

Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Contract Proposal (NOCP) for Payments to Eligible Advanced Biofuel Producers

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the acceptance of applications to enter into Contracts to make payments to Eligible Advanced Biofuel Producers under the Bioenergy Program for Advanced Biofuels to support and ensure an expanding production of Advanced Biofuels. Under this Notice, applications will be accepted for Biorefineries that produce transportation fuels that meet the Renewable Fuel Standard or are currently undergoing an appeal to the U.S. Environmental Protection Agency for inclusion in the Renewable Fuel Standard, or that produce non-transportation renewable energy that results in a reduction in greenhouse gases. The Agency will authorize up to \$40 million in funding for this program for fiscal year (FY) 2010.

DATES: Applications for participating in this program for Fiscal Year 2010 must be received between May 6, 2010 and July 6, 2010.

ADDRESSES: Application materials may be obtained by contacting the USDA, Rural Development State Office, Renewable Energy Coordinator. Submit applications to the Rural Development State Office in the State in which the applicant's principal office is located.

USDA Rural Development State Renewable Energy Coordinators

Note: Telephone numbers listed are not toll-free.

Alabama

Quinton Harris, USDA Rural Development, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106-3683, (334) 279-3623, Quinton.Harris@al.usda.gov.

Alaska

Dean Stewart, USDA Rural Development, 800 West Evergreen, Suite 201, Palmer, AK 99645-6539, (907) 761-7722, dean.stewart@ak.usda.gov.

Arizona

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Arkansas

Tim Smith, USDA Rural Development, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201-3225, (501) 301-3280, Tim.Smith@ar.usda.gov.

California

Philip Brown, USDA Rural Development, 430 G Street, #4169, Davis, CA 95616, (530) 792-5811, Philip.brown@ca.usda.gov.

Colorado

April Dahlager, USDA Rural Development, 655 Parfet Street, Room E-100, Lakewood, CO 80215, (720) 544-2909, april.dahlager@co.usda.gov.

Connecticut

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Delaware

Bruce Weaver, USDA Rural Development, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857-3626, Bruce.Weaver@de.usda.gov.

Federated States of Micronesia

Tim O'Connell, USDA Rural Development, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933-8313, Tim.Oconnell@hi.usda.gov.

Florida

Joe Mueller, USDA Rural Development, 4440 NW. 25th Place, Gainesville, FL 32606, (352) 338-3482, joe.mueller@fl.usda.gov.

Georgia

J. Craig Scroggs, USDA Rural Development, 111 E. Spring St., Suite B, Monroe, GA 30655, Phone 770-267-1413 ext. 113, craig.scroggs@ga.usda.gov.

Guam

Tim O'Connell, USDA Rural Development, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933-8313, Tim.Oconnell@hi.usda.gov.

Hawaii

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Idaho

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Illinois

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Indiana

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Iowa

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Kentucky

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Louisiana

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Maryland

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Massachusetts

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Michigan

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Minnesota

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Mississippi

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Missouri

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New Hampshire

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New Jersey

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New York

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Republic of Palau

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Republic of the Marshall Islands

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Rhode Island

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Vermont

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Virgin Islands

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FOR FURTHER INFORMATION CONTACT: For further information on this program, please contact the USDA Rural Development State Renewable Energy Coordinator for your respective State, as provided in the Addresses section of this Notice.

SUPPLEMENTARY INFORMATION: On June 12, 2009, the Agency published a Notice of Contract Proposals (NOCP) and Solicitation of Applications in the **Federal Register** announcing policy and application procedures for the Bioenergy Program for Advanced Biofuels. In a Notice published March 12, 2010, the Agency notified applicants from the prior Notice of the availability of an additional payment for all applicants determined eligible.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, the paperwork burden associated with this Notice of Contract for Proposal (Notice) has been approved by the Office of Management and

Budget (OMB) under OMB Control Number 0570-0057.

The PRA burden associated with the original Notice, published on June 12, 2009, was approved by OMB, with an opportunity to comment on the burden associated with the program.

Advanced Biofuel Producers seeking funding under this Notice have to submit applications that include specified information, certifications, and agreements. All of the forms, information, certifications, and agreements required to apply for payments under this Notice have been authorized under OMB Control Number 0570-0057.

Overview Information

Federal Agency Name. Rural Business-Cooperative Service.

Contract Proposal Title. Advanced Biofuels Producer Payment Program.

Announcement Type. Initial announcement.

