

have come in contact with the virus. HPAI viruses can remain viable at moderate temperatures for long periods in the environment and can survive indefinitely in frozen material. The H5N1 subtype of HPAI has been of particular concern because it has crossed the species barrier and caused disease in humans.

On October 9, 2008, the German Federal Ministry of Consumer Protection, Food and Agriculture (BMVEL) reported an outbreak of HPAI H5N1 in a single mixed-species flock in Marfersdorf, located in the district of Görlitz in the Federal State of Saxony following the identification of HPAI H5N1 in a wild bird on a nearby lake.

The restrictions put in place by the European Commission on October 9, 2008, in response to that limited outbreak were lifted on November 13, 2008, following extensive surveillance and epidemiologic investigations. In a document titled, "APHIS' Evaluation of the Status of High Pathogenicity Avian Influenza H5N1 (HPAI H5N1) in Saxony, Germany" (February 2009), we present the results of our evaluation of the status of HPAI H5N1 in domestic poultry in Saxony, Germany, in light of the actions taken by German authorities since the 2008 outbreak, and document our analysis of the risk associated with allowing the importation of birds, poultry, and poultry products from the region of Saxony, Germany, into the United States in the aftermath of the 2008 outbreak.

Based on the evaluation, we have determined that the BMVEL was able to effectively control and eradicate HPAI H5N1 in their domestic poultry populations and that the German authorities have adequate control measures in place to rapidly identify, control, and eradicate the disease should it be reintroduced into the country in either wild birds or domestic poultry.

We are making the evaluation available for public review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice. The evaluation may be viewed on the *Regulations.gov* Web site or in our reading room (see **ADDRESSES** above for a link to *Regulations.gov* and information on the location and hours of the reading room). You may request paper copies of the evaluation by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the evaluation when requesting copies.

If, after the close of the comment period, APHIS can identify no

additional risk factors that would indicate that domestic poultry in Saxony, Germany, continues to be affected with HPAI H5N1, we would conclude that the importation of live birds, poultry carcasses, parts of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from Saxony, Germany, presents a low risk of introducing HPAI H5N1 into the United States.

**Authority:** 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 8th day of June 2009.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

#### Notice of Funding Availability (NOFA) for Repowering Assistance Payments to Eligible Biorefineries

**AGENCY:** Rural Development-Energy Division, Program Branch, USDA.

**ACTION:** Notice.

**SUMMARY:** This Notice announces the intention of the USDA ("the Agency") to make payments to eligible biorefineries to encourage the use of renewable biomass as a replacement fuel source for fossil fuels used to provide process heat or power in the operation of these eligible biorefineries. This program is authorized under Title IX, Section 9001, of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

**DATES:** Applications for participating in this program must be received between July 1, 2009 and November 1, 2009.

The comment period for information collection under the Paperwork Reduction Act of 1995 continues through August 11, 2009. Comments on the paperwork burden must be received by this date to be assured of consideration.

**ADDRESSES:** Application materials may be obtained by contacting USDA, Rural Development-Energy Division, Program Branch, Attention: Repowering Assistance Program, 1400 Independence Avenue, SW., Stop 3225, Washington, DC 20250–3225.

**FOR FURTHER INFORMATION CONTACT:** For further information on this payment program, please contact USDA, Rural Development-Energy Division, Program

Branch, Attention: Repowering Assistance Program, 1400 Independence Avenue, SW., Stop 3225, Washington, DC 20250–3225. Telephone: 202–720–1400.

#### SUPPLEMENTARY INFORMATION:

On May 5, 2009, the President issued a Presidential Directive to Secretary of Agriculture Thomas R. Vilsack to aggressively accelerate the investment in and production of biofuels (published in the *Federal Register* on May 7, 2009 (74 FR 21531–21532)). Secretary Vilsack also announced that he will help lead an unprecedented interagency effort to increase America's energy independence and spur rural economic development.

The Presidential directive requests that Secretary Vilsack take steps to the extent permitted by law to expedite and increase production of and investment in biofuel development efforts by, among other things, making renewable energy financing opportunities from the 2008 Farm Bill available within 30 days, which includes guidance and support to encourage biorefineries to replace the use of fossil fuels in plant operations by installing new biomass energy systems or producing new energy from renewable biomass.

#### Administrative Procedure Act Statement

This NOFA is being issued without advance rulemaking or public comment. The Administrative Procedure Act ("APA", 5 U.S.C. 553), has several exemptions to rulemaking requirements. Among them is an exemption for matters relating to federal benefits, but under the provisions of the "Statement of Policy of the Secretary of Agriculture effective July 24, 1971," issued by Secretary Hardin in 1971 (36 FR 13804 (the "Hardin Memorandum")), the Department will normally engage in rulemaking related to federal benefits despite that exemption. However, the Hardin Memorandum does not waive certain other APA-contained exemptions, in particular the "good cause" exemption found at 5 U.S.C. 553(b)(3)(B), which allows effective government action without rulemaking procedures where withholding the action would be "impracticable, unnecessary, or contrary to the public interest." The Hardin memorandum specifically provides for the use of the "good cause" exemption, albeit sparingly, when a substantial basis for so doing exists, and where, as will be described more fully below, that substantial basis is explained.

