

not more than \$55,000,000 of funds of the Commodity Credit Corporation to cover administrative costs associated with the implementation of title I and the amendments made by that title.

**(2) Availability**

The funds referred to in paragraph (1) shall remain available to the Secretary until expended.

**(3) Set-aside**

Of the amount specified in paragraph (1), the Secretary shall use not less than \$5,000,000, but not more than \$8,000,000, to carry out subsection (b) of this section.

**(b) Information management**

**(1) Development of system**

The Secretary of Agriculture shall develop a comprehensive information management system, using appropriate technologies, to be used in implementing the programs administered by the Federal Crop Insurance Corporation and the Farm Service Agency.

**(2) Elements**

The information management system developed under this subsection shall be designed to—

(A) improve access by agricultural producers to programs described in paragraph (1);

(B) improve and protect the integrity of the information collected;

(C) meet the needs of the agencies that require the data in the administration of their programs;

(D) improve the timeliness of the collection of the information;

(E) contribute to the elimination of duplication of information collection;

(F) lower the overall cost to the Department of Agriculture for information collection; and

(G) achieve such other goals as the Secretary considers appropriate.

**(3) Reconciliation of current information management**

The Secretary shall ensure that all current information of the Federal Crop Insurance Corporation and the Farm Service Agency is combined, reconciled, redefined, and reformatted in such a manner so that the agencies can use the common information management system developed under this subsection.

**(4) Assistance for development of system**

The Secretary shall enter into an agreement or contract with a non-Federal entity to assist the Secretary in the development of the information management system. The Secretary shall give preference in entering into an agreement or contract to entities that have—

(A) prior experience with the information and management systems of the Federal Crop Insurance Corporation; and

(B) collaborated with the Corporation in the development of the identification procedures required by section 1515(f) of this title.

**(5) Use**

The information collected using the information management system developed under this subsection may be made available to—

(A) any Federal agency that requires the information to carry out the functions of the agency; and

(B) any approved insurance provider, as defined in section 1502(b) of this title, with respect to producers insured by the approved insurance provider.

**(6) Relation to other activities**

This subsection shall not interfere with, or delay, existing agreements or requests for proposals of the Federal Crop Insurance Corporation or the Farm Service Agency regarding the information management activities known as data mining or data warehousing.

**(c) Authorization of appropriations**

In addition to amounts made available under subsection (a)(3) of this section, there are authorized to be appropriated such sums as are necessary to carry out subsection (b) of this section for each of fiscal years 2003 through 2008.

(Pub. L. 107-171, title X, §10706, May 13, 2002, 116 Stat. 519.)

REFERENCES IN TEXT

Title I and the amendments made by that title, referred to in subsec. (a)(1), is title I of Pub. L. 107-171, May 13, 2002, 116 Stat. 143, which is classified principally to this chapter. For complete classification of title I to the Code, see References in Text note set out under section 7901 of this title and Tables.

**CHAPTER 107—RENEWABLE ENERGY RESEARCH AND DEVELOPMENT**

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CODIFICATION

Title IX of the Farm Security and Rural Investment Act of 2002, which comprises this chapter, was originally enacted by Pub. L. 107-171, title IX, May 13, 2002, 116 Stat. 475, and amended by Pub. L. 108-199, div. A, title VII, §778(b), Jan. 23, 2004, 118 Stat. 41; Pub. L. 109-58, title II, §205, title IX, §943(a), (b), Aug. 8, 2005, 119 Stat. 654, 880, 881; Pub. L. 109-171, title I, §1301, Feb. 8, 2006, 120 Stat. 6. Such title is shown herein, however, as having been added by Pub. L. 110-234, title IX, §9001(a), May 22, 2008, 122 Stat. 1303, and Pub. L. 110-246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2064, without reference to such intervening amendments because of the extensive revision of the title's provisions by Pub. L. 110-234 and Pub. L. 110-246, which amended the title identically. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

**§ 8101. Definitions**

Except as otherwise provided, in this chapter:

**(1) Administrator**

The term “Administrator” means the Administrator of the Environmental Protection Agency.

**(2) Advisory Committee**

The term “Advisory Committee” means the Biomass Research and Development Technical Advisory Committee established by section 8108(d)(1) of this title.

**(3) Advanced biofuel****(A) In general**

The term “advanced biofuel” means fuel derived from renewable biomass other than corn kernel starch.

**(B) Inclusions**

Subject to subparagraph (A), the term “advanced biofuel” includes—

- (i) biofuel derived from cellulose, hemicellulose, or lignin;
- (ii) biofuel derived from sugar and starch (other than ethanol derived from corn kernel starch);
- (iii) biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste;
- (iv) diesel-equivalent fuel derived from renewable biomass, including vegetable oil and animal fat;
- (v) biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass;
- (vi) butanol or other alcohols produced through the conversion of organic matter from renewable biomass; and
- (vii) other fuel derived from cellulosic biomass.

**(4) Biobased product**

The term “biobased product” means a product determined by the Secretary to be a commercial or industrial product (other than food or feed) that is—

- (A) composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or
- (B) an intermediate ingredient or feedstock.

**(5) Biofuel**

The term “biofuel” means a fuel derived from renewable biomass.

**(6) Biomass conversion facility**

The term “biomass conversion facility” means a facility that converts or proposes to convert renewable biomass into—

- (A) heat;
- (B) power;
- (C) biobased products; or
- (D) advanced biofuels.

**(7) Biorefinery**

The term “biorefinery” means a facility (including equipment and processes) that—

- (A) converts renewable biomass into biofuels and biobased products; and
- (B) may produce electricity.

**(8) Board**

The term “Board” means the Biomass Research and Development Board established by section 8108(c) of this title.

**(9) Indian tribe**

The term “Indian tribe” has the meaning given the term in section 450b of title 25.

**(10) Institution of higher education**

The term “institution of higher education” has the meaning given the term in section 1002(a) of title 20.

**(11) Intermediate ingredient or feedstock**

The term “intermediate ingredient or feedstock” means a material or compound made in whole or in significant part from biological products, including renewable agricultural materials (including plant, animal, and marine materials) or forestry materials, that are subsequently used to make a more complex compound or product.

**(12) Renewable biomass**

The term “renewable biomass” means—

(A) materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands (as defined in section 1702 of title 43) that—

- (i) are byproducts of preventive treatments that are removed—
  - (I) to reduce hazardous fuels;
  - (II) to reduce or contain disease or insect infestation; or
  - (III) to restore ecosystem health;
- (ii) would not otherwise be used for high-value products; and
- (iii) are harvested in accordance with—
  - (I) applicable law and land management plans; and
  - (II) the requirements for—
    - (aa) old-growth maintenance, restoration, and management direction of paragraphs (2), (3), and (4) of subsection (e) of section 6512 of title 16; and
    - (bb) large-tree retention of subsection (f) of that section; or

(B) any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including—

- (i) renewable plant material, including—
  - (I) feed grains;
  - (II) other agricultural commodities;
  - (III) other plants and trees; and
  - (IV) algae; and
- (ii) waste material, including—
  - (I) crop residue;
  - (II) other vegetative waste material (including wood waste and wood residues);
  - (III) animal waste and byproducts (including fats, oils, greases, and manure); and
  - (IV) food waste and yard waste.

(iii) are harvested in accordance with—

- (I) applicable law and land management plans; and
- (II) the requirements for—
  - (aa) old-growth maintenance, restoration, and management direction of paragraphs (2), (3), and (4) of subsection (e) of section 6512 of title 16; and
  - (bb) large-tree retention of subsection (f) of that section; or

**(13) Renewable energy**

The term “renewable energy” means energy derived from—

- (A) a wind, solar, renewable biomass, ocean (including tidal, wave, current, and thermal), geothermal, or hydroelectric source; or

(B) hydrogen derived from renewable biomass or water using an energy source described in subparagraph (A).

