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## DEPARTMENT OF AGRICULTURE

### Office of Energy Policy and New Uses

#### 7 CFR Part 2902

RIN 0503-AA33

#### Designation of Biobased Items for Federal Procurement

**AGENCY:** Departmental Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Department of Agriculture (USDA) is amending its Guidelines for Designating Biobased Products for Federal Procurement, to add nine sections to designate 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, as amended by the Food, Conservation, and Energy Act of 2008 (FCEA) (referred to in this document as “section 9002”). USDA also is establishing a minimum biobased content for each of these items.

**DATES:** This rule is effective November 27, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ron Buckhalt, USDA, Office of Procurement and Property Management, 342 Reporters Building, 300 7th St. SW., Washington, DC 20024; e-mail: [biopreferred@usda.gov](mailto:biopreferred@usda.gov); phone (202) 205-4008. Information regarding the preferred procurement program (one part of the BioPreferred Program) is available on the Internet at <http://www.biopreferred.gov>.

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

- I. Authority
- II. Background
- III. Discussion of Public Comments
- IV. Regulatory Information
  - Executive Order 12866: Regulatory Planning and Review

Regulatory Flexibility Act (RFA)  
 Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights  
 Executive Order 12988: Civil Justice Reform  
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 Executive Order 12372: Intergovernmental Review of Federal Programs  
 Executive Order 13175: Consultation and Coordination With Indian Tribal Governments  
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#### I. Authority

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

#### II. Background

As part of the BioPreferred Program, USDA published on October 23, 2008, a proposed rule in the **Federal Register** (FR) for the purpose of designating a total of nine items for the preferred procurement of biobased products by Federal agencies (referred to hereafter in this FR notice as the “preferred procurement program”). This proposed rule can be found at 73 FR 63298. This rulemaking is referred to in this preamble as Round 5 (RIN 0503-AA33).

In the proposed rule, USDA proposed designating the following nine items for the preferred procurement program: Chain and cable lubricants; corrosion preventatives; food cleaners; forming lubricants; gear lubricants; general purpose household cleaners; industrial cleaners; multipurpose cleaners; and parts wash solutions.

Today’s final rule designates the proposed items within which biobased products will be afforded Federal procurement preference. USDA has determined that each of the items being designated under today’s rulemaking meets the necessary statutory requirements; that they are being produced with biobased products; and that their procurement will carry out the following objectives of section 9002: To improve demand for biobased products; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and to enhance the

Nation’s energy security by substituting biobased products for products derived from imported oil and natural gas.

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

**Subcategorization.** Most of the items USDA is considering for designation for preferred procurement cover a wide range of products. For some items, there are subgroups of products within the item that meet different markets and uses and/or different performance specifications. Where such subgroups exist, USDA intends to create subcategories within the designated items.

During the development of the proposal, USDA considered the appropriateness of creating subcategories within the general purpose household cleaners, industrial cleaners, and multipurpose cleaners items. At that time, however, USDA did not have sufficient information to justify creating subcategories within these items. In the proposed rule, USDA requested additional information on the possibility of subcategorizing these three items. USDA did not receive any additional information on these items

during the public comment period that could be used to support the creation of subcategories at this time. Thus, none of the items being designated today have subcategories. USDA will continue to consider additional information that may become available to support subcategorization of these items in the future.

*Overlap with EPA's Comprehensive Procurement Guideline program for recovered content products.* Some of the products that are biobased items designated for preferred procurement may also be items the Environmental Protection Agency (EPA) has designated under the EPA's Comprehensive Procurement Guideline (CPG) for Products Containing Recovered Materials. Where that occurs, an EPA-designated recovered content product (also known as "recycled content products" or "EPA-designated products") has priority in Federal procurement over the qualifying biobased product as identified in 7 CFR 2902.2. In situations where it believes there may be an overlap, USDA is asking manufacturers of qualifying biobased products to provide additional product and performance information to Federal agencies to assist them in determining whether the biobased products in question are, or are not, the same products for the same uses as the recovered content products. As this information becomes available, USDA will place it on the BioPreferred Web site with its catalog of qualifying biobased products.

In cases where USDA believes an overlap with EPA-designated recovered content products may occur, manufacturers are being asked to indicate the various suggested uses of their product and the performance standards against which a particular product has been tested. In addition, depending on the type of biobased product, manufacturers are being asked to provide other types of information, such as whether the product contains petroleum-based components and whether the product contains recovered materials. Federal agencies may also ask manufacturers for information on a product's biobased content and its profile against environmental and health measures and life-cycle costs (the Building for Environmental and Economic Sustainability (BEES) analysis or ASTM Standard D7075 for evaluating and reporting on environmental performance of biobased products). Such information will permit agencies to determine whether or not an overlap occurs.

Section 6002 of the Resource Conservation and Recovery Act (RCRA)

requires a procuring agency purchasing an item designated by EPA generally to purchase such items composed of the highest percentage of recovered materials content practicable. However, a procuring agency may decide not to purchase such an item based on a determination that the item fails to meet the reasonable performance standards or specifications of the procuring agency. An item with recovered materials content may not meet reasonable performance standards or specifications, for example, if the use of the item with recovered materials content would jeopardize the intended end use of the item.

