

icy, 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, increase 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 agen-

cy 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 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.

(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 author-

ized to be appropriated to carry out this section \$2,000,000 for each of fiscal years 2009 through 2013.

(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; amended Pub. L. 112–240, title VII, § 701(f)(1), Jan. 2, 2013, 126 Stat. 2364.)

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.

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.

DRIVING INNOVATION AND CREATING JOBS IN RURAL AMERICA THROUGH BIOBASED AND SUSTAINABLE PRODUCT PROCUREMENT

Memorandum of President of the United States, Feb. 21, 2012, 77 F.R. 10939, provided:

Memorandum for the Heads of Executive Departments and Agencies

The BioPreferred program—established by the Farm Security and Rural Investment Act of 2002 (Public Law 107–171) (2002 Farm Bill), and strengthened by the Food, Conservation, and Energy Act of 2008 (Public Law 110–234 [probably should refer to Public Law 110–246]) (2008 Farm Bill)—is intended to increase Federal procurement of biobased products to promote rural economic development, create new jobs, and provide new markets for farm commodities. Biobased and sustainable products help to increase our energy security and independence.

The Federal Government, with leadership from the Department of Agriculture (USDA), has made significant strides in implementing the BioPreferred program. It is one of the key elements in my efforts to promote sustainable acquisition throughout the Government under Executive Order 13514 of October 5, 2009 (Federal Leadership in Environmental, Energy, and Economic Performance). Further efforts will drive innovation and economic growth and create jobs at marginal cost to the American public.

The goal of this memorandum is to ensure that executive departments and agencies (agencies) effectively execute Federal procurement requirements for biobased products, including those requirements identified in Executive Order 13514 and prescribed in the 2002 Farm Bill, as amended by the 2008 Farm Bill. It is vital that these efforts are in accord and carefully coordinated with other Federal procurement requirements.

Therefore, I direct that agencies take the following steps to significantly increase Federal procurement of biobased and other sustainable products.

SECTION 1. *Actions Related to Executive Order 13514.* (a) Agencies shall include and report on biobased acquisition as part of the sustainable acquisition goals and milestones in the Strategic Sustainability Performance Plan required by section 8 of Executive Order 13514.

(b) As required by section 2(h) of Executive Order 13514, agencies shall ensure that 95 percent of applicable new contract actions for products and services advance sustainable acquisition, including biobased acquisition, where such products and services meet agency performance requirements. In doing so, agencies shall:

(i) include acquisition of biobased products in their Affirmative Procurement Programs and Preferable Purchasing Programs, as applicable (as originally required by Executive Order 13101 of September 14, 1998 (Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition) and reinforced by Executive Order 13423 of January 24, 2007 (Strengthening Federal Environmental, Energy, and Transportation Management) and Executive Order 13514);

(ii) include biobased products as part of their procurement review and monitoring program required by section 9002(a) of the 2008 Farm Bill [probably should be 2002 Farm Bill], incorporating data collection and reporting requirements as part of their program evaluation; and

(iii) provide appropriate training on procurement of biobased products for all acquisition personnel including requirements and procurement staff.

(c) The Office of Management and Budget (OMB) shall emphasize biobased purchasing in the fiscal year 2012 and 2013 Sustainability/Energy scorecard, which is the periodic evaluation of agency performance on sustainable acquisition pursuant to section 4 of Executive Order 13514.

SEC. 2. *Biobased Product Designations.* The USDA has already designated 64 categories of biobased products for preferred Federal procurement. Although these categories represent an estimated 9,000 individual products, less than half of the known biobased products are currently included in the preference program. Increasing the number of products subject to the Federal procurement preference will increase procurement of biobased products. Therefore, I direct the Secretary of Agriculture to:

(a) increase both the number of categories of biobased products designated and individual products eligible for preferred purchasing by 50 percent within 1 year of the date of this memorandum; and

(b) establish a web-based process whereby biobased product manufacturers can request USDA to establish a new product category for designation. The USDA shall determine the merit of the request and, if the product category is deemed eligible, propose designation within 180 days of the request.