USDA has determined, consistent with the APA and the Hardin

Memorandum, that making these funds available under this Notice for payments to biorefineries to assist in their conversion to the use of renewable energy sources as soon as possible is in the public interest. Withholding this NOFA to provide for public notice and comment would unduly delay the provision of benefits associated with this program and be contrary to the public interest. Should the actual practice of the program produce reasons for program modifications those modifications can be brought to the attention of the Department and changes made in the future rulemaking process.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, RBS is requesting comments from all interested individuals and organizations on a new information collection for the repowering assistance program. While this notice requests comments on the information collection activities required for the repowering assistance program, in order to meet the time frames mandated by the Presidential Memorandum discussed above, RBS submitted the following information collection request to the Office of Management and Budget (OMB) under the emergency procedure in accordance with the Paperwork Reduction Act of 1995. As discussed above in the APA section, there is good cause to forgo any delay associated with the opportunity for advance public comment. The repowering assistance program will provide payments for the conversion of biorefineries to use renewable energy as a power source.

Copies of all forms, regulations, and instructions referenced in this NOFA may be obtained from RBS. Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

*Title:* Repowering Assistance Program.

*OMB Control Number:* New collection.

*Type of Request:* New.

*Abstract:* This information collection is needed to comply with section 9004 of Title IX of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8101–8113), which was added by the Food, Conservation, and Energy Act of 2008.

Under this Notice, the Agency is providing payments to eligible biorefineries to support and encourage the use of renewable biomass to replace fossil fuels in the production of heat or

power that fuel the energy requirements of these biorefineries. To meet the goals of this program, the Agency is requesting information from applicants including project costs, cost-effectiveness, the percentage of reduction in fossil fuel use that a biorefinery anticipates by transitioning to biofuel and evidence of applicant's qualifications.

The collection of information is vital to the Agency to make decisions regarding the eligibility of biorefineries to participate in this program, in order to ensure compliance with the provisions of this Notice and to ensure that the payments are made to eligible biorefineries. In summary, the collection of information is necessary in order to implement this program.

The following estimates are based on the average over the first three years the program is in place:

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 14.9 hours per response.

*Respondents:* Liquid transportation biofuel producers.

*Estimated Number of Respondents:* 18.

*Estimated Number of Responses per Respondent:* 7.5.

*Estimated Number of Responses:* 135.

*Estimated Total Annual Burden*

*(hours) on Respondents:* 2,017

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, at (202) 692-0043.

#### Comments

*Comments are invited regarding:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Development, including whether the information will have practical utility; (b) the accuracy of Rural Development's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, USDA, Rural Development, Stop 0742, 1400 Independence Ave., SW., Washington, DC 20250-0742. All responses to this Notice will be

summarized and included in the request for OMB approval. All comments will also become a matter of public record.

#### Overview Information

*Federal Agency Name.* Rural Business-Cooperative Service.

*Payment Proposal Title.* Repowering Assistance Program.

*Announcement Type.* Initial announcement.

*Contract Proposal Number.* XX-XXX-X-XX; OMB approval number is XXXX-XXXX.

*Catalog of Federal Domestic Assistance (CFDA) Number.* The CFDA number for this Notice is 10.866.

*Dates.* The Repowering Assistance Program application period for fiscal year 2009 is July 1 through November 1, 2009.

*Availability of Notice.* This Notice is available on the USDA Rural Development Web site at <http://www.rurdev.usda.gov/rbs/xxxxxxxxxxxxxxxx>.

#### I. Funding Opportunity Description

*A. Purpose of the Program.* The purpose of this program is to provide financial incentives to biorefineries in existence on June 18, 2008, the date of the enactment of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) (Pub. L. 110-246), to replace the use of fossil fuels used to produce heat or power at their facilities by installing new systems that use renewable biomass, or to produce new energy from renewable biomass.

The Agency may make payments under this program to any biorefinery that meets the requirements of this Notice for a period of up to three years. The Agency will determine the amount of payments to be made to a biorefinery based on the quantity of fossil fuel a renewable biomass system is replacing, the percentage reduction in fossil fuel used by the biorefinery, and the cost-effectiveness of the renewable biomass system, economic benefit to the community, and the potential to improve the quality of life in rural America.

The Agency will determine who receives payment under this program based on the percentage reduction in fossil fuel used by the biorefinery that will result from the installation of the renewable biomass system; the cost and cost-effectiveness of the renewable biomass system; and other selection criteria identified in Section V, Application Review Information. The above criteria will be used to determine priority for awards of \$5 million or 50 percent of total eligible project costs, whichever is less. Based on our research

and survey of medium sized project costs, the Agency has determined that the dollar amount identified will provide adequate incentive for biorefineries to apply.

