

(v) the level of financial participation by the applicant, including support from non-Federal and private sources;

(vi) whether the applicant has established that the adoption of the process proposed in the application will have a positive impact on resource conservation, public health, and the environment;

(vii) whether the applicant can establish that if adopted, the biofuels production technology proposed in the application will not have any significant negative impacts on existing manufacturing plants or other facilities that use similar feedstocks;

(viii) the potential for rural economic development;

(ix) the level of local ownership proposed in the application; and

(x) whether the project can be replicated.

(2) Limitations

(A) Maximum amount of loan guaranteed

The principal amount of a loan guaranteed under subsection (c)(2) may not exceed \$250,000,000.

(B) Maximum percentage of loan guaranteed

(i) In general

Except as otherwise provided in this subparagraph, a loan guaranteed under subsection (c)(2) shall be in an amount not to exceed 80 percent of the project costs, as determined by the Secretary.

(ii) Other direct Federal funding

The amount of a loan guaranteed for a project under subsection (c)(2) shall be reduced by the amount of other direct Federal funding that the eligible entity receives for the same project.

(iii) Authority to guarantee the loan

The Secretary may guarantee up to 90 percent of the principal and interest due on a loan guaranteed under subsection (c)(2).

(C) Loan guarantee fund distribution

Of the funds made available for loan guarantees for a fiscal year under subsection (h), 50 percent of the funds shall be reserved for obligation during the second half of the fiscal year.

(f) Consultation

In carrying out this section, the Secretary shall consult with the Secretary of Energy.

(g) Condition on provision of assistance

(1) In general

As a condition of receiving a grant or loan guarantee under this section, an eligible entity shall ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed, in whole or in part, with the grant or loan guarantee, as the case may be, shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with sections 3141 through 3144, 3146, and 3147 of title 40.

(2) Authority and functions

The Secretary of Labor shall have, with respect to the labor standards described in paragraph (1), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App) and section 3145 of title 40.

(h) Funding

(1) Mandatory funding

Of the funds of the Commodity Credit Corporation, the Secretary shall use for the cost of loan guarantees under this section, to remain available until expended—

(A) \$75,000,000 for fiscal year 2009; and

(B) \$245,000,000 for fiscal year 2010.

(2) Discretionary funding

In addition to any other funds made available to carry out this section, there is authorized to be appropriated to carry out this section \$150,000,000 for each of fiscal years 2009 through 2013.

(Pub. L. 107-171, title IX, §9003, as added Pub. L. 110-234, title IX, §9001(a), May 22, 2008, 122 Stat. 1310, and Pub. L. 110-246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2072; amended Pub. L. 112-240, title VII, §701(f)(2), Jan. 2, 2013, 126 Stat. 2365.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (g)(2), is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 8103, Pub. L. 107-171, title IX, §9003, May 13, 2002, 116 Stat. 478, related to biorefinery development grants, prior to the general amendment of this chapter by Pub. L. 110-246.

AMENDMENTS

2013—Subsec. (h)(2). Pub. L. 112-240 substituted “2013” for “2012”.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112-240 effective Sept. 30, 2012, see section 701(j) of Pub. L. 112-240, set out in a 1-Year Extension of Agricultural Programs note under section 8701 of this title.

§ 8104. Repowering assistance

(a) In general

The Secretary shall carry out a program to encourage biorefineries in existence on the date of enactment of the Food, Conservation, and Energy Act of 2008 to replace fossil fuels used to produce heat or power to operate the biorefineries by making payments for—

(1) the installation of new systems that use renewable biomass; or

(2) the new production of energy from renewable biomass.

(b) Payments

(1) In general

The Secretary may make payments under this section to any biorefinery that meets the

requirements of this section for a period determined by the Secretary.

(2) Amount

The Secretary shall determine the amount of payments to be made under this section to a biorefinery after considering—

(A) the quantity of fossil fuels a renewable biomass system is replacing;

(B) the percentage reduction in fossil fuel used by the biorefinery that will result from the installation of the renewable biomass system; and

(C) the cost and cost effectiveness of the renewable biomass system.

