

TITLE IX—ENERGY

SEC. 9001. DEFINITIONS.

In this title:

(1) **ADMINISTRATOR.**—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) **BIOBASED PRODUCT.**—The term “biobased product” means a product determined by the Secretary to be a commercial or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products or renewable domestic agricultural materials (including plant, animal, and marine materials) or forestry materials.

(3) **BIOMASS.**—

(A) **IN GENERAL.**—The term “biomass” means any organic material that is available on a renewable or recurring basis.

(B) **INCLUSIONS.**—The term “biomass” includes—

- (i) agricultural crops;
- (ii) trees grown for energy production;
- (iii) wood waste and wood residues;
- (iv) plants (including aquatic plants and grasses);
- (v) residues;
- (vi) fibers;
- (vii) animal wastes and other waste materials; and
- (viii) fats, oils, and greases (including recycled fats, oils, and greases).

(C) **EXCLUSIONS.**—The term “biomass” does not include—

- (i) paper that is commonly recycled; or
- (ii) unsegregated solid waste.

(4) **RENEWABLE ENERGY.**—The term “renewable energy” means energy derived from—

(A) a wind, solar, biomass, or geothermal source; or
7 USC 8101.

116 STAT. 476 PUBLIC LAW 107–171—MAY 13, 2002

(B) hydrogen derived from biomass or water using an energy source described in subparagraph (A).

(5) **RURAL SMALL BUSINESS.**—The term “rural small business” has the meaning that the Secretary shall prescribe by regulation.

(6) **SECRETARY.**—The term “Secretary” means the Secretary of Agriculture.

SEC. 9002. FEDERAL PROCUREMENT OF BIOBASED PRODUCTS.

(a) **APPLICATION OF SECTION.**—Except as provided in subsection (c), each Federal agency shall comply with the requirements set forth in this section and any regulations issued under this section, with respect to any purchase or acquisition of a procurement item where the purchase price of the item exceeds \$10,000 or where the quantity of such items or of functionally equivalent items purchased or acquired in the course of the preceding fiscal year was \$10,000 or more.

(b) **PROCUREMENT SUBJECT TO OTHER LAW.**—Any procurement, by any Federal agency, which is subject to regulations of the Administrator under section 6002 of the Solid Waste Disposal Act

(42 U.S.C. 6962), shall not be subject to the requirements of this section to the extent that such requirements are inconsistent with such regulations.

(c) **PROCUREMENT PREFERENCE.**—(1) Except as provided in paragraph (2), after the date specified in applicable guidelines prepared pursuant to subsection (e) of this section, each Federal agency which procures any items designated in such guidelines shall, in making procurement decisions, give preference to such items composed of the highest percentage of biobased products practicable, consistent with maintaining a satisfactory level of competition, considering such guidelines.

(2) **AGENCY FLEXIBILITY.**—Notwithstanding paragraph (1), an agency may decide not to procure such items if the agency determines that the items—

(A) are not reasonably available within a reasonable period of time;

(B) fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or

(C) are available only at an unreasonable price.

(3) After the date specified in any applicable guidelines prepared pursuant to subsection (e) of this section, contracting offices shall require that, with respect to biobased products, vendors certify that the biobased products to be used in the performance of the contract will comply with the applicable specifications or other contractual requirements.

(d) **SPECIFICATIONS.**—All Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies shall, within one year after the date of publication of applicable guidelines under subsection (e), or as otherwise specified in such guidelines, assure that such specifications require the use of biobased products consistent with the requirements of this section.

(e) **GUIDELINES.**—

(1) **IN GENERAL.**—The Secretary, after consultation with the Administrator, the Administrator of General Services, and the Secretary of Commerce (acting through the Director of 7 USC 8102.

