



2023 Farm Bill Legislative Side-By-Side

BIOPREFERRED® PROGRAM

Program Description

Managed by USDA, the goal of the [BioPreferred® Program](#) is to increase the purchase and use of bio-based products to spur economic development, create new jobs, and provide new markets for farm commodities.

Climate Highlights

Initially established in the 2002 Farm Bill and reauthorized in the 2018 Farm Bill, the BioPreferred® Program sets mandatory federal purchasing requirements and creates a voluntary labeling initiative for bio-based products. According to [USDA](#), bio-based products “are derived from raw materials such as plants and other renewable agricultural, marine, and forestry materials.” In many cases, bio-based products can be used as a sustainable replacement for fossil fuel-based products like plastics. A 2021 [report](#) from USDA found that the U.S. bio-based products industry added \$470 billion to the economy and supported 4.6 million jobs in 2017. The report also estimated that the U.S. bio-based industry displaces 9.4 million barrels of oil every year.

Funding

The 2018 Farm Bill ([P.L.115-334](#)) authorized mandatory annual funding of \$3 million and discretionary annual funding of \$3 million for the BioPreferred® Program through fiscal year (FY) 2023. Congress provided no discretionary funding for the program in FY 2023.

Key Changes

- This resource will be updated as the House and Senate legislative Farm Bill texts are released.

Legislative Side-By-Side

Current Law 7 USC §8102 (October 2022)	House Version	Senate Version
<p>(a) Federal procurement of biobased products</p> <p>(1) Definition of procuring agency In this subsection, the term "procuring agency" means-</p> <ul style="list-style-type: none"> (A) any Federal agency that is using Federal funds for procurement; or (B) a person that is a party to a contract with any Federal agency, with respect to work performed under such a contract. <p>(2) Procurement preference</p> <p>(A) In general</p> <p>(i) Procuring agency duties Except as provided in clause (ii) and subparagraph (B), after the date specified in applicable guidelines prepared pursuant to paragraph (3), each procuring agency shall-</p> <ul style="list-style-type: none"> (I) establish a procurement program, develop procurement specifications, and procure biobased products identified under the guidelines described in paragraph (3) in accordance with this section; (II) with respect to items described in the guidelines, give a procurement preference to those items that- <ul style="list-style-type: none"> (aa) are composed of the highest percentage of biobased products practicable; or (bb) comply with the regulations issued under section 6914b-1 of title 42; and (III) establish a targeted biobased-only procurement requirement under which the procuring agency shall issue a certain number of biobased-only contracts when the procuring agency is purchasing products, or purchasing services that include the use of products, that are included in a biobased product category designated by the Secretary. <p>(ii) Exception The requirements of clause (i)(I) to establish a procurement program and develop procurement specifications shall not apply to a person described in paragraph (1)(B).</p> <p>(B) Flexibility Notwithstanding subparagraph (A), a procuring agency may decide not to procure items described in that subparagraph if the procuring agency determines that the items-</p>	<p>This resource will be updated as the House legislative Farm Bill text is released.</p>	<p>This resource will be updated as the Senate legislative Farm Bill text is released.</p>

- (i) are not reasonably available within a reasonable period of time;
- (ii) fail to meet-
 - (I) the performance standards set forth in the applicable specifications; or
 - (II) the reasonable performance standards of the procuring agencies; or
- (iii) are available only at an unreasonable price.

(C) Minimum requirements

Each procurement program required under this subsection shall, at a minimum-

- (i) be consistent with applicable provisions of Federal procurement law;
- (ii) ensure that items composed of biobased products will be purchased to the maximum extent practicable;
- (iii) include a component to promote the procurement program;
- (iv) provide for an annual review and monitoring of the effectiveness of the procurement program; and
- (v) adopt 1 of the 2 polices described in subparagraph (D) or (E), or a policy substantially equivalent to either of those policies.

(D) Case-by-case policy

(i) In general

Subject to subparagraph (B) and except as provided in clause (ii), a procuring agency adopting the case-by-case policy shall award a contract to the vendor offering an item composed of the highest percentage of biobased products practicable.

