Dated: December 12, 2006.

Stephen L. Johnson,

Administrator.

For the reasons set forth in the preamble, title 40 CFR, chapter I, part 112 of the Code of Federal Regulations is proposed to be amended as follows:

PART 112—OIL POLLUTION PREVENTION

1. The authority citation for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

2. Section 112.3 amended by revising paragraphs (a)(1) and (b)(1) as proposed to be amended elsewhere in this **Federal Register** on December 26, 2006 and revising paragraph (c) to read as follows:

Subpart A—[Amended]

§ 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan.

* * * * *

(a) * * *

(1) If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, and implement the Plan no later than July 1, 2009. If your onshore or offshore facility becomes operational after August 16, 2002, through July 1, 2009, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan on or before July 1, 2009.

* * * * *

(b)(1) If you are the owner or operator of an onshore or offshore facility that becomes operational after July 1, 2009, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations.

* * * * *

(c) If you are the owner or operator of an onshore or offshore mobile facility, such as an onshore drilling or workover rig, barge mounted offshore drilling or workover rig, or portable fueling facility, you must prepare, implement, and maintain a facility Plan as required by this section. You must maintain your Plan, but must amend and implement it, if necessary to ensure compliance with this part, on or before July 1, 2009. If your onshore or offshore mobile facility becomes operational after July 1, 2009, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations. This provision does not require that you prepare a new Plan each time you move the facility to a new site. The Plan may be a general Plan. When you move the mobile or portable facility, you must locate and install it using the discharge prevention practices outlined in the Plan for the facility. The Plan is applicable only while the facility is in a fixed (non-transportation) operating mode.

* * * * *

[FR Doc. E6–21507 Filed 12–22–06; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 7, 11, 12, 13, 23, 42, and 52

[FAR Case 2004–032; Docket 2006–0020; Sequence 13]

RIN 9000–AK65

Federal Acquisition Regulation; FAR Case 2004–032, Biobased Products Preference Program

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 9002 of the *Farm Security and Rural Investment Act* of 2002 (FSRIA), as amended by Sections 205 and 943 of the *Energy Policy Act of 2005*. Entitled *Federal Procurement of Biobased Products*, section 9002 requires that a procurement preference be afforded biobased products within items designated by the Secretary of Agriculture.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before February 26, 2007 to be considered in the formulation of a final rule.

The Councils, in collaboration with OFPP, invite interested parties from both the private and public sector to provide comments on the biobased procurement preference program and the requirement that Federal agencies shall consider maximum practicable use of biobased products when acquiring products and services.

ADDRESSES: Submit comments identified by FAR case 2004–032 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Search for any document by first selecting the proper document types and selecting ''Federal Acquisition Regulation'' as the agency of choice. At the ''Keyword'' prompt, type in the FAR case number (for example, FAR Case 2006–001) and click on the ''Submit'' button. Please include any personal and/or business information inside the document.

You may also search for any document by clicking on the ''Advanced search/document search'' tab at the top of the screen, selecting from the agency field ''Federal Acquisition Regulation'', and typing the FAR case number in the keyword field. Select the ''Submit'' button.

- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2004–032 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact William Clark, Procurement Analyst, at (202) 219–1813. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAR case 2004–032.

SUPPLEMENTARY INFORMATION:

A. Background

On May 13, 2002, the President signed the *Farm Security and Rural Investment Act* of 2002 (FSRIA), Public Law 107—171. Section 9002 of the Act, entitled *Federal Procurement of Biobased Products*, requires that each Federal agency (''Procuring Agency'' as amended by the *Energy Policy Act of 2005*), which procures products within items designated by the Secretary of Agriculture, give a preference to qualified biobased products, subject to specified exceptions. This same section requires the Secretary of Agriculture to designate items which contain products which are or can be produced with biobased products, establish recommended practices with respect to the procurement of products within the designated items, and provide

