be determined before dilution.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased dust suppressants. 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 dust suppressants.

[73 FR 27973, May 14, 2008]

#### § 2902.33 Carpets.

(a) *Definition.* Floor coverings composed of woven, tufted, or knitted fiber and a backing system.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 7 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 May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased carpet. 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 carpet.

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

NOTE TO PARAGRAPH (d): Biobased carpets within this designated item can compete with polyester carpet products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated carpets (polyester) containing recovered materials as items 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. EPA provides recovered materials content recommendations for carpets (polyester) in the May 1, 1995, Recovered Materials Advisory Notice (RMAN I). The RMAN recommendations can be found on EPA's Web site <http://www.epa.gov/epaoswer/non-hw/procure/products.htm> and then clicking on the appropriate product name.

[73 FR 27973, May 14, 2008]

#### § 2902.34 Carpet and upholstery cleaners.

(a) *Definition.* (1) Cleaning products formulated specifically for use in cleaning carpets and upholstery, through a dry or wet process, found in locations such as houses, cars, and workplaces.

(2) Carpet and upholstery cleaners for which preferred procurement applies are:

(i) *General purpose cleaners.* Carpet and upholstery cleaners formulated for use in cleaning large areas such as the carpet in an entire room or the upholstery on an entire piece of furniture.

(ii) *Spot removers.* Carpet and upholstery cleaners formulated for use in removing spots or stains in a small confined area.

(b) *Minimum biobased content.* The minimum biobased content for all carpet and upholstery cleaners shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents are:

(1) General purpose cleaners—54 percent.

(2) Spot removers—7 percent.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased carpet and upholstery cleaners. By that date, Federal agencies that have the responsibility

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for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased carpet and upholstery cleaners.

[73 FR 27973, May 14, 2008]

## § 2902.35 Bathroom and spa cleaners.

(a) *Definition.* Products that are designed to clean and/or prevent deposits on surfaces found in bathrooms and spas including, but not necessarily limited to, bath tubs and spas, shower stalls, shower doors, shower curtains, and bathroom walls, floors, doors, and counter and sink tops. Products in this item may be designed to be applied to a specific type of surface or to multiple surface types. They are available both in concentrated and ready-to-use forms.

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

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased bathroom and spa cleaners. 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 bathroom and spa cleaners.

[73 FR 27994, May 14, 2008]

## § 2902.36 Concrete and asphalt release fluids.

(a) *Definition.* Products that are designed to provide a lubricating barrier between the composite surface materials (e.g., concrete or asphalt) and the container (e.g., wood or metal forms, truck beds, roller surfaces).

(b) *Minimum biobased content.* The 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

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

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased concrete and asphalt release fluids. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased concrete and asphalt release fluids.

[73 FR 27994, May 14, 2008]

## § 2902.37 General purpose de-icers.

(a) *Definition.* Chemical products (e.g., salt, 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, in general use applications by lowering the freezing point of water. Specialized de-icer products, such as those used to de-ice aircraft and airport runways, are not included.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 93 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 May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased general purpose de-icers. 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 general purpose de-icers.

[73 FR 27994, May 14, 2008]

## § 2902.38 Firearm lubricants.

(a) *Definition.* Lubricants that are designed for use in firearms to reduce the friction and wear between the moving parts of a firearm, and to keep the weapon clean and prevent the formation of deposits that could cause the weapon to jam.

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

have a minimum biobased content of at least 49 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 May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased firearm lubricants. 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 firearm lubricants.

[73 FR 27994, May 14, 2008]

#### § 2902.39 Floor strippers.

(a) *Definition.* Products that are formulated to loosen waxes, resins, or varnishes from floor surfaces. They can be in either liquid or gel form, and may also be used with or without mechanical assistance.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 78 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 May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased floor strippers. 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 floor strippers.

[73 FR 27994, May 14, 2008]

#### § 2902.40 Laundry products.

(a) *Definitions.* (1) Products that are designed to clean, condition, or otherwise affect the quality of the laundered material. Such products include but are not limited to laundry detergents, bleach, stain removers, and fabric softeners.

(2) Laundry products for which preferred procurement applies are:

(i) *Pretreatment/spot removers.* These are laundry products specifically used to pretreat laundry to assist in the removal of spots and stains during laundering.

