

August 1, 2008

Submitted via email to: biopreferred@usda.gov

Boyd K. Rutherford
Assistant Secretary for Administration
U.S. Department of Agriculture
Whitten Building
1400 Independence Avenue, SW
Washington, DC 20250

Re: BioPreferred Voluntary Labeling Program

Dear Assistant Secretary Rutherford:

BIO is the world's largest biotechnology trade association with more than 1100 members worldwide. BIO members are involved in the research and development of innovative healthcare, agricultural, industrial and environmental biotechnologies. The comments below reflect those of the Industrial & Environmental Section which comprises more than 60 companies that produce a wide array of biobased products, from fuels to fine chemicals and plastics.

BIO was one of the very first organizations to endorse and strongly support the Farm Bill's first ever energy title back in 2001 and 2002. The organization continues to support the title and greatly appreciates the expansion of the BioPreferred program in the recently enacted 2008 Farm Bill. We also appreciate the hard work of the U.S. Department of Agriculture in implementing the BioPreferred and related programs that will bolster the rural economy, expand jobs in the agriculture and biotechnology sectors, and improve sustainability and energy security.

We feel that these programs have the potential to be an important tool in stimulating biobased market development, and appreciate the opportunity to provide comments in response to the July 22, 2008 public meeting on the BioPreferred Voluntary Labeling Program. Included below are our comments on the program that will enhance its function and improve our ability to stimulate the biobased products industry.

The proposed voluntary labeling program offers tremendous potential to expand biobased markets due the credibility and visibility that the "USDA Certified Biobased Product" label can offer, both domestically and internationally. To achieve this potential, it is essential to recognize the role of the entire value chain from agricultural feedstocks (e.g. corn, soy, wood, fiber) to intermediate ingredients (biomonomers and polymers) to final products (carpet, apparel, lubricants, packaging, cosmetics, etc). To accomplish this, we would like to echo the sentiment expressed by multiple stakeholders during the public meeting that USDA should ensure qualified intermediate ingredients are eligible to receive the label in addition to finished products. The present labeling program only includes final products.

The voluntary labeling program presents the opportunity for USDA to reach down the value chain and create additional market pull for the biobased intermediates upon which the final products are based. Additionally, instead of having to develop data (e.g. biobased content) on the ingredients, intermediates and/or components of their biobased products, final product manufacturers can build upon the

information obtained through the USDA labeling program. Including intermediates along with final products is critical to the success of the label and to the BioPreferred Program overall.

Additionally, we urge that USDA move the program forward as expeditiously as possible. As you will readily admit, both in terms of designations as well as labeling, the program has moved rather slowly these past six years. Industry has led the development of the industry in the absence of decisive federal action. States are also leading the way through various policy measures and the adoption of BioPreferred initiatives at the state level. What we need now is a concerted effort by the Department, along with significant cooperation from other federal entities such as the Office of Management and Budget, Office of the Federal Environmental Executive, and others to make the great potential of this program a reality. A good deal of progress has been made in recent months. To keep the momentum, we respectfully urge USDA to implement the labeling program by the end of this calendar year.

BIO would also like to submit comments that specifically respond to the four areas mentioned in the July 22 public stakeholders hearing on the voluntary labeling program:

- 1. What does the label mean? What elements should USDA consider as requirements to receive the label? How much information should be included on the physical label? Do consumers care to distinguish whether the label pertains to the product, packaging, or both? Would it be acceptable to include performance and environmental information on a supporting website as opposed to on the physical label?**

Labeling of Packaging and Products:

- USDA should allow for labeling of packaging and products. Many of the companies present at the July 22 USDA public hearing produce polymers suitable for packaging, and labeling for both packaging and products would encourage biobased purchasing.
- The key for a successful label is to find the right balance of information that gives the consumer what he/she wants but does not burden them with extraneous details. The goal of the label is to provide a simple, truthful measure of the biobased content for the product. We believe the label should make clear that it applies to the product and/or the packaging.