**B. Statutory Authority.** This program is authorized under Title IX, Section 9001, of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246).

**C. Definition of Terms.** The following definitions are applicable to this Notice.

**Application period.** The time period announced by the Agency in this or subsequent Notices during which the Agency will accept applications.

**Base energy use.** The amount of documented fossil fuel energy use over an extended operating period.

(i) The extended operating period must be at least 24 months of recorded usage, and requires metered utility records for electric energy, natural gas consumption, fuel oil, coal shipments and propane use, as applicable for providing heat or power for the operation of the biorefinery.

(ii) Utility billing, oil and coal shipments must be actual bills, with meter readings, applicable rates and tariffs, costs and usage. Billing must be complete, without gaps and arranged in chronological order. Drop shipments of coal or oil can be substituted for metered readings, provided the biorefinery documents the usage and its relationship to providing heat or power to the biorefinery.

(iii) A biorefinery in existence on or before June 18, 2008 with less than 24 months of actual operating data must provide at least 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm.

**Biobased products.** Is a product determined by the Secretary to be a commercial or industrial product (other than food or feed) that is: (a) Composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or (b) an intermediate ingredient or feedstock.

**Biofuel.** Fuel derived from renewable biomass.

**Biorefinery.** A facility (including equipment and processes) that converts renewable biomass into biofuels and biobased products, and may produce electricity.

**Eligible biorefinery.** A producer, whose primary production is liquid transportation biofuels, that meets all requirements of this program. The biorefinery must have been in existence on or before June 18, 2008.

**Eligible renewable biomass.** Renewable biomass as defined in this Notice.

**Energy Information Agency (EIA).** The statistical agency of the Department of Energy and source of official energy statistics from the U.S. Government.

**Feasibility study.** An Agency-acceptable analysis of the economic, environmental, technical, financial, and management capabilities of a proposed project or business in terms of its expected success. See Section III G(9) of this notice for a list of items included in a feasibility study.

**Feedstock unit.** Bushel, hundredweight, pound, or other unit of measure, as applicable, for the renewable biomass feedstock used in liquid transportation biofuel production.

**Financial Interest.** For the purposes of this notice means any ownership, creditor, or management interest in the biorefinery.

**Fiscal year.** The 12-month period beginning each October 1 and ending September 30 of the following calendar year.

**Fossil fuel.** Fuels derived from coal, oil and natural gas.

**Renewable biomass.**

(i) Materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that:

(A) Are byproducts of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health; and

(B) Would not otherwise be used for higher value products; and

(C) Are harvested in accordance with applicable law and land management plans and the requirements for old growth maintenance, restoration, and management direction as per paragraphs (e)(2), (e)(3), and (e)(4), and large tree retention as per paragraph (f), of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512); or

(ii) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(A) Renewable plant material, including feed grains; other agricultural commodities; other plants and trees; and algae; and

(B) Waste material, including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and byproducts (including fats, oils, greases, and

manure); and food waste and yard waste.

**Rural or rural area.** Any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, and the contiguous and adjacent urbanized area, and any area that has been determined to be "rural in character" by the Under Secretary for Rural Development, or as otherwise identified in this definition. In determining which census blocks in an urbanized area are not in a rural area, the Agency will exclude any cluster of census blocks that would otherwise be considered not in a Rural Area only because the cluster is adjacent to not more than two census blocks that are otherwise considered not in a rural area under this definition.

(i) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self government, and legal powers set forth in a charter granted by the State.

(ii) For the Commonwealth of Puerto Rico, the island is considered rural and eligible for Business Programs assistance, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are "not urban in character." Any such requests must be forwarded to the National Office, Business and Industry Division, with supporting documentation as to why the area is "not urban in character" for review, analysis, and decision by the Administrator, Business and Cooperative Programs.

(iii) For the State of Hawaii, all areas within the State are considered rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(iv) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural area based on available population data.

(v) The determination that an area is "rural in character" under this definition will be to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 population that is within one-quarter mile of a rural area.

## II. Funding Information

A. *Available Funds.* Congress has appropriated mandatory funding for this program in the amount up to \$20 million for FY 2009, to remain available until expended.

B. *Number of Payments.* The number of payments made will vary and be based on the number of applicants selected for award and availability of funds.

C. *Range of Amounts of Each Payment.* The amount of each payment will depend on the number of eligible applicants selected for award in the program, the amount of fossil fuel replaced, the cost effectiveness of the system, and the percentage reduction in fossil fuel use.

D. *Payment Limitations.* For the purposes of this program, the maximum payment an applicant may receive will be 50 percent of total eligible project costs or \$5 million, whichever is less. Based on our research and survey of medium sized project costs, the Agency has determined that the dollar amount identified will provide adequate incentive for biorefineries to apply.