116 STAT. 477 PUBLIC LAW 107–171—MAY 13, 2002
the National Institute of Standards and Technology), shall prepare, and from time to time revise, guidelines for the use of procuring agencies in complying with the requirements of this section. Such guidelines shall—

(A) designate those items which are or can be produced with biobased products and whose procurement by procuring agencies will carry out the objectives of this section;

(B) set forth recommended practices with respect to the procurement of biobased products and items containing such materials and with respect to certification by vendors of the percentage of biobased products used; and

(C) provide information as to the availability, relative price, performance, and environmental and public health benefits, of such materials and items and where appropriate shall recommend the level of biobased material to be contained in the procured product.

(2) CONSIDERATIONS.—In making the designation under paragraph (1)(A), the Secretary shall, at a minimum, consider—

(A) the availability of such items; and

(B) the economic and technological feasibility of using such items, including life cycle costs.

(3) FINAL GUIDELINES.—The Secretary shall prepare final guidelines under this section within 180 days after the date of enactment of this Act.

(f) OFFICE OF FEDERAL PROCUREMENT POLICY.—The Office of Federal Procurement Policy, in cooperation with the Secretary, shall implement the requirements of this section. It shall be the responsibility of the Office of Federal Procurement Policy to coordinate this policy with other policies for Federal procurement to implement the requirements of this section, and, every two years beginning in 2003, to report to the Congress on actions taken by Federal agencies and the progress made in the implementation of this section, including agency compliance with subsection (d).

(g) PROCUREMENT PROGRAM.—(1) Within one year after the date of publication of applicable guidelines under subsection (e), each Federal agency shall develop a procurement program which will assure that items composed of biobased products will be purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement law.

(2) Each procurement program required under this subsection shall, at a minimum, contain—

(A) a biobased products preference program;

(B) an agency promotion program to promote the preference program adopted under subparagraph (A); and

(C) annual review and monitoring of the effectiveness of an agency's procurement program.

(3) In developing the preference program, the following options shall be considered for adoption:

(A) CASE-BY-CASE POLICY DEVELOPMENT.—Subject to the limitations of subsection (c)(2) (A) through (C), a policy of awarding contracts to the vendor offering an item composed of the highest percentage of biobased products practicable. Subject to such limitations, agencies may make an award to a vendor offering items with less than the maximum biobased products content.

(B) MINIMUM CONTENT STANDARDS.—Minimum biobased products content specifications which are set in such a way

Deadline.

Reports.

Deadline.

116 STAT. 478 PUBLIC LAW 107-171—MAY 13, 2002

as to assure that the biobased products content required is consistent with the requirements of this section, without violating the limitations of subsection (c)(2) (A) through (C).

Federal agencies shall adopt one of the options set forth in subparagraphs (A) and (B) or a substantially equivalent alternative, for inclusion in the procurement program.

(h) LABELING.—

(1) IN GENERAL.—The Secretary, in consultation with the Administrator, shall establish a voluntary program under which the Secretary authorizes producers of biobased products to use

the label “U.S.D.A. Certified Biobased Product”.

(2) **ELIGIBILITY CRITERIA.**—Within one year after the date of enactment of this Act, the Secretary, in consultation with the Administrator, shall issue criteria for determining which products may qualify to receive the label under paragraph (1). The criteria shall encourage the purchase of products with the maximum biobased content, and should, to the maximum extent possible, be consistent with the guidelines issued under subsection (e).

(3) **USE OF THE LABEL.**—The Secretary shall ensure that the label referred to in paragraph (1) is used only on products that meet the criteria issued pursuant to paragraph (2).

(4) **RECOGNITION.**—The Secretary shall establish a voluntary program to recognize Federal agencies and private entities that use a substantial amount of biobased products.

(i) **LIMITATION.**—Nothing in this section shall apply to the procurement of motor vehicle fuels or electricity.

(j) **FUNDING.**—

(1) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary to carry out this section.

(2) **FUNDING FOR TESTING OF BIOBASED PRODUCTS.**—

(A) **IN GENERAL.**—Of the funds of the Commodity Credit Corporation, the Secretary shall use \$1,000,000 for each of fiscal years 2002 through 2007 to support testing of biobased products to carry out this section.