**(14) Secretary**

The term “Secretary” means the Secretary of Agriculture.

(Pub. L. 107–171, title IX, §9001, as added Pub. L. 110–234, title IX, §9001(a), May 22, 2008, 122 Stat. 1303, and Pub. L. 110–246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2064.)

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.

**§ 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 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) 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 pur-

chase 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 em-

ployees 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
- (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 exceed 15 percent of the amount of the grantee 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 re-

duced 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 2012.

(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.)

## 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 devel-

opment grants, prior to the general amendment of this chapter by Pub. L. 110-246.

### § 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 authorized to be appropriated to carry out this section \$15,000,000 for each of fiscal years 2009 through 2012.

(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.)

#### 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.

### § 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 distribute the total amount of funding available in an equitable manner.

#### (f) Other requirements

To receive a payment under this section, an eligible producer shall meet any other requirements of Federal and State law (including regulations) applicable to the production of advanced biofuels.

#### (g) Funding

##### (1) Mandatory funding

Of the funds of the Commodity Credit Corporation, the Secretary shall use to carry out this section, to remain available until expended—

- (A) \$55,000,000 for fiscal year 2009;
- (B) \$55,000,000 for fiscal year 2010;
- (C) \$85,000,000 for fiscal year 2011; and
- (D) \$105,000,000 for fiscal year 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 \$25,000,000 for each of fiscal years 2009 through 2012.

##### (3) Limitation

Of the funds provided for each fiscal year, not more than 5 percent of the funds shall be

made available to eligible producers for production at facilities with a total refining capacity exceeding 150,000,000 gallons per year.

(Pub. L. 107–171, title IX, §9005, as added Pub. L. 110–234, title IX, §9001(a), May 22, 2008, 122 Stat. 1314, and Pub. L. 110–246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2075.)

#### 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 8105, Pub. L. 107–171, title IX, §9005, May 13, 2002, 116 Stat. 480, related to an energy audit and renewable energy development program, prior to the general amendment of this chapter by Pub. L. 110–246.

### § 8106. Biodiesel fuel education program

#### (a) Establishment

The Secretary shall, under such terms and conditions as the Secretary determines to be appropriate, make competitive grants to eligible entities to educate governmental and private entities that operate vehicle fleets, other interested entities (as determined by the Secretary), and the public about the benefits of biodiesel fuel use.

#### (b) Eligible entities

To receive a grant under subsection (b), an entity shall—

- (1) be a nonprofit organization or institution of higher education;
- (2) have demonstrated knowledge of biodiesel fuel production, use, or distribution; and
- (3) have demonstrated the ability to conduct educational and technical support programs.

#### (c) Consultation

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

#### (d) Funding

Of the funds of the Commodity Credit Corporation, the Secretary shall use to carry out this section \$1,000,000 for each of fiscal years 2008 through 2012.

(Pub. L. 107–171, title IX, §9006, as added Pub. L. 110–234, title IX, §9001(a), May 22, 2008, 122 Stat. 1315, and Pub. L. 110–246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2076.)

#### 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 8106, Pub. L. 107–171, title IX, §9006, May 13, 2002, 116 Stat. 482; Pub. L. 109–171, title I, §1301, Feb. 8, 2006, 120 Stat. 6, related to assistance to farmers, ranchers, and rural small businesses to purchase renewable energy systems and make energy efficiency improvements, prior to the general amendment of this chapter by Pub. L. 110–246. See section 8107 of this title.

### § 8107. Rural Energy for America Program

#### (a) Establishment

The Secretary, in consultation with the Secretary of Energy, shall establish a Rural Energy

for America Program to promote energy efficiency and renewable energy development for agricultural producers and rural small businesses through—

- (1) grants for energy audits and renewable energy development assistance; and
- (2) financial assistance for energy efficiency improvements and renewable energy systems.

#### (b) Energy audits and renewable energy development assistance

##### (1) In general

The Secretary shall make competitive grants to eligible entities to provide assistance to agricultural producers and rural small businesses—

- (A) to become more energy efficient; and
- (B) to use renewable energy technologies and resources.

##### (2) Eligible entities

An eligible entity under this subsection is—

- (A) a unit of State, tribal, or local government;
- (B) a land-grant college or university or other institution of higher education;
- (C) a rural electric cooperative or public power entity; and
- (D) any other similar entity, as determined by the Secretary.

##### (3) Selection criteria

In reviewing applications of eligible entities to receive grants under paragraph (1), the Secretary shall consider—

- (A) the ability and expertise of the eligible entity in providing professional energy audits and renewable energy assessments;
- (B) the geographic scope of the program proposed by the eligible entity in relation to the identified need;
- (C) the number of agricultural producers and rural small businesses to be assisted by the program;
- (D) the potential of the proposed program to produce energy savings and environmental benefits;
- (E) the plan of the eligible entity for performing outreach and providing information and assistance to agricultural producers and rural small businesses on the benefits of energy efficiency and renewable energy development; and
- (F) the ability of the eligible entity to leverage other sources of funding.

##### (4) Use of grant funds

A recipient of a grant under paragraph (1) shall use the grant funds to assist agricultural producers and rural small businesses by—

- (A) conducting and promoting energy audits; and
- (B) providing recommendations and information on how—
  - (i) to improve the energy efficiency of the operations of the agricultural producers and rural small businesses; and
  - (ii) to use renewable energy technologies and resources in the operations.

##### (5) Limitation

Grant recipients may not use more than 5 percent of a grant for administrative expenses.

**(6) Cost sharing**

A recipient of a grant under paragraph (1) that conducts an energy audit for an agricultural producer or rural small business under paragraph (4) shall require that, as a condition of the energy audit, the agricultural producer or rural small business pay at least 25 percent of the cost of the energy audit, which shall be retained by the eligible entity for the cost of the energy audit.

**(c) Financial assistance for energy efficiency improvements and renewable energy systems****(1) In general**

In addition to any similar authority, the Secretary shall provide loan guarantees and grants to agricultural producers and rural small businesses—

(A) to purchase renewable energy systems, including systems that may be used to produce and sell electricity; and

(B) to make energy efficiency improvements.

**(2) Award considerations**

In determining the amount of a loan guarantee or grant provided under this section, the Secretary shall take into consideration, as applicable—

(A) the type of renewable energy system to be purchased;

(B) the estimated quantity of energy to be generated by the renewable energy system;

(C) the expected environmental benefits of the renewable energy system;

(D) the quantity of energy savings expected to be derived from the activity, as demonstrated by an energy audit;

(E) the estimated period of time for the energy savings generated by the activity to equal the cost of the activity;

(F) the expected energy efficiency of the renewable energy system; and

(G) other appropriate factors.

**(3) Feasibility studies****(A) In general**

The Secretary may provide assistance in the form of grants to an agricultural producer or rural small business to conduct a feasibility study for a project for which assistance may be provided under this subsection.

**(B) Limitation**

The Secretary shall use not more than 10 percent of the funds made available to carry out this subsection to provide assistance described in subparagraph (A).

**(C) Avoidance of duplicative assistance**

An entity shall be ineligible to receive assistance to carry out a feasibility study for a project under this paragraph if the entity has received other Federal or State assistance for a feasibility study for the project.

**(4) Limits****(A) Grants**

The amount of a grant under this subsection shall not exceed 25 percent of the cost of the activity carried out using funds from the grant.

**(B) Maximum amount of loan guarantees**

The amount of a loan guaranteed under this subsection shall not exceed \$25,000,000.

**(C) Maximum amount of combined grant and loan guarantee**

The combined amount of a grant and loan guaranteed under this subsection shall not exceed 75 percent of the cost of the activity funded under this subsection.

**(d) Outreach**

The Secretary shall ensure, to the maximum extent practicable, that adequate outreach relating to this section is being conducted at the State and local levels.

**(e) Lower-cost activities****(1) Limitation on use of funds**

Except as provided in paragraph (2), the Secretary shall use not less than 20 percent of the funds made available under subsection (g) to provide grants of \$20,000 or less.