SEC. 3. *Changes in Procurement Mechanisms.* Several actions can be taken to facilitate improvement in and compliance with the requirements to purchase biobased products. To achieve these changes, I direct:

(a) the Senior Sustainability Officers and Chief Acquisition Officers of all agencies to randomly sample procurement actions (such as solicitations and awards) to verify that biobased considerations are included as appropriate. Agencies shall include results of these sampling efforts in the Sustainability/Energy scorecard reported to OMB;

(b) the Secretary of Agriculture to work with relevant officials in agencies that have electronic product procurement catalogs to identify and implement solutions to increase the visibility of biobased and other sustainable products;

(c) the Senior Sustainability Officers of all agencies that have established agency-specific product specifications, in coordination with any other appropriate officials, to review and revise all specifications under their control to assure that, wherever possible and appropriate, such specifications require the use of sustainable products, including USDA-designated biobased products, and that any language prohibiting the use of

biobased products is removed. The review shall be on a 4-year cycle. Significant review should be completed within 1 year of the date of this memorandum, and the results of the reviews shall be annually reported to OMB and the Office of Science and Technology Policy (OSTP); and

(d) the Secretary of Agriculture to amend USDA's automated contract writing system, the Integrated Acquisition System, to serve as a model for biobased product procurement throughout the Federal Government by adding elements related to acquisition planning, evaluation factors for source selection, and specifications and requirements. Once completed, USDA shall share the model with all agencies and, as appropriate, assist any agency efforts to adopt similar mechanisms.

SEC. 4. *Small Business Assistance.* A majority of the biobased product manufacturers and vendors selling biobased products and services that use biobased products to the Federal Government are small businesses. To improve the ability of small businesses to sell these products and services to the Federal Government, I direct:

(a) the Secretary of Commerce, in consultation with the Secretary of Agriculture, to use relevant programs of the Department, such as the Manufacturing Extension Partnership network, to improve the performance and competitiveness of biobased product manufacturers;

(b) the Secretary of Agriculture to work cooperatively with Procurement Technical Assistance Center programs located across the Nation to provide training and assistance to biobased product companies to make these companies aware of the BioPreferred program and opportunities to sell biobased products to Federal, State, and local government agencies; and

(c) the Secretary of Agriculture to develop training within 6 months of the date of this memorandum for small businesses on the BioPreferred program and the opportunities it presents, and the Administrator of the Small Business Administration (SBA) to disseminate that training to Small Business Development Centers and feature it on the SBA website.

SEC. 5. *Reporting.* The Federal Government should obtain the most reliable information to gauge its progress in purchasing biobased products, including measuring the annual number of procurements that include direct purchase of biobased products, the annual number of construction and service contracts that include the purchase of biobased products, and the annual volume and type of biobased products the Federal Government purchases. I direct that:

(a) within 1 year of the date of this memorandum, the Federal Acquisition Regulatory Council shall propose an amendment to the Federal Acquisition Regulation to require reporting of biobased product purchases, to be made public on an annual basis; and

(b) following the promulgation of the proposed amendment referenced in subsection (a) of this section, the Secretary of Agriculture, in consultation with the Chief Acquisition Officers Council, shall develop a reporting template to facilitate the annual reporting requirement.

SEC. 6. *Jobs Creation Research.* Biobased products are creating jobs across America. These innovative products are creating new markets for agriculture and expanding opportunities in rural America. Therefore, I direct the Secretary of Agriculture to prepare a report on job creation and the economic impact associated with the biobased product industry to be submitted to the President through the Domestic Policy Council and OSTP within 2 years of the date of this memorandum. The study shall include:

(a) the number of American jobs originating from the biobased product industry annually over the last 10 years, including the job changes in specific sectors;

(b) the dollar value of the current domestic biobased products industry, including intermediates, feedstocks, and finished products, but excluding biofuels;

(c) a forecast for biobased job creation potential over the next 10 years;

(d) a forecast for growth in the biobased industry over the next 10 years; and

(e) jobs data for both biofuels and biobased products, but shall generate separate data for each category.

SEC. 7. *Education and Outreach.* In compliance with the 2002 Farm Bill, several agencies established agency promotion programs to support the biobased products procurement preference. The Federal Acquisition Institute has added biobased procurement training to its course offerings. To assure both formal and informal educational and outreach instruction on the BioPreferred program are in place and being implemented by each agency, I direct:

(a) the Secretary of Agriculture to update all existing USDA BioPreferred and related sustainable acquisition training materials within 1 year of the date of this memorandum;

(b) the Senior Sustainability Officers and Chief Acquisition Officers of agencies to work cooperatively with the Secretary of Agriculture to immediately implement such BioPreferred program agency education and outreach programs as are necessary to meet the requirements of this memorandum and relevant statutes; and

(c) the Secretary of Agriculture to work actively with the Committee for Purchase From People Who Are Blind or Severely Disabled to promote education and outreach to program, technical, and contracting personnel, and to purchase card holders on BioPreferred AbilityOne products.

SEC. 8. *General Provisions.* (a) This memorandum shall apply to an agency with respect to the activities, personnel, resources, and facilities of the agency that are located within the United States. The head of an agency may provide that this memorandum shall apply in whole or in part with respect to the activities, personnel, resources, and facilities of the agency that are not located within the United States, if the head of the 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.