

will be determined for biodiesel made from eligible commodities that have a corresponding oil or grease market price, using the Posted County Price for soybeans for the county where the plant is located. If the biodiesel is made from soybeans or soy oil, this is the gross payment without a further feedstock adjustment (but subject to other possible adjustments). For biodiesel made from other than soy oil or soybeans, the applicable feedstock's oil or yellow grease (for animal fats and oils) market price, as determined by CCC, will be divided by the soy oil price published in the Agricultural Marketing Service's weekly "Soybean Crush Report (Central Illinois (Decatur, Macon County, Illinois))" for the applicable date. The resulting percentage will be multiplied by the soybean gross payment to determine the producer's gross payment eligibility subject to such other adjustments as provided in the regulations.

Eligible Commodities and Fuels

The proposed rule elicited 53 comments in this area. Of these, 50 supported the addition of animal fats and oils as program eligible commodities. Also, three suggested that CCC allow producers to use different eligible commodities during the same FY and not make producers commit at sign-up to which feedstocks will be used in bioenergy production.

CCC recognizes the difficulty producers have in forecasting which feedstocks will be used a year ahead of actual production. However, potential program payments must be estimated after that FY's sign-up is concluded to determine if a payment factor will be required to keep program expenditures within budgetary authority during the FY. CCC also recognizes that program projections for FY 2001 and FY 2002 were excessive compared to actual production. To address this, the bioenergy agreements will continue to request the maximum possible production by eligible commodity but will separately request the maximum total production increase. Producers will separately list the estimated production by eligible commodity and the total maximum increase from all eligible commodities. The total maximum increase reported will no longer be tied to the estimated production by eligible commodity. When added, the estimated production by commodity may now exceed the total maximum increase reported. This will allow producers to switch production between eligible commodities while still providing CCC the data necessary to

project program costs based on eligible commodities being used.

Producer Eligibility

Fifty-four respondents felt that program payments should only be made to bona fide producers—not marketers. FSA reviews each applicant thoroughly for eligibility before they are approved for the program. To be eligible, a producer must have, among other requirements, risk of loss during the production process. A producer need not own the facility producing the fuel. All program payments are monitored and thorough, on-site examinations are conducted of all program participants' operations to verify program compliance. If noncompliance or over payments are discovered, repayments are required. In addition, program provisions are only applicable to a producer's bioenergy production activities—not to other business activities that producer may be involved in. However, to address this issue and also the issue of producers moving production between different plants between FY's to gain larger program payments, 7 CFR 1424.7(c) has been updated to state that there can only be one producer per plant and that when producers transfer all of their operations to a different plant, their prior FY's production will be the greater of the production at the plants they operated in the prior FY or the prior FY production at plants they are taking over in the next FY. Also, to help insure that the program accomplishes its goals, the rule provides that "Otherwise, for purposes of computing whether a producer has increased production in the current year from the previous year, the determination will be made by comparing for the current year the producer's production figures from all locations in which the producer has an interest with, for the previous year the sum of (i) production at those locations by any person including, but not limited to, the producer, and (ii) additional production by the producer at any other location in that year. Also, as needed to avoid frustrating the goals of the program, the Executive Vice President of CCC may treat producers with common interests, common ownership, or common facilities or arrangements as the same producer. These provisions mirror provisions in the current rule and are provided for additional clarity.

Although FY 2003 sign-up will be held after October 1, 2002, FY 2003 bioenergy production beginning October 1, 2002 will be eligible for FY 2003 program payments.

Miscellaneous Comments

Twelve miscellaneous comments were received, with nine of those stating general support for the program. However, responses to the biodiesel issue also seem to indicate that those respondents would support the program even if biodiesel payments are reduced by the final rule. Another two respondents supported the program's current recordkeeping or paperwork burden. One respondent urged CCC to remove all support for continuance of current bioenergy programs and instead provide greater attention to supporting on farm fuel production for use in food production crops. The 2002 Act requires CCC to continue the program through FY 2006.

Cost-Benefit Assessment

The 2002 Act authorizes bioenergy program funding of up to \$150 million per year for FY's 2003 through 2006. Section 743 of the Consolidated Appropriations Resolution, 2003, Public Law 108-7, limits FY 2003 payments to eligible bioenergy producers to 77 percent of the amount that those producers would otherwise earn under the program. The President's Budget for FY 2004 also proposes to limit the program to \$100 million in FY 2004. The program was first implemented during FY 2001 and funded for FY 2001 and FY 2002 at \$150 million each year. Payments have been well under the annual funding levels—FY 2001 payments totaled \$40.7 million; FY 2002 payments totaled \$78.7 million. The list of eligible commodities is expanded to include cottonseed and any animal byproduct (in addition to oils, fats, and greases) that may be used to produce bioenergy. However, because payments have been made only on corn, grain sorghum, wheat, soybeans, and animal fats and oils, it is difficult to forecast additional payments on the newly eligible commodities. Assuming that some of the new commodities do enter the program, the volume is likely to be small, and the outlay effects negligible. The number of participants receiving payments is expected to increase only slightly. Because of very strong incentives to increase ethanol production independent of the bioenergy program, FY 2003-ethanol production and payments are projected to increase sharply from FY's 2001 and 2002. Program payments for ethanol are expected to be highest in FY 2003 and then decline, because the rate of increase in production is projected to slow as California completes the transition to ethanol. Thus, the cost of the program is expected to be higher