information as to the availability, relative price, performance, and environmental and public health benefits of such items. In a final rule, published January 11, 2005 entitled *Guidelines for Designating Biobased Products for Federal Procurement*, the USDA promulgated regulations defining the process for designating items. In the July 5, 2005 **Federal Register** (70 FR 38612), USDA proposed 6 item containing biobased materials that it plans to designate for Federal procurement preference. In the March 16, 2006 **Federal Register** (71 FR 13685) entitled ''Designation of Biobased Items for Federal Procurement'', USDA made a final determination about these items. USDA designated the following six items within which biobased products will be afforded Federal procurement preference, as provided for under section 9002 of the Farm Security and Rural Investment Act of 2002: Mobile equipment hydraulic fluids; roof coatings; water tank coatings; diesel fuel additives; penetrating lubricants; and bedding, bed linens, and towels. USDA also established minimum biobased content for each of these items. However, USDA deferred the effective date for two items (water tank coatings and bedding, bed linens, and towels) until such time that more than one manufacturer of products in these two items is identified and planned to announce that availability in a future **Federal Register** notice. In the August 17, 2006 **Federal Register** (71 FR 47566 and 47589), USDA proposed 20 additional items containing biobased materials that it plans to designate for Federal procurement preference.

USDA's designation of biobased items parallels the approach taken by the Environmental Protection Agency (EPA) in its designation of items containing recovered material pursuant to 40 CFR part 247, subpart B. USDA indicates throughout the preamble of the rule that where a biobased item is used for the same purposes and to meet the same requirements as an EPA-designated recovered content product, the Federal agency must purchase the recovered content product. If, on the other hand, for example, biobased hydraulic fluid is to be used to address certain environmental or health requirements that the EPA-designated recovered content product would not meet, then the biobased product should be given preference, subject to cost, availability, and performance.

On August 8, 2005, the President signed the *Energy Policy Act* of 2005, Public Law 109—58. Section 943 of the *Energy Policy Act* amended the *FSRIA* by revising the term ''Federal agency'' to ''Procuring Agency'' in several areas of Section 9002. The term 'Procuring agency'' was defined as 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. The amended definition expanded application of the Biobased Program to products used in the performance of service contracts (including construction). Section 205 added a requirement for degradable plastic ring carriers, see 40 CFR part 238.

In the July 27, 2006 **Federal Register** (71 FR 42572), USDA amended 7 CFR 2902 in order to clarify that biobased products from certain designated countries must be treated by procuring agencies as eligible for the procurement preference under FSRIA. This amendment requires agencies treat as eligible for the preference, biobased products composed of renewable agricultural materials or forestry materials from ''designated countries,'' as defined in 25.003, provided that those products otherwise meet all requirements for participation in the preference program.

This proposed rule incorporates the biobased procurement preference into the FAR. As discussed by the USDA in the Supplemental Information section of their final rule at 70 FR 1792–1793 (January 11, 2005), Congress had three primary objectives in enacting section 9002 of *FSRIA*: improved demand for biobased products, development of the industrial base through value-added agricultural processing and manufacturing, and energy security. While environmental enhancement is only a possible ancillary feature to the first goal, the bulk of the implementing regulations are proposed for inclusion in FAR subpart 23.4 due to the similarities between *FSRIA* section 9002 and section 6002 of the *RCRA* mandating a similar preference for items containing recovered materials. Specifically, both have similar triggering, preference, and exemption provisions; mandate a preference program; and require conformity certification. Both also require federal agencies responsible for drafting specifications to review and revise their specifications to require the use of recovered materials and biobased products respectively. By integrating the regulations implementing section 9002 of the *FSRIA* and section 6002 of the *RCRA*, efficiencies can be achieved at the contracting officer level by eliminating the repetitive requirement of reconciling the two provisions. While the statutory provisions are strikingly similar, there are minor differences in the details of the two statutes as reflected in the proposed rule.

The EPA program began at a time when contract certifications were more stringent than the current practice. Under the EPA, the offerors are required to furnish a preaward certification that they will furnish a product with the requisite EPA recommended recovered material content. At contract completion, the contractor is required to furnish an estimate of the actual recovered material content of the product delivered. The Government, in turn, is required to verify the accuracy of the contractors' certifications. Under the new USDA program, offerors are simply required to furnish a preaward self-certification that they will deliver and/or use products containing the minimum biobased content. Under both programs, the EPA or USDA may propose and designate additional products from time to time. Under both programs, the Federal agencies have a period of 1-year period in which to modify their procurement programs to accommodate the newly designated products. Under both programs, Federal agencies may choose not to acquire products with recovered material or biobased content if they are not readily available, not reasonably priced, or do not perform satisfactorily.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Solicitation of Public Comment

The Councils, along with OFPP, wish to ensure that the biobased preference program includes the acquisition of products and services (including construction). In furtherance of its responsibility under section 9002, OFPP seeks to better understand the application of acquisition of services coverage and welcomes feedback on this aspect of the proposed rule. In commenting, please include citations, as appropriate, to relevant sources of information that may be used to substantiate the basis for your comments.