OMB Control Number: 0570-0057.

Catalog of Federal Domestic Assistance (CFDA) Number. The CFDA number for this Notice is 10.078.

Dates. The Advanced Biofuels Program Sign-up Period for Fiscal Year 2010 is May 6, 2010 and July 6, 2010.

Availability of Notice. This Notice is available on the USDA Rural Development Web site at <http://www.rurdev.usda.gov/rbs/buspf/9005Biofuels.htm>.

I. Funding Opportunity Description

A. *Purpose of the Program.* The purpose of this program is to support and ensure an expanding production of Advanced Biofuels by providing payments to Eligible Advanced Biofuel Producers. Implementing this program not only promotes the Agency's mission for promoting sustainable economic development in rural America, but is an important part of achieving the Administration's goals for increased biofuel production and use by providing economic incentives for the production of advanced biofuels.

B. *Statutory Authority.* This program is authorized under Title IX, Section 9001, of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-234).

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

Advanced biofuel. Fuel derived from Renewable Biomass, other than corn kernel starch, to include:

- (i) Biofuel derived from cellulose, hemicellulose, or lignin;
- (ii) Biofuel derived from sugar and starch (other than Ethanol derived from corn kernel starch);
- (iii) Biofuel derived from waste material, including crop residue, other

vegetative waste material, animal waste, food waste, and yard waste;

(iv) Diesel-equivalent fuel derived from Renewable Biomass, including vegetable oil and animal fat;

(v) Biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from Renewable Biomass;

(vi) Butanol or other Alcohols produced through the conversion of organic matter from Renewable Biomass; and

(vi) Other fuel derived from cellulosic biomass.

Advanced biofuel producer. An 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 Advanced Biofuel.

Agency. The Rural Business and Cooperative Service on behalf of the U.S. Department of Agriculture.

Alcohol. Anhydrous ethyl Alcohol manufactured in the United States and its territories and sold either:

(i) For fuel use, rendered unfit for beverage use, produced at a Biorefinery and in a manner approved by the Bureau of Alcohol, Tobacco, Firearms, and Explosives of the United States Department of Justice (ATF) for the production of Alcohol for fuel; or

(ii) As denatured Alcohol used by blenders and refiners and rendered unfit for beverage use.

Alcohol producer. An 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 is authorized by ATF to produce Alcohol.

Base production. The quantity of Eligible Advanced Biofuels produced at an Advanced Biofuel Biorefinery as determined by the Agency under paragraphs (1) through (3), as applicable. An Advanced Biofuel Biorefinery's Base Production cannot be transferred to another Advanced Biofuel Biorefinery.

(1) If the Biorefinery has been in existence for 12 months or more prior to May 6, 2010, the Biorefinery's Base Production for FY 2010 will be equal to the actual amount of Biofuel produced over that 12 month period.

(2) If the Biorefinery has been in existence less than 12 months prior to May 6, 2010, the Biorefinery's Base Production for the sign-up fiscal year will be equal to the quantity projected to be produced by the biorefinery's producer as reported in Form RD 9005-

1, "Advanced Biofuel Payment Program Application."

(3) If the Advanced Biofuel Biorefinery will begin producing after May 6, 2010, the Biorefinery's Base Production for FY 2010 will be equal to the quantity projected to be produced by the Biorefinery's producer as reported in Form RD 9005-1.

Biodiesel. A mono alkyl ester, manufactured in the United States and its territories, that meets the requirements of the appropriate American Society for Testing and Materials Standard (ASTM).

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.

Certificate of Analysis. A document approved by the Agency that certifies the quality and purity of the Advanced Biofuel being produced. The document must be from a qualified, independent third party.

Contract. The Advanced Biofuels Program Contract, or other form prescribed by the Agency.

Eligible advanced biofuel producer. A producer of Advanced Biofuels that meets all requirements for program payments.

Eligible renewable biomass. Renewable Biomass excluding corn kernel starch.

Eligible renewable energy content. That portion of an Advanced Biofuel's energy content derived from eligible Renewable Biomass feedstock. The energy content from any portion of the Biofuel, whether from, for example, blending with another fuel or a denaturant, that is derived from a non-Eligible Renewable Biomass feedstock (e.g., corn kernel starch) is not eligible for payment under this program.

