

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 8101, Pub. L. 107-171, title IX, §9001, May 13, 2002, 116 Stat. 475; Pub. L. 109-58, title IX, §943(a)(1), Aug. 8, 2005, 119 Stat. 880, contained definitions for this chapter, prior to the general amendment of this chapter by Pub. L. 110-246.

EFFECTIVE DATE

Enactment of this chapter and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as a note under section 8701 of this title.

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108-199, div. A, title VII, §778(a), Jan. 23, 2004, 118 Stat. 41, provided that: “This section [enacting section 8109 of this title] may be cited as the ‘Sun Grant Research Initiative Act of 2003.’”

BIOMASS RESEARCH AND DEVELOPMENT

Pub. L. 106-224, title III, June 20, 2000, 114 Stat. 428; as amended by Pub. L. 107-171, title IX, §9008, May 13, 2002, 116 Stat. 483; Pub. L. 108-148, title II, §201, Dec. 3, 2003, 117 Stat. 1901; Pub. L. 109-58, title IX, §941, Aug. 8, 2005, 119 Stat. 873, known as the Biomass Research and Development Act of 2000, and formerly set out as a note under this section, provided temporary authority for the Secretaries of Agriculture and Energy to promote biomass research and development. As amended by Pub. L. 109-58, the program became permanent, and title III of Pub. L. 106-224 was transferred to chapter 112 (§8601 et seq.) of this title. Subsequently, title III of Pub. L. 106-224 was repealed by Pub. L. 110-246, title IX, §9001(b), June 18, 2008, 122 Stat. 2095.

BIOFUELS AND RURAL ECONOMIC DEVELOPMENT

Memorandum of President of the United States, May 5, 2009, 74 F.R. 21531, provided:

Memorandum for the Secretary of Agriculture, the Secretary of Energy, [and] the Administrator of the Environmental Protection Agency

In the Nation’s ongoing efforts to achieve energy independence, biomass and biofuels promise to play a key role by providing the Nation with homegrown sustainable energy options and energizing our economy with new industries and jobs. While producing clean renewable fuels locally is a powerful engine of economic growth, they must be developed and used in a way that limits environmental impact. Today, the Environmental Protection Agency (EPA) is issuing a Notice of Proposed Rulemaking, as required by the Energy Independence and Security Act of 2007, to set new national renewable fuel standards and implement those standards. The public will have an opportunity to provide input on this proposal through a 60-day comment period, and the EPA is conducting peer reviews on key aspects of the environmental impact assessments within the proposal.

In order to shepherd our Nation’s development of this important industry and to coordinate interagency policy, I hereby establish a Biofuels Interagency Working Group (Working Group), to be co-chaired by the Secretaries of Agriculture and Energy and the Administrator of the EPA. This Working Group will coordinate with the National Science and Technology Council’s Biomass Research and Development Board in undertaking its work. The responsibilities of the Working Group shall include:

(a) Developing the Nation’s first comprehensive biofuel market development program, which shall use existing authorities and identify new policies to support the development of next-generation biofuels, in-

crease flexible fuel vehicle use, and assist in retail marketing efforts;

(b) Coordinating infrastructure policies affecting the supply, secure transport, and distribution of biofuels; and

(c) Identifying new policy options to promote the environmental sustainability of biofuels feedstock production, taking into consideration land use, habitat conservation, crop management practices, water efficiency and water quality, as well as lifecycle assessments of greenhouse gas emissions.

Alongside the Working Group’s efforts, the Secretary of Agriculture may pursue other important biofuel development efforts. The Rural Development Act of 1972 and the Rural Development Policy Act of 1980 direct the Secretary of Agriculture to develop, in coordination with State and local governments, a nationwide rural development program to assure rural America’s health and prosperity. In keeping with that mandate, and recognizing the key role rural America will play in the development of biofuel technology and development, I request that the Secretary of Agriculture take the following steps, to the extent permitted by law:

(a) Immediately begin restructuring existing investments in renewable fuels as needed to preserve industry employment; and

(b) Develop a comprehensive approach to accelerating the investment in and production of American biofuels and reducing our dependence on fossil fuels by providing, within 30 days, under the authorities made available in the Food, Conservation, and Energy Act of 2008:

(i) Loan guarantees for the development, construction, and retrofitting of commercial-scale biorefineries and grants to help pay for the development and construction costs of demonstration-scale biorefineries;

(ii) Expedited funding to encourage biorefineries to replace the use of fossil fuels in plant operations by installing new biomass energy systems or producing new energy from renewable biomass;

(iii) Expedited funding to biofuels producers to encourage production of next-generation biofuels from cellulosic biomass and other feedstocks;

(iv) Expansion of the Renewable Energy Systems and Energy Efficiency Improvements Program, which has been renamed the Rural Energy for America Program, to include hydroelectric source technologies, energy audits, and higher loan guarantee limits; and

(v) Guidance and support for collection, harvest, storage, and transportation assistance for eligible materials for use in biomass conversion facilities.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Secretary of Agriculture is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 8102. Biobased markets program

(a) Federal procurement of biobased products

(1) Definition of procuring agency

In this subsection, the term “procuring agency” means—

(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.

