

January 2011

**SUPPORTING STATEMENT
0570-NEW
Repowering Assistance Program
Interim Rule**

A. Justification

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

The Agency is implementing the Repowering Assistance Program, authorized under Section 9004 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). The purpose of this program is to provide financial incentives to biorefineries in existence on the date of the enactment of the 2008 Farm Bill, 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 the program for a period determined by the Agency. The Agency will determine the amount of payments to be made to a biorefinery under this program with consideration given to:

- (1) the quantity of fossil fuel a renewable biomass system is replacing;
- (2) the percentage reduction in fossil fuel used by the biorefinery that will result from the installation of the renewable biomass system; and
- (3) the cost and cost-effectiveness of the renewable biomass system.

Congress has appropriated mandatory funding for this program in the amount of \$35 million for FY 2009, to remain available until expended. In addition, there is authorization to appropriate an additional \$15 million for each of fiscal years 2009 through 2012. The maximum payment an applicant may receive will be 25 percent of project costs, up to the maximum amount announced in the Federal Register for the fiscal year. There is no minimum amount of payment that an applicant may receive.

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

Information gathered under this collection will be used to determine the eligibility of biorefineries to participate in the program. 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 cost-effectiveness, availability of renewable biomass, and the reduction of fossil fuel usage resulting from the installation of a renewable biomass system. Applicants are required to provide relevant data to allow for technical analysis of their existing facilities to demonstrate significant replacement of fossil fuel by renewable biomass with reasonable costs and maximum efficiencies.

REPORTING REQUIREMENTS – NO FORM NUMBERS

Feasibility Study. The applicant must submit an independent feasibility study by a qualified consultant demonstrating 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:

- executive summary, including the resume of the consultant and introduction/project overview (brief general overview of project location, size, etc.).
- economic feasibility determination, including information regarding project site; availability of trained or trainable labor; and availability of infrastructure and rail and road service to the site.
- technical feasibility determination, including (1) a description of the repowering project including information on the heating and cooling equipment; anticipated impacts of the project on electrical use data, fuel use data, thermal loads and biofuel and biobased product production; a project development schedule; and 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 and (2) identification and estimation of project operation and development costs and specify the level of accuracy of these estimates and the assumptions on which these estimates have been based.
- financial feasibility determination, including repowering project construction funding, reliability of the

financial projections and assumptions on which the project is based including all sources of project capital; projected balance sheets and costs associated with project operations; cash flow projections for the life of the project; adequacy of raw materials and supplies; sensitivity analysis, including feedstock and energy costs, product/co-product prices; risks related to the project; and continuity, maintenance and availability of other records and adequacy of management.

- management feasibility determination.
- recommendations for implementation.
- environmental aspects of the system.
- feedstock availability, including feedstock source management; estimates of feedstock volumes and costs; collection, pre-treatment, transportation, and storage; and impacts on existing manufacturing plants or other facilities that use similar feedstock.
- feasibility/plans of project to work with producer associations or cooperatives including estimated amount of annual feedstock.
- document that all and any woody biomass feedstock sourced from National Forest System lands or public lands cannot be used as a higher value wood-based product.

Request for Appeal. This requirement provides a mechanism for applicants to obtain review and additional consideration of Rural Development business programs decisions denying participation in the program or payments under the program.

Clarifying information. After the semiannual payment application is submitted, the Agency may need information from the eligible biorefinery to clarify the eligibility of the requested payment. These requests for clarifying information are necessary to ensure appropriate payments are made.

FY2009 and FY2010 application requests. Applicants who were selected for an award, but had not received any payments when the interim rule was published could submit a written request to the Agency to have their payments made and serviced under the interim rule. Similarly, applicants who received payments prior to the interim rule could submit a written request to the Agency to their payments serviced under the interim rule.

REPORTING REQUIREMENTS - FORMS APPROVED WITH THIS DOCKET

Applicants will be required to submit the following forms that have been developed for, are available from, USDA's Rural Development program offices:

Form RD 4288-4, "Repowering Assistance Program - Application". Applicants are required to submit this form, and any attachments that may be necessary as a result of space limitations of the forms, in order to apply for participation in this Program. This form requires the applicant to provide relevant data to allow for technical analysis of their existing facilities to demonstrate significant replacement of fossil fuel by renewable biomass with reasonable costs and maximum efficiencies. The application also requires the applicant to provide information on total project costs of the proposed repowering project. The Agency is requiring this form in order to ensure that only eligible biorefineries participate in this Program and to determine eligible project costs.

Form RD 4288-5, "Repowering Assistance Program - Agreement". This form constitutes the agreement between the Agency and the eligible biorefinery. This form lays out the terms and conditions associated with participation in this Program. This form is required because it provides the basis under which the Agency will make payments to participating biorefineries.