Ethanol. Anhydrous ethyl Alcohol manufactured in the United States and its territories and sold either:

(i) For fuel use, and which has been rendered unfit for beverage use and produced at a biofinery approved by the ATF for the production of Ethanol for fuel, or

(ii) As denatured Ethanol used by blenders and energy refiners, which has been rendered unfit for beverage use.

Ethanol producer. An individual or legal entity, including but is not limited to, a corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or non-profit entity that is authorized by ATF to produce ethanol.

Fiscal Year (FY). A 12 month period beginning each October 1 and ending September 30 of the following calendar year.

Incremental production. The quantity of Eligible Advanced Biofuel produced at an Advanced Biofuel Biorefinery that is in excess of that Biorefinery's Base Production, except that for Advanced Biofuel Biorefineries that begin producing Eligible Advanced Biofuels after May 6, 2010. For such Biorefineries, production in excess of Base Production, as determined under paragraph (3) under the definition of Base Production, will not be treated as Incremental Production.

Larger producer. Eligible producers with a refining capacity exceeding 150,000,000 gallons of Advanced Biofuel per year.

Payment application. Form RD 9005-3, "Advanced Biofuel Payment Program—Payment Request," which is required in order to receive payments under this program.

Quarter. The federal fiscal time period for any fiscal year as follows:

(i) 1st Quarter: October 1 through December 31;

(ii) 2nd Quarter: January 1 through March 31;

(iii) 3rd Quarter: April 1 through June 30; and

(iv) 4th Quarter: July 1 through September 30.

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;

(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 of paragraphs (e)(2), (e)(3), and (e)(4) and large-tree retention of 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.

Sign-up period. The time period announced by the Agency in this Notice during which the Agency will accept program Contracts.

Smaller producer. Eligible producers with a refining capacity of 150,000,000 gallons or less of Advanced Biofuel per year.

State. Any of the 50 states of the United States, the Commonwealth of Puerto Rico, the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

USDA. The United States Department of Agriculture.

II. Funding Information

A. Available Funds. Congress appropriated mandatory budget authority to this program as follows: \$55 million for FY 2009 and \$55 million for FY 2010. However, in FY 2009, the program was allotted \$30 million. The remaining FY 2009 funding of \$25 million will be used in FY 2010, and \$15 million of new funding from FY 2010. The Agency, therefore, will authorize up to \$40 million in budget authority for this program for fiscal year (FY) 2010.

B. Number of Payments. Under this notice, payments to participating Advanced Biofuel Producers will be made as follows for:

(1) Actual production produced from October 1, 2009 to June 30, 2010; and

(2) Actual production from July 1, 2010 through September 30, 2010.

The amount of payments made will depend on the number of eligible participating Advanced Biofuel Producers.

C. Range of Amounts of Each Payment. The amount of each payment will depend on the number of Eligible Advanced Biofuel Producers participating in the program, the amount of Advanced Biofuels being produced by such Advanced Biofuel Producers, and the amount of funds available.

D. Contract period. October 1, 2009 through September 30, 2010.

E. Type of Instrument. Payment.

III. Eligibility Information

This Notice contains eligibility requirements for Advanced Biofuel Producers seeking payments under this program.

A. Applicant Eligibility

To be eligible for this program, the applicant must be an Eligible Advanced Biofuel Producer, which is defined in this Notice as a producer of Advanced Biofuels who meets all requirements for program payments, and 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. When an entity owns an interest in the applicant, its citizenship will be determined by the citizenship of the individuals who own an interest in the entity or any sub-entity based on their ownership interest.

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

(4) If an applicant's original submittal is not sufficient to verify an applicant's eligibility, the Agency will notify the Advanced Biofuel Producer, 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.

(5) An otherwise Eligible Advanced Biofuel Producer will be determined to be ineligible if the Advanced Biofuel Producer:

(i) Refuses to allow the Agency to verify any information provided by the Advanced Biofuel Producer under this program, including information for determining applicant eligibility, Advanced Biofuel eligibility, and application payments; or

(ii) Fails to meet any of the conditions set out in this Notice, in the Contract, or in other program documents; or

(iii) Fails to comply with all applicable Federal, State, or local laws.

B. Biorefinery Eligibility Requirements

To be eligible for program payments under this Notice, an otherwise Eligible Advanced Biofuel must:

(1) Be either a transportation fuel that meets the Renewable Fuel Standard or are currently undergoing an appeal to the U.S. Environmental Protection Agency for inclusion in the Renewable Fuel Standard, or non-transportation renewable energy that results in a reduction in greenhouse gases;

(2) Be produced at an Advanced Biofuel Biorefinery located in a Rural Area; and

(3) If the biofuel is used on-site, there must be an Agency-approved system to verify the quantity of biofuel used on-site.

