

Subpart 2-Administrative Rules  
Chapter 04-Ethanol

Purpose

100 The program's purpose is to provide incentive for ethanol producers to utilize Mississippi-grown corn, biomass, or other resource commodities.

Source: *Miss. Code Ann.* §69-51-5.

Definitions and Terms

- 101 Wherever the following terms are used in this chapter they will have the following meanings:
1. "Entity" means a particular and distinct unit.
  2. "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.
  3. "Producer" means the legal entity that owns the Production Facility.
  4. "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.
  5. "Single producer" means an entity with a production facility or facilities that may not exceed payment limitations provided in this chapter.
  6. "Fiscal Biennium" means the two-year period commencing with the calendar quarter in which ethanol production that qualifies for payment under this program is first achieved in Mississippi.
  7. "Claim for payment" means Application for Ethanol Producers Payment provided by the Mississippi Department of Agriculture and Commerce.
  8. "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.
  9. "Application for approval of the new production capacity" means Application for Permit to Participate in State of Mississippi Ethanol Producers Payment Program provided by the Mississippi Department of Agriculture and Commerce.

Source: *Miss. Code Ann.* §69-51-1 & 69-51-5.

Authorization of Payment

102 The Commissioner has the authority, pursuant to the provisions of Sections 69-51-1 et. seq., to approve or deny for any reason any Application for Permit to Participate in State of Mississippi Ethanol 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 with approved Applications for Permits to Participate in State of Mississippi Ethanol Producers Payment Program during the life of the program.

Source: *Miss. Code Ann.* §69-51-5.

- 103 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 eligibility for the payment in accordance with the governing state laws and rules. The CPA must verify and certify that ethanol produced from “Mississippi grown” feedstock was 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 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.

Source: *Miss. Code Ann.* §69-51-5.

- 104 Payments under subsections (1), (2), and (3) of Section 69-51-5 shall be authorized as meeting one or more of the following criteria:
1. Feedstock is certified as produced in Mississippi.
  2. 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 by-products 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”.
  3. 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.
  4. Feedstock derived in Mississippi is unattainable due to unreasonable conditions or low supply in the local cash market, as determined by the Commissioner.
  5. Feedstock derived out of state is necessary for financial stability of the facility, as documented by the facility and as determined by the Commissioner.

Source: *Miss. Code Ann.* §69-51-5.

#### Payment Distributions

105 In the event that the total amount for which all producers are eligible for payment under subsections (1) and (2) of 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 Section 69-51-5 and funds appropriated by the Mississippi Legislature.

Source: *Miss. Code Ann.* §69-51-5.

106 A single producer with one or more permitted production facilities may receive quarterly payments within the limitations of subsection (6) of Section 69-51-5 and appropriations by the Mississippi Legislature.

Source: *Miss. Code Ann.* §69-51-5.

107 The payments provided for in subsection 9 of 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.

Source: *Miss. Code Ann.* §69-51-5.

#### Permit Amendments and Ownership Changes

108 An approved Application for Permit to Participate in State of Mississippi Ethanol 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.

Source: *Miss. Code Ann.* §69-51-5.

109 The Commissioner has the authority to require a permitted facility(s) to resubmit an Application for Permit to Participate in State of Mississippi Ethanol Producers Payment Program after undergoing ownership changes, at the discretion of the Commissioner.

Source: *Miss. Code Ann.* §69-51-5.

110 Nothing in these regulations shall preclude an entity holding a “controlling interest” in one ethanol 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 Producer Payment Program set forth in Section 69-51-5.

Source: *Miss. Code Ann.* §69-51-5.