(ii) *General purpose laundry products.* These are laundry products used for regular cleaning activities.

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

(1) Pretreatment/spot removers—46 percent.

(2) General purpose laundry products—34 percent.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased laundry products. 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.

[73 FR 27994, May 14, 2008]

#### § 2902.41 Metalworking fluids.

(a) *Definition.* (1) Fluids that are designed to provide cooling, lubrication, corrosion prevention, and reduced wear on the contact parts of machinery used for metalworking operations such as cutting, drilling, grinding, machining, and tapping.

(2) Metalworking fluids for which preferred procurement applies are:

(i) *Straight oils.* Metalworking fluids that are not diluted with water prior to use and are generally used for metalworking processes that require lubrication rather than cooling.

(ii) *General purpose soluble, semi-synthetic, and synthetic oils.* Metalworking fluids formulated for use in a re-circulating fluid system to provide cooling, lubrication, and corrosion prevention when applied to metal feedstock during normal grinding and machining operations.

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(iii) *High performance soluble, semi-synthetic, and synthetic oils.* Metalworking fluids formulated for use in a re-circulating fluid system to provide cooling, lubrication, and corrosion prevention when applied to metal feedstock during grinding and machining operations involving unusually high temperatures or corrosion potential.

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

(1) Straight oils—66 percent.

(2) General purpose soluble, semi-synthetic, and synthetic oils—57 percent.

(3) High performance soluble, semi-synthetic, and synthetic oils—40 percent.

(c) *Preference compliance date.* (1) *Straight oils.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased metalworking fluids—straight oils. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased metalworking fluids—straight oils.

(2) *General purpose soluble, semi-synthetic, and synthetic oils.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased metalworking fluids—general purpose soluble, semi-synthetic, and synthetic oils. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased metalworking fluids—general purpose soluble, semi-synthetic, and synthetic oils.

(3) *High performance soluble, semi-synthetic, and synthetic oils.* Determination of the preference compliance date for metalworking fluids—high performance soluble, semi-synthetic, and synthetic oils is deferred until USDA identifies two or more manufacturers of biobased products within this sub-

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category. At that time, USDA will publish a document in the FEDERAL REGISTER announcing that Federal agencies have one year from the date of publication to give procurement preference to biobased metalworking fluids—high performance soluble, semi-synthetic, and synthetic oils.

[73 FR 27994, May 14, 2008]

## § 2902.42 Wood and concrete sealers.

(a) *Definition.* (1) Products that are penetrating liquids formulated to protect wood and/or concrete, including masonry and fiber cement siding, from damage caused by insects, moisture, and decaying fungi and to make surfaces water resistant.

(2) Wood and concrete sealers for which preferred procurement applies are:

(i) *Penetrating liquids.* Wood and concrete sealers that are formulated to penetrate the outer surface of the substrate.

(ii) *Membrane concrete sealers.* Concrete sealers that are formulated to form a protective layer on the surface of the substrate.

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

(1) Penetrating liquids—79 percent.

(2) Membrane concrete sealers—11 percent.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased wood and concrete sealers. 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 wood and concrete sealers.

[73 FR 27994, May 14, 2008]

**§ 2902.43 Chain and cable lubricants.**

(a) *Definition.* Products designed to provide lubrication in such applications as bar and roller chains, sprockets, and wire ropes and cables. Products may also prevent rust and corrosion in these applications.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 77 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 October 27, 2010, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased chain and cable lubricants. 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 chain and cable lubricants.

[74 FR 55093, Oct. 27, 2009]

**§ 2902.44 Corrosion preventatives.**

(a) *Definition.* Products designed to prevent the deterioration (corrosion) of metals.

(b) *Minimum biobased content.* The 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 October 27, 2010, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased corrosion preventatives. 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 corrosion preventatives.

[74 FR 55093, Oct. 27, 2009]

**§ 2902.45 Food cleaners.**

(a) *Definition.* Anti-microbial products designed to clean the outer layer

of various food products, such as fruit, vegetables, and meats.

(b) *Minimum biobased content.* The 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 October 27, 2010, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased food cleaners. 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 food cleaners.