In the case where an Agency receives an application that is undergoing an appeal before the U.S. Environmental Protection Agency for inclusion in the Renewable Fuel Standard, the Agency will be unable to finalize processing of the application until the appeal has been completed.

C. Payment Eligibility

To be eligible for program payments, an Advanced Biofuel Producer must maintain adequate records for FY 2010, quantifying:

(1) Feedstock usage and Advanced Biofuel production for each Advanced Biofuel Biorefinery, and

(2) All other records required to establish program eligibility and compliance.

IV. Application and Submission Information

A. Address To Request Applications

Contract and Payment Application forms are available from the USDA, Rural Development State Office, Renewable Energy Coordinator. The list of Renewable Energy Coordinators is provided in the **ADDRESSES** section of this Notice.

B. Content and Form of Submission

Applicants must submit an original, signed hard copy of the Form RD 9005-1, "Advanced Biofuel Payment Program Annual Application," required in this section to the Rural Development State Renewable Energy Coordinators in the State in which the Advanced Biofuel Producer's principal office is located. A list of the Rural Development State Renewable Energy Coordinators is provided in the **ADDRESSES** section of this Notice. Applicants must submit to the Agency the following:

(1) *Form RD 9005-1, "Advanced Biofuel Payment Program Application."* This form requires an Advanced Biofuel

Producer seeking to participate in this program 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 the types and quantities 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.

(i) Producers must submit authoritative evidence (as specified in paragraph B(2) below) documenting production of Advanced Biofuels, and the eligibility of the Advanced Biofuels, between October 1, 2008, and September 30, 2009. Advanced Biofuel production must be certified as stated elsewhere in this notice in order to be eligible for payment, including determining Base and Incremental Production amounts.

(ii) Applicants may submit this form for an Advanced Biofuel Biorefinery that is scheduled to begin producing Eligible Advanced Biofuels after the application period for FY 2010 closes and before the end of FY 2010.

(iii) Please 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>.

(2) *Certifications.* The Advanced Biofuel Producer must furnish the Agency all required certifications identified in paragraphs (B)(2)(i) and (ii), 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.

(i) *Alcohol.* For Alcohol Producers with authority from ATF to produce Alcohol, copies of either:

(A) The Alcohol Fuel Producers Permit (ATF F 5110.74) or

(B) The registration of Distilled Spirits Plant (ATF F 5110.41) and Operating Permit (ATF F 5110.23).

(ii) *Hydrous ethanol.* If the Advanced Biofuel Producer entering into this agreement is:

(A) 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:

(1) Applicable hydrous Ethanol produced is distilled and denatured for fuel use according to ATF requirements, and

(2) Distiller will not include the applicable Ethanol in any payment requests that the distiller may make under this program.

(B) 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.

Note: The Agency may pay the first applicant to the exclusion of other possible applicants. Or, the Agency may require an agreement as to payment before paying either. Alternatively, the Agency may designate whether the distiller or the hydrous Ethanol Producer will be the payee where needed to ensure program integrity.

(C) *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, registration requirements as applicable under Energy Independence and Security Act, Clean Air Act, Environmental Protection Agency, Internal Revenue Service, and quality requirements per applicable ASTM International standards and commercially acceptable quality standards of the local market.

(D) *Gaseous Advanced Biofuel.* For gaseous Advanced Biofuel Producers, third party certification that the Biofuel meets commercially acceptable pipeline quality standards of the local market.

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

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

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

(6) Each participating advanced biofuel producer that is projecting an increase in production from the previous fiscal year and each new applicant must submit documentation to support the production estimates reported in the enrollment application.

Such documentation includes, but is not limited to:

(i) Historical production data;

(ii) Production capacity of the biorefinery; and

(iii) Evidence of ability to distribute final product, including distribution networks and contracts for purchase of final product.

(7) Each participating advanced biofuel producer must provide documentation from an Agency-approved recognized published source quantifying the reduction in greenhouse gas emissions that result from the displacement of fossil fuel.

C. *Submission Dates and Times*

(1) *Enrollment.* Advanced Biofuel Producers who expect to have eligible production at any time during FY 2010 must enroll in the program between May 6, 2010 and July 6, 2010.

