

**SUPPORTING STATEMENT – Proposed Rule
Advanced Biofuel Payment Program
0570-NEW**

A. Justification

1. Explain the circumstances that make the collection of information necessary.

The burden reported in this supporting statement is for the proposed rule implementing the Advanced Biofuel Payment Program (the Program).

This Program, authorized under section 9005 of Title IX of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), authorizes the Agency to enter into contracts to make payments to eligible entities to support and ensure an expanding production of advanced biofuels. Entities eligible to receive payments under the Program are producers of advanced biofuels that meet all of the requirements of the Program. Such entities can be an individual or legal entity, including a corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or non-profit that produces an advanced biofuel and that sells the advanced biofuel on the commercial market.

2. Explain how, by whom, and for what purpose the information is to be used.

Advanced biofuel producers seeking to participate in the Program must enroll in the Program by submitting an application (Form RD 4288-1), which includes specific information about the producer and the producer's advanced biofuel biorefineries. This information will be used to determine whether the advanced biofuel producer is eligible to participate in the Program and whether the advanced biofuel being produced is eligible for payments under the Program. Form RD 4288-1 will also be used by the Agency to sign-up advance biofuel producers in subsequent fiscal years (FY) and to obtain information to help determine payment rates.

Once an advanced biofuel producer has been approved for participation in the Program, the producer and the Agency will enter into a contract (Form RD 4288-2). Once the contract is signed, the advanced biofuel producer will submit payment requests (Form RD-4288-3), preferably on a quarterly basis. The information in the payment request forms will be used by the Agency to determine payments to the advanced biofuel producers.

REPORTING REQUIREMENTS - NO FORMS

Appeals

The applicant/eligible advanced biofuel producer may appeal any adverse Agency decision.

Appeals are handled in accordance with Departmental appeal regulations.

Succession Requests

Any entity that becomes an advanced biofuel producer for a biorefinery under Contract under this Program must submit a request to the Agency for permission to succeed to the Program Contract. This is necessary to ensure that the entity is an eligible producer and that such succession would serve the purposes of the Program.

Additional Information

Applicants may be requested by the Agency to submit additional information if their application for participation does not contain sufficient information to allow the Agency to make an eligibility determination.

REPORTING REQUIREMENTS - FORMS

Form RD 4288-1, “Advanced Biofuel Payment Program Annual Application”

Applicants seeking to participate in the Program will have to submit this form in order to apply for participation in this Program. This form requires an advanced biofuel producer to provide information on the advanced biofuel producer; the advanced biofuel producer’s biorefineries at which the advanced biofuels are produced, including location and quantities produced and a description of the business; the types and quantities of renewable biomass feedstock being used to produce the advanced biofuels; and the amount of eligible advanced biofuels produced at each biorefinery in the 12 months prior to the first day of the sign-up period for the fiscal year for which the annual application is being submitted. Applicants are required to submit with this form documentation to support the amount of eligible advanced biofuels reported in the form. The form also requires the advanced biofuel producer to certify the information provided, including that the advanced biofuels are eligible advanced biofuels and that the renewable biomass feedstock used to produce the advanced biofuels are eligible biomass feedstock. Producers must submit authoritative evidence documenting production of advanced biofuels, and the eligibility of the advanced biofuels. Applicants are required to have a Dun and Bradstreet Universal Numbering System (DUNS) number (unless the applicant is an individual). 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>.

The advanced biofuel producer must also furnish the Agency all required certifications, as applicable, before acceptance into the program, and furnish access to the advanced biofuel producer’s records required by the Agency to verify compliance with program provisions. The required certifications depend on the type of biofuel produced. Certifications are to be completed and provided by an accredited independent, third-party. The specific certifications are identified below.

Alcohol. For alcohol producers with authority from ATF to produce alcohol, copies of either the alcohol fuel producers permit (TTB F 5110.74) or the registration of Distilled Spirits Plant (TTB F 5110.41) and Operating Permit (TTB F 5110.25).

Hydrous ethanol. If the advanced biofuel producer entering into this agreement is the hydrous ethanol producer, then the advanced biofuel producer shall include with the contract an affidavit, acceptable to the Agency, from the distiller stating that the applicable hydrous ethanol produced is distilled and denatured for fuel use according to ATF requirements and that the distiller will not include the applicable ethanol in any payment requests that the distiller may make under this program.

If the advanced biofuel producer entering into this agreement is the distiller that upgrades hydrous ethanol to anhydrous ethyl alcohol, then the advanced biofuel producer shall include with the contract an affidavit, acceptable to the Agency, from the hydrous ethanol producer stating that the hydrous ethanol producer will not include the applicable ethanol in any payment requests that may be made under this program.