Form RD 4288-6, "Repowering Assistance Program - Reporting Form". This form is used by a participating biorefinery to report information and documentation of the usage and production of energy at the biorefinery during the previous year, including the previous and current fossil fuel load and the renewable biomass energy production produced by the renewable biomass system. The information in this form will be used by the Agency to determine if the biorefinery is meeting the fossil fuel reduction and energy production requirements for the biorefinery.

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 400-1, "Equal Opportunity Agreement". Applicants are required to agree that they will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.

RD 400-4, "Assurance Agreement" (OMB 0575-0018). All applicants

and recipients are required to complete this form to comply with Civil Rights Acts and laws.

RD 1940-20, "Request for Environmental Information" (first page only). This form is required of applicants to assess the potential cumulative impacts of the project as well as any environmental concerns or problems that are associated with the project that can be identified at the earliest planning stages. However, applicants are to substitute the narrative specified in the instructions to this form with the narrative outlined in RD Instruction 1940-G, Exhibit H.

AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions" or other written documentation. This form certifies that the applicant is not presently debarred, suspended, or voluntarily excluded from covered transactions by any Federal department or agency.

AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions" or other written documentation. This form certifies that lower tier participants are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal department or agency.

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

REPORTING REQUIREMENTS - FORMS APPROVED UNDER OTHER OMB NUMBERS

All applicants will be required to submit the following standard application form:

SF-271, "Outlay Report and Request for Reimbursement for Construction Projects" (OMB No. 0348-0002). This is the standard form used by the grantee to request advances or reimbursement of cash outlays.

RECORDKEEPING REQUIREMENTS

Assistance payment recipients are required to keep records of information that verify compliance with program objectives. During construction, such records are associated with documents

that identify the purposes for and the manner in which program funds were expended. These records are normally kept as part of general business practice; therefore, no burden was attributed to these records.

After construction and when the project is completed, such records are associated with documenting the fossil fuel reduction and energy production requirements associated with the rule.

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.

The Agency strongly encourages applicants to submit as much material as possible electronically, which would allow the Agency to retrieve the applications electronically. Further, applicants who receive funding will be encouraged, but not required, to submit any subsequent reports that may be required electronically. However, the Agency will not totally require submission by electronic methods because some applicants may not have the technological expertise for electronic submission or may not have the equipment necessary for high technological information gathering. The Agency will prepare an application guide to help reduce the effort associated with preparing applications, which could be posted on the Agency's Web site along with all forms for the applicant to print off.

4. Describe efforts to identify duplication.

The Agency has developed forms for this program based on the specific needs of the program. The information being collected is not believed to duplicate that collected by any other Agency. However, if similar information is found to be available from another Federal agency, every effort is 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. The Agency is using industry-standardized data elements and documents, supplementing them with Government-wide

forms that are familiar to many applicants.

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 this program is the minimum necessary to conform to the requirements of the program regulations established by law. Information is collected when needed and cannot be collected less frequently and still meets the requirements of the program. Failure to collect proper information could result in improper determinations 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 to the Agency more often than quarterly.
- b. Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it.
- c. Requiring respondents to submit more than an original and two copies of any document.
- d. Requiring respondents to retain records for more than 3 years.
- e. Not using statistical sampling.
- f. Requiring use of statistical data classification that has not be reviewed and approved by Office of Management and Budget (OMB).
- g. Requiring a pledge of confidentiality that is not supported by authority in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use.
- h. Requiring respondents to submit proprietary trade secrets or other confidential information unless the agency can demonstrate that it has instituted procedures to protect

the information's confidentiality to the extent permissible by law.

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.

The proposed rule was published in the Federal Register on April 16, 2010 (75 FR 20073). The Agency received comments on the burden estimate for the proposed rule. While no comments were directed specifically to 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 9004 and other title IX sections in the 2008 Farm Bill from outside persons during a "public meeting," which was held on September 4, 2008 [73 FR 50302]. No comments related to the potential burden of implementing the Repowering Assistance program were received.

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 annual burden for this collection is 67 respondents; 647 responses; and 13,059 burden hours. The average cost per hour over the first 3 years was estimated to be approximately \$64 for all labor except the feasibility study, which was estimated to cost \$85.21 per hour. Based on these data, the estimated annual average cost of burden for the first three years is \$1,061,883.

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 \$41.00 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 \$166,782. The breakdown of cost to the Government by activity is as follows:

Allocation of Federal Government Costs

Activity	Estimated 3-Year Average Annual Burden
Acknowledge and review applications	\$21,867
Evaluate and score applications	\$43,733
Inform applicants of selection results	\$5,467
Legal document preparation	\$3,280
Review payment requests and issue payments	\$19,680
Review of annual reports	\$410

Monitoring and review of records	\$6,560
Administration	\$65,785
Total	\$166,782

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 8,669 hours from the proposed rule. This increase is attributable to an increase in the number of expected applicants and participants.

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. Forms are used and approved in other burden packages with different expiration dates which could be confusing to the respondents.

18. Explain each exception to the certification statement in identified in item 19 of 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.