(2) *Payment applications.* Advanced Biofuel Producers must submit Form RD 9005-3 by 4:30 p.m. local time November 2, 2010. Payment will be made for the time period October 1, 2009 through September 30, 2010.

D. *Intergovernmental Review*

This program is not subject to Executive Order 12372—Intergovernmental Review of Federal Programs because the Government is not providing financial assistance for the development of advanced biofuel biorefineries.

E. *Funding Restrictions*

For a FY, not more than five percent of the funds shall be made available to eligible producers with a refining capacity exceeding 150,000,000 gallons of Advanced Biofuel per year. In calculating whether a producer meets the 150,000,000 capacity, production of all Advanced Biofuel Biorefineries owned or operated by the producer will be totaled.

V. *Program Payment Provisions*

This section of the Notice identifies the process and procedures the Agency will use to make payments to Eligible Advanced Biofuel Producers.

As noted previously in this Notice, Form RD 9005-1, "Advanced Biofuel Payment Program Annual Application," will be used by Advanced Biofuels producers to apply for participation in this program. When a producer submits Form RD 9005-1, the Agency will make its determination as to whether or not the producer is eligible to participate. If an Advanced Biofuel Producer is determined to be ineligible, the Agency will notify the producer, in writing, of its determination.

If an Advanced Biofuel Producer is determined eligible to receive payments, the Eligible Advanced Biofuel Producer must then enter into a Contract with the Agency using Form RD 9005-2, "Advanced Biofuel Payment Program Contract," in order to participate in this program. The Agency will forward Form RD 9005-2 to the Advanced Biofuel Producer. 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. Each contract issued under this notice will be for FY 2010.

Once the Eligible Advanced Biofuel Producer has entered into a valid Contract with the Agency, the Advanced Biofuel Producer will be required to submit Form RD 9005-3, "Advanced Biofuel Payment Program—Payment Request," in order to receive payments under this 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.

(a) *Payment applications.* To request payments under this program, an Eligible Advanced Biofuel Producer must:

(1) Submit Form RD 9005-3, "Advanced Biofuel Program Payments Application," within 30 days after the end of each period in B (1) and (2);

(2) Certify that the request is accurate;

(3) Furnish the Agency such certification, and access to such records, as the Agency considers necessary to verify compliance with program provisions; and

(4) Provide documentation as requested by the Agency regarding the net production of Advanced Biofuel at

all Advanced Biofuel Biorefineries during FY 2010.

(b) *Additional documentation.* 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.

(c) *Notification.* The Agency will notify the Advanced Biofuel Producer, in writing, whenever the Agency determines that a Payment Application is ineligible and why the application was determined ineligible.

(d) *Payment provisions.* Determination of payments to Eligible Advanced Biofuel Producers will be made in accordance with the provisions of this paragraph. As stated previously, making these payments promotes the Agency's mission for promoting sustainable economic development in rural America and is an important part of achieving the Administration's goals for increased biofuel production and use by providing economic incentives for the production of advanced biofuels.

(1) *Determination of payment rate.* The Agency will establish payment rates for both Base and Incremental Production of Eligible Advanced Biofuels for both Smaller Producers and Larger Producers using the procedures specified in paragraphs (d)(1)(i) through (v). These rates will be applied to the actual quantity of Eligible Advanced Biofuel produced when making payments to Eligible Advanced Biofuel Producers, as described below.

(i) Based on the information provided in each eligible Form RD 9005-1, when applicable, the Agency will determine Base and Incremental Eligible Advanced Biofuel Production being projected for the FY for both Smaller Producers and Larger Producers. Thus, the Agency will determine the Base Production quantity for Smaller Producers, the Incremental Production quantity for Smaller Producers, the Base Production quantity for Larger Producers, and the Incremental Production quantity for Larger Producers.

(ii) If an applicant is blending its Advanced Biofuel using ineligible

feedstocks (e.g., fossil gasoline or methanol, corn kernel starch), only the quantity of Advanced Biofuel being produced from eligible feedstocks will be used in determining the payment rates and for which payments will be made.

(iii) For each combination of production type (base, incremental) and producer size (smaller, larger—over 150 million equivalent gallons of production), the Agency will convert the projected Base and Incremental Production determined to be eligible under paragraph (d)(1)(i) into British Thermal Unit (BTU) equivalent using factors published by the Energy Information Administration (or successor organization). If the Energy Information Administration (or successor organization) does not publish such conversion factor for a specific type of Advanced Biofuel, the Agency will establish and use a conversion formula as appropriate until such time as the Energy Information Administration (or successor organization) publishes a conversion factor for said Advanced Biofuel. The Agency will then calculate the total eligible BTUs across all eligible applications.