Biodiesel, biomass-based diesel, and liquid hydrocarbons derived from biomass. For these fuels, the advanced biofuel producer shall self-certify that the producer, the Advanced Biofuel Biorefinery, and the Biofuel meet the definition of each term as defined in the rule, the applicable registration requirements under the Energy Independence and Security Act and the Clean Air Act, the applicable regulations of the U.S. Environmental Protection Agency and Internal Revenue Service, and quality requirements per applicable ASTM International standards (e.g., ASTM D6751) and commercially acceptable quality standards of the local market. The advanced biofuel producer must also provide the Renewable Identification Number (RIN) for each advanced biofuel and BQ-9000 certification.

Gaseous Advanced Biofuel. For gaseous advanced biofuel producers, certification that the biofuel meets commercially acceptable pipeline quality standards of the local market; that the flow meters used to determine the quantity of advanced biofuel produced are industry standard and properly calibrated by a third party professional; and that the readings have been taken by a qualified individual.

In addition, for woody biomass feedstocks, the applicant must submit documentation that the woody biomass feedstock cannot be used as a higher value wood-based product.

Participating producers who enroll and project increased advanced biobased production and all producers enrolling in the program for the first time must submit with their application documentation to support their production projections in the enrollment application. Such documentation may include historical production data, production capacity of the biorefinery, and evidence of ability to distribute final product, including distribution networks and contracts for purchase of final product.

If an applicant's original submittal is not sufficient to verify an applicant's eligibility, the Agency will notify the applicant, in writing, as soon as practicable. This notification will identify, at a minimum, the additional information being requested to enable the Agency to determine the applicant's eligibility and a timeframe in which to supply the information.

The Agency is requiring this form in order to ensure that only eligible advanced biofuel

producers participate in the Program and to determine payments rates each FY.

Form RD 4288-2, “Advanced Biofuel Payment Program Contract”

Advanced biofuel producers determined to be eligible to participate in the Program must sign a contract with the Agency. The Agency will review all contracts at least annually to ensure compliance with the contract and ensure the integrity of the program. The advanced biofuel producer must agree to the terms and conditions of the contract, sign, date, and return it to the Agency within the time provided by the Agency. This contract, which lays out the terms and conditions associated with participation in the Program, is required because it provides the basis under which the Agency will make payments to participating producers.

Form RD 4288-3, “Advanced Biofuel Payment Program - Payment Request”

Once the eligible advanced biofuel producer has entered into a valid contract with the Agency, participating advanced biofuel producers must submit payment requests, preferably on a quarterly basis, in order to receive payments under the Program. This form requires the advanced biofuel producer to provide information on the types and quantities of advanced biofuels produced in a quarter and on the types and quantities of renewable feedstock used to produce those advanced biofuels. In addition, the advanced biofuel producer will report cumulative production of advanced biofuels and the use of renewable biomass feedstock for all advanced biofuel biorefineries. The information for each advanced biofuel biorefinery is to be provided cumulatively and on an individual advanced biofuel biorefinery basis.

After a payment application is submitted, eligible advanced biofuel producers may be required to submit additional clarification if their original submittal is not sufficient to verify eligibility for payment or quantity of the advanced biofuel product.

This information is required in order for the Agency to determine the payments to be made to the eligible producers each quarter and to track the quantities of advanced feedstock for which payments have been made.

RD Instruction 1940-Q, Exhibit A-1, “Certification for Contracts, Grants and Loans”

This form specifies that an applicant requesting funding in excess of \$100,000 agrees to certain restrictions on lobbying.

RD 400-4, “Assurance Agreement”. All applicants and recipients are required to complete this form to comply with Civil Rights Acts and laws.

REPORTING REQUIREMENTS - FORMS APPROVED UNDER OTHER OMB NUMBERS

SF-LLL, “Disclosure of Lobbying Activities”. All applicants are required to complete this form, regardless of their involvement in lobbying activities.

3. Describe whether, and to what extent, the collection of information involves the use of

automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Also describe any consideration of using information technology to reduce burden.

At this time, the Agency is planning to collect these forms as hard copy forms.

As the Agency promulgates a rule for this program, it will assess the feasibility of accepting electronic submissions of these forms. The Agency's plan envisions a system capable of electronically receiving from advanced biofuels producers the data elements contained in the forms associated with the Program.

4. Describe efforts to identify duplication.

The Agency is relying on forms developed under a very similar program (Bioenergy Program) in developing the forms for this Program. If similar information is found to be available from another Federal agency, every effort will be made to utilize that information as is or in an appropriately modified form for this Program.

5. If the collection of information affects small businesses or other small entities, describe the methods used to minimize the burden.