(ii) Exception

Subject to subparagraph (B), an agency adopting the policy described in clause (i) may make an award to a vendor offering items with less than the maximum biobased products content.

(E) Minimum content standards

Subject to subparagraph (B), a procuring agency adopting the minimum content standards policy shall establish minimum biobased products content specifications for awarding contracts in a manner that ensures that the biobased products content required is consistent with this subsection.

(F) Certification

After the date specified in any applicable guidelines prepared pursuant to paragraph (3), contracting offices shall require that vendors certify that the biobased products to be used in the performance of the contract will comply with the applicable specifications or other contractual requirements.

(3) Guidelines

(A) In general

The Secretary, after consultation with the Administrator, the Administrator of General Services, and the Secretary of Commerce (acting through the Director of the National Institute of Standards and Technology), shall prepare, and from time to time revise, guidelines for the use of procuring agencies in complying with the requirements of this subsection.

(B) Requirements

The guidelines under this paragraph shall-

- (i) designate those items (including finished products) that are or can be produced with biobased products (including biobased products for which there is only a single product or manufacturer in the category) that will be subject to the preference described in paragraph (2);
- (ii) designate those intermediate ingredients and feedstocks that are or can be used to produce items that will be subject to the preference described in paragraph (2);
- (iii) automatically designate items composed of intermediate ingredients and feedstocks designated under clause (ii), if the content of the designated intermediate ingredients and feedstocks exceeds 50 percent of the item (unless the Secretary determines a different composition percentage is appropriate);
- (iv) set forth recommended practices with respect to the procurement of biobased products and items containing such materials;
- (v) require reporting of quantities and types of biobased products purchased by procuring agencies;
- (vi) promote biobased products, including forest products, that apply an innovative approach to growing, harvesting, sourcing, procuring, processing, manufacturing, or application of biobased products regardless of the date of entry into the marketplace;
- (vii) as determined to be necessary by the Secretary based on the availability of data, provide information as to the availability, relative price, performance, and environmental and public health benefits of such materials and items; and
- (viii) take effect on the date established in the guidelines, which may not exceed 1 year after publication.

(C) Information provided

Information provided pursuant to subparagraph (B)(v) ¹ with respect to a material or item shall be considered to be provided for another item made with the same material or item.

(D) Prohibition

Guidelines issued under this paragraph may not require a manufacturer or vendor of biobased products, as a condition of the purchase of biobased products from the manufacturer or vendor, to provide to procuring agencies more data than would be required to be provided by other manufacturers or vendors offering products for sale to a procuring agency, other than data confirming the biobased content of a product.

(E) Qualifying purchases

The guidelines shall apply with respect to any purchase or acquisition of a procurement item for which-

- (i) the purchase price of the item exceeds \$10,000; or
- (ii) the quantity of the items or of functionally-equivalent items purchased or acquired during the preceding fiscal year was at least \$10,000.

(F) Required designations

Not later than 1 year after February 7, 2014, the Secretary shall begin to designate intermediate ingredients or feedstocks and assembled and finished biobased products in the guidelines issued under this paragraph.

(4) Administration

(A) Office of Federal Procurement Policy

The Office of Federal Procurement Policy, in cooperation with the Secretary, shall-

- (i) coordinate the implementation of this subsection with other policies for Federal procurement;
- (ii) annually collect the information required to be reported under subparagraph (B) and make the information publicly available;
- (iii) take a leading role in informing Federal agencies concerning, and promoting the adoption of and compliance with, procurement requirements for biobased products by Federal agencies; and
- (iv) not less than once every 2 years, submit to Congress a report that-
 - (I) describes the progress made in carrying out this subsection; and
 - (II) contains a summary of the information reported pursuant to subparagraph (B).