(B) **USE OF FUNDS.**—Amounts made available under subparagraph (A) may be used to support contracts or cooperative agreements with entities that have experience and special skills to conduct such testing.

(C) **PRIORITY.**—At the discretion of the Secretary, the Secretary may give priority to the testing of products for which private sector firms provide cost sharing for the testing.

SEC. 9003. BIOREFINERY DEVELOPMENT GRANTS.

(a) **PURPOSE.**—The purpose of this section is to assist in the development of new and emerging technologies for the use of biomass, including lignocellulosic biomass, so as to—

- (1) develop transportation and other fuels, chemicals, and energy from renewable sources;
- (2) increase the energy independence of the United States;
- (3) provide beneficial effects on conservation, public health, and the environment;
- (4) diversify markets for raw agricultural and forestry products;

and

7 USC 8103.

Deadline.

116 STAT. 479 PUBLIC LAW 107–171—MAY 13, 2002

(5) create jobs and enhance the economic development of the rural economy.

(b) **DEFINITIONS.**—In this section:

(1) **ADVISORY COMMITTEE.**—The term “Advisory Committee” means the Biomass Research and Development Technical Advisory Committee established by section 306 of the Biomass Research and Development Act of 2000 (7 U.S.C. 7624 note);

Public Law 106–224).

(2) **BIOREFINERY.**—The term “biorefinery” means equipment and processes that—

- (A) convert biomass into fuels and chemicals; and
- (B) may produce electricity.

(3) **BOARD.**—The term “Board” means the Biomass Research and Development Board established by section 305 of the Biomass Research and Development Act of 2000 (7 U.S.C. 7624 note; Public Law 106–224).

(4) **INDIAN TRIBE.**—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(c) **GRANTS.**—The Secretary shall award grants to eligible entities to assist in paying the cost of development and construction of biorefineries to carry out projects to demonstrate the commercial viability of 1 or more processes for converting biomass to fuels or chemicals.

(d) **ELIGIBLE ENTITIES.**—An individual, corporation, farm cooperative, association of farmers, national laboratory, institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)), State or local energy agency or office, Indian tribe, or consortium comprised of any of those entities shall be eligible to receive a grant under subsection (c).

(e) **COMPETITIVE BASIS FOR AWARDS.**—

(1) **IN GENERAL.**—The Secretary shall award grants under subsection (c) on a competitive basis after consulting the Board and Advisory Committee.

(2) **SELECTION CRITERIA.**—

(A) **IN GENERAL.**—In selecting projects to receive grants under subsection (c), the Secretary—

- (i) shall select projects based on the likelihood that the projects will demonstrate the commercial viability of a new and emerging process for converting biomass into fuels, chemicals, or energy; and
- (ii) may consider the likelihood that the projects will produce electricity.

(B) **FACTORS.**—The factors to be considered under subparagraph (A) may include—

- (i) the potential market for the product or products;
- (ii) the level of financial participation by the applicants;
- (iii) the availability of adequate funding from other sources;
- (iv) the beneficial impact on resource conservation, public health, and the environment;
- (v) the participation of producer associations and cooperatives;
- (vi) the timeframe in which the project will be operational;
- (vii) the potential for rural economic development;

116 STAT. 480 PUBLIC LAW 107–171—MAY 13, 2002

(viii) the participation of multiple eligible entities;
and

(ix) the potential for developing advanced industrial

biotechnology approaches.

(f) COST SHARING.—

(1) IN GENERAL.—The amount of a grant for a project awarded under subsection (c) shall not exceed 30 percent of the cost of the project.

(2) FORM OF GRANTEE SHARE.—

(A) IN GENERAL.—The grantee share of the cost of a project may be made in the form of cash or the provision of services, material, or other in-kind contributions.