(iv) The Agency will determine the amount of program funds available to Smaller Producers and to Larger Producers in the FY.

(v) The Agency will then determine the Base Production and Incremental Production payment rates (\$/Btu) for Smaller Producers and for Larger Producers. For both Small Producers and Larger Producers, the Incremental Production payment rate will be 3 times higher than their respective Base Production payment rate. These rates will be calculated such that all of the funds allocated will be distributed in the FY.

(2) *Contract Value.* Using the payment rates established under paragraph (d)(1) and the projected Base and Incremental Production for each Advanced Biofuel Biorefinery, the Agency will calculate a value for each Eligible Advanced Biofuel Producer's Contract for FY 2010 using Equation 4:

$$CV_{2010} = (BPPR \times BP) + (IPPR \times IP) \quad (\text{Eq. 4})$$

Where:

CV_{2010} = Contract value for FY 2010

BPPR = Base Production payment rate, \$/million BTU

BP = projected eligible Base Production, million BTUs

IPPR = Incremental Production payment rate,

\$/million BTU

IP = projected eligible Incremental Production, million BTUs

(3) *Payment Amount.* Each eligible Advanced Biofuel Producer will be paid for the actual amount of BTUs produced

from Eligible Advanced Biofuels produced in FY 2010. Except as provided under paragraph (d)(4), the Agency will not pay a producer more than the Contract value established under paragraph (d)(2).

(4) *Remaining funds.* If available funds remain at the end of FY 2010 (e.g., due to underproduction of Eligible Advanced Biofuels), the Agency will carry the funds over to FY 2011.

(5) *Other payment provisions.* The following provisions apply.

(i) Advanced Biofuel Producers will be paid on the basis of the amount of Eligible Renewable Energy Content of the Advanced Biofuels only if the producer provides documentation sufficient, including a Certificate of Analysis, for the Agency to determine the Eligible Renewable Energy Content for which payment is being requested, and quantity produced through such documentation as, but not limited to, records of sale and calibrated flow meter records.

(ii) There shall only be one Eligible Advanced Biofuel Producer per Advanced Biofuel Biorefinery. If needed, the Agency may treat Advanced Biofuel Producers with common interests, common ownership, or common Advanced Biofuel Biorefineries or arrangements as the same Advanced Biofuel Producer.

(iii) Hydrous Ethanol that is upgraded by another distiller to anhydrous ethyl Alcohol is eligible for payment only once; that is, the Agency will make payment either to the Advanced Biofuel Producer of the hydrous ethanol or to the Advanced Biofuel Producer who distills the hydrous Ethanol to anhydrous ethyl Alcohol.

(iv) Subject to other provisions of this section, Advanced Biofuel Producers shall be paid any sum due for the payment period, subject to the requirements and refund provisions of this Notice.

(e) *Payment Adjustments.* The Agency will adjust the payment otherwise payable to an Advanced Biofuel Producer if there is a difference between the amount actually produced and the amount determined by the Agency to be eligible for payment.

(f) *Payment liability.* Any payment, or portion thereof, made under this program shall be made without regard to questions of title under State law and without regard to any claim or lien against the Advanced Biofuel, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government.

(g) *Verification.* The Agency reserves the right to verify all payment requests and subsequent payments made under this program, as frequently as necessary to ensure the integrity of the program. The Agency will conduct site visits to review producer records in order to verify information submitted in Forms RD 9005-1 and RD 9005-3.

(1) *Production and feedstock verification.* The Agency will review producer records that the type and amount of biofuel produced and the type and amount of feedstocks used.

(2) *Blending verification.* The Agency will review the producer's certificates of analysis and feedstock records to verify the portion of the advanced biofuel eligible for payment.

(3) *Certificate of Analysis.* The Agency will review the producer records to ensure that each certificate of analysis has been issued by a qualified, independent third party.

(h) *Refunds and interest payments.* An Eligible Advanced Biofuel Producer who receives payments under this program may be required to refund such payments as specified in this paragraph. If the Agency suspects fraudulent representation through its site visits and records inspections under paragraph (g) of this section, it will be referred to the Office of Inspector General for appropriate action.