**(2) Exception**

Effective beginning on June 30 of each fiscal year, paragraph (1) shall not apply to funds made available under subsection (g) for the fiscal year.

**(f) Report**

Not later than 4 years after the date of enactment of the Food, Conservation, and Energy Act of 2008, the Secretary shall submit to Congress a report on the implementation of this section, including the outcomes achieved by projects funded under this section.

**(g) Funding****(1) Mandatory funding**

Of the funds of the Commodity Credit Corporation, the Secretary shall use to carry out this section, to remain available until expended—

(A) \$55,000,000 for fiscal year 2009;

(B) \$60,000,000 for fiscal year 2010;

(C) \$70,000,000 for fiscal year 2011; and

(D) \$70,000,000 for fiscal year 2012.

**(2) Audit and technical assistance funding****(A) In general**

Subject to subparagraph (B), of the funds made available for each fiscal year under paragraph (1), 4 percent shall be available to carry out subsection (b).

**(B) Other use**

Funds not obligated under subparagraph (A) by April 1 of each fiscal year to carry out subsection (b) shall become available to carry out subsection (c).

**(3) 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 \$25,000,000 for each of fiscal years 2009 through 2012.

(Pub. L. 107-171, title IX, §9007, as added Pub. L. 110-234, title IX, §9001(a), May 22, 2008, 122 Stat. 1315, and Pub. L. 110-246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2077.)

## REFERENCES IN TEXT

The date of enactment of the Food, Conservation, and Energy Act of 2008, referred to in subsec. (f), 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 8107, Pub. L. 107-171, title IX, §9007, May 13, 2002, 116 Stat. 483, related to application of hydrogen and fuel cell technologies, prior to the general amendment of this chapter by Pub. L. 110-246.

**§ 8108. Biomass research and development****(a) Definitions**

In this section:

**(1) Biobased product**

The term “biobased product” means—

(A) an industrial product (including chemicals, materials, and polymers) produced from biomass; or

(B) a commercial or industrial product (including animal feed and electric power) derived in connection with the conversion of biomass to fuel.

**(2) Demonstration**

The term “demonstration” means demonstration of technology in a pilot plant or semi-works scale facility, including a plant or facility located on a farm.

**(3) Initiative**

The term “Initiative” means the Biomass Research and Development Initiative established under subsection (e).

**(b) Cooperation and coordination in biomass research and development****(1) In general**

The Secretary of Agriculture and the Secretary of Energy shall coordinate policies and procedures that promote research and development regarding the production of biofuels and biobased products.

**(2) Points of contact**

To coordinate research and development programs and activities relating to biofuels and biobased products that are carried out by their respective departments—

(A) the Secretary of Agriculture shall designate, as the point of contact for the Department of Agriculture, an officer of the Department of Agriculture appointed by the President to a position in the Department before the date of the designation, by and with the advice and consent of the Senate; and

(B) the Secretary of Energy shall designate, as the point of contact for the Department of Energy, an officer of the Department of Energy appointed by the President to a position in the Department before the date of the designation, by and with the advice and consent of the Senate.

**(c) Biomass Research and Development Board****(1) Establishment**

There is established the Biomass Research and Development Board to carry out the duties described in paragraph (3).

**(2) Membership**

The Board shall consist of—

(A) the point of contacts of the Department of Energy and the Department of Agriculture, who shall serve as cochairpersons of the Board;

(B) a senior officer of each of the Department of the Interior, the Environmental Protection Agency, the National Science Foundation, and the Office of Science and Technology Policy, each of whom shall have a rank that is equivalent to the rank of the points of contact; and

(C) at the option of the Secretary of Agriculture and the Secretary of Energy, other members appointed by the Secretaries (after consultation with the Board).

**(3) Duties**

The Board shall—

(A) coordinate research and development activities relating to biofuels and biobased products—

(i) between the Department of Agriculture and the Department of Energy; and

(ii) with other departments and agencies of the Federal Government;

(B) provide recommendations to the points of contact concerning administration of this chapter;

(C) ensure that—

(i) solicitations are open and competitive with awards made annually; and

(ii) objectives and evaluation criteria of the solicitations are clearly stated and minimally prescriptive, with no areas of special interest; and

(D) ensure that the panel of scientific and technical peers assembled under subsection (e) to review proposals is composed predominantly of independent experts selected from outside the Departments of Agriculture and Energy.

**(4) Funding**

Each agency represented on the Board is encouraged to provide funds for any purpose under this section.

**(5) Meetings**

The Board shall meet at least quarterly.

**(d) Biomass Research and Development Technical Advisory Committee****(1) Establishment**

There is established the Biomass Research and Development Technical Advisory Committee to carry out the duties described in paragraph (3).

**(2) Membership****(A) In general**

The Advisory Committee shall consist of—

(i) an individual affiliated with the biofuels industry;

(ii) an individual affiliated with the biobased industrial and commercial products industry;

(iii) an individual affiliated with an institution of higher education who has expertise in biofuels and biobased products;

(iv) 2 prominent engineers or scientists from government or academia who have expertise in biofuels and biobased products;

(v) an individual affiliated with a commodity trade association;

(vi) 2 individuals affiliated with environmental or conservation organizations;

(vii) an individual associated with State government who has expertise in biofuels and biobased products;

(viii) an individual with expertise in energy and environmental analysis;

(ix) an individual with expertise in the economics of biofuels and biobased products;

(x) an individual with expertise in agricultural economics;

(xi) an individual with expertise in plant biology and biomass feedstock development;

(xii) an individual with expertise in agronomy, crop science, or soil science; and

(xiii) at the option of the points of contact, other members.

#### **(B) Appointment**

The members of the Advisory Committee shall be appointed by the points of contact.

#### **(3) Duties**

The Advisory Committee shall—

(A) advise the points of contact with respect to the Initiative; and

(B) evaluate and make recommendations in writing to the Board regarding whether—

(i) funds authorized for the Initiative are distributed and used in a manner that is consistent with the objectives, purposes, and considerations of the Initiative;

(ii) solicitations are open and competitive with awards made annually;

(iii) objectives and evaluation criteria of the solicitations are clearly stated and minimally prescriptive, with no areas of special interest;

(iv) the points of contact are funding proposals under this chapter that are selected on the basis of merit, as determined by an independent panel of scientific and technical peers predominantly from outside the Departments of Agriculture and Energy; and

(v) activities under this chapter are carried out in accordance with this chapter.

#### **(4) Coordination**

To avoid duplication of effort, the Advisory Committee shall coordinate its activities with those of other Federal advisory committees working in related areas.

#### **(5) Meetings**

The Advisory Committee shall meet at least quarterly.

#### **(6) Terms**

Members of the Advisory Committee shall be appointed for a term of 3 years.

#### **(e) Biomass Research and Development Initiative**

##### **(1) In general**

The Secretary of Agriculture and the Secretary of Energy, acting through their respective points of contact and in consultation with the Board, shall establish and carry out a Biomass Research and Development Initiative under which competitively awarded grants, contracts, and financial assistance are provided to, or entered into with, eligible entities to carry out research on and development and demonstration of—

(A) biofuels and biobased products; and

(B) the methods, practices, and technologies, for the production of biofuels and biobased products.

##### **(2) Objectives**

The objectives of the Initiative are to develop—

(A) technologies and processes necessary for abundant commercial production of biofuels at prices competitive with fossil fuels;

(B) high-value biobased products—

(i) to enhance the economic viability of biofuels and power;

(ii) to serve as substitutes for petroleum-based feedstocks and products; and

(iii) to enhance the value of coproducts produced using the technologies and processes; and

(C) a diversity of economically and environmentally sustainable domestic sources of renewable biomass for conversion to biofuels, bioenergy, and biobased products.