(B) LIMITATION.—The amount of the grantee share of the cost of a project that is made in the form of the provision of services, material, or other in-kind contributions shall not exceed 25 percent of the amount of the grantee share determined under paragraph (1).

(g) CONSULTATION.—In carrying out this section, the Secretary shall consult with the Secretary of Energy.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 2002 through 2007.

SEC. 9004. BIODIESEL FUEL EDUCATION PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall, under such terms and conditions as are appropriate, make competitive grants to eligible entities to educate governmental and private entities that operate vehicle fleets, other interested entities (as determined by the Secretary), and the public about the benefits of biodiesel fuel use.

(b) ELIGIBLE ENTITIES.—To receive a grant under subsection (a), an entity—

(1) shall be a nonprofit organization or institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001));

(2) shall have demonstrated knowledge of biodiesel fuel production, use, or distribution; and

(3) shall have demonstrated the ability to conduct educational and technical support programs.

(c) CONSULTATION.—In carrying out this section, the Secretary shall consult with the Secretary of Energy.

(d) FUNDING.—Of the funds of the Commodity Credit Corporation, the Secretary shall make available to carry out this section \$1,000,000 for each of fiscal years 2003 through 2007.

SEC. 9005. ENERGY AUDIT AND RENEWABLE ENERGY DEVELOPMENT PROGRAM.

(a) IN GENERAL.—The Secretary shall make competitive grants to eligible entities to carry out a program to assist farmers, ranchers, and rural small businesses in becoming more energy efficient and in using renewable energy technology and resources.

(b) ELIGIBLE ENTITIES.—Entities eligible to carry out a program under subsection (a) are—

(1) a State energy or agricultural office;

(2) a regional or State-based energy organization or energy organization of an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b));

Grants.

7 USC 8105.

7 USC 8104.

116 STAT. 481 PUBLIC LAW 107-171—MAY 13, 2002

(3) a land-grant college or university (as defined in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103)) or other institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001));

(4) a rural electric cooperative or utility;

(5) a nonprofit organization; and

(6) any other entity, as determined by the Secretary.

(c) MERIT REVIEW.—

(1) MERIT REVIEW PROCESS.—The Secretary shall establish a merit review process to review applications for grants under subsection (a) that uses the expertise of other Federal agencies, industry, and nongovernmental organizations.

(2) SELECTION CRITERIA.—In reviewing applications of eligible entities to receive grants under subsection (a), the Secretary shall consider—

(A) the ability and expertise of the eligible entity in providing professional energy audits and renewable energy assessments;

(B) the geographic scope of the program proposed by the eligible entity;

(C) the number of farmers, ranchers, and rural small businesses to be assisted by the program;

(D) the potential for energy savings and environmental and public health benefits resulting from the program; and

(E) the plan of the eligible entity for educating farmers, ranchers, and rural small businesses on the benefits of energy efficiency and renewable energy development.

(d) USE OF GRANT FUNDS.—

(1) REQUIRED USES.—A recipient of a grant under subsection (a) shall use the grant funds to conduct and promote energy audits for farmers, ranchers, and rural small businesses to provide farmers, ranchers, and rural small businesses recommendations on how to improve energy efficiency and use renewable energy technology and resources.

(2) PERMITTED USES.—In addition to the uses described in paragraph (1), a recipient of a grant may use the grant funds to make farmers, ranchers, and rural small businesses aware of, and ensure that they have access to—

(A) financial assistance under section 9006; and

(B) other Federal, State, and local financial assistance programs for which farmers, ranchers, and rural small businesses may be eligible.

(e) COST SHARING.—A recipient of a grant under subsection (a) that conducts an energy audit for a farmer, rancher, or rural small business under subsection (d)(1) shall require that, as a condition of the energy audit, the farmer, rancher, or rural small business pay at least 25 percent of the cost of the audit.