C. Regulatory Flexibility Act

This proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because manufacturers, large or small, are expected to develop and market biobased products within the designated items. The actual impact will be item

specific and based on how many small entities are providing a specific item once it is designated by the United States Department of Agriculture.

On March 16, 2006, the USDA issued a final rule in the **Federal Register** (71 FR 13685) amending 7 CFR part 2902, Guidelines for Designating Biobased Products for Federal Procurement, to add six sections designating the first six of a series of items that are made with biobased products that would be afforded Federal procurement preference, as provided for under section 9002 of the Farm Security and Rural Investment Act of 2002. The Initial Regulatory Flexibility Act Statement is summarized as follows:

The rule will amend the FAR to implement section 9002 of the Farm Security and *Rural Investment Act (FSRIA)* (Public L. 107–171, 7 U.S.C. section 8102), as amended by the *Energy Policy Act of 2005* (Public L. 109–58, section 943) and incorporate the biobased preference program. As USDA designates items through the issuance of final rules, it is anticipated that this rule will impact small business entities that manufacture or sell products within the designated items. The impact may vary based on the specific item[s] once they are designated by USDA.

The objective of the rule is to incorporate the biobased procurement preference into the FAR. As discussed by the USDA in the Supplementary Information section of their final rule published in the **Federal Register** at 70 FR 1792, January 11, 2005; Congress had three primary objectives in enacting section 9002 of FSRIA: (1) improved demand for biobased products; (2) development of the industrial base through value-added agricultural processing and manufacturing, and; (3) energy security.

The proposed rule will apply to all large and small business entities that seek award of Federal contracts that may involve the manufacturing, selling or use of biobased products. Because the program is still in its infancy, the number of small business entities impacted is unknown and cannot be determined by the Councils. Small business entities are encouraged to thoroughly review the USDA's final rule entitled ''Guidelines for Designating Biobased Products for Federal Procurement'' published in the **Federal Register** at 70 FR 1792, January 11, 2005 as well as any subsequent publications from USDA concerning the program. It is anticipated that as items are designated by USDA through the issuance of final rules, this Federal procurement preference program may provide additional opportunities for small business entities that manufacture and sell USDA designated biobased products to Federal agencies. USDA anticipates that it will take approximately 4 years to designate all items under this program. In its final rule published on March 16, 2006, USDA indicated they have no data on the number of small businesses that may choose to develop and market products within the six items designated, however, USDA expects the number to be small. Because biobased products represent a small emerging market, only a small percentage of all manufacturers, large or small, are expected to develop and market biobased products.

The proposed rule does contain information collection requirements, which the Paperwork Reduction Act section of this notice addresses more fully below. The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no practical alternatives that will accomplish the objectives of this proposed rule.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts 2, 7, 11, 12, 13, 23, 42, and 52 in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR case 2004–032), in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the proposed rule contains information collection requirements. The rule will require offerors to submit a certification that products being used or delivered in the performance of the contract are qualified biobased products that fall under items (generic groupings of biobased products) that have been designated by USDA for preferred procurement. Accordingly, the FAR Secretariat has submitted a request for approval of a new information collection requirement concerning OMB Control Number 9000–00XX, Biobased Products Preference Program, implementation of section 9002 of the *Farm Security and Rural Investment Act of 2002* (Pub. L. 107—171, 7 U.S.C. section 8102), to the Office of Management and Budget under 44 U.S.C. 3501m *et seq.*

Annual Reporting Burden:

The clause at 52.223–1 requires the contractor to certify the use of biobased material in each applicable solicitation, i.e. when the Federal agency purchases $10,000 or more of one of the USDA designated items or when functionally equivalent items purchased during the preceding fiscal year was $10,000 or more. As USDA continues to designate items, it is anticipated that the number of responses will increase over time. It is estimated that an average of 30 minutes will be required for offerors and contractors to research, prepare, and submit the required information. We currently estimate the annual total burden hours as follows:

Respondents: 6,000.
Responses per respondent: 6.
Total annual responses: 36,000.
Preparation hours per response: .5.
Total response burden hours: 18,000.

E. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than February 26, 2007 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–00XX, Biobased Products Preference Program, in all correspondence.

List of Subjects in 48 CFR Parts 2, 7, 11, 12, 13, 23, 42, and 52

Government procurement.

Dated: December 15, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 7, 11, 12, 13, 23, 42, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 7, 11, 12, 13, 23, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 in paragraph (b)(2) by adding, in alphabetical order, the definition ''Biobased product'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Biobased product (7 U.S.C. 8101(2)) means a product determined by the U.S.

Department of Agriculture 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.

* * * * *

PART 7—ACQUISITION PLANNING

3. Amend section 7.103 by revising paragraph (n)(2) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(n) * * *

(2) Comply with the policy in 11.002(d) regarding procurement of biobased products, products containing recovered materials, and environmentally preferable and energy-efficient products and services.

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

4. Amend section 11.002 by revising paragraph (d) to read as follows:

11.002 Policy.

* * * * *

(d)(1) When agencies acquire products and services, various statutes and executive orders (identified in Part 23) require consideration of—

(i) Energy-efficient products and services (Subpart 23.2);

(ii) Products and services that utilize renewable energy technologies (Subpart 23.2);

(iii) Products containing energy-efficient standby power devices (Subpart 23.2);

(iv) Products containing recovered materials (Subpart 23.4);

(v) Biobased products (Subpart 23.4); and

(vi) Environmentally preferable products and services (Subpart 23.7).

(2) Executive agencies shall consider maximum practicable use of products and services listed in paragraph (d)(1) of this section when—

(i) Developing, reviewing, or revising Federal and military specifications, product descriptions (including commercial item descriptions) and standards;

(ii) Describing Government requirements for products and services; and

(iii) Developing source-selection factors.

* * * * *

11.101 [Amended]

5. Amend section 11.101 by removing paragraph (b) and redesignating paragraph (c) as (b).

6. Amend section 11.302 by revising paragraph (c) to read as follows:

11.302 Policy.

* * * * *

(c)(1) When the contracting officer needs additional information to determine whether supplies meet minimum recovered material or biobased standards stated in the solicitation, the contracting officer may require offerors to submit additional information on the recycled or biobased content or related standards. The request for the information must be included in the solicitation. When acquiring commercial items, limit the information to the maximum extent practicable to that available under normal commercial practices.

(2) For biobased products, the contracting officer may require vendors to provide information on life cycle costs and environmental and health benefits in accordance with 7 CFR 2902.8.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

7. Amend section 12.301 by revising paragraph (e)(3) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(e) * * *

(3) The contracting officer may use the provisions and clauses contained in Part 23 regarding the use of recovered material and biobased products when appropriate for the item being acquired.

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

8. Amend section 13.201 by revising paragraph (f) to read as follows:

13.201 General.

* * * * *

(f) The procurement requirements in Subparts 23.2, 23.4, and 23.7 apply to purchases at or below the micro-purchase threshold.

* * * * *

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

9. Amend section 23.000 by revising paragraph (d) to read as follows:

23.000 Scope.

* * * * *

(d) Acquiring energy-and water-efficient products and services, environmentally preferable products, products that use recovered materials, and biobased products; and

* * * * *

10. Revise Subpart 23.4 to read as follows:

Subpart 23.4—Use of Products Containing Recovered Materials and Biobased Products

Sec.

23.400 Scope of subpart.
23.401 Definitions.
23.402 Authorities.
23.403 Policy.
23.404 Agency affirmative procurement programs.
23.405 Procedures.
23.406 Solicitation provisions and contract clauses.

23.400 Scope of subpart.

(a) The procedures in this subpart apply to all agency acquisitions of an Environmental Protection Agency (EPA) or United States Department of Agriculture (USDA)-designated item, if—

(1) The price of the designated item exceeds $10,000; or

(2) The aggregate amount paid for designated items, or for functionally equivalent designated items, in the preceding fiscal year was $10,000 or more.