[74 FR 55093, Oct. 27, 2009]

**§ 2902.46 Forming lubricants.**

(a) *Definition.* Products designed to provide lubrication during metalworking applications that are performed under extreme pressure. Such metalworking applications include tube bending, stretch forming, press braking, and swaging.

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

(c) *Preference compliance date.* No later than October 27, 2010, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased forming lubricants. 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 forming lubricants.

[74 FR 55093, Oct. 27, 2009]

**§ 2902.47 Gear lubricants.**

(a) *Definition.* Products, such as greases or oils, that are designed to reduce friction when applied to a toothed machine part (such as a wheel or cylinder) that meshes with another

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toothed part to transmit motion or to change speed or direction.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 58 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 October 27, 2010, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased gear lubricants. 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 gear lubricants.

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

NOTE TO PARAGRAPH (d): Biobased gear lubricant products within this designated item can compete with similar gear lubricant products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated re-refined lubricating oils containing recovered materials as items 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.

[74 FR 55093, Oct. 27, 2009]

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**§ 2902.48 General purpose household cleaners.**

(a) *Definition.* Products designed to clean multiple common household surfaces. This designated item does not include products that are formulated for use as disinfectants. Task-specific cleaning products, such as spot and stain removers, upholstery cleaners, bathroom cleaners, glass cleaners, etc., are not included in this item.

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

(c) *Preference compliance date.* No later than October 27, 2010, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased general purpose household cleaners. 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 general purpose household cleaners.

[74 FR 55093, Oct. 27, 2009]

**§ 2902.49 Industrial cleaners.**

(a) *Definition.* Products used to remove contaminants, such as adhesives, inks, paint, dirt, soil, and grease, from parts, products, tools, machinery, equipment, vessels, floors, walls, and other production-related work areas. The cleaning products within this item are usually solvents, but may take other forms. They may be used in either straight solution or diluted with water in pressure washers, or in hand wiping applications in industrial or manufacturing settings, such as inside vessels. Task-specific cleaners used in industrial settings, such as parts wash solutions, are not included in this definition.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 41 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 October 27, 2010, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased industrial cleaners. 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 industrial cleaners.

[74 FR 55093, Oct. 27, 2009]

#### § 2902.50 Multipurpose cleaners.

(a) *Definition.* Products used to clean dirt, grease, and grime from a variety of items in both industrial and domestic settings. This designated item does not include products that are formulated for use as disinfectants.

(b) *Minimum biobased content.* The 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 October 27, 2010, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased multipurpose cleaners. 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 multipurpose cleaners.

[74 FR 55093, Oct. 27, 2009]

#### § 2902.51 Parts wash solutions.

(a) *Definition.* Products that are designed to clean parts in manual or automatic cleaning systems. Such systems include, but are not limited to, soak vats and tanks, cabinet washers, and ultrasonic cleaners.

(b) *Minimum biobased content.* The 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 weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than October 27, 2010, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased parts wash solutions. 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 parts wash solutions.

[74 FR 55093, Oct. 27, 2009]

#### § 2902.52 Disposable tableware.

(a) *Definition.* Products made from, or coated with, plastic resins and used in dining, such as drink ware and dishware, including but not limited to cups, plates, bowls, and serving platters, and that are designed for one-time use. This item does not include disposable cutlery, which is a separate item.

(b) *Minimum biobased content.* The 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 weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased disposable tableware. 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 disposable tableware.

[75 FR 63701, Oct. 18, 2010]

#### § 2902.53 Expanded polystyrene (EPS) foam recycling products.

(a) *Definition.* Products formulated to dissolve EPS foam to reduce the volume of recycled or discarded EPS items.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 90 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.

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(c) *Preference compliance date.* No later than October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased EPS foam recycling products. 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 EPS foam recycling products.

[75 FR 63701, Oct. 18, 2010]

## § 2902.54 Heat transfer fluids.

(a) *Definition.* Products with high thermal capacities used to facilitate the transfer of heat from one location to another, including coolants or refrigerants for use in HVAC applications, internal combustion engines, personal cooling devices, thermal energy storage, or other heating or cooling closed-loops.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 89 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 October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased heat transfer fluids. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased heat transfer fluids.

