

41A.09 ETHANOL DEVELOPMENT.

Subdivision 1. [Repealed, 2003 c 128 art 3 s 47]

Subd. 1a. **Ethanol production goal.** It is a goal of the state that ethanol production plants in the state attain a total annual production level of:

- (1) 240,000,000 gallons in 2003;
- (2) 300,000,000 gallons in 2004;
- (3) 360,000,000 gallons in 2005 and 2006;
- (4) 420,000,000 gallons in 2007; and
- (5) 480,000,000 gallons in 2008 and subsequent years.

Subd. 2. [Repealed, 1995 c 220 s 141]

Subd. 2a. **Definitions.** For the purposes of this section, the terms defined in this subdivision have the meanings given them.

(a) "Ethanol" means fermentation ethyl alcohol derived from agricultural products, including potatoes, cereal grains, cheese whey, and sugar beets; forest products; or other renewable resources, including residue and waste generated from the production, processing, and marketing of agricultural products, forest products, and other renewable resources, that:

- (1) meets all of the specifications in ASTM specification D4806-04a; and
- (2) is denatured as specified in Code of Federal Regulations, title 27, parts 20 and 21.

(b) "Ethanol plant" means a plant at which ethanol is produced.

(c) "Commissioner" means the commissioner of agriculture.

(d) "Rural economic infrastructure" means the development of activities that will enhance the value of agricultural crop or livestock commodities or by-products or waste from farming operations through new and improved value-added conversion processes and technologies, the development of more timely and efficient infrastructure delivery systems, and the enhancement of marketing opportunities. "Rural economic infrastructure" also means land, buildings, structures, fixtures, and improvements located or to be located in Minnesota and used or operated primarily for the processing or the support of production of marketable products from agricultural commodities or wind energy produced in Minnesota.

Subd. 3. [Repealed, 1995 c 220 s 141]

Subd. 3a. **Ethanol producer payments.** (a) The commissioner shall make cash payments to producers of ethanol located in the state that have begun production at a specific location by June 30, 2000. For the purpose of this subdivision, an entity that holds a controlling interest in more than one ethanol plant is considered a single producer. The amount of the payment for each producer's annual production, except as provided in paragraph (c), is 20 cents per gallon for each gallon of ethanol produced at a specific location on or before June 30, 2000, or ten years after the start of production, whichever is later. Annually, within 90 days of the end of its fiscal year, an ethanol producer receiving payments under this subdivision must file a disclosure statement on a form provided by the commissioner. The initial disclosure statement must include a summary description of the organization of the business structure of the claimant, a listing of the percentages of ownership by any person or other entity with an ownership interest of five percent or greater, and a copy of its annual audited financial statements, including the auditor's report and footnotes. The disclosure statement must include information demonstrating what percentage of the entity receiving payments under this section is owned by farmers or other entities eligible to farm or own agricultural land in Minnesota under the provisions of section 500.24. Subsequent annual reports must affirm that majority ownership of the entity is held by farmers or other entities eligible to farm or own agricultural land under section 500.24 or individuals residing within 30 miles of the plant. The report need not disclose the identity of the persons or entities eligible to farm or own agricultural land with ownership interests, individuals residing within 30 miles of the plant, or of any other entity with less than ten percent ownership interest, but the claimant must retain information within its files confirming the accuracy of the data provided. This data must be made available to the commissioner upon request. Not later than the 15th day of February in each year the commissioner shall deliver to the chairs of the standing committees of the senate and the house of representatives that deal with agricultural policy and agricultural finance issues an annual report summarizing aggregated data from plants receiving payments under this section during the preceding calendar year. Audited financial statements and notes and disclosure statements submitted to the commissioner are nonpublic data under section 13.02, subdivision 9. Notwithstanding the provisions of chapter 13 relating to nonpublic data, summaries of the submitted audited financial reports and notes and disclosure statements will be contained in the report to the committee chairs and will be public data.

(b) No payments shall be made for ethanol production that occurs after June 30, 2010. A producer of ethanol shall not transfer the producer's eligibility for payments under this section to an ethanol plant at a different location.

(c) If the level of production at an ethanol plant increases due to an increase in the production capacity of the plant, the payment under paragraph (a) applies to the additional increment of

production until ten years after the increased production began. Once a plant's production capacity reaches 15,000,000 gallons per year, no additional increment will qualify for the payment.