(b) While micro-purchases are included in determining the aggregate amount paid under paragraph (a)(2) of this section, it is not recommended that an agency track micro-purchases when—

(1) The agency anticipates the aggregate amount paid will exceed $10,000; or

(2) The agency intends to establish or continue an affirmative procurement program in the following fiscal year.

23.401 Definitions.

As used in this subpart—

(a) *EPA-designated item* means a product that is or can be made with recovered material—

(1) That is listed by EPA in a procurement guideline (40 CFR part 247); and

(2) For which EPA has provided purchasing recommendations in a related Recovered Materials Advisory Notice (RMAN).

(b) *USDA-designated item* means a product that is or can be made with biobased material—

(1) That is listed by USDA in a procurement guideline (7 CFR part 2902, subpart B); and

(2) For which USDA has provided purchasing recommendations.

23.402 Authorities.

(a) The Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6962.

(b) The Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102.

(c) Executive Order 13101 of September 14, 1998, Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition.

(d) The Energy Policy Act of 2005, Public Law 109–58.

23.403 Policy.

Government policy on the use of products containing recovered materials and biobased products considers cost, availability of competition, and performance. Agencies shall assure the use of products containing recovered materials and biobased products to the maximum extent practicable without jeopardizing the intended use of the product while maintaining a satisfactory level of competition at a reasonable price. Such products shall meet the reasonable performance standards of the agency and be acquired competitively, in a cost-effective manner. Except as provided at 23.404(b), virgin material shall not be required by the solicitation (see 11.302).

23.404 Agency affirmative procurement programs.

(a) An agency must establish an affirmative procurement program for EPA and USDA-designated items if the agency's purchases of designated items exceed the threshold set forth in 23.400.

(1) Agencies have a period of 1 year to revise their procurement program(s) after the designation of any new item by EPA or USDA.

(2) Technical or requirements personnel and procurement personnel are responsible for the preparation, implementation, and monitoring of affirmative procurement programs.

(3) Agency affirmative procurement programs must include—

(i) A recovered materials and biobased products preference program;

(ii) An agency promotion program;

(iii) For EPA-designated items only, a program for requiring reasonable estimates, certification, and verification of recovered material used in the performance of contracts. Both the recovered material content and biobased programs require preaward certification that the products meet EPA or USDA recommendations. A second certification is required at contract completion for recovered material content; and

(iv) Annual review and monitoring of the effectiveness of the program.

(b) Agency affirmative procurement programs must require that 100 percent of purchases of EPA or USDA-designated items contain recovered material or biobased content, respectively, unless the item cannot be acquired—

(1) Competitively within a reasonable time frame;

(2) Meeting reasonable performance standards; or

(3) At a reasonable price.

(c) Agency affirmative procurement programs must provide guidance for purchases of EPA-designated items at or below the micro-purchase threshold.

(d) Agencies may use their own specifications or commercial product descriptions when procuring products containing recovered materials or biobased products. When using either, the contract should specify—

(1) For products containing recovered materials, that the product is composed of the—

(i) Highest percent of recovered materials practicable; or

(ii) Minimum content standards in accordance with EPA's Recovered Materials Advisory Notices; and

(2) For biobased products, that the product is composed of—

(i) The highest percentage of biobased material practicable; or

(ii) USDA's recommended minimum contents standards.

(e) Agencies shall treat as eligible for the preference for biobased products, products from ''designated countries,'' as defined in 25.003, provided that those products—

(1) Meet the criteria for the definition of biobased product, except for the requirement that renewable agricultural materials (including plant, animal, and marine materials) or forestry materials in such product must be domestic; and

(2) Otherwise meet all requirements for participation in the preference program.

23.405 Procedures.

(a) *Designated items and procurement guidelines.*—(1) *Recovered Materials.* Contracting officers should refer to EPA's list of EPA-designated items (available via the Internet at *http://www.epa.gov/cpg/*) and to their agencies' affirmative procurement program when purchasing products that contain recovered material, or services that could include the use of products that contain recovered material.

(2) *Biobased products.* Contracting officers should refer to USDA's list of USDA-designated items (available through the Internet at *http://www.biobased.oce.usda.gov*) and to their agencies' affirmative procurement program when purchasing supplies that contain biobased material or when purchasing services that could include supplies that contain biobased material.

