



United States Department of Agriculture

August 3, 2021

TO: Austin Mudd
Senior Desk Officer
Office of Management and Budget (OMB)

THROUGH: Levi Harrell
USDA Information Collection Officer

FROM: Michele Brooks
Director, Regulations Management Division
Innovation Center, Rural Development, USDA

SUBJECT: Request for Emergency Approval of a New Information Collection Request
for Notice of Funding Opportunity for the Biofuel Producer Program

The Rural Business-Cooperative Service (RBCS), an agency of the Rural Development (RD) Mission Area (Agencies) within the United States Department of Agriculture (USDA), is seeking emergency review and approval of a new information collection for the Notice of Funding Opportunity (NOFO) for the Biofuel Producer Program. The Agency is expecting to publish the NOFO, of which the 60-day notice is embedded, in the *Federal Register* by August 30, 2021.

In compliance with the requirements of 5 CFR § 1320.13, this request for emergency approval is essential for RBCS to fulfill its responsibility to administer the Biofuel Producer Program.

The Biofuel Producer Program is authorized by Section 751, Division N, Title VII—Nutrition and Agriculture Relief, of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2021 (the Act). The Act authorizes the Secretary of Agriculture to make payments to producers of advanced biofuel, biomass-based diesel, cellulosic biofuel, conventional biofuel, or renewable fuel (as such terms are defined in section 211(o)(1) of the Clean Air Act (42 U.S.C. 7545(o)(1))).

The payments will be administered in accordance with this NOFO. The Agency anticipates only making one payment to an eligible applicant under this NOFO. Payments will be based upon the volume of market loss the biofuel producer experienced in the first two quarters of calendar year 2020 based on the requirements specified in this NOFO. Market loss will be calculated by comparing the amount of fuel (gallons of eligible biofuel) they produced in the third and fourth quarters of calendar year 2019 to the amount of fuel (gallons of eligible biofuel) produced in the first and second quarters of calendar year 2020. Applicants producing

eligible biofuel in more than one production facility, market loss will be calculated based on the production for all of their production facilities including production facilities that did not experience market losses. Payments will be executed based upon the volume of market loss experience data collected as a result of this NOFO. RBCS will affix a target volume price per gallon, limited by the amount of funding available under the authorizing legislation.

The expeditious implementation of the Biofuel Producer Program is very critical to the Agency's mission for the reasons that (1) the Program will not be able to be implemented prior to the end of FY 21, and (2) the use of normal clearance procedures is likely to prevent the collection of information from applicants which, in turn, will have negative consequences on the intended recipients.

This program is designed for eligible producers, individual or legal entity, including, but not limited to, a corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or non-profit entity that produces an eligible biofuel.

Such funding is made because withholding these funds would unduly delay the provision of the additional coronavirus response and relief funds which Congress intended to provide expeditious relief to address the current economic conditions arising from the COVID-19 emergency. In lieu of the compressed deadline to publish the NOFO no later than August 30, 2021, USDA is requesting approval of this new collection package on or before August 16, 2021. Failure to collect proper information from borrowers will hinder the implementation of the program as well as the selection of recipients, and result in improper determinations of assistance as well as encumber customer service.

The Congress, Administration, and USDA have indicated that the implementation of this program is a top priority. Approval of the emergency request for this new information collection is important because the Biofuel Producer Program will not be able to be implemented, as the use of normal clearance procedures is likely to prevent the collection of information from applicants which, in turn, will have negative consequences on the intended recipients, as well as be in violation of the Act. Therefore, USDA is requesting that OMB complete their review and approval of this new collection package on or before August 16, 2021.

The 60-day notice for comments is included in the NOFO, and comments on the Biofuel Producer Program information collection package is requested in order to submit the regular request to obtain a 3-year approval from OMB after receiving the 6-month OMB emergency approval. Due to the need to consider comments received and then issue another notice for the Federal Register for an additional thirty days of comment, RBCS would not be able to complete the information collection process without the emergency clearance. Please note that after the 60-day comment period closes, RBCS will submit the regular collection package for a 3-year approval addressing any comments received.

In compliance with OMB regulations (5 CFR Part 1320), which implements the Paperwork Reduction Act of 1995 (Pub. L. 104-13), the information collection and recordkeeping requirements that may be imposed by this section are submitted to OMB for

emergency review and approval. Attached are the supporting statement and spreadsheet for the Biofuel Producer Program.

In summary, the expeditious implementation of this program is a top priority. Should you have any questions, please do not hesitate to contact Michele Brooks, Director, Regulations Management Division, Innovation Center, Rural Development by telephone at (202) 690-1078 or by email at Michele.Brooks@usda.gov. or Lauren Cusick, Chief, Branch 2, Regulations Management Division, Innovation Center, Rural Development by telephone at (202) 720-1414.

Thank you in advance for your quick review and response.

Attachment