E. *Type of Instrument.* Payment Agreement.

## III. Eligibility Information

This Notice contains eligibility requirements for applicants seeking payments under this program.

A. *Applicant Eligibility.* To be eligible for this program, the applicant must be an eligible biorefinery, defined in this Notice as a biorefinery in existence on or before June 18, 2008. Additionally, applicants must meet the citizenship requirement specified in paragraph (1) or (2), as applicable, of this section.

(1) If the applicant is an individual, the applicant must be a citizen or national of the United States (U.S.), the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa, or must reside in the U.S. after legal admittance for permanent residence.

(2) If the applicant is an entity other than an individual, the applicant must be at least 51 percent owned by persons who are either citizens or nationals of the United States (U.S.), the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa, or legally admitted permanent residents residing in the U.S.

(3) The Agency will determine an applicant's eligibility for participation in this program.

B. *Rural Area Requirement.* To be eligible for program payments, biorefinery must be located in a rural area.

C. *Payment Eligibility.* To be eligible for program payments, an applicant must submit a complete application for consideration of payment. Payments will be made based on ranking of applicants in relation to project cost, cost-effectiveness, the quantity of fossil fuels the renewable biomass system is replacing, the reduction of fossil fuel usage resulting from the installation of a renewable biomass system.

(D) *Ranking of Applications.* All scored applications will be ranked by the Agency as soon after the application deadline as possible. The Agency will consider the score an application has received compared to the scores of other applications in the priority list, with higher scoring applications receiving first consideration for payments.

(E) *Selection of Applications for Payments.* Using the ranking created under Section V, Application Review Information, the Agency will select applications for payments. The Agency will notify, in writing, all applicants whose applications have been selected for payments. Applicants whose applications have not been selected for payments will be notified in writing, with a brief explanation as to why.

(F) *Availability of funds.* If, after the majority of applications have been considered, insufficient funds remain to pay the next highest scoring application, the Agency may elect to pay a lower scoring application. Before this occurs, the Administrator, as applicable, will provide the applicant of the higher scoring application the opportunity to reduce the amount of its payment request to the amount of funds available. If the applicant agrees to lower its payment request, it must certify that the purposes of the project can be met, and the Administrator must determine the project is feasible at the lower amount.

G. *Application Package Contents.* Applicants are required to provide relevant data to allow for technical analysis of their existing facilities to demonstrate replacement of fossil fuel by renewable biomass with reasonable costs and maximum efficiencies. Applicants in existence on or before June 18, 2008 with more than 24 months of actual operating data must provide data for the most recent 24-month period. Applicants in existence on or before June 18, 2008 with less than 24 months of actual operating data must

provide 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm.

All applicants must submit the following information as part of their application package:

(1) *Contact Data.* Contact information for the primary technical contact for the biorefinery.

(2) *Biorefinery Data.* Basic information on facility operations over time (hours/day, days/year).

(3) *Electric Use Data.* Information on existing electric service to the facility, data on consumption, peak and average demand, and monthly/seasonal use patterns.

(4) *Fuel Use Data.* Information on natural gas and current fuel use for boilers and heaters, including fuel type, costs, and use patterns.

(5) *Thermal Loads.* Information on existing thermal loads, including type (steam, hot water, direct heat), conditions (temperature, pressure) and use patterns.

(6) *Existing Equipment.* Information on existing heating and cooling equipment, including type, capacities, efficiencies and emissions.

(7) *Site-Specific Data.* Information on other site-specific issues, such as expansion plans or neighborhood considerations that might impact the proposed new system design or operation; or environmental impacts.

(8) *Biofuel production.* Information on liquid biofuel production (gallons/year).

(9) *Feasibility Study.* The applicant must submit a feasibility study by an independent qualified consultant, which has no financial interest in the biorefinery, and demonstrates that the renewable biomass system of the biorefinery is feasible, taking into account the economic, technical and environmental aspects of the system. The study must include the following:

(i) Executive summary, including resume of the consultant.

(A) Introduction/project overview (brief general overview of project location, size, etc.)

(ii) Economic feasibility determination.

(A) Information regarding project site.

(B) Availability of trained or trainable labor.

(C) Availability of infrastructure and rail and road service to the site.

(iii) Technical feasibility determination.

(A) Report must be based upon verifiable data and contain sufficient information and analysis so that a determination may be made on the technical feasibility of achieving the levels of energy production that are projected in the statements.

(B) Report must also identify and estimate project operation and development costs and specify the level of accuracy of these estimates and the assumptions on which these estimates have been based. The project engineer or architect is considered an independent party provided neither any principal of the firm nor any individual of the firm who participates in the technical feasibility report has a financial interest in the project.

(iv) Financial feasibility determination.

(A) Reliability of the financial projections and assumptions on which the project is based including all sources of project capital, both private and public, such as Federal funds.

(B) Projected balance sheets and costs associated with project operations.

(C) Cash flow projections for the life of the project.

(D) Adequacy of raw materials and supplies.