##### **(3) Technical areas**

The Secretary of Agriculture and the Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency and heads of other appropriate departments and agencies (referred to in this subsection as the “Secretaries”), shall direct the Initiative in the 3 following areas:

###### **(A) Feedstocks development**

Research, development, and demonstration activities regarding feedstocks and feedstock logistics (including the harvest, handling, transport, preprocessing, and storage) relevant to production of raw materials for conversion to biofuels and biobased products.

###### **(B) Biofuels and biobased products development**

Research, development, and demonstration activities to support—

(i) the development of diverse cost-effective technologies for the use of cellulosic biomass in the production of biofuels and biobased products; and

(ii) product diversification through technologies relevant to production of a range of biobased products (including chemicals, animal feeds, and cogenerated power) that

potentially can increase the feasibility of fuel production in a biorefinery.

**(C) Biofuels development analysis**

**(i) Strategic guidance**

The development of analysis that provides strategic guidance for the application of renewable biomass technologies to improve sustainability and environmental quality, cost effectiveness, security, and rural economic development.

**(ii) Energy and environmental impact**

Development of systematic evaluations of the impact of expanded biofuel production on the environment (including forest land) and on the food supply for humans and animals, including the improvement and development of tools for life cycle analysis of current and potential biofuels.

**(iii) Assessment of Federal land**

Assessments of the potential of Federal land resources to increase the production of feedstocks for biofuels and biobased products, consistent with the integrity of soil and water resources and with other environmental considerations.

**(4) Additional considerations**

Within the technical areas described in paragraph (3), the Secretaries shall support research and development—

(A) to create continuously expanding opportunities for participants in existing biofuels production by seeking synergies and continuity with current technologies and practices;

(B) to maximize the environmental, economic, and social benefits of production of biofuels and derived biobased products on a large scale; and

(C) to facilitate small-scale production and local and on-farm use of biofuels, including the development of small-scale gasification technologies for production of biofuel from cellulosic feedstocks.

**(5) Eligibility**

To be eligible for a grant, contract, or assistance under this section, an applicant shall be—

(A) an institution of higher education;

(B) a National Laboratory;

(C) a Federal research agency;

(D) a State research agency;

(E) a private sector entity;

(F) a nonprofit organization; or

(G) a consortium of 2 or more entities described in subparagraphs (A) through (F).

**(6) Administration**

**(A) In general**

After consultation with the Board, the points of contact shall—

(i) publish annually 1 or more joint requests for proposals for grants, contracts, and assistance under this subsection;

(ii) require that grants, contracts, and assistance under this section be awarded based on a scientific peer review by an independent panel of scientific and technical peers;

(iii) give special consideration to applications that—

(I) involve a consortia of experts from multiple institutions;

(II) encourage the integration of disciplines and application of the best technical resources; and

(III) increase the geographic diversity of demonstration projects; and

(iv) require that the technical areas described in each of subparagraphs (A), (B), and (C) of paragraph (3) receive not less than 15 percent of funds made available to carry out this section.

**(B) Cost share**

**(i) Research and development projects**

**(I) In general**

Except as provided in subclause (II), the non-Federal share of the cost of a research or development project under this section shall be not less than 20 percent.

**(II) Reduction**

The Secretary of Agriculture or the Secretary of Energy, as appropriate, may reduce the non-Federal share required under subclause (I) if the appropriate Secretary determines the reduction to be necessary and appropriate.

**(ii) Demonstration and commercial projects**

The non-Federal share of the cost of a demonstration or commercial project under this section shall be not less than 50 percent.

**(C) Technology and information transfer**

The Secretary of Agriculture and the Secretary of Energy shall ensure that applicable research results and technologies from the Initiative are—

(i) adapted, made available, and disseminated, as appropriate; and

(ii) included in the best practices database established under section 5925e(e) of this title.

**(f) Administrative support and funds**

**(1) In general**

The Secretary of Energy and the Secretary of Agriculture may provide such administrative support and funds of the Department of Energy and the Department of Agriculture to the Board and the Advisory Committee as are necessary to enable the Board and the Advisory Committee to carry out their duties under this section.

**(2) Other agencies**

The heads of the agencies referred to in subsection (c)(2)(B), and the other members of the Board appointed under subsection (c)(2)(C), are encouraged to provide administrative support and funds of their respective agencies to the Board and the Advisory Committee.

**(3) Limitation**

Not more than 4 percent of the amount made available for each fiscal year under subsection (h) may be used to pay the administrative costs of carrying out this section.

**(g) Reports**

For each fiscal year for which funds are made available to carry out this section, the Secretary of Energy and the Secretary of Agriculture shall jointly submit to Congress a detailed report on—

(1) the status and progress of the Initiative, including a report from the Advisory Committee on whether funds appropriated for the Initiative have been distributed and used in a manner that is consistent with the objectives and requirements of this section;

(2) the general status of cooperation and research and development efforts carried out at each agency with respect to biofuels and biobased products; and

(3) the plans of the Secretary of Energy and the Secretary of Agriculture for addressing concerns raised in the report, including concerns raised by the Advisory Committee.

**(h) Funding****(1) Mandatory funding**

Of the funds of the Commodity Credit Corporation, the Secretary of Agriculture shall use to carry out this section, to remain available until expended—

- (A) \$20,000,000 for fiscal year 2009;
- (B) \$28,000,000 for fiscal year 2010;
- (C) \$30,000,000 for fiscal year 2011; and
- (D) \$40,000,000 for fiscal year 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 \$35,000,000 for each of fiscal years 2009 through 2012.

(Pub. L. 107-171, title IX, §9008, as added Pub. L. 110-234, title IX, §9001(a), May 22, 2008, 122 Stat. 1318, and Pub. L. 110-246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2079.)

## 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 8108, Pub. L. 107-171, title IX, §9010, May 13, 2002, 116 Stat. 485, related to continuation of bioenergy program, prior to the general amendment of this chapter by Pub. L. 110-246. See section 8105 of this title.

A prior section 9008 of Pub. L. 107-171 amended title III of Pub. L. 106-224, which was classified to chapter 112 (§8601 et seq.) of this title prior to repeal by Pub. L. 110-246, §9001(b).

**§ 8109. Rural Energy Self-Sufficiency Initiative****(a) Definitions**

In this section:

**(1) Eligible rural community**

The term “eligible rural community” means a community located in a rural area (as defined in section 1991(a)(13)(A) of this title).

**(2) Initiative**

The term “Initiative” means the Rural Energy Self-Sufficiency Initiative established under this section.

**(3) Integrated renewable energy system**

The term “integrated renewable energy system” means a community-wide energy system that—

- (A) reduces conventional energy use; and
- (B) increases the use of energy from renewable sources.

**(b) Establishment**

The Secretary shall establish a Rural Energy Self-Sufficiency Initiative to provide financial assistance for the purpose of enabling eligible rural communities to substantially increase the energy self-sufficiency of the eligible rural communities.

**(c) Grant assistance****(1) In general**

The Secretary shall make grants available under the Initiative to eligible rural communities to carry out an activity described in paragraph (2).

**(2) Use of grant funds**

An eligible rural community may use a grant—

- (A) to conduct an energy assessment that assesses the total energy use of all energy users in the eligible rural community;
- (B) to formulate and analyze ideas for reducing energy usage by the eligible rural community from conventional sources; and
- (C) to develop and install an integrated renewable energy system.

**(3) Grant selection****(A) Application**

To be considered for a grant, an eligible rural community shall submit an application to the Secretary that describes the ways in which the community would use the grant to carry out an activity described in paragraph (2).

**(B) Preference**

The Secretary shall give preference to those applications that propose to carry out an activity in coordination with—

- (i) institutions of higher education or nonprofit foundations of institutions of higher education;
- (ii) Federal, State, or local government agencies;
- (iii) public or private power generation entities; or
- (iv) government entities with responsibility for water or natural resources.

**(4) Report**

An eligible rural community receiving a grant under the Initiative shall submit to the Secretary a report on the project of the eligible rural community.