(f) USE OF COST-SHARE FUNDS.—Funds collected by a recipient of a grant under subsection (e) as a result of activities carried out using the grant funds shall be used to conduct activities authorized under this section, as approved by the Secretary.

(g) CONSULTATION.—In carrying out this section, the Secretary shall consult with the Secretary of Energy.

Establishment.

116 STAT. 482 PUBLIC LAW 107-171—MAY 13, 2002

(h) REPORTS.—Not later than 4 years after the date of enactment of this Act, the Secretary shall submit to Congress a report on the implementation of this section.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 2002 through 2007.

SEC. 9006. RENEWABLE ENERGY SYSTEMS AND ENERGY EFFICIENCY IMPROVEMENTS.

(a) IN GENERAL.—In addition to exercising authority to make loans and loan guarantees under other law, the Secretary shall make loans, loan guarantees, and grants to farmers, ranchers, and rural small businesses to—

- (1) purchase renewable energy systems; and
- (2) make energy efficiency improvements.

(b) ELIGIBILITY.—To be eligible to receive a grant under subsection (a), a farmer, rancher, or rural small business shall demonstrate financial need as determined by the Secretary.

(c) COST SHARING.—

(1) IN GENERAL.—

(A) GRANTS.—The amount of a grant shall not exceed 25 percent of the cost of the activity funded under subsection (a).

(B) MAXIMUM AMOUNT OF COMBINED GRANT AND

LOAN.—The combined amount of a grant and loan made or guaranteed shall not exceed 50 percent of the cost of the activity funded under subsection (a).

(2) FACTORS.—In determining the amount of a grant or loan, the Secretary shall take into consideration, as applicable—

- (A) the type of renewable energy system to be purchased;
- (B) the estimated quantity of energy to be generated by the renewable energy system;
- (C) the expected environmental benefits of the renewable energy system;
- (D) the extent to which the renewable energy system will be replicable;
- (E) the amount of energy savings expected to be derived from the activity, as demonstrated by an energy audit comparable to an energy audit under section 9005;
- (F) the estimated length of time it would take for the energy savings generated by the activity to equal the cost of the activity; and
- (G) other factors as appropriate.

(d) INTEREST RATE.—

(1) IN GENERAL.—A loan made by the Secretary under subsection (a) shall bear interest at the rate equivalent to the rate of interest charged on Treasury securities of comparable maturity on the date the loan is approved.

(2) DURATION.—The interest rate for each loan will remain in effect for the term of the loan.

(e) CONSULTATION.—In carrying out this section, the Secretary shall consult with the Secretary of Energy.

(f) FUNDING.—Of the funds of the Commodity Credit Corporation, the Secretary shall make available to carry out this section

\$23,000,000 for each of fiscal years 2003 through 2007.

7 USC 8106.

Deadline.

116 STAT. 483 PUBLIC LAW 107–171—MAY 13, 2002

SEC. 9007. HYDROGEN AND FUEL CELL TECHNOLOGIES.

(a) IN GENERAL.—The Secretary and the Secretary of Energy shall enter into a memorandum of understanding under which the Secretary and the Secretary of Energy shall cooperate in the application of hydrogen and fuel cell technology programs for rural communities and agricultural producers.

(b) DISSEMINATION OF INFORMATION.—Under the memorandum of understanding, the Secretary shall work with the Secretary of Energy to disseminate information to rural communities and agricultural producers on potential applications of hydrogen and fuel cell technologies.

SEC. 9008. BIOMASS RESEARCH AND DEVELOPMENT.

(a) FUNDING.—The Biomass Research and Development Act of 2000 (7 U.S.C. 7624 note; Public Law 106–224) is amended—

(1) in section 307, by striking subsection (f);

(2) by redesignating section 310 as section 311; and

(3) by inserting after section 309 the following:

“SEC. 310. FUNDING.