(E) Sensitivity analysis, including feedstock and energy costs, product/co-product prices.

(F) Risks related to the project.

(G) Continuity, maintenance and availability of other records and adequacy of management.

(v) Management feasibility determination.

(vi) Recommendations for implementation.

(vii) Environmental aspects of the system.

(viii) Feedstock:

(A) Feedstock source management.

(B) Estimates of feedstock volumes and costs.

(C) Collection, pre-treatment, transportation, and storage.

(D) Impacts on existing manufacturing plants or other facilities that use similar feedstock.

(ix) Feasibility/plans of project to work with producer associations or cooperatives including estimated amount of annual feedstock.

H. *Eligible Project Costs.* Eligible project costs will be only for construction costs for repowering improvements associated with the equipment, installation, engineering, design, site plans, associated professional fees, permits and financing fees.

I. *Ineligible Project Costs.* Any project costs not directly associated with the repowering project and system incurred by the applicant prior to application for payment assistance under this program will be ineligible for payment assistance. A project is not eligible under this notice if it is using feedstocks for repowering that are feedgrains that received benefits under Title I of the

Food, Conservation, and Energy Act of 2008.

#### IV. Application and Submission Information

A. *Address to Make Application.* Application must be made to USDA, Rural Development-Energy Division, Program Branch, Attention: Repowering Assistance Program, 1400 Independence Avenue, SW., Stop 3225, Washington, DC 20250-3225.

B. *Content and Form of Submission.* Applicants must submit a signed original and one copy of an application containing all the information required in this section. The applicant must also furnish the Agency the required documentation identified in the following forms to verify compliance with program provisions before acceptance into the program:

- Form RD 9004-1, Part C; and
- Form RD 9004-2, Part H; and
- Form RD 9004-3, Part E.

Note that applicants are required to have a Dun and Bradstreet Universal Numbering System (DUNS) number (unless the applicant is an individual). The DUNS number is a nine-digit identification number, which uniquely identifies business entities. A DUNS number can be obtained at no cost via a toll-free request line at 1-866-705-5711, or online at <http://fedgov.dnb.com/webform>. In addition to the previously referenced feasibility study, applicants must submit to the Agency the following:

(1) Form RD 9004-1, "Repowering Assistance Program Application". Applicants must submit this form and all necessary attachments providing project information on the biorefinery; the facility at which the biorefinery operates, including location and products produced; and the types and quantities of renewable biomass feedstock being proposed to produce heat or power. This form requires the applicant to provide relevant data to allow for technical analysis of their existing facility to demonstrate replacement of fossil fuel by renewable biomass with reasonable costs and maximum efficiencies. Applicant must also submit evidence that the biorefinery was in existence on or before June 18, 2008. The applicant is required to certify the information provided.

(2) Form RD 9004-2, "Repowering Assistance Program Agreement".

(3) RD Instruction 1940-Q, Exhibit A-1, "Restriction on Lobbying (if over \$100,000)".

(4) Form RD 400-1, "Equal Opportunity Agreement".

(5) Form RD 400-4, "Assurance Agreement".

(6) Form RD 1940-20, "Request for Environmental Information".

(7) Certifications. The applicant must furnish the Agency all required certifications before acceptance into the program, and furnish access to records required by the Agency to verify compliance with program provisions. Applicant must submit forms or other written documentation certifying to the following:

(i) AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions" or other written documentation.

(ii) AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions" or other written documentation.

(8) SF-LLL, "Disclosure of Lobbying Activities".

C. *Submission Dates and Times.* For FY 2009, the application period is July 1, 2009 through November 1, 2009.

D. *Multiple Submissions.* Only one application from corporations and entities with more than one biorefinery location will be eligible under this Notice. A project that serves multiple biorefineries located at the same location is an eligible project provided the heat and power are centrally produced.

#### V. Application Review Information

The Agency is evaluating projects based on the cost, cost-effectiveness, and capacity of projects to reduce fossil fuels. The cost of the project is taken into consideration in the context of each project's ability to economically produce energy from renewable biomass to replace its dependence on fossil fuels. Projects with higher costs that are less efficient will not score well. The scoring criteria are designed to evaluate projects on simple payback as well as the percentage of fossil fuel reduction.

Submission of an application neither reserves payments nor ensures payments. The Agency will evaluate each application and make a determination as to whether the applicant is eligible, whether the proposed project is eligible, and whether the proposed payment request complies with all applicable statutes and regulations. This evaluation will be based on the information provided by the applicant and on other sources of information, such as recognized industry experts from the Agricultural Research Service and the Forest Service. The Agency will score each application in order to prioritize each proposed project. The maximum number of points awardable to any applicant will be 100.

The evaluation criteria that the Agency will use to score these projects are as follows.