**(5) Cost-sharing**

The amount of a grant under the Initiative shall not exceed 50 percent of the cost of the activities described in the application.

**(d) Authorization of appropriations**

There is authorized to be appropriated to carry out this section \$5,000,000 for each of fiscal years 2009 through 2012.

(Pub. L. 107-171, title IX, §9009, as added Pub. L. 110-234, title IX, §9001(a), May 22, 2008, 122 Stat. 1324, and Pub. L. 110-246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2085.)

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 8109, Pub. L. 107-171, title IX, §9011, as added Pub. L. 108-199, div. A, title VII, §778(b), Jan. 23, 2004, 118 Stat. 41, related to research, extension, and educational programs on biobased energy technologies and products, prior to the general amendment of this chapter by Pub. L. 110-246. See section 8114 of this title.

A prior section 9009 of Pub. L. 107-171 amended section 6711 of this title.

**§ 8110. Feedstock flexibility program for bioenergy producers**

**(a) Definitions**

In this section:

**(1) Bioenergy**

The term “bioenergy” means fuel grade ethanol and other biofuel.

**(2) Bioenergy producer**

The term “bioenergy producer” means a producer of bioenergy that uses an eligible commodity to produce bioenergy under this section.

**(3) Eligible commodity**

The term “eligible commodity” means a form of raw or refined sugar or in-process sugar that is eligible to be marketed in the United States for human consumption or to be used for the extraction of sugar for human consumption.

**(4) Eligible entity**

The term “eligible entity” means an entity located in the United States that markets an eligible commodity in the United States.

**(b) Feedstock flexibility program**

**(1) In general**

**(A) Purchases and sales**

For each of the 2008 through 2012 crops, the Secretary shall purchase eligible commodities from eligible entities and sell such commodities to bioenergy producers for the purpose of producing bioenergy in a manner that ensures that section 7272 of this title is operated at no cost to the Federal Government by avoiding forfeitures to the Commodity Credit Corporation.

**(B) Competitive procedures**

In carrying out the purchases and sales required under subparagraph (A), the Secretary shall, to the maximum extent practicable, use competitive procedures, including the receiving, offering, and accepting of bids, when entering into contracts with eligible entities and bioenergy producers, provided that such procedures are consistent with the purposes of subparagraph (A).

**(C) Limitation**

The purchase and sale of eligible commodities under subparagraph (A) shall only be

made in crop years in which such purchases and sales are necessary to ensure that the program authorized under section 7272 of this title is operated at no cost to the Federal Government by avoiding forfeitures to the Commodity Credit Corporation.

**(2) Notice**

**(A) In general**

As soon as practicable after the date of enactment of the Food, Conservation, and Energy Act of 2008 and each September 1 thereafter through September 1, 2012, the Secretary shall provide notice to eligible entities and bioenergy producers of the quantity of eligible commodities that shall be made available for purchase and sale for the crop year following the date of the notice under this section.

**(B) Reestimates**

Not later than the January 1, April 1, and July 1 of the calendar year following the date of a notice under subparagraph (A), the Secretary shall reestimate the quantity of eligible commodities determined under subparagraph (A), and provide notice and make purchases and sales based on such reestimates.

**(3) Commodity Credit Corporation inventory**

**(A) Dispositions**

**(i) Bioenergy and generally**

Except as provided in clause (ii), to the extent that an eligible commodity is owned and held in inventory by the Commodity Credit Corporation (accumulated pursuant to the program authorized under section 7272 of this title), the Secretary shall—

(I) sell the eligible commodity to bioenergy producers under this section consistent with paragraph (1)(C);

(II) dispose of the eligible commodity in accordance with section 7272(f)(2) of this title; or

(III) otherwise dispose of the eligible commodity through the buyback of certificates of quota entry.

**(ii) Preservation of other authorities**

Nothing in this section limits the use of other authorities for the disposition of an eligible commodity held in the inventory of the Commodity Credit Corporation for nonfood use or otherwise in a manner that does not increase the net quantity of sugar available for human consumption in the United States market, consistent with section 7272(f)(1) of this title.

**(B) Emergency shortages**

Notwithstanding subparagraph (A), if there is an emergency shortage of sugar for human consumption in the United States market that is caused by a war, flood, hurricane, or other natural disaster, or other similar event, the Secretary may dispose of an eligible commodity that is owned and held in inventory by the Commodity Credit Corporation (accumulated pursuant to the program authorized under section 7272 of

this title) through disposition as authorized under section 7272(f) of this title or through the use of any other authority of the Commodity Credit Corporation.

**(4) Transfer rule; storage fees**

**(A) General transfer rule**

Except with regard to emergency dispositions under paragraph (3)(B) and as provided in subparagraph (C), the Secretary shall ensure that bioenergy producers that purchase eligible commodities pursuant to this section take possession of the eligible commodities within 30 calendar days of the date of such purchase from the Commodity Credit Corporation.

**(B) Payment of storage fees prohibited**

**(i) In general**

The Secretary shall, to the maximum extent practicable, carry out this section in a manner that ensures no storage fees are paid by the Commodity Credit Corporation in the administration of this section.

**(ii) Exception**

Clause (i) shall not apply with respect to any commodities owned and held in inventory by the Commodity Credit Corporation (accumulated pursuant to the program authorized under section 7272 of this title).

**(C) Option to prevent storage fees**

**(i) In general**

The Secretary may enter into contracts with bioenergy producers to sell eligible commodities to such producers prior in time to entering into contracts with eligible entities to purchase the eligible commodities to be used to satisfy the contracts entered into with the bioenergy producers.

**(ii) Special transfer rule**

If the Secretary makes a sale and purchase referred to in clause (i), the Secretary shall ensure that the bioenergy producer that purchased eligible commodities takes possession of such commodities within 30 calendar days of the date the Commodity Credit Corporation purchases the eligible commodities.

**(5) Relation to other laws**

If sugar that is subject to a marketing allotment under part VII of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359aa et seq.) is the subject of a payment under this section, the sugar shall be considered marketed and shall count against a processor's allocation of an allotment under such part, as applicable.

**(6) Funding**

The Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation, including the use of such sums as are necessary, to carry out this section.

(Pub. L. 107–171, title IX, §9010, as added Pub. L. 110–234, title IX, §9001(a), May 22, 2008, 122 Stat. 1325, and Pub. L. 110–246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2086.)

REFERENCES IN TEXT

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

The Agricultural Adjustment Act of 1938, referred to in subsec. (b)(5), is act Feb. 16, 1938, ch. 30, 52 Stat. 31. Part VII of subtitle B of title III of the Act is classified to subpart VII (§1359aa et seq.) of part B of subchapter II of chapter 35 of this title. For complete classification of this Act to the Code, see section 1281 of this title and Tables.

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 9010 of Pub. L. 107–171 was classified to section 8108 of this title, prior to the general amendment of this chapter by Pub. L. 110–246.

**§ 8111. Biomass Crop Assistance Program**

**(a) Definitions**

In this section:

**(1) BCAP**

The term “BCAP” means the Biomass Crop Assistance Program established under this section.

**(2) BCAP project area**

The term “BCAP project area” means an area that—

(A) has specified boundaries that are submitted to the Secretary by the project sponsor and subsequently approved by the Secretary;

(B) includes producers with contract acreage that will supply a portion of the renewable biomass needed by a biomass conversion facility; and

(C) is physically located within an economically practicable distance from the biomass conversion facility.

**(3) Contract acreage**

The term “contract acreage” means eligible land that is covered by a BCAP contract entered into with the Secretary.

**(4) Eligible crop**

**(A) In general**

The term “eligible crop” means a crop of renewable biomass.