[75 FR 63701, Oct. 18, 2010]

## § 2902.55 Ink removers and cleaners.

(a) *Definition.* Chemical products designed to remove ink, haze, glaze, and other residual ink contaminants from the surfaces of equipment, such as rollers, used in the textile and printing industries.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 79 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of

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

(c) *Preference compliance date.* No later than October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased ink removers and cleaners. 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 ink removers and cleaners.

[75 FR 63701, Oct. 18, 2010]

## § 2902.56 Mulch and compost materials.

(a) *Definition.* Products designed to provide a protective covering placed over the soil, primarily to keep down weeds and to improve the appearance of landscaping. Compost is the aerobically decomposed remnants of organic materials used in gardening and agriculture as a soil amendment, and commercially by the landscaping and container nursery industries.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 95 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 October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased mulch and compost materials. 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 mulch and compost materials.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying products within this item may overlap with the EPA-designated recovered content product: Landscaping products—“compost” and “hydraulic mulch”. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended

uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated landscaping products and which product should be afforded the preference in purchasing.

NOTE TO PARAGRAPH (D): Biobased mulch and compost materials within this designated item can compete with similar landscaping products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated landscaping products containing recovered materials as items 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.

[75 FR 63701, Oct. 18, 2010]

#### § 2902.57 Multipurpose lubricants.

(a) *Definition.* Products designed to provide lubrication under a variety of conditions and in a variety of industrial settings to prevent friction or rust. Greases, which are lubricants composed of oils thickened to a semi-solid or solid consistency using soaps, polymers or other solids, or other thickeners, are not included in this item. In addition, task-specific lubricants, such as chain and cable lubricants and gear lubricants, are not included in this item.

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

(c) *Preference compliance date.* No later than October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased multipurpose lubricants. 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 multipurpose lubricants.

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

NOTE TO PARAGRAPH (D): Biobased multipurpose lubricant products within this designated item can compete with similar multipurpose lubricant products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated re-refined lubricating oils containing recovered materials as items 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.

[75 FR 63701, Oct. 18, 2010]

#### § 2902.58 [Reserved]

#### § 2902.59 Topical pain relief products.

(a) *Definition.* Products that can be balms, creams and other topical treatments used for the relief of muscle, joint, headache, and nerve pain, as well as sprains, bruises, swelling, and other aches.

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

(c) *Preference compliance date.* No later than October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased topical pain relief

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products. 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 topical pain relief products.

[75 FR 63701, Oct. 18, 2010]

### § 2902.60 Turbine drip oils.

(a) *Definition.* Products that are lubricants for use in drip lubrication systems for water well line shaft bearings, water turbine bearings for irrigation pumps, and other turbine bearing applications.

(b) *Minimum biobased content.* The 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 October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased turbine drip oils. 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 turbine drip oils.

[75 FR 63701, Oct. 18, 2010]

## PART 2903—BIODIESEL FUEL EDUCATION PROGRAM

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AUTHORITY: 7 U.S.C. 8104; 5 U.S.C. 301.

SOURCE: 68 FR 56139, Sept. 30, 2003, unless otherwise noted.

### Subpart A—General Information

#### § 2903.1 Applicability of regulations.

(a) The regulations of this part only apply to Biodiesel Fuel Education Program grants awarded under the provisions of section 9004 of the Farm Security and Rural Investment Act of 2002 (FSRIA) (7 U.S.C. 8104) which authorizes the Secretary to award competitive grants to eligible entities to educate governmental and private entities that operate vehicle fleets, other interested entities (as determined by the Secretary), and the public about the benefits of biodiesel fuel use. Eligibility is limited to nonprofit organizations and institutions of higher education (as defined in sec. 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) that have demonstrated both knowledge of biodiesel fuel production, use, or distribution and the ability to conduct educational and technical support programs. The Secretary delegated this authority to the Chief Economist, who in turn delegated this authority to the Director of OEPNU.

(b) The regulations of this part do not apply to grants awarded by the Department of Agriculture under any other authority.

**§ 2903.2 Purpose of the program.**

The Biodiesel Fuel Education Program seeks to familiarize public and private vehicle fleet operators, other interested entities, and the public, with the benefits of biodiesel, a relatively new fuel option in the United States. It will also address concerns previously identified by fleet operators and other potential users of this alternative fuel, including the need to balance the positive environmental, social and human health impacts of biodiesel utilization with the increased per gallon cost to the user. It is the Program's goal to stimulate biodiesel demand and encourage the further development of a biodiesel industry in the United States.