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

This final rule designates one item for preferred procurement for which there may be overlap with EPA-designated recovered content products. This item is gear lubricants. Depending on how they are to be used, qualifying products under this item may overlap with the EPA-designated recovered content products "lubricating oils containing re-refined oil." EPA provides recovered materials content recommendations for this recovered content product in a Recovered Materials Advisory Notice (RMAN I). The RMAN recommendations for each of this CPG product 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.

*Minimum Biobased Contents.* The minimum biobased contents being established with today's rulemaking are based on products for which USDA has biobased content test data. In addition to considering the biobased content test data for each item, USDA also considers other factors when establishing the

minimum biobased content. These other factors include: Public comments received on the proposed minimum biobased contents; product performance information to justify the inclusion of products at lower levels of biobased content; and the range, groupings, and breaks in the biobased content test data array. Consideration of this information allows USDA to establish minimum biobased contents on a broad set of factors to assist the Federal procurement community in its decision to purchase biobased products.

USDA makes every effort to obtain biobased content test data on multiple products within each item. For most designated items, USDA has biobased content test data on more than one product within a designated item. However, USDA must rely on biobased product manufacturers to voluntarily submit product information and, in some cases, USDA has been able to obtain biobased content data for only a single product within a designated item. As USDA obtains additional data on the biobased contents for products within these nine designated items, USDA will evaluate whether the minimum biobased content for a designated item will be revised.

USDA anticipates that the minimum biobased content of an item that is based on a single product is more likely to change as additional products in those items are identified and tested. In today's rulemaking, none of the minimum biobased contents are based on a single tested product.

For all items where additional information indicates that it is appropriate to revise a minimum biobased content established under today's rulemaking, USDA will propose the change in a notice in the **Federal Register** to allow public comment on the proposed revised minimum biobased content. USDA will then consider the public comments and issue a final rulemaking on the minimum biobased content.

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

USDA plans to identify approximately 10–15 items in each future rulemaking. USDA has developed a preliminary list of items for future designation. This list is available on the BioPreferred Web

site. While this list presents an initial prioritization of items for designation, USDA cannot identify with any certainty which items will be presented in each of the future rulemakings. In response to comments from other Federal Agencies, USDA intends to give increased priority to those items that contain the highest biobased content. In addition, as the program matures, manufacturers of biobased products within some industry segments have become more responsive to USDA's requests for technical information than those in other segments. Thus, items with high biobased content and for which sufficient technical information can be obtained quickly may be added or moved up on the prioritization list. USDA intends to update the list of items for future designation on the Biopreferred Web site every six months, or more often if significant changes are made to the list.

**Exemptions.** In earlier item designation rules, USDA created exemptions from the preferred procurement program's requirements for procurements involving combat or combat-related missions and for spacecraft systems and launch support equipment. Since publication of those final rules in the **Federal Register**, and in response to comments from the Department of Defense (DoD), USDA has decided to create "blanket" exemptions for all items used in products or systems designed or procured for combat or combat-related missions, which will apply to all items designated for the procurement preference. These "blanket" exemptions can be found in subpart A of part 2902. Because these blanket exemptions are included in subpart A of part 2902, it is unnecessary to repeat them in the individual item designations in this final rule.

### III. Discussion of Public Comments

USDA solicited comments on the proposed rule for 60 days ending on December 22, 2008. No public comments were received and no additional technical information has been collected to justify revising the proposed rule. Thus, today's action finalizes the designation of the nine items within which biobased products will be afforded Federal procurement preference, as proposed. USDA encourages manufacturers, vendors, and purchasers of biobased products within these nine designated items to continue to submit information relative to products available within these items. If sufficient supporting information becomes available, USDA will consider amending today's rulemaking by creating subcategories within the items,

raising (or lowering) the minimum biobased content, or other appropriate actions.

### IV. Regulatory Information

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

This action has been determined significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. We are not able to quantify the annual economic effect associated with this final rule. As discussed in the proposed rule, USDA made extensive efforts to obtain information on the Federal agencies' usage within the nine designated items. These efforts were largely unsuccessful. Therefore attempts to quantify the economic impact of this rule would require estimation of the anticipated market penetration of biobased products based upon many assumptions. In addition, because agencies have the option of not purchasing designated items if costs are "unreasonable," the product is not readily available, or the product does not demonstrate necessary performance characteristics, certain assumptions may not be valid. While facing these quantitative challenges, USDA relied upon a qualitative assessment to determine the impacts of this rulemaking. This assessment was based primarily on the offsetting nature of the program (an increase in biobased products purchased with a corresponding decrease in petroleum products purchased). Consideration was also given to the fact that agencies may choose not to procure designated items due to unreasonable costs.

#### 1. Summary of Impacts

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

new requirements for designated biobased products. Because the extent to which procuring agencies will find the performance and costs of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of the rule.