A. *Cost*. Payment will not exceed 50 percent of the total eligible project costs associated with the project or \$5 million, whichever is less. Points will be awarded to applicants based on their ability to demonstrate the availability of sufficient other funding to complete the project. The applicant must provide evidence, satisfactory to the Agency, showing they have sufficient funds or commitment of funds to complete the project, including applicant financial statements or lender commitment letters. A maximum of 10 points will be awarded as follows:

(1) Applicant demonstrates availability of all funding needed to complete the project, award 10 points.

(2) Applicant does not demonstrate the availability of all the funding needed to complete the project, no points will be awarded.

B. *Cost-Effectiveness*. Cost-effectiveness will be scored based on the anticipated return on investment (ROI). Anticipated ROI will be demonstrated by calculating documented base energy use costs for the 24-month period prior to submission of the application or must provide at least 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm.

(1) ROI is equal to the simple payback period.

- $ROI = C/S$ ; where C = capital expenses; and S = savings in annual operating costs.

- Example: Capital expenses, including handling equipment, biomass boiler, piping improvements and plant modifications, are equal to \$5,300,500. The annual difference in fossil fuel cost versus the cost for renewable biomass is \$990,500. Assume these costs and uses are based on a yearly operating cycle, which may include handling, storage and treatment costs. In this example, C = \$5,300,500; S = \$990,500; ROI = 5.35 years (C/S = ROI).

(2) A maximum of 30 points will be awarded as follows:

(i) If the anticipated ROI is less than or equal to four years, up to award 30 points.

(ii) If the anticipated ROI is greater than four years but less than or equal to six years, award up to 10 points.

(iii) If the anticipated ROI will be greater than six years, award 0 points.

C. *Percentage of Reduction of Fossil Fuel Use*. The anticipated percent of reduction in the use of fossil fuels will be measured using the same evidence provided by the applicant for measuring cost-effectiveness. However, this set of

criteria will measure actual fossil fuel use for the 24-month period prior to submission of the application or for at least 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm.

**Note:** Fossil fuel use in terms of electric usage will be evaluated by using generating information provided by the Energy Information Agency (EIA). Not all electric generated power originates from fossil fuels, based on the definition in Section I of this notice. The Agency will determine the percentage reduction of fossil use based on and in cooperation with the applicant's submission of electric power provider contracts, power agreements, and utility billings in relation to available information from the EIA.

A maximum of 25 points will be awarded as follows:

(1) Applicant demonstrates an anticipated reduction in fossil fuel use of 100 percent, award 25 points.

(2) Applicant demonstrates an anticipated reduction in fossil fuel use of at least 80 percent but less than 100 percent, award 20 points.

(3) Applicant demonstrates an anticipated reduction in fossil fuel use of at least 60 percent but less than 80 percent, award 15 points.

(4) Applicant demonstrates an anticipated reduction in fossil fuel use of at least 40 percent but less than 60 percent, award 10 points.

(5) Applicant demonstrates an anticipated reduction in fossil fuel use of at least 30 percent but less than 40 percent, award 5 points.

(6) Applicant demonstrates an anticipated reduction in fossil fuel use of less than 30 percent, award 0 points.

D. *Renewable Biomass Factors*. Applicants must demonstrate the availability of the project-specific renewable biomass for the project. If the biorefinery has a commitment or contract for biomass feedstocks a maximum of 10 points will be awarded as follows:

(1) Applicant demonstrates acceptable evidence of 100 percent biomass availability, award 10 points.

(2) Applicant demonstrates acceptable evidence of 50 percent or greater biomass availability, award 5 points.

(3) Applicant is unable to demonstrate acceptable evidence of biomass availability, award 0 points.

E. *Technical Review Factors*. Technical reviews will be conducted by a team of experts, including rural energy coordinators and state engineers. The Agency may engage the services of other government agencies or other recognized industry experts in the applicable technology field, at its

discretion, to evaluate and rate the application. Each section of the technical review will be scored within a range of possible points available within that section. A maximum of 25 points will be awarded as follows:

(1) *Qualifications of the Applicant's Project Team*. The applicant must describe its qualifications in terms of those individuals who will be essential to successful performance of the proposed project. This will include information regarding professional credentials, relevant experience, and education, and must be supported with documentation of service capabilities, professional credentials, licenses, certifications, and resumes, as applicable. Award 0–5 points.

(2) *Agreements and Permits*. The applicant must describe the agreements and permits necessary for project implementation. An Agency-acceptable schedule for securing the required documents and permits must be provided. Award 0–3 points.

(3) *Design and Engineering*. The applicant has described the design, engineering, and testing needed for the proposed project. This description supports that the system will be designed, engineered, and tested so as to meet its intended purpose, ensure public safety, and comply with all applicable laws, regulations, agreements, permits, codes, and standards. Award 0–5 points.

(4) *Project Development Schedule*. The applicant has provided a detailed plan for project development including a proposed schedule of activities, a description of each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through to successful completion. This description must address the applicant's project development cash flow requirements. Award 0–3 points.