**(B) Exclusions**

The term “eligible crop” does not include—

(i) any crop that is eligible to receive payments under title I of the Food, Conservation, and Energy Act of 2008 [7 U.S.C. 8701 et seq.] or an amendment made by that title; or

(ii) any plant that is invasive or noxious or has the potential to become invasive or noxious, as determined by the Secretary, in consultation with other appropriate Federal or State departments and agencies.

**(5) Eligible land**

**(A) In general**

The term “eligible land” includes agricultural and nonindustrial private forest lands (as defined in section 2103a(c) of title 16).

**(B) Exclusions**

The term “eligible land” does not include—

- (i) Federal- or State-owned land;
- (ii) land that is native sod, as of the date of enactment of the Food, Conservation, and Energy Act of 2008;
- (iii) land enrolled in the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.);
- (iv) land enrolled in the wetlands reserve program established under subchapter C of chapter 1 of subtitle D of title XII of that Act (16 U.S.C. 3837 et seq.); or
- (v) land enrolled in the grassland reserve program established under subchapter D of chapter 2 of subtitle D of title XII of that Act (16 U.S.C. 3838n et seq.).

**(6) Eligible material****(A) In general**

The term “eligible material” means renewable biomass.

**(B) Exclusions**

The term “eligible material” does not include—

- (i) any crop that is eligible to receive payments under title I of the Food, Conservation, and Energy Act of 2008 [7 U.S.C. 8701 et seq.] or an amendment made by that title;
- (ii) animal waste and byproducts (including fats, oils, greases, and manure);
- (iii) food waste and yard waste; or
- (iv) algae.

**(7) Producer**

The term “producer” means an owner or operator of contract acreage that is physically located within a BCAP project area.

**(8) Project sponsor**

The term “project sponsor” means—

- (A) a group of producers; or
- (B) a biomass conversion facility.

**(b) Establishment and purpose**

The Secretary shall establish and administer a Biomass Crop Assistance Program to—

- (1) support the establishment and production of eligible crops for conversion to bioenergy in selected BCAP project areas; and
- (2) assist agricultural and forest land owners and operators with collection, harvest, storage, and transportation of eligible material for use in a biomass conversion facility.

**(c) BCAP project area****(1) In general**

The Secretary shall provide financial assistance to producers of eligible crops in a BCAP project area.

**(2) Selection of project areas****(A) In general**

To be considered for selection as a BCAP project area, a project sponsor shall submit to the Secretary a proposal that includes, at a minimum—

(i) a description of the eligible land and eligible crops of each producer that will participate in the proposed BCAP project area;

(ii) a letter of commitment from a biomass conversion facility that the facility will use the eligible crops intended to be produced in the proposed BCAP project area;

(iii) evidence that the biomass conversion facility has sufficient equity available, as determined by the Secretary, if the biomass conversion facility is not operational at the time the proposal is submitted to the Secretary; and

(iv) any other appropriate information about the biomass conversion facility or proposed biomass conversion facility that gives the Secretary a reasonable assurance that the plant will be in operation by the time that the eligible crops are ready for harvest.

**(B) BCAP project area selection criteria**

In selecting BCAP project areas, the Secretary shall consider—

(i) the volume of the eligible crops proposed to be produced in the proposed BCAP project area and the probability that such crops will be used for the purposes of the BCAP;

(ii) the volume of renewable biomass projected to be available from sources other than the eligible crops grown on contract acres;

(iii) the anticipated economic impact in the proposed BCAP project area;

(iv) the opportunity for producers and local investors to participate in the ownership of the biomass conversion facility in the proposed BCAP project area;

(v) the participation rate by—

(I) beginning farmers or ranchers (as defined in accordance with section 1991(a) of this title); or

(II) socially disadvantaged farmers or ranchers (as defined in section 2279(e) of this title);

(vi) the impact on soil, water, and related resources;

(vii) the variety in biomass production approaches within a project area, including (as appropriate)—

(I) agronomic conditions;

(II) harvest and postharvest practices;

and

(III) monoculture and polyculture crop mixes;

(viii) the range of eligible crops among project areas; and

(ix) any additional information, as determined by the Secretary.

**(3) Contract****(A) In general**

On approval of a BCAP project area by the Secretary, each producer in the BCAP project area shall enter into a contract directly with the Secretary.

**(B) Minimum terms**

At a minimum, contracts shall include terms that cover—

(i) an agreement to make available to the Secretary, or to an institution of higher education or other entity designated by the Secretary, such information as the Secretary considers to be appropriate to promote the production of eligible crops and the development of biomass conversion technology;

(ii) compliance with the highly erodible land conservation requirements of subtitle B of title XII of the Food Security Act of 1985 (16 U.S.C. 3811 et seq.) and the wetland conservation requirements of subtitle C of title XII of that Act (16 U.S.C. 3821 et seq.);

(iii) the implementation of (as determined by the Secretary)—

- (I) a conservation plan; or
- (II) a forest stewardship plan or an equivalent plan; and

(iv) any additional requirements the Secretary considers appropriate.

**(C) Duration**

A contract under this subsection shall have a term of up to—

- (i) 5 years for annual and perennial crops; or
- (ii) 15 years for woody biomass.

**(4) Relationship to other programs**

In carrying out this subsection, the Secretary shall provide for the preservation of cropland base and yield history applicable to the land enrolled in a BCAP contract.

**(5) Payments**

**(A) In general**

The Secretary shall make establishment and annual payments directly to producers to support the establishment and production of eligible crops on contract acreage.

**(B) Amount of establishment payments**

The amount of an establishment payment under this subsection shall be up to 75 percent of the costs of establishing an eligible perennial crop covered by the contract, including—

- (i) the cost of seeds and stock for perennials;
- (ii) the cost of planting the perennial crop, as determined by the Secretary; and
- (iii) in the case of nonindustrial private forestland, the costs of site preparation and tree planting.

**(C) Amount of annual payments**

**(i) In general**

Subject to clause (ii), the amount of an annual payment under this subsection shall be determined by the Secretary.

**(ii) Reduction**

The Secretary shall reduce an annual payment by an amount determined to be appropriate by the Secretary, if—

- (I) an eligible crop is used for purposes other than the production of energy at the biomass conversion facility;
- (II) an eligible crop is delivered to the biomass conversion facility;
- (III) the producer receives a payment under subsection (d);

(IV) the producer violates a term of the contract; or

(V) there are such other circumstances, as determined by the Secretary to be necessary to carry out this section.

**(d) Assistance with collection, harvest, storage, and transportation**

**(1) In general**

The Secretary shall make a payment for the delivery of eligible material to a biomass conversion facility to—

- (A) a producer of an eligible crop that is produced on BCAP contract acreage; or
- (B) a person with the right to collect or harvest eligible material.

**(2) Payments**

**(A) Costs covered**

A payment under this subsection shall be in an amount described in subparagraph (B) for—

- (i) collection;
- (ii) harvest;
- (iii) storage; and
- (iv) transportation to a biomass conversion facility.

**(B) Amount**

Subject to paragraph (3), the Secretary may provide matching payments at a rate of \$1 for each \$1 per ton provided by the biomass conversion facility, in an amount equal to not more than \$45 per ton for a period of 2 years.

**(3) Limitation on assistance for BCAP contract acreage**

As a condition of the receipt of annual payment under subsection (c), a producer receiving a payment under this subsection for collection, harvest, storage or transportation of an eligible crop produced on BCAP acreage shall agree to a reduction in the annual payment.

**(e) Report**

Not later than 4 years after the date of enactment of the Food, Conservation, and Energy Act of 2008, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the dissemination by the Secretary of the best practice data and information gathered from participants receiving assistance under this section.

**(f) Funding**

Of the funds of the Commodity Credit Corporation, the Secretary shall use to carry out this section such sums as are necessary for each of fiscal years 2008 through 2012.

(Pub. L. 107-171, title IX, §9011, as added Pub. L. 110-234, title IX, §9001(a), May 22, 2008, 122 Stat. 1327, and Pub. L. 110-246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2089.)