“(a) FUNDING.—Of funds of the Commodity Credit Corporation, the Secretary shall make available to carry out this title—

“(1) \$5,000,000 for fiscal year 2002; and

“(2) \$14,000,000 for each of fiscal years 2003 through 2007; to remain available until expended.

“(b) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts transferred under subsection (a), there are authorized to be appropriated to carry out this title \$49,000,000 for each of fiscal years 2002 through 2007.”

(b) TERMINATION OF AUTHORITY.—Section 311 of the Biomass Research and Development Act of 2000 (7 U.S.C. 7624 note; Public Law 106–224) (as redesignated by subsection (a)) is amended by striking “December 31, 2005” and inserting “September 30, 2007”.

SEC. 9009. COOPERATIVE RESEARCH AND EXTENSION PROJECTS.

Section 221 of the Agricultural Risk Protection Act of 2000 (114 Stat. 407) is amended—

(1) by redesignating subsection (d) as subsection (f); and

(2) by inserting after subsection (c) the following:

“(d) COOPERATIVE RESEARCH.—

“(1) IN GENERAL.—Subject to the availability of appropriations, the Secretary, in cooperation with departments and agencies participating in the U.S. Global Change Research Program (which may use any of their statutory authorities) and with eligible entities, may carry out research to promote understanding of—

“(A) the flux of carbon in soils and plants (including trees); and

“(B) the exchange of other greenhouse gases from agriculture.

“(2) ELIGIBLE ENTITIES.—Research under this subsection may be carried out through the competitive awarding of grants and cooperative agreements to colleges and universities (as defined in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 1303)).

“(3) COOPERATIVE RESEARCH PURPOSES.—Research conducted

under this subsection shall encourage collaboration among scientists with expertise in the areas of soil science,
7 USC 6711.
26 USC 7624
note.
26 USC 7624
note.
Memorandum.
7 USC 8107.

116 STAT. 484 PUBLIC LAW 107–171—MAY 13, 2002
agronomy, agricultural economics, forestry, and other agricultural sciences to focus on—

“(A) developing data addressing carbon losses and gains in soils and plants (including trees) and the exchange of methane and nitrous oxide from agriculture;

“(B) understanding how agricultural and forestry practices affect the sequestration of carbon in soils and plants (including trees) and the exchange of other greenhouse gases, including the effects of new technologies such as biotechnology and nanotechnology;

“(C) developing cost-effective means of measuring and monitoring changes in carbon pools in soils and plants (including trees), including computer models;

“(D) evaluating the linkage between federal conservation programs and carbon sequestration;

“(E) developing methods, including remote sensing, to measure the exchange of carbon and other greenhouse gases sequestered, and to evaluate leakage, performance, and permanence issues; and

“(F) assessing the applicability of the results of research conducted under this subsection for developing methods to account for the impact of agricultural activities (including forestry) on the exchange of greenhouse gases.

“(4) AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated such sums as are necessary to carry out this subsection for each of fiscal years 2002 through 2007.

“(e) EXTENSION PROJECTS.—

“(1) IN GENERAL.—The Secretary, in cooperation with departments and agencies participating in the U.S. Global Change Research Program (which may use any of their statutory authorities), and local extension agents, experts from institutions of higher education that offer a curriculum in agricultural and biological sciences, and other local agricultural or conservation organizations, may implement extension projects (including on-farm projects with direct involvement of agricultural producers) that combine measurement tools and modeling techniques into integrated packages to monitor the carbon sequestering benefits of conservation practices and the exchange of greenhouse gas emissions from agriculture which demonstrate the feasibility of methods of measuring and monitoring—

“(A) changes in carbon content and other carbon pools in soils and plants (including trees); and

“(B) the exchange of other greenhouse gases.

“(2) EXTENSION PROJECT RESULTS.—The Secretary may disseminate to farmers, ranchers, private forest landowners,

and appropriate State agencies in each State information concerning—

“(A) the results of projects under this subsection; and

“(B) the manner in which the methods used in the projects might be applicable to the operations of the farmers, ranchers, private forest landowners, and State agencies.