**§ 2903.3 Eligibility.**

(a) Eligibility is limited to nonprofit organizations and institutions of higher education that have demonstrated both knowledge of biodiesel fuel production, use, or distribution and the ability to conduct educational and technical support programs.

(b) Award recipients may subcontract to organizations not eligible to apply provided such organizations are necessary for the conduct of the project.

**§ 2903.4 Indirect costs.**

(a) For the Biodiesel Fuel Education Program, applicants should use the current indirect cost rate negotiated with the cognizant Federal negotiating agency. Indirect costs may not exceed the negotiated rate. If no indirect cost rate has been negotiated, a reasonable dollar amount for indirect costs may be requested, which will be subject to approval by USDA. In the latter case, if a proposal is recommended for funding, an indirect cost rate proposal must be submitted prior to award to support the amount of indirect costs requested.

(b) A proposer may elect not to charge indirect costs and, instead, charge only direct costs to grant funds. Grantees electing this alternative will not be allowed to charge, as direct costs, indirect costs that otherwise would be in the grantee's indirect cost pool under the applicable Office of Management and Budget cost principles. Grantees who request no indirect costs will not be permitted to re-

verse their budgets at a later date to charge indirect costs to grant funds.

**§ 2903.5 Matching requirements.**

There are no matching funds requirements for the Biodiesel Fuel Education Program and matching resources will not be factored into the review process as evaluation criteria.

**Subpart B—Program Description****§ 2903.6 Project types.**

OEPNU intends to award continuation grants to successful Biodiesel Fuel Education Program applicants. A continuation grant is a grant instrument by which the Department agrees to support a specified level of effort for a predetermined project period with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued government support would be in the best interest of the Federal government and the public. If these three elements are met, OEPNU plans to provide additional support to the funded project(s).

**§ 2903.7 Project objectives.**

(a) Successful projects will develop practical indicators or milestones to measure their progress towards achieving the following objectives:

- (1) Enhance current efforts to collect and disseminate biodiesel information;
  - (2) Coordinate with other biodiesel educational or promotional programs, and with Federal, State and local programs aimed at encouraging biodiesel use, including the EPAct program;
  - (3) Create a nationwide networking system that delivers biodiesel information to targeted audiences, including users, distributors and other infrastructure-related personnel;
  - (4) Identify and document the benefits of biodiesel (e.g., lifecycle costing); and
  - (5) Gather data pertaining to information gaps and develop strategies to address the gaps.
- (b) [Reserved]

**§ 2903.8**

**Subpart C—Preparation of an Application**

**§ 2903.8 Program application materials.**

OEPNU will publish periodic program announcements to notify potential applicants of the availability of funds for competitive continuation grants. The program announcement will provide information about obtaining program application materials.

**§ 2903.9 Content of an application.**

(a) Applications should be prepared following the guidelines and the instructions in the program announcement. At a minimum, applications shall include: a proposal cover page, project summary, project description, information about key personnel, documentation of collaborative arrangements, information about potential conflicts-of-interest, budget forms and a budget narrative, information about current and pending support, and assurance statements.

(b) Proper preparation of applications will assist reviewers in evaluating the merits of each application in a systematic, consistent fashion. Specific instructions regarding additional application content requirements and the ordering of application contents will be included in the program announcement. These will include instructions about paper size, margins, font type and size, line spacing, page numbering, the inclusion of illustrations, and electronic submission.

**§ 2903.10 Submission of an application.**

The program announcement will provide the deadline date for submitting an application, the number of copies of each application that must be submitted, and the address to which proposals must be submitted.

**§ 2903.11 Acknowledgment of applications.**

The receipt of all applications will be acknowledged. Applicants who do not receive an acknowledgment within 60 days of the submission deadline should contact the program contact indicated on the program announcement. Once the application has been assigned a

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proposal number, that number should be cited on all future correspondence.