REFERENCES IN TEXT

The Food, Conservation, and Energy Act of 2008, referred to in subsec. (a)(4)(B)(i), (6)(B)(i), is Pub. L. 110-246, June 18, 2008, 122 Stat. 1651. Title I of the Act

is classified principally to chapter 113 (§8701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8701 of this title and Tables.

The date of enactment of the Food, Conservation, and Energy Act of 2008, referred to in subsecs. (a)(5)(B)(ii) and (e), is the date of enactment of Pub. L. 110-246, which was approved June 18, 2008.

The Food Security Act of 1985, referred to in subsecs. (a)(5)(B)(iii)-(v) and (c)(3)(B)(ii), is Pub. L. 99-198, Dec. 23, 1985, 99 Stat. 1354. Subtitles B and C of title XII of the Act are classified generally to subchapters II (§3811 et seq.) and III (§3821 et seq.), respectively, of chapter 58 of Title 16, Conservation. Subchapters B and C of chapter 1 of subtitle D of title XII of the Act are classified generally to subparts B (§3831 et seq.) and C (§3837 et seq.), respectively, of part I of subchapter IV of chapter 58 of Title 16. Subchapter D of chapter 2 of subtitle D of title XII of the Act is classified generally to subpart D (§3838n et seq.) of part II of subchapter IV of chapter 58 of Title 16. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 1281 of this title and Tables.

#### 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 9011 of Pub. L. 107-171 was classified to section 8109 of this title, prior to the general amendment of this chapter by Pub. L. 110-246.

### § 8112. Forest biomass for energy

#### (a) In general

The Secretary, acting through the Forest Service, shall conduct a competitive research and development program to encourage use of forest biomass for energy.

#### (b) Eligible entities

Entities eligible to compete under the program under this section include—

- (1) the Forest Service (acting through Research and Development);
- (2) other Federal agencies;
- (3) State and local governments;
- (4) Indian tribes;
- (5) land-grant colleges and universities; and
- (6) private entities.

#### (c) Priority for project selection

In carrying out this section, the Secretary shall give priority to projects that—

- (1) develop technology and techniques to use low-value forest biomass, such as byproducts of forest health treatments and hazardous fuels reduction, for the production of energy;
- (2) develop processes that integrate production of energy from forest biomass into bio-refineries or other existing manufacturing streams;
- (3) develop new transportation fuels from forest biomass; and
- (4) improve the growth and yield of trees intended for renewable energy production.

#### (d) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$15,000,000 for each of fiscal years 2009 through 2012.

(Pub. L. 107-171, title IX, §9012, as added Pub. L. 110-234, title IX, §9001(a), May 22, 2008, 122 Stat.

1331, and Pub. L. 110-246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2093.)

#### 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.

### § 8113. Community wood energy program

#### (a) Definitions

In this section:

##### (1) Community wood energy plan

The term “community wood energy plan” means an assessment of—

- (A) available feedstocks necessary to supply a community wood energy system; and
- (B) the long-term feasibility of supplying and operating a community wood energy system.

##### (2) Community wood energy system

###### (A) In general

The term “community wood energy system” means an energy system that—

- (i) primarily services public facilities owned or operated by State or local governments, including schools, town halls, libraries, and other public buildings; and
- (ii) uses woody biomass as the primary fuel.

###### (B) Inclusions

The term “community wood energy system” includes single facility central heating, district heating, combined heat and energy systems, and other related biomass energy systems.

#### (b) Grant program

##### (1) In general

The Secretary, acting through the Chief of the Forest Service, shall establish a program to be known as the “Community Wood Energy Program” to provide—

- (A) grants of up to \$50,000 to State and local governments (or designees) to develop community wood energy plans; and
- (B) competitive grants to State and local governments to acquire or upgrade community wood energy systems.

##### (2) Considerations

In selecting applicants for grants under paragraph (1)(B), the Secretary shall consider—

- (A) the energy efficiency of the proposed system;
- (B) the cost effectiveness of the proposed system; and
- (C) other conservation and environmental criteria that the Secretary considers appropriate.

##### (3) Use of plan

A State or local government applying to receive a competitive grant described in paragraph (1)(B) shall submit to the Secretary as part of the grant application the applicable community wood energy plan.

#### (c) Limitation

A community wood energy system acquired with grant funds provided under subsection (b)(1)(B) shall not exceed an output of—

- (1) 50,000,000 Btu per hour for heating; and
- (2) 2 megawatts for electric power production.

**(d) Matching funds**

A State or local government that receives a grant under subsection (b) shall contribute an amount of non-Federal funds towards the development of the community wood energy plan, or acquisition of the community wood energy systems that is at least equal to the amount of grant funds received by the State or local government under that subsection.

**(e) Authorization of appropriations**

There is authorized to be appropriated to carry out this section \$5,000,000 for each of fiscal years 2009 through 2012.

(Pub. L. 107-171, title IX, §9013, as added Pub. L. 110-234, title IX, §9001(a), May 22, 2008, 122 Stat. 1332, and Pub. L. 110-246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2094.)

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.

**§ 8114. Sun grant program**

**(a) Establishment**

The Secretary shall establish and carry out a program to provide grants to the sun grant centers and subcenter specified in subsection (b)—

- (1) to enhance national energy security through the development, distribution, and implementation of biobased energy technologies;
- (2) to promote diversification in, and the environmental sustainability of, agricultural production in the United States through biobased energy and product technologies;
- (3) to promote economic diversification in rural areas of the United States through biobased energy and product technologies; and
- (4) to enhance the efficiency of bioenergy and biomass research and development programs through improved coordination and collaboration among—
  - (A) the Department of Agriculture;
  - (B) the Department of Energy; and
  - (C) land-grant colleges and universities.

**(b) Grants**

**(1) In general**

The Secretary shall use amounts made available under subsection (g) to provide grants to each of the following:

**(A) North-central center**

A north-central sun grant center at South Dakota State University for the region composed of the States of Illinois, Indiana, Iowa, Minnesota, Montana, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming.

**(B) Southeastern center**

A southeastern sun grant center at the University of Tennessee at Knoxville for the region composed of—

- (i) the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Caro-

lina, South Carolina, Tennessee, and Virginia;

- (ii) the Commonwealth of Puerto Rico; and

(iii) the United States Virgin Islands.

**(C) South-central center**

A south-central sun grant center at Oklahoma State University for the region composed of the States of Arkansas, Colorado, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas.

**(D) Western center**

A western sun grant center at Oregon State University for the region composed of—

- (i) the States of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington; and

(ii) insular areas (as defined in section 3103 of this title (other than the insular areas referred to in clauses (ii) and (iii) of subparagraph (B))).

**(E) Northeastern center**

A northeastern sun grant center at Cornell University for the region composed of the States of Connecticut, Delaware, Massachusetts, Maryland, Maine, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and West Virginia.

**(F) Western insular Pacific subcenter**

A western insular Pacific sun grant subcenter at the University of Hawaii for the region of Alaska, Hawaii, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

**(2) Manner of distribution**

**(A) Centers**

In providing any funds made available under subsection (g), the Secretary shall distribute the grants in equal amounts to the sun grant centers described in subparagraphs (A) through (E) of paragraph (1).

**(B) Subcenter**

The sun grant center described in paragraph (1)(D) shall allocate a portion of the funds received under paragraph (1) to the subcenter described in paragraph (1)(F) pursuant to guidance issued by the Secretary.

**(3) Failure to comply with requirements**

If the Secretary finds on the basis of a review of the annual report required under subsection (f) or on the basis of an audit of a sun grant center or subcenter conducted by the Secretary that the center or subcenter has not complied with the requirements of this section, the sun grant center or subcenter shall be ineligible to receive further grants under this section for such period of time as may be prescribed by the Secretary.