“(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection for each of fiscal years 2002 through 2007.’’.

116 STAT. 485 PUBLIC LAW 107–171—MAY 13, 2002

SEC. 9010. CONTINUATION OF BIOENERGY PROGRAM.

(a) DEFINITIONS.—In this section:

(1) BIOENERGY.—The term “bioenergy” means—

(A) biodiesel; and

(B) fuel grade ethanol.

(2) BIODIESEL.—The term “biodiesel” means a monoalkyl ester that meets the requirements of an appropriate American Society for Testing and Materials standard.

(3) ELIGIBLE COMMODITY.—The term “eligible commodity” means—

(A) wheat, corn, grain sorghum, barley, oats, rice, soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard, crambe, sesame seed, and cottonseed;

(B) a cellulosic commodity (such as hybrid poplar and switch grass);

(C) fats, oils, and greases (including recycled fats, oils, and greases) derived from an agricultural product; and

(D) any animal byproduct (in addition to oils, fats, and greases) that may be used to produce bioenergy, as determined by the Secretary.

(4) ELIGIBLE PRODUCER.—The term “eligible producer” means a producer that uses an eligible commodity to produce bioenergy.

(b) BIOENERGY PROGRAM.—

(1) CONTINUATION.—The Secretary shall continue the program under part 1424 of title 7, Code of Federal Regulations (or any successor regulation), under which the Secretary makes payments to eligible producers to encourage increased purchases of eligible commodities for the purpose of expanding production of such bioenergy and supporting new production capacity for such bioenergy.

(2) CONTRACTS.—To be eligible to receive a payment, an eligible producer shall—

(A) enter into a contract with the Secretary to increase bioenergy production for 1 or more fiscal years; and

(B) submit to the Secretary such records as the Secretary may require as evidence of increased purchase and use of eligible commodities for the production of bioenergy.

(3) PAYMENT.—

(A) IN GENERAL.—Under the program, the Secretary shall make payments to eligible producers, based on the quantity of bioenergy produced by the eligible producer during a fiscal year that exceeds the quantity of bioenergy

produced by the eligible producer during the preceding fiscal year.

(B) PAYMENT RATE.—

(i) PRODUCERS OF LESS THAN 65,000,000 GALLONS.—

An eligible producer that produces less than 65,000,000 gallons of bioenergy shall be reimbursed 1 feedstock unit for every 2.5 feedstock units of eligible commodity used for increased production.

(ii) PRODUCERS OF 65,000,000 OR MORE GALLONS.—

An eligible producer that produces 65,000,000 or more gallons of bioenergy shall be reimbursed 1 feedstock unit for every 3.5 feedstock units of eligible commodity used for increased production.

7 USC 8108.

116 STAT. 486 PUBLIC LAW 107-171—MAY 13, 2002

(C) QUARTERLY PAYMENTS.—The Secretary shall make payments to an eligible producer for each quarter of the fiscal year.

(4) PRORATION.—If the amount made available for a fiscal year under subsection (c) is insufficient to allow the payment of the amount of the payments that eligible producers (that apply for the payments) otherwise would receive under this subsection, the Secretary shall prorate the amount of the funds among all such eligible producers.

(5) OVERPAYMENTS.—If the total amount of payments that an eligible producer receives for a fiscal year 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).

(6) LIMITATION.—No eligible producer shall receive more than 5 percent of the total amount made available under subsection (c) for a fiscal year.

(7) OTHER REQUIREMENTS.—To be eligible to receive a payment under this subsection, an eligible producer shall meet other requirements of Federal law (including regulations) applicable to the production of bioenergy.

(c) FUNDING.—Of the funds of the Commodity Credit Corporation, the Secretary shall use to carry out this section—

(1) not more than \$150,000,000 for each of fiscal years 2003 through 2006; and

(2) \$0 for fiscal year 2007.