(d) Total payments under paragraphs (a) and (c) to a producer in a fiscal year may not exceed \$3,000,000.

(e) By the last day of October, January, April, and July, each producer shall file a claim for payment for ethanol production during the preceding three calendar months. A producer that files a claim under this subdivision shall include a statement of the producer's total ethanol production in Minnesota during the quarter covered by the claim. For each claim and statement of total ethanol production filed under this subdivision, the volume of ethanol production must be examined by an independent certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants.

(f) Payments shall be made November 15, February 15, May 15, and August 15. A separate payment shall be made for each claim filed. Except as provided in paragraph (g), the total quarterly payment to a producer under this paragraph may not exceed \$750,000.

(g) Notwithstanding the quarterly payment limits of paragraph (f), the commissioner shall make an additional payment in the fourth quarter of each fiscal year to ethanol producers for the lesser of: (1) 20 cents per gallon of production in the fourth quarter of the year that is greater than 3,750,000 gallons; or (2) the total amount of payments lost during the first three quarters of the fiscal year due to plant outages, repair, or major maintenance. Total payments to an ethanol producer in a fiscal year, including any payment under this paragraph, must not exceed the total amount the producer is eligible to receive based on the producer's approved production capacity. The provisions of this paragraph apply only to production losses that occur in quarters beginning after December 31, 1999.

(h) The commissioner shall reimburse ethanol producers for any deficiency in payments during earlier quarters if the deficiency occurred because of unallotment or because appropriated money was insufficient to make timely payments in the full amount provided in paragraph (a). Notwithstanding the quarterly or annual payment limitations in this subdivision, the commissioner shall begin making payments for earlier deficiencies in each fiscal year that appropriations for ethanol payments exceed the amount required to make eligible scheduled payments. Payments for earlier deficiencies must continue until the deficiencies for each producer are paid in full, except the commissioner shall not make a deficiency payment to an entity that no longer produces ethanol on a commercial scale at the location for which the entity qualified for producer payments or to an assignee of the entity, or an entity that is not majority owned by farmers or other entities

eligible to farm or own agricultural land under section 500.24 or individuals residing within 30 miles of the plant.

(i) The commissioner may provide financial assistance under the agricultural growth, research, and innovation program in section 41A.12 with any amount of the annual appropriation for ethanol producer payments that is in excess of the amount required to make scheduled ethanol producer payments and deficiency payments under paragraphs (a) to (h).

Subd. 4. **Rulemaking authority.** The commissioner shall adopt rules to implement this section.

Subd. 5. [Repealed, 1995 c 220 s 141]

Subd. 5a. [Repealed, 2003 c 128 art 3 s 47]

Subd. 6. [Repealed, 2003 c 128 art 3 s 47]

Subd. 7. [Repealed, 2003 c 128 art 3 s 47]

Subd. 8. [Repealed, 2003 c 128 art 3 s 47]

Subd. 9. [Repealed, 2007 c 45 art 1 s 66]

Subd. 10. **Guidelines.** The commissioner shall establish guidelines not subject to chapter 14 for the submission and review of applications and the awarding of grants under subdivision 9.

History: *1Sp1986 c 1 art 8 s 1; 1987 c 390 s 1,2; 1988 c 688 art 18 s 1; 1989 c 257 s 1,2; 1989 c 269 s 37; 1989 c 277 art 1 s 2; 1989 c 335 art 4 s 106; 1991 c 254 art 3 s 21; 1991 c 302 s 1; 1992 c 513 art 2 s 18; 1992 c 575 s 1,2; 1993 c 13 art 1 s 52; 1993 c 172 s 30,31; 1993 c 366 s 2; 1994 c 632 art 2 s 15-17; 1995 c 220 s 45-48; 1996 c 471 art 5 s 1; 1997 c 7 art 5 s 8; 1997 c 216 s 57; 1998 c 299 s 30; 1998 c 401 s 19,20; 2000 c 488 art 3 s 11; 1Sp2001 c 4 art 6 s 77; 2002 c 220 art 9 s 6; 2002 c 379 art 1 s 14; 2003 c 107 s 26; 2003 c 128 art 3 s 37,38; 1Sp2003 c 14 art 7 s 1; 2004 c 254 s 13; 1Sp2005 c 1 art 1 s 69-72; art 4 s 2; 2008 c 297 art 1 s 20; 2008 c 363 art 7 s 5; 2009 c 94 art 1 s 82*