

agency determines that such application is in the interest of the United States.

(b) The head of an agency shall manage activities, personnel, resources, and facilities of the agency that are not located within the United States, and with respect to which the head of the agency has not made a determination under subsection (a) of this section, in a manner consistent with the policies set forth in this memorandum, to the extent the head of the agency determines practicable.

(c) For purposes of this memorandum, “biobased product” shall have the meaning set forth in section 8101(4) of title 7, United States Code.

(d) 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.

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

BARACK OBAMA.

### § 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

- (2) guarantees for loans made to fund the development, construction, and retrofitting of commercial-scale biorefineries using eligible technology.

#### (d) Grants

##### (1) Competitive basis

The Secretary shall award grants under subsection (c)(1) on a competitive basis.

##### (2) Selection criteria

###### (A) In general

In approving grant applications, the Secretary shall establish a priority scoring system that assigns priority scores to each application and only approve applications that exceed a specified minimum, as determined by the Secretary.

###### (B) Feasibility

In approving a grant application, the Secretary shall determine the technical and economic feasibility of the project based on a feasibility study of the project described in the application conducted by an independent third party.

###### (C) Scoring system

In determining the priority scoring system, the Secretary shall consider—

- (i) the potential market for the advanced biofuel and the byproducts produced;
- (ii) the level of financial participation by the applicant, including support from non-Federal and private sources;
- (iii) whether the applicant is proposing to use a feedstock not previously used in the production of advanced biofuels;
- (iv) whether the applicant is proposing to work with producer associations or cooperatives;
- (v) whether the applicant has established that the adoption of the process proposed in the application will have a positive impact on resource conservation, public health, and the environment;
- (vi) the potential for rural economic development;
- (vii) whether the area in which the applicant proposes to locate the biorefinery has other similar facilities;
- (viii) whether the project can be replicated; and
- (ix) scalability for commercial use.

#### (3) Cost sharing

##### (A) Limits

The amount of a grant awarded for development and construction of a biorefinery under subsection (c)(1) shall not exceed an amount equal to 30 percent of the cost of the project.

##### (B) Form of grantee share

###### (i) In general

The grantee share of the cost of a project may be made in the form of cash or material.

###### (ii) Limitation

The amount of the grantee share that is made in the form of material shall not ex-

ceed 15 percent of the amount of the grant-ee share determined under subparagraph (A).

**(e) Loan guarantees**

**(1) Selection criteria**

**(A) In general**

In approving loan guarantee applications, the Secretary shall establish a priority scoring system that assigns priority scores to each application and only approve applications that exceed a specified minimum, as determined by the Secretary.

**(B) Feasibility**

In approving a loan guarantee application, the Secretary shall determine the technical and economic feasibility of the project based on a feasibility study of the project described in the application conducted by an independent third party.

**(C) Scoring system**

In determining the priority scoring system for loan guarantees under subsection (c)(2), the Secretary shall consider—

(i) whether the applicant has established a market for the advanced biofuel and the byproducts produced;

(ii) whether the area in which the applicant proposes to place the biorefinery has other similar facilities;

(iii) whether the applicant is proposing to use a feedstock not previously used in the production of advanced biofuels;

(iv) whether the applicant is proposing to work with producer associations or cooperatives;

(v) the level of financial participation by the applicant, including support from non-Federal and private sources;

(vi) whether the applicant has established that the adoption of the process proposed in the application will have a positive impact on resource conservation, public health, and the environment;

(vii) whether the applicant can establish that if adopted, the biofuels production technology proposed in the application will not have any significant negative impacts on existing manufacturing plants or other facilities that use similar feedstocks;

(viii) the potential for rural economic development;

(ix) the level of local ownership proposed in the application; and

(x) whether the project can be replicated.

**(2) Limitations**

**(A) Maximum amount of loan guaranteed**

The principal amount of a loan guaranteed under subsection (c)(2) may not exceed \$250,000,000.

**(B) Maximum percentage of loan guaranteed**

**(i) In general**

Except as otherwise provided in this subparagraph, a loan guaranteed under subsection (c)(2) shall be in an amount not to exceed 80 percent of the project costs, as determined by the Secretary.

**(ii) Other direct Federal funding**

The amount of a loan guaranteed for a project under subsection (c)(2) shall be reduced by the amount of other direct Federal funding that the eligible entity receives for the same project.

**(iii) Authority to guarantee the loan**

The Secretary may guarantee up to 90 percent of the principal and interest due on a loan guaranteed under subsection (c)(2).

**(C) Loan guarantee fund distribution**

Of the funds made available for loan guarantees for a fiscal year under subsection (h), 50 percent of the funds shall be reserved for obligation during the second half of the fiscal year.

**(f) Consultation**

In carrying out this section, the Secretary shall consult with the Secretary of Energy.

**(g) Condition on provision of assistance**

**(1) In general**

As a condition of receiving a grant or loan guarantee under this section, an eligible entity shall ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed, in whole or in part, with the grant or loan guarantee, as the case may be, shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with sections 3141 through 3144, 3146, and 3147 of title 40.