(2) Procurement preference

(A) In general

(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—

(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; and

(II) with respect to items described in the guidelines, give a procurement preference to those items that—

(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.

(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).

(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—

(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 policies 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) provide information as to the availability, relative price, performance, and environmental and public health benefits of such materials and items; and

(vi) 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) 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.

(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).

(B) Other agencies

To assist the Office of Federal Procurement Policy in carrying out subparagraph (A)—

- (i) each procuring agency shall submit each year to the Office of Federal Procurement Policy, to the maximum extent practicable, information concerning—
 - (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 con-

tractors 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.

(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.

(b) Labeling**(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”.

(2) Eligibility criteria**(A) Criteria****(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 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).

(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.

(B) Requirements

Criteria issued under subparagraph (A) shall—

- (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).

(3) Use of label

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).

(c) Recognition

The Secretary shall—

(1) establish a program to recognize Federal agencies and private entities that use a substantial amount of biobased products; and

(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.

(d) Limitation

Nothing in this section shall apply to the procurement of motor vehicle fuels, heating oil, or electricity.

(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.

(f) National testing center registry

The Secretary shall establish a national registry of testing centers for biobased products that will serve biobased product manufacturers.

(g) Reports

(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.

(2) Contents

The report shall include—

(A) a comprehensive management plan that establishes tasks, milestones, and timelines, organizational roles and responsibilities, and funding allocations for fully implementing this section; and

(B) information on the status of implementation of—

(i) item designations (including designation of intermediate ingredients and feedstocks); and

(ii) the voluntary labeling program established under subsection (b).

(h) Funding

(1) Mandatory funding

Of the funds of the Commodity Credit Corporation, the Secretary shall use to provide mandatory funding for biobased products testing and labeling as required to carry out this section—

(A) \$1,000,000 for fiscal year 2008; and

(B) \$2,000,000 for each of fiscal years 2009 through 2012.

(2) Discretionary funding

In addition to any other funds made available to carry out this section, there is authorized to be appropriated to carry out this section \$2,000,000 for each of fiscal years 2009 through 2012.

(Pub. L. 107–171, title IX, §9002, as added Pub. L. 110–234, title IX, §9001(a), May 22, 2008, 122 Stat.

1305, and Pub. L. 110–246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2067.)

REFERENCES IN TEXT

The date of the enactment of the Food, Conservation, and Energy Act of 2008, referred to in subsecs. (b)(2)(A), (e), and (g)(1), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

A prior section 8102, Pub. L. 107–171, title IX, §9002, May 13, 2002, 116 Stat. 476; Pub. L. 109–58, title II, §205, title IX, §943(a)(2), (b), Aug. 8, 2005, 119 Stat. 654, 880, 881, related to Federal procurement of biobased products, prior to the general amendment of this chapter by Pub. L. 110–246.

§ 8103. Biorefinery assistance

(a) Purpose

The purpose of this section is to assist in the development of new and emerging technologies for the development of advanced biofuels, so as to—

(1) increase the energy independence of the United States;

(2) promote resource conservation, public health, and the environment;

(3) diversify markets for agricultural and forestry products and agriculture waste material; and

(4) create jobs and enhance the economic development of the rural economy.

(b) Definitions

In this section:

(1) Eligible entity

The term “eligible entity” means an individual, entity, Indian tribe, or unit of State or local government, including a corporation, farm cooperative, farmer cooperative organization, association of agricultural producers, National Laboratory, institution of higher education, rural electric cooperative, public power entity, or consortium of any of those entities.

(2) Eligible technology

The term “eligible technology” means, as determined by the Secretary—

(A) a technology that is being adopted in a viable commercial-scale operation of a biorefinery that produces an advanced biofuel; and

(B) a technology not described in subparagraph (A) that has been demonstrated to have technical and economic potential for commercial application in a biorefinery that produces an advanced biofuel.

(c) Assistance

The Secretary shall make available to eligible entities—

(1) grants to assist in paying the costs of the development and construction of demonstration-scale biorefineries to demonstrate the commercial viability of 1 or more processes for converting renewable biomass to advanced biofuels; and