**(c) Use of funds**

**(1) Competitive grants**

**(A) In general**

A sun grant center or subcenter shall use 75 percent of the funds described in sub-

section (b) to provide competitive grants to entities that are—

- (i) eligible to receive grants under subsection (b)(7) of section 450i of this title; and
- (ii) located in the region covered by the sun grant center or subcenter.

**(B) Activities**

Grants described in subparagraph (A) shall be used by the grant recipient to conduct, in a manner consistent with the purposes described in subsection (a), multi-institutional and multistate—

- (i) research, extension, and education programs on technology development; and
- (ii) integrated research, extension, and education programs on technology implementation.

**(C) Funding allocation**

Of the amount of funds that is used to provide grants under subparagraph (A), the sun grant center or subcenter shall use—

- (i) not less than 30 percent of the funds to carry out the programs described in subparagraph (B)(i); and
- (ii) not less than 30 percent of the funds to carry out the programs described in subparagraph (B)(ii).

**(D) Administration**

**(i) Peer and merit review**

In making grants under this paragraph, a sun grant center or subcenter shall—

- (I) seek and accept proposals for grants;
- (II) determine the relevance and merit of proposals through a system of peer review similar to that established by the Secretary pursuant to section 7613 of this title; and
- (III) award grants on the basis of merit, quality, and relevance to advancing the purposes of this section.

**(ii) Priority**

A sun grant center or subcenter shall give a higher priority to programs that are consistent with the plan approved by the Secretary under subsection (d).

**(iii) Term**

A grant awarded by a sun grant center or subcenter shall have a term that does not exceed 5 years.

**(iv) Matching funds required**

**(I) In general**

Except as provided in subclauses (II) and (III), as a condition of receiving a grant under this paragraph, the sun grant center or subcenter shall require that not less than 20 percent of the cost of an activity described in subparagraph (B) be matched with funds, including in-kind contributions, from a non-Federal source.

**(II) Exclusion**

Subclause (I) shall not apply to fundamental research (as defined in sub-

section (f)(1) of section 6971 of this title (as added by section 7511(a)(4))<sup>1</sup>.

**(III) Reduction**

The sun grant center or subcenter may reduce or eliminate the requirement for non-Federal funds under subclause (I) for applied research (as defined in subsection (f)(1) of section 6971 of this title (as added by section 7511(a)(4))<sup>1</sup> if the sun grant center or subcenter determines that the reduction is necessary and appropriate pursuant to guidance issued by the Secretary.

**(v) Buildings and facilities**

Funds made available for grants shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing building or facility (including site grading and improvement and architect fees).

**(vi) Limitation on indirect costs**

A sun grant center or subcenter may not recover the indirect costs of making grants under subparagraph (A).

**(2) Administrative expenses**

A sun grant center or subcenter may use up to 4 percent of the funds described in subsection (b) to pay administrative expenses incurred in carrying out paragraph (1).

**(3) Research, extension and educational activities**

The sun grant centers and subcenter shall use the remainder of the funds described in subsection (b) to conduct, in a manner consistent with the purposes described in subsection (a), multi-institutional and multistate—

- (A) research, extension, and educational programs on technology development; and
- (B) integrated research, extension, and educational programs on technology implementation.

**(d) Plan for research activities to be funded**

**(1) In general**

Subject to the availability of funds under subsection (g), and in cooperation with land-grant colleges and universities and private industry in accordance with paragraph (2), the sun grant centers and subcenter shall jointly develop and submit to the Secretary for approval a plan for addressing the bioenergy, biomass, and gasification research priorities of the Department of Agriculture and the Department of Energy at the State and regional levels.

**(2) Gasification coordination**

With respect to gasification research activity, the sun grant centers and subcenter shall coordinate planning with land-grant colleges and universities in their respective regions that have ongoing research activities in that area.

<sup>1</sup> So in original. Probably should be followed by a third closing parenthesis.

**(3) Funding**

Funds described in subsection (c)(2) shall be available to carry out planning coordination under paragraph (1).

**(4) Use of plan**

The sun grant centers and subcenter shall use the plan described in paragraph (1) in making grants under subsection (c)(1).

**(e) Grant Information Analysis Center**

The sun grant centers and subcenter shall maintain a Sun Grant Information Analysis Center at the sun grant center specified in subsection (b)(1)(A) to provide the sun grant centers and subcenter with analysis and data management support.

**(f) Annual reports**

Not later than 90 days after the end of each fiscal year, a sun grant center or subcenter receiving a grant under this section shall submit to the Secretary a report that describes the policies, priorities, and operations of the program carried out by the center or subcenter during the fiscal year, including—

- (1) the results of all peer and merit review procedures conducted pursuant to subsection (c)(1)(D)(i); and
- (2) a description of progress made in facilitating the priorities described in subsection (d)(1).

**(g) Authorization of appropriations**

There is authorized to be appropriated to carry out this section \$75,000,000 for each of fiscal years 2008 through 2012, of which not more than \$4,000,000 for each fiscal year shall be made available to carry out subsection (e).

(Pub. L. 110-234, title VII, §7526, May 22, 2008, 122 Stat. 1274; Pub. L. 110-246, §4(a), title VII, §7526, June 18, 2008, 122 Stat. 1664, 2035.)

REFERENCES IN TEXT

Section 7511(a)(4), referred to in subsec. (c)(1)(D)(iv)(II) and (III), means section 7511(a)(4) of Pub. L. 110-246.

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.

Section was enacted as part of the Food, Conservation, and Energy Act of 2008, and not as part of title IX of the Farm Security and Rural Investment Act of 2002 which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 8109 of this title prior to the general amendment of this chapter by Pub. L. 110-246.

EFFECTIVE DATE

Enactment of this section 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.

DEFINITION OF “SECRETARY”

“Secretary” as meaning the Secretary of Agriculture, see section 8701 of this title.

**CHAPTER 108—TREE ASSISTANCE PROGRAM**

|               |              |
|---------------|--------------|
| Sec.<br>8201. | Definitions. |
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| Sec.<br>8202.<br>8203.<br>8204.<br>8205. | Eligibility.<br>Assistance.<br>Limitations on assistance.<br>Authorization of appropriations. |
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**§ 8201. Definitions**

In this chapter:

**(1) Eligible orchardist**

The term “eligible orchardist” means a person that produces annual crops from trees for commercial purposes.

**(2) Natural disaster**

The term “natural disaster” means plant disease, insect infestation, drought, fire, freeze, flood, earthquake, lightning, and other occurrence, as determined by the Secretary.

**(3) Secretary**

The term “Secretary” means the Secretary of Agriculture.

**(4) Tree**

The term “tree” includes a tree, bush, and vine.

(Pub. L. 107-171, title X, §10201, May 13, 2002, 116 Stat. 490.)

**§ 8202. Eligibility**

**(a) Loss**

Subject to subsection (b) of this section, the Secretary shall provide assistance under section 8203 of this title to eligible orchardists that planted trees for commercial purposes but lost the trees as a result of a natural disaster, as determined by the Secretary.

**(b) Limitation**

An eligible orchardist shall qualify for assistance under subsection (a) of this section only if the tree mortality of the eligible orchardist, as a result of damaging weather or related condition, exceeds 15 percent (adjusted for normal mortality).

(Pub. L. 107-171, title X, §10202, May 13, 2002, 116 Stat. 490.)

**§ 8203. Assistance**

Subject to section 8204 of this title, the assistance provided by the Secretary to eligible orchardists for losses described in section 8202 of this title shall consist of—

- (1) reimbursement of 75 percent of the cost of replanting trees lost due to a natural disaster, as determined by the Secretary, in excess of 15 percent mortality (adjusted for normal mortality); or
- (2) at the option of the Secretary, sufficient seedlings to reestablish a stand.

(Pub. L. 107-171, title X, §10203, May 13, 2002, 116 Stat. 491.)

**§ 8204. Limitations on assistance**

**(a) Amount**

The total amount of payments that a person shall be entitled to receive under this chapter may not exceed \$75,000, or an equivalent value in tree seedlings.