
**Executive Documents**

**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 Secretary of Agriculture and the Secretary of Energy, 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 L. 106–224 was repealed by Pub.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. 2005.

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; and

(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.

RAKABE. 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;

(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; 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 in-
clude the use of products, that are included in a biobased product category designated by the Secretary.

(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 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) with respect to a material or item shall be considered to be provided for

1 See References in Text note below.
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).

(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 6922 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.

(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).

(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
(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).

(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).

(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).

(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) 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.

(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.

(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).

(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.

(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.

(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.

(j) 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
Each report under paragraph (1) 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; 
(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); and 
(C) the progress made by other Federal agencies in compliance with the biobased procurement requirements, including the quantity of purchases made.
(3) Economic impact study and report

(A) In general

The Secretary shall conduct a study to assess the economic impact of the biobased products industry, including—

(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.

(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).

(k) Funding

(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.

(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.

(k) 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.

(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.


EDITORIAL NOTE

Section 110–246 was repealed by section 4(a) of Pub. L. 110–246, which was approved June 18, 2008.

PRIORITY PROVISIONS

Subsec. (f). Pub. L. 115–334, § 9002(2), amended subsec. (f) generally. Prior to amendment, text read as follows: “The Secretary shall establish a national registry of testing centers for biobased products that will serve biobased product manufacturers.”
Subsecs. (h), (i). Pub. L. 115–334, § 9002(4), added subsecs. (h) and (i). Former subsecs. (h) and (i) redesignated (j) and (k), respectively.
Subsecs. (j), (k). Pub. L. 115–334, § 9002(3), redesignated subsecs. (h) and (i) as (j) and (k), respectively. Former subsec. (j) redesignated (l).
Subsec. (k)(2). Pub. L. 115–334, § 9002(5)(B), substituted “$3,000,000 for each of fiscal years 2019 through 2023” for “$2,000,000 for each of fiscal years 2013 through 2018”.

Subsec. (a)(3)(B)(vi). Pub. L. 113–79, § 9002(a)(1)(B)(i)(III), amended as determined to be necessary by the Secretary based on the availability of data,” before “provide information”.
Subsec. (a)(3)(B)(viii). Pub. L. 113–79, § 9002(a)(1)(B)(i)(III), redesignated cls. (v) and (vi) as (vii) and (viii), respectively.
Subsec. (g). Pub. L. 113–79, § 9002(a)(5), added subsec. (g). Former subsec. (g) redesignated (h).
Subsec. (h). Pub. L. 113–79, § 9002(a)(4), redesignated subsecs. (g) and (h) as (h) and (i), respectively.
Subsec. (i)(1). Pub. L. 113–79, § 9002(a)(6), added (h) and struck out former pars. (1) and (2) which related to mandatory funding for fiscal years 2008 through 2012 and discretionary funding for fiscal years 2009 through 2013, respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2013 AMENDMENT


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) 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.

(8102)
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, to the extent possible, require the use of biobased 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.

Sic. 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 designate appropriate programs of the Department, such as the Manufacturing Extension Partnership network, to improve the performance and competitiveness of biobased product manufacturers and vendors;

(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.

Sic. 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.

Sic. 6. Jobs Creation Research. Biobased products are creating jobs across America. These innovative prod-
ucts 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.

§ 8103. Biorefinery, renewable chemical, and biobased product manufacturing 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, renewable chemicals, and biobased product manufacturing 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) Biobased product manufacturing

The term ‘‘biobased product manufacturing’’ means development, construction, and retrofitting of technologically new commercial-scale processing and manufacturing equipment and required facilities that will be used to convert renewable chemicals and other biobased outputs of biorefineries into end-user products on a commercial scale.

(2) 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.

(3) 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 any 1 or more, or a combination, of—

(i) an advanced biofuel;

(ii) a renewable chemical; or

(iii) a biobased product; 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 any 1 or more, or a combination, of—

(i) an advanced biofuel;

(ii) a renewable chemical; or

(iii) a biobased product.

(c) Assistance

The Secretary shall make available to eligible entities guaranteed for loans made to fund the development, construction, and retrofitting of commercial-scale biorefineries using eligible technology.

(d) Loan guarantees

(1) Selection criteria

(A) In general

In approving loan guarantee applications, the Secretary shall establish a priority scor-