

# USDA Issues Final Rule Regarding Biobased Product Labeling

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On January 20, 2011, the United States Department of Agriculture ("USDA") issued a [final rule](#) regarding a voluntary product certification and labeling program for biobased products. The new rule creates a distinctive USDA product mark for qualifying products and sets forth the standards that these products must meet to bear the USDA's symbol. According to the USDA, the labeling initiative is intended to "more clearly identify biobased products for all buyers, and to promote the increased sale and use of biobased products in the commercial market and for consumers." The certification and labeling program will be administered in conjunction with the USDA's BioPreferred Products procurement program, which affords products that meet the programs' requirements preferred purchasing status by federal agencies.

To bear the USDA's new label, products must:

- Be a commercial or industrial product that is composed wholly or significantly of biological ingredients (e.g., renewable plant, animal, marine or forestry materials); and
- Meet minimum biobased content standards.
  - The USDA has already determined the minimum biobased content for some categories of products that are eligible for the federal preferred procurement program. If an entity is seeking label approval for a product that falls within a category of products for which the USDA has created minimum content standards, the product must meet the minimum content requirements for the specific product category found in 7 C.F.R. Part 2902, Subpart B. Product categories for which the USDA has already created minimum content standards include bedding, linens, disposable cutlery and containers, fertilizer, hand cleaners and sanitizers, lip care products, cleaning products, and topical pain relief products.
  - If a product does not fall within a USDA BioPreferred Products' category, the product must contain at least 25 percent biobased material.

Food, fuel, and feed products, as well as mature market products, are excluded from the rule's scope and entities may not apply to use the biobased label with these products. Mature market products refers to products that had a significant market share in 1972 (e.g., cotton t-shirts are considered a mature market product because a significant portion of the t-shirt market was comprised of cotton-based products in 1972).

The rule also sets forth application procedures, information regarding how the USDA's label may be used and how it must be displayed (e.g., the label may be used to advertise certified products in catalogs, on websites, and other promotional material; general statements describing a biobased product may describe it as "USDA Certified Biobased Product/Package/Product & Package"; the label

must stand alone and not be incorporated into any other certification label or logo design), and penalties for violations of the final rule.

An example of the USDA's new label is available [here](#) on the USDA's [BioPreferred program website](#).