#### 2. Benefits of the rule

The designation of these nine items provides the benefits outlined in the objectives of section 9002: To increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and to enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas. On a national and regional level, this rule can result in expanding and strengthening markets for biobased materials used in these items.

#### 3. Costs of the rule

Like the benefits, the costs of this rule have not been quantified. Two types of costs are involved: Costs to producers of products that will compete with the preferred products and costs to Federal agencies to provide procurement preference for the preferred products. Producers of competing products may face a decrease in demand for their products to the extent Federal agencies refrain from purchasing their products. However, it is not known to what extent this may occur. Procurement costs for Federal agencies may rise as they evaluate the availability and relative cost of preferred products before making a purchase.

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

When an agency issues a final rule following a proposed rule, the Regulatory Flexibility Act (RFA, 5 U.S.C. 601–612) requires the agency to prepare a final regulatory flexibility analysis. 5 U.S.C. 604. However, the requirement for a final regulatory flexibility analysis does not apply if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

USDA evaluated the potential impacts of its designation of these items to determine whether its actions would have a significant impact on a substantial number of small entities. Because the preferred procurement program established under section 9002 applies only to Federal agencies and

their contractors, small governmental (city, county, etc.) agencies are not affected. Thus, this rule will not have a significant economic impact on small governmental jurisdictions.

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

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

The preferred procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. Most manufacturers of non-biobased products within the items being designated for preferred procurement in this final rule are expected to be included under NAICS codes 324191 (Petroleum lubricating oil and grease manufacturing), 325611 (Soap and other detergent manufacturing), or 325612 (Polish and other sanitation goods manufacturing). USDA obtained information on these three NAICS categories from the U.S. Census Bureau's Economic Census database. USDA found that the Economic Census reports about 1,500 companies within these three NAICS categories and that nearly all of these companies (about 1,490) report less than 500 employees. Thus, nearly all of the businesses fall within the Small Business Administration's definition of a small business (less than 500 employees, in most NAICS categories).

USDA does not have data on the potential adverse impacts on manufacturers of non-biobased products

within the items being designated, but believes that the impact will not be significant. The items being designated in this rulemaking are, in general terms, either cleaning products or lubricating products. These products are widely used by the general public and by industrial/commercial establishments that are not subject to this rulemaking. Thus, USDA believes that the number of small businesses manufacturing non-biobased products within the items being designated and selling significant quantities of those products to government agencies affected by this rulemaking to be relatively low. Also, this rule will not affect existing purchase orders and it will not preclude procuring agencies from continuing to purchase non-biobased items under certain conditions relating to the availability, performance, or cost of biobased items. This rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials. Thus, the economic impacts of this rule are not expected to be significant.

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

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

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

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

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

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

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

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

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

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

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

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments. Although there is no statutory requirement to do so, we believe that, in the long term, many State and local governments will implement similar purchase programs based on the BioPreferred Program. USDA has been charged by Congress to share information on the BioPreferred Program with State and local governments.

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

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

#### *I. Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501

through 3520), the information collection under this rule is currently approved under OMB control number 0503-0011.

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

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

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

Biobased products, Procurement.

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

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

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

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

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

■ 2. Add §§ 2902.43 through 2902.51 to subpart B to read as follows:

Sec.	
2902.43	Chain and cable lubricants.
2902.44	Corrosion preventatives.
2902.45	Food cleaners.
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.

#### **§ 2902.43 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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 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 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):** 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

Dated: October 21, 2009.

**Pearlie S. Reed,**

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

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**DEPARTMENT OF HOMELAND SECURITY**

**8 CFR Parts 103, 214, 274a, and 299**

[CIS No. 2459-08; DHS Docket No. USCIS-2008-0038]

RIN 1615-AB76

**Commonwealth of the Northern Mariana Islands Transitional Worker Classification**

**AGENCY:** U.S. Citizenship and Immigration Services, DHS.

**ACTION:** Interim rule; solicitation of comments.

**SUMMARY:** The Department of Homeland Security (DHS) is creating a new, temporary, Commonwealth of the Northern Mariana Islands (CNMI)-only transitional worker classification (CW classification) in accordance with title VII of the Consolidated Natural Resources Act of 2008 (CNRA). The transitional worker program is intended to provide for an orderly transition from the CNMI permit system to the U.S. federal immigration system under the Immigration and Nationality Act (INA or Act). A CW transitional worker is an alien worker who is ineligible for another classification under the INA and who performs services or labor for an employer in the CNMI. The CNRA imposes a five-year transition period before the INA requirements become fully applicable in the CNMI. The new CW classification will be in effect for the duration of that transition period, unless extended by the Secretary of Labor. The rule also establishes employment authorization incident to CW status.

**DATES:** *Effective date:* This rule will be effective on November 27, 2009.

*Implementation date:* Beginning at 12:01 a.m. (CNMI local time) on November 28, 2009, U.S. Citizenship and Immigration Services will begin operation of this program and required compliance with this interim rule will begin. The existing CNMI permit program will be in effect through November 27, 2009.