Labeling Content:

- In terms of label content, we do not feel it is useful, and may even be counter-productive to add much more information such as the life cycle costs and environmental and health effects for several reasons. Most consumers or end users will not want such a level of detail, and it could make the label more complicated and less powerful than it otherwise might have been. For example, the USDA Organics label and the EPA Energy Star labels are simple, and clearly identifiable. That is what we need for biobased products. A clear, easy approach may be to state that a product has “at least _ percent of biobased content.” There could be several 10 percent increments along these lines to make the label easy to understand, and to account for the inherent variability in testing methods used to determine biobased content. As the Department notes in the public notice, additional information other than content can be made available to the public via the internet.
- It is our view that the label should not contain the term “BioPreferred” to identify those products that are also eligible for preferred procurement under the BioPreferred program. This might serve to confuse end users or buyers since there would be some labels with and some without. This may undermine the value of the non-BioPreferred labeled products. However, as the industry grows along with the federal program, it might make sense to distinguish the labels in this fashion in future years. The more flexible, easily understandable and useable the label is the better. This information can be provided via other means, such as in product literature, the

Department's website, etc.

Criteria for Obtaining the Label:

- The criteria for obtaining the label and its content should be simple, clear and transparent. The USDA labeling program should only require documentation supporting the biobased origin and content of the intermediates or final biobased products. ASTM has developed an international standard (D6866), which can be used to verify biobased carbon content. If intermediates are made eligible for the labeling program, and manufacturers can provide the required documentation, USDA will essentially develop a database of information that can then be used to qualify final products made from eligible intermediates. This will significantly streamline the labeling process.
- Life cycle assessments are an important tool to compare total environmental performance of a particular biobased product with its petroleum based counterpart. However, in light of the significant stakeholder concern and debate on this issue, and in the interest of expediting the implementation of the program, life cycle analyses should not be required to obtain the USDA label. Instead, we propose that USDA build an incentive into the program for manufacturers and suppliers that have or will conduct an LCA on their intermediates or final products. This incentive could take the form of a color coded label or seal that identifies products and intermediates that have been evaluated for their overall environmental performance, not just their biobased content. As mentioned before, supplemental information could be provided on a USDA website on a voluntary basis.

2. In terms of qualifying products and minimum content-should the label be available to designated, non-designated and mature-market products, and if so, should USDA establish a minimum biobased content greater than or equal to 50%? Should there be a process to request alternative minimum content level?

- We feel the content requirements should be kept reasonably low. Setting a 50% minimum will arbitrarily eliminate some well known high volume biobased products and intermediates that are already in the market place. It is our view that a lower threshold will help build the industry and the number of products brought to market. Companies at all points of the value chain should be able to take advantage of the biobased label in order to create the market pull required for adoption of new biobased technologies. For example, if there is an intermediate composed of 100% biobased material, a vendor who uses that intermediate may only have 10% biobased content in a final product. The final product should then also be allowed to carry the label in order to promote the biobased item to the end consumer.
- Moreover, as was noted at the public meeting on July 22, there are substantial carbon reductions that could come from even modest biobased percentages embedded within products brought to market. One of the primary goals of the program is to enhance energy security by backing fossil fuels out of the nation's economy. Of course we recognize that as the industry grows it may be appropriate to raise the content standards in the future.
- We also ask that an alternative minimum biobased content standard process be set for products for non-designated and mature-market products. This would most likely occur via an appeals or review process that the Department would adopt via regulation. We concur that this is a strong approach. Industry will likely be in position in the future to bring technical and other data to the Department's attention that could lead to alternative standards being set thereby increasing biobased product purchases and reducing petroleum consumption. We would ask that the procedure for this be simple, straightforward, and not too onerous so as to discourage industry participation.

3. With testing procedures, is there a concern about availability of facilities to conduct required testing? Should USDA allow manufacturers/vendors to perform internal testing?

- There should be flexibility in the types of tests accepted by the USDA to qualify for the label. More flexibility in this regard will serve to enhance the core mission of the program, which of course is to increase the purchase of biobased products.
- Testing required for the label should be performed by qualified third-party testing organizations or testing done by manufacturers certified by ASTM or ISO.

4. Should manufacturers and vendors be eligible to apply for the label?

- Our belief is that vendors and manufacturers should be eligible for the simple reason that vendors are part of the value chain, and the label can and will help generate the purchase of biobased products.

We look forward to working with you in the upcoming months to further discuss our comments as USDA moves forward with implementing the labeling program. Additionally, we would be very interested to meet with USDA and provide more detailed industry feedback on specific aspects of the program. Please contact Jocelyne Modine at 202-962-6641, or jmodine@bio.org if you have any questions. Thank you again for your efforts and for giving us the opportunity to comment on this important program.

Sincerely,

A handwritten signature in black ink that reads "Brent Erickson". The signature is fluid and cursive, with a prominent flourish at the end.

Brent Erickson
Executive Vice President
BIO Industrial and Environmental Section