

2004, 15 percent in FY 2005, and 0 percent in FY 2006. No change is being made to the rules for ethanol in this regard because there is not the same need.

#### *Definition of Biodiesel*

CCC received 194 comments that supported the proposed change in the biodiesel definition and supported additional feedstocks being eligible for biodiesel production. Three respondents suggested adding an American Society for Testing and Materials standard as a requirement to the biodiesel definition. Four comments supported eligibility for all biodiesel uses, whether for fuel or not, and expansion of the biodiesel definition to include other bio-oil/solvent products. Finally, two respondents suggested the program make payments on lower grades of bio fuels that are used for industrial uses.

Section 9010(b)(3)(A) of the 2002 Act specifically defines biodiesel as “a monoalkyl ester that meets the requirements of an appropriate American Society for Testing and Materials standard.” The language of the 2002 Act indicates that the intent of Congress was that eligible biodiesel be that used for fuel use only. Therefore, no change is made to the biodiesel definition.

#### *Plant Capacity Conversion Factor*

Two respondents suggested that the program change from using 2.5 to 1.1 as a divisor for producers with total plant capacity of under 65 million gallons per year and from using 3.5 to 2.1 for producers with total plant capacity of 65 million gallons or more per year. However, sections 9010(b)(3)(B)(i) and (ii) of the 2002 Act specifically provide for use of the 2.5 and 3.5 factors, respectively. The regulations follow the statute.

#### *Refunds of Overpayments*

One respondent, in addressing the program's requirement for refunds when increased production is not maintained for the entire FY, suggested that the program should “not force production of baseline if market cannot support the demand.”

Section 9010(b)(5) of the 2002 Act specifically states, “If the total amount of payments that an eligible producer receives for an FY under this section exceeds the amount that the eligible producer should have received under this subsection, the eligible producer shall repay the amount of the overpayment to the Secretary, with interest (as determined by the Secretary).” Accordingly, no change is made in this area. However, the change

made with regard to basing program payments on all biodiesel production should minimize the impact of this requirement on program biodiesel participants.

#### *Determining Commodity Market Price*

One respondent suggested that the program, when making payment calculations, use the average commodity price for the production quarter rather than the price as of the last business day of the quarter in which production occurred. This issue, although it was the subject of one comment on this rule, has been an issue in program administration in both FY 2001 and FY 2002. Program participants in those years complained that their actual feedstock costs were established before production, not after, and that knowing the program payment rate earlier would help them price their contracts. To address this concern, without compromising the purpose of the program to try to approximate actual conditions, 7 CFR 1424.8(d)(2) has been changed to adopt for use the price of the commodity on the 10th business day before the start of the production quarter to establish program payments.

#### *Conversion Factors*

The rule resulted in 3,471 comments being received concerning conversion factors for eligible commodities. Of those, 1,829 respondents requested conversion factors be issued more timely, more predictably, and with more sensitivity toward the potential impact of changes after they are announced. An additional 1,640 respondents suggested that conversion factors be more predictable, not be subject to annual change, and codified in the regulations. One respondent recommended the conversion factor for all eligible commodities be codified in the regulations, and one respondent generally opposed removing conversion factors from the regulations.

These comments may have resulted from the proposed rule's suggested adoption of a new biodiesel soybean conversion factor. With the exception of the disparity in program payments for biodiesel made from soybeans and soy oil versus animal fats and oils, no complaints had been received in FY 2001 or FY 2002 on the program's conversion factors and no general discontent was expressed by participants about the factors used in those years. The broad list of potential program eligible commodities, many currently not used in bioenergy production, makes publication of a conversion factor for every eligible commodity unrealistic. In addition, as manufacturing processes improve and

industry conversion factors improve, CCC needs to be able to reflect the bioenergy producer's true costs of production in a more timely fashion than that allowed by notice and comment rulemaking. From a review of the comments, it appears the real goal is for producers to be able to accurately estimate program payments when they contract future sales prices. To address that, 7 CFR 1424.8(e) has been changed to state, “After FY 2003, changes to established conversion factors shall be announced in a press release issued by CCC 90 calendar days before the applicable FY's sign-up, to the extent practicable.” This should give program participants a 120-day notification (90 days before sign-up plus 30-day sign-up period) before applicable production is produced. Conversion factors, as they are established, will also be posted to the program's Internet website.

#### *Source Used for Fats and Oil Market Prices*

Fifty-one respondents commented on this aspect of the program. Fifty suggested that CCC use the “Jacobsen Fats and Oils Bulletin” for oil feedstock prices without applicable Posted County Prices; one suggested CCC use the Chicago Board of Trade for all virgin crude oil prices with 5-year trade adjustments from that for cottonseed oil, corn oil, and canola oil prices. Respondents expressed the belief that the “Jacobsen Fats and Oils Bulletin” provided a more accurate market price for animal fats and oils than the USDA's “Weekly National Carlot Meat Report,” which was used by the program in FY 2002.

The program's regulations do not specify the source CCC will use for feedstock prices for eligible commodities without a Posted County Price—only that the market price will be “as determined by CCC.” For FY 2002, CCC used the U.S. Department of Agriculture's Agricultural Marketing Service's “Springfield Report” for corn oil prices and the USDA's “Weekly National Carlot Meat Report” for animal fats and oils prices. However, based on comments received, CCC has reviewed the data provided by the “Jacobsen Fats and Oils Bulletin” and has determined it does provide an accurate regional price for animal fats and oils. Therefore, CCC will use the “Jacobsen Fats and Oils Bulletin” to the extent possible for oil feedstock prices without a Posted County Price. This policy will also be announced in the FY 2003 sign-up press release announcement. 7 CFR 1424.8(d)(2)(ii) is changed to indicate that as a step in the final calculation of payments the biodiesel gross payment