**Subpart D—Application Review and Evaluation**

**§ 2903.12 Application review.**

(a) Reviewers will include government and non-government individuals. All reviewers will be selected based upon training and experience in relevant scientific, extension, or education fields, taking into account the following factors:

(1) The level of relevant formal scientific, technical education, or extension experience of the individual, as well as the extent to which an individual is engaged in relevant research, education, or extension activities; and

(2) The need to include as reviewers experts from various areas of specialization within relevant scientific, education, or extension fields.

(b) In addition, when selecting non-government reviewers, the following factors will be considered:

(1) The need to include as reviewers other experts (e.g., producers, range or forest managers/operators, and consumers) who can assess relevance of the applications to targeted audiences and to program needs;

(2) The need to include as reviewers experts from a variety of organizational types (e.g., colleges, universities, industry, state and Federal agencies, private profit and non-profit organizations) and geographic locations;

(3) The need to maintain a balanced composition of reviewers with regard to minority and female representation and an equitable age distribution; and

(4) The need to include reviewers who can judge the effective usefulness to producers and the general public of each application.

(c) Authorized departmental officers will compile application reviews and recommend awards to OEPNU. OEPNU will make final award decisions.

**§ 2903.13 Evaluation criteria.**

(a) The following evaluation criteria will be used in reviewing applications submitted for the Biodiesel Fuel Education Program:

(1) Relevance of proposed project to current and future issues related to the production, use, distribution, fuel quality, and fuel properties of biodiesel, including:

(i) Demonstrated knowledge about markets, state initiatives, impacts on local economies, regulatory issues, standards, and technical issues;

(ii) Demonstrated knowledge about issues associated with developing a biodiesel infrastructure; and

(iii) Quality and extent of stakeholder involvement in planning and accomplishment of program objectives.

(2) Reasonableness of project proposal, including:

(i) Sufficiency of scope and strategies to provide a consistent message in keeping with existing standards and regulations;

(ii) Adequacy of Project Description, suitability and feasibility of methodology to develop and implement program;

(iii) Clarity of objectives, milestones, and indicators of progress;

(iv) Adequacy of plans for reporting, assessing and monitoring results over project's duration; and

(v) Demonstration of feasibility, and probability of success.

(3) Technical quality of proposed project, including:

(i) Suitability and qualifications of key project personnel;

(ii) Institutional experience and competence in providing alternative fuel education, including:

(A) Demonstrated knowledge about programs involved in alternative fuel research and education;

(B) Demonstrated knowledge about other fuels, fuel additives, engine performance, fuel quality and fuel emissions;

(C) Demonstrated knowledge about Federal, State and local programs aimed at encouraging alternative fuel use;

(D) Demonstrated ability in providing educational programs and developing technical programs; and

(E) Demonstrated ability to analyze technical information relevant to the biodiesel industry.

(iii) Adequacy of available or obtainable resources; and

(iv) Quality of plans to administer and maintain the project, including collaborative efforts, evaluation and monitoring efforts.

(b) [Reserved]

#### § 2903.14 Conflicts of interest and confidentiality.

(a) During the peer evaluation process, extreme care will be taken to prevent any actual or perceived conflicts of interest that may impact review or evaluation. Determinations of conflicts of interest will be based on the academic and administrative autonomy of an institution. The program announcement will specify the methodology for determining such autonomy.

(b) Names of submitting institutions and individuals, as well as application content and peer evaluations, will be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of peer reviewers will remain confidential throughout the entire review process. Therefore, the names of the reviewers will not be released to applicants. At the end of the fiscal year, names of reviewers will be made available in such a way that the reviewers cannot be identified with the review of any particular application.

### Subpart E—Award Administration

#### § 2903.15 General.

Within the limit of funds available for such purpose, the Authorized Departmental Officer (ADO) shall make grants to those responsible, eligible applicants whose applications are judged most meritorious under the procedures set forth in this part. The date specified by the ADO as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by OEPNU under this program shall be expended solely for the purpose for which the funds are granted in accordance

**§ 2903.16**

with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the applicable Department assistance regulations (including part 3019 of this title).

**§ 2903.16 Organizational management information.**

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this program, if such information has not been provided previously. Copies of forms recommended for use in fulfilling these requirements will be provided as part of the preaward process.