<p>(B) Other agencies To assist the Office of Federal Procurement Policy in carrying out subparagraph (A)-</p> <ul style="list-style-type: none"> (i) each procuring agency shall submit each year to the Office of Federal Procurement Policy, to the maximum extent practicable, information concerning- <ul style="list-style-type: none"> (I) actions taken to implement paragraph (2); (II) the results of the annual review and monitoring program established under paragraph (2)(C)(iv); (III) the number and dollar value of contracts entered into during the year that include the direct procurement of biobased products; (IV) the number of service and construction (including renovations) contracts entered into during the year that include language on the use of biobased products; and (V) the types and dollar value of biobased products actually used by contractors in carrying out service and construction (including renovations) contracts during the previous year; and (ii) the General Services Administration and the Defense Logistics Agency shall submit each year to the Office of Federal Procurement Policy information concerning, to the maximum extent practicable, the types and dollar value of biobased products purchased by procuring agencies. <p>(C) Procurement subject to other law Any procurement by any Federal agency that is subject to regulations of the Administrator under section 6962 of title 42 shall not be subject to the requirements of this section to the extent that the requirements are inconsistent with the regulations.</p>		
<p>(b) Labeling</p> <p>(1) In general The Secretary, in consultation with the Administrator, shall establish a voluntary program under which the Secretary authorizes producers of biobased products to use the label "USDA Certified Biobased Product".</p> <p>(2) Eligibility criteria</p> <p>(A) Criteria</p> <p>(i) In general Not later than 90 days after the date of the enactment of the Food, Conservation, and Energy Act of 2008 and except as provided in clause (ii), the Secretary, in consultation with the</p>		

<p>Administrator and representatives from small and large businesses, academia, other Federal agencies, and such other persons as the Secretary considers appropriate, shall issue criteria (as of the date of enactment of that Act) for determining which products may qualify to receive the label under paragraph (1).</p> <p>(ii) Exception Clause (i) shall not apply to final criteria that have been issued (as of the date of enactment of that Act) by the Secretary.</p> <p>(iii) Renewable chemicals Not later than 180 days after December 20, 2018, the Secretary shall update the criteria issued under clause (i) to provide criteria for determining which renewable chemicals may qualify to receive the label under paragraph (1).</p> <p>(B) Requirements Criteria issued under subparagraph (A) shall-</p> <ul style="list-style-type: none"> (i) encourage the purchase of products with the maximum biobased content; (ii) provide that the Secretary may designate as biobased for the purposes of the voluntary program established under this subsection finished products that contain significant portions of biobased materials or components; and (iii) to the maximum extent practicable, be consistent with the guidelines issued under subsection (a)(3). <p>(3) Use of label</p> <p>(A) In general The Secretary shall ensure that the label referred to in paragraph (1) is used only on products that meet the criteria issued pursuant to paragraph (2).</p> <p>(B) Auditing and compliance The Secretary may carry out such auditing and compliance activities as the Secretary determines to be necessary to ensure compliance with subparagraph (A).</p> <p>(4) Assembled and finished products Not later than 1 year after February 7, 2014, the Secretary shall begin issuing criteria for determining which assembled and finished products may qualify to receive the label under paragraph (1).</p>		
<p>(c) Recognition The Secretary shall-</p> <ul style="list-style-type: none"> (1) establish a program to recognize Federal agencies and private entities that use a substantial amount of biobased products; and 		

<p>(2) encourage Federal agencies to establish incentives programs to recognize Federal employees or contractors that make exceptional contributions to the expanded use of biobased products.</p>		
<p>(d) Limitation Nothing in this section shall apply to the procurement of motor vehicle fuels, heating oil, or electricity.</p>		
<p>(e) Inclusion Effective beginning on the date that is 90 days after the date of enactment of the Food, Conservation, and Energy Act of 2008, the Architect of the Capitol, the Sergeant at Arms of the Senate, and the Chief Administrative Officer of the House of Representatives shall consider the biobased product designations made under this section in making procurement decisions for the Capitol Complex.</p>		
<p>(f) Manufacturers of renewable chemicals and biobased products (1) NAICS codes The Secretary and the Secretary of Commerce shall jointly develop North American Industry Classification System codes for- (A) renewable chemicals manufacturers; and (B) biobased products manufacturers. (2) National testing center registry The Secretary shall establish a national registry of testing centers for biobased products that will serve biobased product manufacturers.</p>		
<p>(g) Forest products laboratory coordination In determining whether products are eligible for the "USDA Certified Biobased Product" label, the Secretary (acting through the Forest Products Laboratory) shall provide appropriate technical and other assistance to the program and applicants for forest products.</p>		
<p>(h) Streamlining (1) In general Not later than 1 year after December 20, 2018, the Secretary shall establish guidelines for an integrated process under which biobased products may be, in 1 expedited approval process- (A) determined to be eligible for a Federal procurement preference under subsection (a); and (B) approved to use the "USDA Certified Biobased Product" label under subsection (b).</p>		