(5) *Equipment Procurement*. The applicant must describe the equipment needed, and the availability of the equipment needed, to complete installation and activation of the new system. The description supports that the required equipment is available, and can be procured and delivered within the proposed project development schedule. Award 0–3 points.

(6) *Equipment Installation*. The applicant has provided a satisfactory description of the plan for site development and system installation that reflects the soundness of the project plan. Award 0–3 points.

(7) *Operations and Maintenance*. The applicant has described the operations and maintenance requirements of the system necessary for the system to

operate as designed and provide the savings and efficiencies as described. The description and requirements noted must be supportable by the technical review. Award 0–3 points.

## VI. Program Payment Provisions

Applicants must agree to the terms and conditions of the payment program's provisions. This section of the Notice identifies the process and procedures the Agency will use to make payments to eligible biorefineries.

A. *Payment Applications.* To request payments under this program during a FY, an eligible biorefinery must:

(1) Submit Form RD 9004–3, "Repowering Assistance Program-Payment Request".

(i) Upon completion of the project or project improvements, the first payment will be paid at the rate not to exceed 20 percent of the project award. Subsequent semiannual payments will be paid based on actual measured renewable biomass energy production at a rate of 50 cents per million British thermal units (MMBTUs), up to the limit of the award.

(ii) After processing an initial payment, additional payments may be processed semiannually with the submission of Form RD 9004–3. This form must be accompanied by measurement and verification records including metered data demonstrating displacement of fossil fuel use from the conversion to renewable biomass. Payment will be at the rate of 50 cents per MMBTU up to and until the project payment limit has been reached.

(2) Certify that the request is accurate.

(3) Furnish the Agency such certifications and access to records that verify compliance with program provisions.

(4) Provide documentation, as requested by the Agency, regarding the production of usable energy at the biorefinery during the relevant payment period. Approved documentation for payment and verification of energy production from renewable biomass must include the following:

(i) Metered data documenting the production of heat, gas and power must be obtained utilizing an Agency approved measurement device.

(ii) Metered data must be verifiable and subject to independent calibration testing.

(iii) Applicant must present payment request for energy production in units of MMBTU and request payment based on verifiable and documented data.

(iv) Applicant must present receipts for drop shipments of and use of renewable biomass as applicable for the corresponding period in which they are

requesting payments. Applicant must also present the current utility billing data from the same utilities used in the base energy use period for the corresponding payment request period.

B. *Additional Documentation.* After semiannual payment applications are submitted, eligible biorefineries may be required to submit additional supporting clarification if their original submittal is not sufficient to verify eligibility for payment.

C. *Notification.* The Agency will notify the biorefinery, in writing, whenever the Agency determines that a payment application is ineligible and why the application was determined ineligible.

D. *Payment Provisions.* After the initial payment, payments to eligible applicants will be made based on energy produced as measured in output MMBTUs.

E. *Payment Amounts.* An eligible biorefinery may receive a payment in an amount as determined according to the procedures specified in this section, subject to the availability of funds. The Agency will determine total available funds.

F. *Verification.* The Agency reserves the right to verify all payment requests and subsequent payments made under this program, including field visits, as frequently as necessary to ensure the integrity of the program. Documentation provided will be used to verify, reconcile, and enforce the payment terms of the agreement along with any potential refunds that the recipient will be required to make should they fail to adequately document their request. The required documentation is given in RD form 9004–3, the Repowering Program Payment Request, which details and provides that the requester demonstrate a reduction in fossil fuel use by providing concurrent readings from their previously metered usage, along with the readings from the metered, measured, and verifiable production of renewable energy from renewable biomass.

G. *Payment adjustments.* The Agency may make adjustments to payments otherwise payable to the biorefinery if it finds there is a difference between the quantity of fossil fuel actually replaced by renewable biomass and the quantity certified to in a payment application.

H. *Refunds and Interest Payments.* An eligible biorefinery that has received a payment under this program may be required to refund such payment as specified in this paragraph.

(1) An eligible biorefinery receiving payment under this program will become ineligible if the Agency determines the producer has:

(i) Made any material fraudulent representation; or

(ii) Misrepresented any material fact affecting a program determination.

(2) All payments made to a biorefinery determined by the Agency to be ineligible must be refunded to the Agency with interest and other such sums as may become due, including, but not limited to, any interest, penalties, and administrative costs, as determined appropriate under 31 CFR 901.9.

(3) When a refund is due, it must be paid promptly. If a refund is not made promptly, the Agency may use all remedies available to it, including Treasury offset under the Debt Collection Improvement Act of 1996, financial judgment against the producer, and sharing information with the Department of Justice.

(4) Late payment interest will be assessed on each refund in accordance with provisions and rates as determined by the Agency.

(i) Interest charged by the Agency under this program will be at the rate established annually by the Secretary of the U.S. Treasury pursuant to 31 U.S.C. 3717. Interest will accrue from the date payments were received by the biorefinery to the date of repayment, or the date of an interest increase, as determined in accordance with applicable regulations.

