

DEPARTMENT OF AGRICULTURE**Commodity Credit Corporation****7 CFR Part 1424****RIN 0560-AG84****Bioenergy Program****AGENCY:** Commodity Credit Corporation, USDA.**ACTION:** Final rule.

SUMMARY: This rule finalizes a proposed rule to amend the existing regulations of the Commodity Credit Corporation (CCC) Bioenergy Program (program) in order to implement section 9010 of the Farm Security and Rural Investment Act of 2002 (the 2002 Act). These changes include: modifying the definitions for biodiesel, eligible commodities, and ethanol; extending the program beyond Fiscal Year (FY) 2002; and allowing producers to enter into multi-year agreements for program payments. Additional changes, based on comments received on the proposed rule, include: modifying the conversion factor provisions, making biodiesel payments on a soybean basis, making biodiesel payments on all biodiesel production, basing program payments on market prices as of the 10th business day before the production quarter, and establishing a target notification period for changes to conversion factors. Under the rule, CCC will pay incentives to ethanol producers to increase their use of eligible agricultural commodities in an FY as compared to the corresponding period in the prior FY. For biodiesel, CCC will pay incentives to biodiesel producers for FY 2003 through FY 2005 on all biodiesel production from eligible agricultural commodities. For FY 2006, CCC will pay biodiesel producers incentives only on their increased biodiesel production.

DATES: Effective October 1, 2002. The FY 2003 and beyond sign-up period will end June 6, 2003.

FOR FURTHER INFORMATION CONTACT: Jim Goff, Warehouse and Inventory Division, Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0553, 1400 Independence Avenue, SW., Washington, D.C. 20250-0553, telephone (202) 720-5396 or e-mail address:

BioenergyProgram@wdc.fsa.usda.gov. Persons with disabilities who require alternative means of communication (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:**Executive Order 12866**

This rule has been determined to be significant for the purposes of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget (OMB). A summary of the cost-benefit assessment is included in the Background section explaining the 2002 Actions this rule will take.

Small Business Regulatory Enforcement Fairness Act

This rule will be submitted to Congress as required by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 801 *et seq.*) The rule has been determined not to be a major regulatory action. Thus, the 60-day delay required by section 801 of SBREFA for Congressional review is not applicable.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rule making for the subject matter of this rule.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Environmental Assessment

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508); and FSA's regulations for compliance with NEPA, 7 CFR part 799. FSA has concluded that the rule will not have any significant impacts upon the human environment as documented through the completion of a final environmental assessment (FEW) that is on file and available to the public in the Administrative Record at the address specified above by contacting the official named above. The FEW is also available electronically at <http://www.fsa.usda.gov/dafp/cepd/epb/nepa.htm>.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The rule specifies that production will be eligible retroactively beginning October 1, 2002. The administrative appeal provisions

published at 7 CFR parts 11 and 780 must be exhausted before bringing any action for judicial review.

Executive Order 12612

The Federalism implications of this rule are not sufficient to warrant preparation of a Federalism Assessment. This rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of Government.

Unfunded Mandates Reform Act of 1995

This Rule contains no Federal mandates as defined in Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to sections 202 and 205 of UMRA.

Paperwork Reduction Act

The information collection reporting and recordkeeping requirements associated with this rulemaking have been approved by OMB and assigned control number 0560-0207. The proposed rule contained a notice for this information collection (67 FR 61565, October 1, 2002) as required by 5 CFR 1320.8 (d) (1). Two comments were received supporting the FY 2002 recordkeeping burden.

Discussion of the Final Rule

In November of 2000, USDA implemented a Bioenergy Program. The 2002 Act extended the program through FY 2006 and made several changes to the program. A proposed rule addressing these changes was published in the **Federal Register** on October 1, 2002 (67 FR 61565). Comments were accepted on the proposed rule until October 31, 2002.

Comments on the Proposed Rule

Responses to the proposed rule were received from 1,994 interested parties representing five different sectors as follows: 1,521 from individuals; 194 comments from 137 companies; 186 comments from 119 cooperatives; 48 comments from 44 trade organizations and special interest groups—mainly representing the American Soybean Association and the National Renderers Association; and 45 from State and local Governments. Most respondents made multiple comments.

How Payments Are Determined**Soybean or Soybean Oil Basis**

CCC received 2,131 comments expressing concern about how CCC proposed to base program payments on