<p>(2) Initiation The Secretary shall ensure that a review of a biobased product under the integrated qualification process established pursuant to paragraph (1) may be initiated on receipt of a recommendation or petition from a manufacturer, vendor, or other interested party.</p> <p>(3) Product designations The Secretary may issue a product designation pursuant to subsection (a)(3)(B), or approve the use of the "USDA Certified Biobased Product" label under subsection (b), through streamlined procedures, which shall not be subject to chapter 7 of title 5.</p>		
<p>(i) Requirement of procuring agencies A procuring agency (as defined in subsection (a)(1)) shall not establish regulations, guidance, or criteria regarding the procurement of biobased products, pursuant to this section or any other law, that impose limitations on that procurement that are more restrictive than the limitations established by the Secretary under the regulations to implement this section.</p>		
<p>(j) Reports</p> <p>(1) In general Not later than 180 days after the date of enactment of the Food, Conservation, and Energy Act of 2008 and each year thereafter, the Secretary shall submit to Congress a report on the implementation of this section.</p> <p>(2) Contents Each report under paragraph (1) shall include-</p> <ul style="list-style-type: none"> (A) a comprehensive management plan that establishes tasks, milestones, and timelines, organizational roles and responsibilities, and funding allocations for fully implementing this section; (B) information on the status of implementation of- <ul style="list-style-type: none"> (i) item designations (including designation of intermediate ingredients and feedstocks); and (ii) the voluntary labeling program established under subsection (b); and (C) the progress made by other Federal agencies in compliance with the biobased procurement requirements, including the quantity of purchases made. <p>(3) Economic impact study and report</p> <p>(A) In general The Secretary shall conduct a study to assess the economic impact of the biobased products industry, including-</p>		

<p>(i) the quantity of biobased products sold; (ii) the value of the biobased products; (iii) the quantity of jobs created; (iv) the quantity of petroleum displaced; (v) other environmental benefits; and (vi) areas in which the use or manufacturing of biobased products could be more effectively used, including identifying any technical and economic obstacles and recommending how those obstacles can be overcome.</p> <p>(B) Report Not later than 1 year after February 7, 2014, the Secretary shall submit to Congress a report describing the results of the study conducted under subparagraph (A).</p>		
<p>(k) Funding</p> <p>(1) Mandatory funding Of the funds of the Commodity Credit Corporation, the Secretary shall use to carry out this section \$3,000,000 for each of fiscal years 2014 through 2023.</p> <p>(2) Discretionary funding There is authorized to be appropriated to carry out this section \$3,000,000 for each of fiscal years 2019 through 2023.</p>		
<p>(l) Biobased product inclusion In this section, the term "biobased product" (as defined in section 8101 of this title) includes, with respect to forestry materials, forest products that meet biobased content requirements, notwithstanding the market share the product holds, the age of the product, or whether the market for the product is new or emerging.</p>		
<p>(m) Rural development mission area In carrying out this section, except as provided in subsection (g), the Secretary shall act through the rural development mission area.</p>		

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This resource will be updated as the House and Senate legislative Farm Bill texts are released.

This resource is available electronically (with hyperlinks and endnotes) at www.eesi.org/papers.

The Environmental and Energy Study Institute (EESI) is a non-profit organization founded in 1984 on a bipartisan basis by members of Congress to help educate and inform policymakers, their staff, stakeholders, and the American public about the benefits of a low-emissions economy that prioritizes energy efficiency, renewable energy, and new clean energy technologies. In 1988, EESI declared that addressing climate change is a moral imperative, which has since guided our work toward our vision: a sustainable, resilient, and equitable world.

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