**(2) Authority and functions**

The Secretary of Labor shall have, with respect to the labor standards described in paragraph (1), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App) and section 3145 of title 40.

**(h) Funding**

**(1) Mandatory funding**

Of the funds of the Commodity Credit Corporation, the Secretary shall use for the cost of loan guarantees under this section, to remain available until expended—

(A) \$75,000,000 for fiscal year 2009; and

(B) \$245,000,000 for fiscal year 2010.

**(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 \$150,000,000 for each of fiscal years 2009 through 2013.

(Pub. L. 107-171, title IX, §9003, as added Pub. L. 110-234, title IX, §9001(a), May 22, 2008, 122 Stat. 1310, and Pub. L. 110-246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2072; amended Pub. L. 112-240, title VII, §701(f)(2), Jan. 2, 2013, 126 Stat. 2365.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (g)(2), is set out in the Appendix to Title 5, Government Organization and Employees.

## 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 8103, Pub. L. 107-171, title IX, §9003, May 13, 2002, 116 Stat. 478, related to biorefinery development grants, prior to the general amendment of this chapter by Pub. L. 110-246.

## AMENDMENTS

2013—Subsec. (h)(2). Pub. L. 112-240 substituted “2013” for “2012”.

## EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112-240 effective Sept. 30, 2012, see section 701(j) of Pub. L. 112-240, set out in a 1-Year Extension of Agricultural Programs note under section 8701 of this title.

**§ 8104. Repowering assistance****(a) In general**

The Secretary shall carry out a program to encourage biorefineries in existence on the date of enactment of the Food, Conservation, and Energy Act of 2008 to replace fossil fuels used to produce heat or power to operate the biorefineries by making payments for—

- (1) the installation of new systems that use renewable biomass; or
- (2) the new production of energy from renewable biomass.

**(b) Payments****(1) In general**

The Secretary may make payments under this section to any biorefinery that meets the requirements of this section for a period determined by the Secretary.

**(2) Amount**

The Secretary shall determine the amount of payments to be made under this section to a biorefinery after considering—

- (A) the quantity of fossil fuels a renewable biomass system is replacing;
- (B) the percentage reduction in fossil fuel used by the biorefinery that will result from the installation of the renewable biomass system; and
- (C) the cost and cost effectiveness of the renewable biomass system.

**(c) Eligibility**

To be eligible to receive a payment under this section, a biorefinery shall demonstrate to the Secretary that the renewable biomass system of the biorefinery is feasible based on an independent feasibility study that takes into account the economic, technical and environmental aspects of the system.

**(d) Funding****(1) Mandatory funding**

Of the funds of the Commodity Credit Corporation, the Secretary shall use to make payments under this section \$35,000,000 for fiscal year 2009, to remain available until expended.

**(2) Discretionary funding**

In addition to any other funds made available to carry out this section, there is author-

ized to be appropriated to carry out this section \$15,000,000 for each of fiscal years 2009 through 2013.

(Pub. L. 107-171, title IX, §9004, as added Pub. L. 110-234, title IX, §9001(a), May 22, 2008, 122 Stat. 1313, and Pub. L. 110-246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2075; amended Pub. L. 112-240, title VII, §701(f)(3), Jan. 2, 2013, 126 Stat. 2365.)

## REFERENCES IN TEXT

The date of enactment of the Food, Conservation, and Energy Act of 2008, referred to in subsec. (a), 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 8104, Pub. L. 107-171, title IX, §9004, May 13, 2002, 116 Stat. 480, related to a biodiesel fuel education program, prior to the general amendment of this chapter by Pub. L. 110-246. See section 8106 of this title.

## AMENDMENTS

2013—Subsec. (d)(2). Pub. L. 112-240 substituted “2013” for “2012”.

## EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112-240 effective Sept. 30, 2012, see section 701(j) of Pub. L. 112-240, set out in a 1-Year Extension of Agricultural Programs note under section 8701 of this title.

**§ 8105. Bioenergy program for advanced biofuels****(a) Definition of eligible producer**

In this section, the term “eligible producer” means a producer of advanced biofuels.

**(b) Payments**

The Secretary shall make payments to eligible producers to support and ensure an expanding production of advanced biofuels.

**(c) Contracts**

To receive a payment, an eligible producer shall—

- (1) enter into a contract with the Secretary for production of advanced biofuels; and
- (2) submit to the Secretary such records as the Secretary may require as evidence of the production of advanced biofuels.

**(d) Basis for payments**

The Secretary shall make payments under this section to eligible producers based on—

- (1) the quantity and duration of production by the eligible producer of an advanced biofuel;
- (2) the net nonrenewable energy content of the advanced biofuel, if sufficient data is available, as determined by the Secretary; and
- (3) other appropriate factors, as determined by the Secretary.

**(e) Equitable distribution**

The Secretary may limit the amount of payments that may be received by a single eligible producer under this section in order to distrib-