(b) *Procurement exemptions.*—(1) Once an item has been designated by either EPA or USDA, agencies shall purchase conforming products unless it is determined that conforming products cannot be acquired—

(i) Competitively within a reasonable time frame;

(ii) Meeting reasonable performance standards; or

(iii) At a reasonable price.

(2) When an exemption is used for an EPA designated item or the procurement of a product containing recovered material does not meet or exceed the EPA recovered material content guidelines, the contracting officer shall place a written justification in the contract file.

(c) *Program priorities.* When both the USDA-designated item and the EPA-designated item will be used for the same purposes, and both meet the agency's needs, the agency shall purchase the EPA-designated item.

23.406 Solicitation provisions and contract clauses.

(a) Insert the provision at 52.223–1, Biobased Product Certification, in solicitations that—

(1) Require the delivery or specify the use of USDA-designated items; or

(2) Include the clause at 52.223–XX.

(b) Insert the provision at 52.223—4, Recovered Material Certification, in solicitations that are for, or specify the use of, EPA-designated items.

(c) Insert the clause at 52.223—9, Estimate of Percentage of Recovered Material Content for EPA-designated Items, in solicitations and contracts exceeding $100,000 that include the provision at 52.223—4. If technical personnel advise that estimates can be verified, use the clause with its Alternate I.

(d) Insert the clause at 52.223–XX, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, in service or construction solicitations and contracts unless the contract will not involve the

use of USDA-designated items at *http://www.biobased.oce.usda.gov* or 7 CFR part 2902.

23.701 [Removed and Reserved]

11. Remove and reserve section 23.701.

12. Amend section 23.702 by adding paragraph (g) to read as follows:

23.702 Authorities.

* * * * *

(g) Farm Security and Rural Investment Act of 2002 (FSRIA) (7 U.S.C. 8102).

13. Amend section 23.703 by revising paragraph (b)(7); and adding paragraph (b)(8) to read as follows:

23.703 Policy.

* * * * *

(b) * * *

(7) Promote the use of biobased products.

(8) Purchase only plastic ring carriers that are degradable (7 USC 8102(c)(1), 40 CFR part 238).

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

14. Amend section 42.302 by revising paragraph (a)(68)(ii) to read as follows:

42.302 Contract administration functions.

(a) * * *

(68) * * *

(ii) Monitoring contractor compliance with specifications or other contractual requirements requiring the delivery or use of environmentally preferable products, energy-efficient products, products containing recovered materials, and biobased products. This must occur as part of the quality assurance procedures set forth in Part 46; and

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

15. Add section 52.223–1 to read as follows:

52.223–1 Biobased Product Certification.

As prescribed in 23.406(a), insert the following provision:

BIOBASED PRODUCT CERTIFICATION (DATE)

The Contractor shall execute the following certification required by the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8102(c)(3)):

I, _____ (name of certifier), am an officer or employee responsible for the performance of this contract and I hereby certify that biobased products (within categories of items listed by the United States Department of Agriculture in 7 CFR part 2902, subpart B) to be used or delivered in the performance of the contract will comply with the applicable specifications or other contractual requirements.

_____

[*Signature of the Officer or Employee*]

_____

[*Typed Name of the Officer or Employee*]

_____

[*Title*]

_____

[*Name of Company, Firm, or Organization*]

_____

[*Date*]

(End of provision)

52.223–4 [Amended]

16. Amend section 52.223–4 by removing from the prescription ''23.406(a'') and adding ''23.406(b'') in its place.

52.223–9 [Amended]

17. Amend section 52.223–9 by removing from the prescription ''23.406(b'') and adding ''23.406(c'') in its place.

18. Add section 52.223–XX to read as follows:

52.223–XX Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

As prescribed in 23.406(d), insert the following clause:

AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (DATE)

(a) In the performance of this contract, the contractor shall make maximum use of biobased products that are USDA-designated items unless the product cannot be acquired—

(1) Competitively within a time frame providing for compliance with the contract performance schedule;

(2) Meeting contract performance requirements; or

(3) At a reasonable price.

(b) Information about this requirement and these products is available at *http://www.biobased.oce.usda.gov*.

(End of clause)

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