

**SUPPORTING STATEMENT  
0570-NEW  
Advanced Biofuel Payment Program  
Interim Rule**

**A. Justification**

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

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 facilities. 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).

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 quarterly payment requests (Form RD 4288-3). 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 biofuel facility 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.

### **Recordkeeping**

For the purpose of verifying compliance with the requirements of this subpart, each eligible advanced biofuel producer must make available for examination by the Agency, all books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, and other documents related to the Program that is within the control of such advanced biofuel producer for not less than 3 years from each Program payment date. If audit has not been resolved within 3 years, it will be necessary for the respondent to keep records until such audit has been resolved.

## **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 and the advanced biofuel producer’s biofuel facilities at which the advanced biofuels are produced, including location and the types of renewable biomass feedstock being used to produce the advanced biofuels. 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. 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. If one has been established, the advanced biofuel producer must also provide the Renewable Identification Number (RIN) for a typical gallon of each type of advanced biofuel produced.

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 sourced from National Forest System lands or public lands, the applicant must submit documentation that the woody biomass feedstock cannot be used as a higher value wood-based 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 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 facilities. The information for each advanced biofuel facility is to be provided cumulatively and on an individual advanced biofuel facility basis. The information contained in these forms will also be used by the Agency to determine any incremental production payments to eligible advanced biofuel producers.

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.

**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. Rural Development is estimating about 50% of the entities will be small businesses for this 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.** In those instances where audit finding have not been resolved within 3 years, it will be necessary for respondents to retain records until audit findings have been resolved.

- (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 other 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.**

The proposed rule was published in the Federal Register on April 16, 2010 (75 FR 20085). The Agency received no public comment letters on the burden estimate for the proposed rule. While no comment letters were directed specifically at the burden estimate, commenters provided comments and suggestions on the reporting requirements of the proposed rule that the Agency has taken into consideration in this interim rule.

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 393 respondents; 3,704 responses; and 3,115 burden hours. This is equivalent to approximately 0.9 hour per response. The cost per hour used was approximately \$64. Based on these data, the estimated 3-year average annual cost of burden is \$198,469.

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

Burden Item	Estimated Annual Burden
Number of respondents:	393
Total annual responses:	3,704
Number of hours per response:	0.9
Total hours:	3,115
Cost per hour:	\$63.71
Total annual cost:	\$198,469

NOTE: Totals may not sum due to rounding.

The attached spreadsheet provides the specific estimates.

**13. Provide an estimate for the total annual cost burden to the respondents or recordkeeping 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 \$737,990. 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	\$13,048
Review contract	\$14,965
Process quarterly payment applications	\$127,264
Determine payment application eligibility (e.g., fuel eligibility)	\$381,792
Determine quarterly actual production payments	\$3,280
Determine incremental production payments	\$492
Review succession requests	\$1,968
Appeals	\$3,936
Conduct site visits	\$127,264
Administrative	\$65,785
<b>Total</b>	<b>\$739,794</b>

NOTE: Totals may not sum due to rounding.

**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. This is an increase of 842 hours from the proposed rule. The majority of this increase is attributable to an increase in the number of expected applicants and participants as the result of several factors, including expanding the program to non-rural biofuel facilities and to foreign-owned biofuel facilities, and documentation of production and capacity for new applicants.

**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.