The information collection required places little or nominal burden on small entities beyond that performed in normal business practice. Furthermore, Rural Development is using modified forms that are very similar to forms already familiar to many of the anticipated advanced biofuel producers who would be seeking to participate in the Program.

6. Describe the consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The information collected under the Program is the minimum necessary to conform to the requirements of the Program established by law. Information is collected when needed and cannot be collected less frequently and still meet the requirements of the Program. Failure to collect proper information could result in improper determination of eligibility and improper payments.

7. Explain any special circumstances that would cause the collection of information to be conducted in a manner:

- (a) Requiring respondents to report information more than quarterly.
- (b) Requiring written responses in less than 30 days.
- (c) Requiring more than an original and two copies.

- (d) **Requiring respondents to retain records for more than 3 years.**
- (e) **Not utilizing statistical sampling.**
- (f) **Requiring use of statistical sampling which has not been reviewed and approved by OMB.**
- (g) **Requiring a pledge of confidentiality.**
- (h) **Requiring submission of proprietary trade secrets.**

There are no special circumstances. The collection of information is consistent with the guidelines in 5 CFR 1320.6.

8. Comments on Agency’s notice in the Federal Register and efforts to consult with persons outside the Agency to obtain their views on the availability of data, frequency of collection, the clarity of the instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A 60-day comment period was embedded in the section 9005 Notice of Contract Proposal, which was published on June 12, 2009 (74 FR 27998). For the renewal of the approved information collection, a 60-day comment period is embedded in the proposed rule for the Advanced Biofuel Payment Program.

The Agency sought comments on section 9005 and other title IX section in the 2008 Farm Bill from outside persons during a “listening conference,” which was held on September 4, 2008. One commenter provided comments related to the potential burden of implementing the advanced biofuels payment program. This commenter stated that the rules should be simplified and streamlined to attain the highest rate of participation possible from a variety of producers of advanced biofuels and accelerate commercial production.

The Agency has relied on the experience obtained on the Bioenergy Program and believes that the requirements for implementing the advanced biofuel payment program are efficient and clear to encourage participation from all eligible advanced biofuels producers.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payments or gifts will be provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or Agency policy.

Confidentiality is not assured. Requests for release of records and information are processed in accordance with the Privacy Act of 1974.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private.

There is no collection of any information that would be considered sensitive in nature or commonly considered private.

12. Provide estimates of the hour burden of the collection of information.

Based on the anticipated funding level for this Program, the estimated 3-year average annual burden for this collection is 302 respondents; 2,842 responses; and 2,273 burden hours. This is equivalent to approximately 0.8 hour per response. The cost per hour used was \$60. Based on these data, the estimated 3-year average annual cost of burden is \$135,587.

The following summarizes the estimated 3-year average annual burden associated with the Program.

Burden Item	Estimated Annual Burden
Number of respondents:	302
Total annual responses:	2,842
Number of hours per response:	0.8
Total hours:	2,273
Cost per hour:	\$60
Total annual cost:	\$135,587

The attached spreadsheet provides the specific estimates.

13. Provide an estimate for the total annual cost burden to the respondents or recordkeepings resulting from the collection of information.

There are no capital/start-up costs or operation/maintenance costs associated with this collection.

14. Provide estimates of annualized cost to the Federal Government.

The estimated wage of federal employees compiling the information is \$41 per hour. Administrative costs include the cost of promulgating the regulations, publication in the Federal Register, and development of forms, etc. The 3-year average annual cost to the Government is estimated to be \$529,098. The breakdown of cost to the Government by activity is as follows:

Allocation of Federal Government Costs

Activity	Estimated 3-Year Average Annual Burden
Determine producer eligibility	\$18,821
Review production documentation	\$3,102
Review contract	\$14,788
Process quarterly payment applications	\$81,699
Determine payment application eligibility (e.g., fuel eligibility)	\$245,098
Determine annual payment amounts	\$640
Review succession requests	\$1,968
Appeals	\$3,936
Conduct site visits	\$93,261
Administrative	\$65,785
Total	\$529,098

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

This is a new information collection.

16. For collection of information whose results will be published, outline plans for tabulation and publication.

The results of this collection of information will not be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

Approval not to display the expiration date is being sought. The Agency sees no benefit to displaying the expiration date.

18. Explain each exception to the certification statement identified in item 19 on OMB 83-I.

There are no exceptions to the certification. The Agency is able to certify compliance with all provisions under item 19.

19. How is this information collection related to the Service Center Initiative (SCI)? Will the information collection be part of the one stop shopping concept?

The SCI calls for changes to improve services to the United States Department of Agriculture (USDA) customers. One aspect is providing one stop service for greater customer convenience

in accessing USDA programs, including access to required forms.