

# ETHANOL AND BIO-DIESEL PRODUCER PAYMENT PROGRAM RULES AND CRITERIA

Pursuant to *Miss. Code Ann.* §§69-51-1 *et seq.*, any and all subsequent amendments made thereafter, and all such other points of law that may be applicable, the Commissioner of Agriculture and Commerce promulgates the following regulations, in accordance with the Mississippi Administrative Procedures Law, as may be necessary to further the provisions of the Law.

## 1. Purpose

The program's purpose is to provide incentive for ethanol and/or bio-diesel producers to utilize farm products grown in Mississippi including derivatives and byproducts, biomass, or other farm resource commodities.

## 2. Definitions and Terms

- (A) "Entity" means a particular and distinct unit.
- (B) For the purpose of this chapter, "farm products" include corn, cotton, soybeans, grain sorghum, rice, wheat, livestock, poultry, catfish or forest resources.
- (C) "Controlling interest" means the ownership of or right to vote shares, partnership or limited liability company interests, or other incidents of ownership, sufficient to cause the entity to act or refrain from acting in a certain manner.
- (D) "Producer" means the legal entity that owns the Production Facility.
- (E) "Production Facility" means a plant or a still located within the State of Mississippi that produces or has the capacity to produce ethyl alcohol through its own fermentation and distillation processes or produces or has the capacity to produce bio-diesel.
- (F) "Single producer" means an entity with a production facility or facilities that may not exceed payment limitations provided in this chapter.
- (G) "Fiscal Biennium" means the two-year period commencing with the calendar quarter in which ethanol or bio-diesel production that qualifies for payment under this program is first achieved in Mississippi.
- (H) "Claim for payment" means Application for Ethanol Producers Payment or Application for Bio-Diesel Producers Payment provided by the Mississippi Department of Agriculture and Commerce.
- (I) "Independent CPA" means a Certified Public Accountant licensed to practice in the State of Mississippi, contracted by the facility submitting the claim to perform an audit to verify the claim.
- (J) "Application for approval of the new production capacity" means Application for Permit to Participate in State of Mississippi Ethanol/Bio-Diesel Producers Payment Program provided by the Mississippi Department of Agriculture and Commerce.

(K) “Under construction” means the commencement of construction activities, including initial site preparation, by the Producer or others on behalf of the Producer, at the site on which the Production Facility is to be built.

### 3. Authorization of Payment

(A) The Commissioner has the authority, pursuant to the provisions of *Miss. Code Ann.* Sections 69-51-1 *et seq.*, to approve or deny for any reason any Application for Permit to Participate in State of Mississippi Ethanol/Bio-Diesel Producers Payment Program submitted to the Mississippi Department of Agriculture and Commerce.

~~An Application for Permit approved by the Commissioner shall be required before commencement of any construction on a Production Facility in order for that facility to qualify for payments under this program. The Commissioner will request approval of appropriations from the State Legislature for amounts sufficient to make full payments to Producers of the first 180,000,000 gallons of ethanol and/or bio-diesel with approved Applications for Permits to Participate in State of Mississippi Ethanol/Bio-Diesel Producers Payment Program during the life of the program.~~

(B) The Commissioner requires an audit report of each claim for payment under subsections (1), (2), and (3) of *Miss. Code Ann.* §§69-51-1 *et seq.* be submitted along with the claim. This audit must be conducted by an independent certified public accountant, licensed in the State of Mississippi to perform these services. It must be performed in accordance with generally accepted accounting procedures to verify the producer production of ethanol and/or bio-diesel and eligibility for the payment in accordance with the governing state laws and rules. The CPA must verify and certify that ethanol and/or bio-diesel produced from farm products, or derivatives thereof, were purchased directly from a Mississippi farm or from a source that acquired Mississippi grown feedstock equal to or greater than the amount in the claim over the period of one year (July 1 through June 30 of each year during the life of this program). Additionally, any request for payment on ethanol and/or bio-diesel produced from non-Mississippi feedstock shall be accompanied by documentation of the plant’s goals and procurement efforts pursued to obtain feedstock produced in Mississippi, and a detailed explanation as to why non-Mississippi grown sources were used.

(1) Payments under subsections (1), (2), and (3) of *Miss. Code Ann.* Section 69-51-5 shall be authorized as meeting one or more of the following criteria:

- Feedstock is certified as produced in Mississippi.

- Feedstock derived in Mississippi is unavailable due to drought, flood, insect damage, disease, other natural disaster, or crop failure, as determined by the Commissioner. The presence in feedstock of aflatoxin or other similar toxins in sufficient quantities to render the feed byproducts unsuitable for their intended uses (including but not limited to limits specified by the US Food and Drug Administration), shall be sufficient to deem said feedstock “unavailable”.
- Feedstock derived in Mississippi is unavailable due to failure of delivery from contracted source, as documented by the facility and as determined by the Commissioner.
- Feedstock derived in Mississippi is unattainable due to unreasonable conditions or low supply in the local cash market, as determined by the Commissioner.
- Feedstock derived out of state is necessary for financial stability of the facility, as documented by the facility and as determined by the Commissioner.

#### 4. Payment Distributions

- (A) In the event that the total amount for which all producers are eligible for payment under subsections (1) and (2) of *Miss. Code Ann.* Section 69-51-5 in a quarter exceeds the amount available, the Commissioner shall make payments pro rata – in accordance with the payment limitations of subsections (4) and (6) of *Miss. Code Ann.* Section 69-51-5 and funds appropriated by the Mississippi Legislature.
- (B) A single producer with one or more permitted production facilities may receive quarterly payments within the limitations of subsection (6) of *Miss. Code Ann.* Section 69-51-5 and appropriations by the Mississippi Legislature.
- (C) The payments provided for in subsection 9 of *Miss. Code Ann.* Section 69-51-5 over and above the normal 7,500,000 gallon quarterly limit will be made to Producers only to the extent that qualifying production during the previous 7 calendar quarters did not reach the 7,500,000 quarterly payment maximum.

#### 5. Permit Amendments and Ownership Changes

- (A) An approved Application for Permit to Participate in State of Mississippi Ethanol/Bio-Diesel Producers Payment Program may be amended by the applicant anytime after permit issuance with approval by the Mississippi Department of Agriculture and Commerce Administrative Division.

- (B) The Commissioner has the authority to require a permitted facility(s) to resubmit an Application for Permit to Participate in State of Mississippi Ethanol/Bio-Diesel Producers Payment Program after undergoing ownership changes, at the discretion of the Commissioner.
  
- (C) Nothing in these regulations shall preclude an entity holding a “controlling interest” in one ethanol and/or bio-diesel plant from owning less than a “controlling interest” in one or more other plants in which the “controlling interest” is owned by other qualified entity(s) for purposes of the Ethanol /Bio-Diesel Producer Payment Program set forth in *Miss. Code Ann.* Section 69-51-5.