(ii) The Agency may waive the accrual of interest and/or damages if the Agency determines that the cause of the erroneous determination was not due to any action of the biorefinery.

(5) Any biorefinery or person receiving payment under this program will be jointly and severally liable for any refund or related charges due under this program.

## VII. Administration Information

A. *Notice of Eligibility.* If an applicant is determined by the Agency to be eligible for participation, the Agency will notify the applicant, in writing, and will assign the applicant an agreement number. If an applicant is determined by the Agency to be ineligible, the Agency will notify the applicant, in writing, as to the reason(s) the applicant was rejected. Such applicants will have appeal rights as specified in this Notice.

B. *Conditions for Receipt of Payment.* A signed copy of Form RD 9004–2, "Repowering Assistance Program-Agreement", will be required for payment.

C. *Administrative and National Policy Requirements.* In the event that all program funds are not expended in 2010 and/or discretionary money becomes available, then the Agency will proceed with a rulemaking process.

(1) *Review or appeal rights.* Any person or entity who has applied for payments or whose right to receive payments under this program who is adversely affected by a decision by the Agency may appeal such decision to the USDA National Appeals Division pursuant to 7 CFR Part 11.

(2) *Remedies.* The remedies provided in this Notice will be in addition to other civil, criminal, or administrative remedies that may apply.

(3) *Records.* For the purpose of verifying compliance with the requirements of this Notice, each biorefinery must make available and provide for the metering of all power and heat producing boilers, containment vessels, generators and any other equipment related to the production of heat or power required to displace fossil fuel loads with renewable biomass. These records must be held in one place and be available at all reasonable times for examination by the Agency. Such records include all books, papers, contracts, scale tickets, settlement sheets, invoices, written price quotations, and any other documents related to the program that are within the control of the biorefinery. These records must be held and made available for Agency examination for a period of not less than three years from each payment date.

(4) *Succession and control of facilities and production.* Any party obtaining a biorefinery that is under this program must request permission to participate in this program as a successor. The Agency may grant such request if it is determined that, the party is eligible, and permitting such succession would serve the purposes of the program. If appropriate, the Agency may require the consent of the previous party to such succession. Also, the Agency may terminate payments and demand full refund of payments made if a party loses control of a biorefinery whose production of heat or power from renewable biomass is the basis of a program payment, or otherwise fails to retain the ability to assure that all program obligations and requirements will be met.

*D. Environmental Review.* All recipients under this subpart are subject to the requirements of 7 CFR Part 1940, subpart G.

*E. Civil Rights Requirements.* The Agency will comply with the civil rights law and compliance requirements in accordance with 7 CFR Part 1901-E. This program is subject to Executive Order 12898, Environmental Justice, and RD Instruction 2006-P.

## VIII. Agency Contacts

*Notice Contact.* For further information about this Notice, please contact USDA, Rural Development-Energy Division, Program Branch, Attention: Frederick Petok, Stop 3225, Room 6870, 1400 Independence Avenue, SW., Washington, DC 20250-3225. Telephone: (202) 690-0784.

*Technical Assistance.* For technical assistance on this payment program, please contact the USDA, Rural Development-Energy Division, Attention: Repowering Assistance Program, 1400 Independence Avenue, SW., Stop 3225, Washington, DC 20250-3225. Telephone: (202) 720-1400.

## IX. Non-Discrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability and, where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance programs. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TTY). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice) or (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

Dated: June 8, 2009.

**Judith A. Canales,**

*Administrator, Rural Development, Business and Cooperative Programs.*

[FR Doc. E9-13804 Filed 6-11-09; 8:45 am]

**BILLING CODE:P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Mandatory Shrimp Vessel and Gear Characterization Survey.

*OMB Control Number:* 0648-0542.

*Form Number(s):* None.

*Type of Request:* Regular submission.

*Burden Hours:* 667.

*Number of Respondents:* 2,000.

*Average Hours per Response:* 20 minutes.

*Needs and Uses:* Census-level information on fishing vessel and gear characteristics in the Gulf of Mexico Exclusive Economic Zone (EEZ) shrimp fishery are needed as supplemental information necessary to conduct economic, social, and biological analyses that will improve fishery management decision-making in this fishery; ensure that national goals, objectives, and requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MFCMA, 16 U.S.C. 1801 *et seq.*), National Environmental Policy Act (NEPA), Regulatory Flexibility Act (RFA) and Executive Order (E.O.) 12866 are met; and quantify achievement of the performance measures in the National Marine Fisheries Service's Strategic Operating Plans. This information is vital in assessing the economic, social, and biological effects of fishery management decisions and regulations on individual shrimp fishing enterprises, fishing communities, and the nation as a whole.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* Annually.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395-7285, or [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov).

Dated: June 8, 2009.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E9-13764 Filed 6-11-09; 8:45 am]

**BILLING CODE 3510-22-P**