(c) Eligibility

To be eligible to receive a payment under this section, a biorefinery shall demonstrate to the Secretary that the renewable biomass system of the biorefinery is feasible based on an independent feasibility study that takes into account the economic, technical and environmental aspects of the system.

(d) Funding

(1) Mandatory funding

Of the funds of the Commodity Credit Corporation, the Secretary shall use to make payments under this section \$35,000,000 for fiscal year 2009, to remain available until expended.

(2) Discretionary funding

In addition to any other funds made available to carry out this section, there is authorized to be appropriated to carry out this section \$15,000,000 for each of fiscal years 2009 through 2013.

(Pub. L. 107-171, title IX, §9004, as added Pub. L. 110-234, title IX, §9001(a), May 22, 2008, 122 Stat. 1313, and Pub. L. 110-246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2075; amended Pub. L. 112-240, title VII, §701(f)(3), Jan. 2, 2013, 126 Stat. 2365.)

REFERENCES IN TEXT

The date of enactment of the Food, Conservation, and Energy Act of 2008, referred to in subsec. (a), is the date of enactment of Pub. L. 110-246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 8104, Pub. L. 107-171, title IX, §9004, May 13, 2002, 116 Stat. 480, related to a biodiesel fuel education program, prior to the general amendment of this chapter by Pub. L. 110-246. See section 8106 of this title.

AMENDMENTS

2013—Subsec. (d)(2). Pub. L. 112-240 substituted “2013” for “2012”.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112-240 effective Sept. 30, 2012, see section 701(j) of Pub. L. 112-240, set out in a 1-Year Extension of Agricultural Programs note under section 8701 of this title.

§ 8105. Bioenergy program for advanced biofuels

(a) Definition of eligible producer

In this section, the term “eligible producer” means a producer of advanced biofuels.

(b) Payments

The Secretary shall make payments to eligible producers to support and ensure an expanding production of advanced biofuels.

(c) Contracts

To receive a payment, an eligible producer shall—

(1) enter into a contract with the Secretary for production of advanced biofuels; and

(2) submit to the Secretary such records as the Secretary may require as evidence of the production of advanced biofuels.

(d) Basis for payments

The Secretary shall make payments under this section to eligible producers based on—

(1) the quantity and duration of production by the eligible producer of an advanced biofuel;

(2) the net nonrenewable energy content of the advanced biofuel, if sufficient data is available, as determined by the Secretary; and

(3) other appropriate factors, as determined by the Secretary.

(e) Equitable distribution

The Secretary may limit the amount of payments that may be received by a single eligible producer under this section in order to distribute the total amount of funding available in an equitable manner.

(f) Other requirements

To receive a payment under this section, an eligible producer shall meet any other requirements of Federal and State law (including regulations) applicable to the production of advanced biofuels.

(g) Funding

(1) Mandatory funding

Of the funds of the Commodity Credit Corporation, the Secretary shall use to carry out this section, to remain available until expended—

(A) \$55,000,000 for fiscal year 2009;

(B) \$55,000,000 for fiscal year 2010;

(C) \$85,000,000 for fiscal year 2011; and

(D) \$105,000,000 for fiscal year 2012.

(2) Discretionary funding

In addition to any other funds made available to carry out this section, there is authorized to be appropriated to carry out this section \$25,000,000 for each of fiscal years 2009 through 2013.

(3) Limitation

Of the funds provided for each fiscal year, not more than 5 percent of the funds shall be made available to eligible producers for production at facilities with a total refining capacity exceeding 150,000,000 gallons per year.

(Pub. L. 107-171, title IX, §9005, as added Pub. L. 110-234, title IX, §9001(a), May 22, 2008, 122 Stat. 1314, and Pub. L. 110-246, §4(a), title IX, §9001(a),