**§ 2903.17 Award document and notice of award.**

(a) The award document will provide pertinent instructions and information including, at a minimum, the following:

- (1) Legal name and address of performing organization or institution to whom OEPNU has issued an award under this program;
- (2) Title of project;
- (3) Name(s) and institution(s) of PDs chosen to direct and control approved activities;
- (4) Identifying award number assigned by the Department;
- (5) Project period;
- (6) Total amount of Departmental financial assistance approved by OEPNU during the project period;
- (7) Legal authority(ies) under which the award is issued;
- (8) Appropriate Catalog of Federal Domestic Assistance (CFDA) number;
- (9) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the award; and
- (10) Other information or provisions deemed necessary by OEPNU and the Authorized Departmental Officer to carry out the awarding activities or to accomplish the purpose of a particular award.

(b) [Reserved]

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**Subpart F—Supplementary Information**

**§ 2903.18 Access to review information.**

Copies of reviews, not including the identity of reviewers, and a summary of the comments will be sent to the applicant PD after the review process has been completed.

**§ 2903.19 Use of funds; changes.**

(a) *Delegation of fiscal responsibility.* Unless the terms and conditions of the award state otherwise, the awardee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of award funds.

(b) *Changes in project plans.* (1) The permissible changes by the awardee, PD(s), or other key project personnel in the approved project shall be limited to changes in methodology, techniques, or other similar aspects of the project to expedite achievement of the project's approved goals. If the awardee or the PD(s) is uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination. The ADO is the signatory of the award document, not the program contact.

(2) Changes in approved goals or objectives shall be requested by the awardee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the awardee and approved in writing by the ADO prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the awardee and approved in writing by the ADO prior to effecting such transfers, unless prescribed otherwise in the terms and conditions of the award.

(5) *Changes in project period.* The project period may be extended by

OEPNU without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project, but in no case shall the total project period exceed five years. Any extension of time shall be conditioned upon prior request by the awardee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of award.

(6) *Changes in approved budget.* Changes in an approved budget must be requested by the awardee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or award.

#### § 2903.20 Reporting requirements.

The award document will give instructions regarding the submission of progress reports, including the frequency and required contents of the reports.

#### § 2903.21 Applicable Federal statutes and regulations.

Several Federal statutes and regulations apply to grant applications considered for review and to project grants awarded under this program. These include, but are not limited to:

7 CFR Part 1, subpart A—USDA implementation of the Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A-129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular A-110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052—USDA implementation of OMB Circular No. A-133, Audits of States, Local Governments, and Non-profit Organizations. 29 U.S.C. 794 (sec. 504, Rehabilitation Act of 1973) and 7 CFR part 15b (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs. 35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

#### § 2903.22 Confidential aspects of applications and awards.

When an application results in an award, it becomes a part of the record of USDA transactions, available to the public upon specific request. Information that the Secretary determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked within the application. The original copy of an application that does not result in an award will be retained by the Agency for a period of one year. Other copies will be destroyed. Such an application will be released only with the consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to the final action thereon.

#### § 2903.23 Definitions.

For the purpose of this program, the following definitions are applicable:

*Authorized departmental officer* or *ADO* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

*Authorized organizational representative* or *AOR* means the president or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

*Biodiesel* means a monoalkyl ester that meets the requirements of an appropriate American Society for Testing and Materials Standard.

*Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

*Department* or *USDA* means the United States Department of Agriculture.

*Education activity* means an act or process that imparts knowledge or skills through formal or informal training and outreach.

*Grant* means the award by the Secretary of funds to an eligible recipient for the purpose of conducting the identified project.

*Grantee* means the organization designated in the award document as the responsible legal entity to which a grant is awarded.

*Institution of higher education*, as defined in sec. 101 of the Higher Education Act of 1965 (20 U.S.C. 1001), means an educational institution in any State that:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of preaccreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

*OEPNU* means the Office of Energy Policy and New Uses.

*Peer review* is an evaluation of a proposed project performed by experts with the scientific knowledge and technical skills to conduct the proposed work whereby the technical quality and relevance to the program are assessed.

*Prior approval* means written approval evidencing prior consent by an authorized departmental officer (as defined in this section).

*Program* means the Biodiesel Fuel Education Program.

*Project* means the particular activity within the scope of the program supported by a grant award.

*Project director* or *PD* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project, also known as a principal investigator for research activities.

*Project period* means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

*Secretary* means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.