(1) An Eligible Advanced Biofuel Producer receiving payments under this program shall become ineligible if the Agency determines the Advanced Biofuel Producer has:

(i) Made any fraudulent representation; or

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

(2) All payments made to an entity determined by the Agency to be ineligible shall 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 7 CFR 901.9.

(3) When a refund is due, it shall 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 shall be assessed on each refund in accordance with the provisions and rates established by the United States Treasury.

(i) Interest charged by the Agency under this Notice shall be established by the United States Treasury. Such interest shall accrue from the date such payments were made to the date of repayment.

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

(5) Any Advanced Biofuel Producer or person engaged in an act prohibited by this section and any Advanced Biofuel Producer or person receiving payment under this Notice shall be jointly and severally liable for any refund due under this Notice and for related charges.

VI. 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 a Contract 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 applicant will have appeal rights as specified in this Notice.

B. Administrative and National Policy Requirements

(1) *Review or appeal rights.* A person may seek a review of an Agency decision under this Notice from the appropriate Agency official that oversees the program in question or appeal to the National Appeals Division in accordance with 7 CFR part 11 of this title.

(2) *Remedies.* If the Agency has determined that a producer has misrepresented the information or defrauded the Government, the Agency will take one of the following steps in accordance to 7 CFR 3017, Government-wide Debarment and Suspension:

(i) Suspend payments on the Contract until the violation has been reconciled;

(ii) Terminate the Contract; or

(iii) Debarment to participate in any Federal Government program.

(3) *Records.* For the purpose of verifying compliance with the requirements of this Notice, each Eligible Advanced Biofuel Producer shall make available at one place at all reasonable times for examination by representatives of USDA, 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 three years from each payment date.

(4) *Succession and control of biorefineries and production.* An entity who becomes the Eligible Advanced Biofuel Producer for a Biorefinery that is under Contract under this Notice must request permission from the Agency to succeed to the program Contract and the Agency may grant such request if it is determined that the entity

is an eligible producer and permitting such succession would serve the purposes of the program. If appropriate, the Agency may require the consent of the previous Eligible Advanced Biofuel Producer to such succession.

Payments will be made only to an eligible Advanced Biofuel Producer with a valid Contract and for Biorefineries owned or controlled by said Producer. If payments are made to an Advanced Biofuel Producer for production at a Biorefinery no longer owned or controlled by said Producer or to an otherwise ineligible Advanced Biofuel Producer, the Agency will demand full refund of all such payments.

C. Environmental Review

All recipients under this Notice are subject to the requirements of subpart G of part 1940 of title 7 of the CFR. However, 7 CFR 1940.310(c)(1) excludes this activity. In accordance with § 1940.310(c)(1), General Exclusions, if a program provides assistance that is not related to the development of a specific site, it is excluded from conducting an environmental review. RD's compliance with the National Environmental Policy Act of 1969 (NEPA) is implemented in its regulations at 7 CFR 1940 subpart G. Applicants whose proposal involves additional facility construction should provide RD Form 1940-20 as part of this application. RD will then determine whether the approval falls under Section 1940.310(c)(1), which categorically excludes the action from NEPA compliance.

VII. Agency Contacts

Assistance. For assistance on this payment program, please contact a USDA Rural Development State Renewable Energy Coordinator, as provided in the Addresses section of this Notice.

VIII. 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 TDD). To file a complaint of discrimination, write to

USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC, 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

Dated: April 27, 2010.

Judith A. Canales,

Administrator, Rural Development, Business and Cooperative Programs.

[FR Doc. 2010-10247 Filed 5-5-10; 8:45 am]

BILLING CODE 3410-XY-P

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

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

AGENCY: Rural Business—Cooperative Service.

ACTION: Notice.

SUMMARY: This Notice announces the acceptance of applications for 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. Under this Notice, applications will be accepted for biorefineries that produce transportation fuels that meet the Renewable Fuel Standard or are currently undergoing an appeal to the U.S. Environmental Protection Agency for inclusion in the Renewable Fuel Standard, or that produce non-transportation renewable energy that results in a reduction in greenhouse gases.

DATES: Applications for participating in this program for Fiscal Year 2010 must be received between May 6, 2010 and July 20, 2010.

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 June 12, 2009, the Agency published a Notice of Funds Availability (NOFA) and Solicitation of Applications in the

Federal Register announcing general policy and application procedures for the Repowering Assistance Program (the Program). Congress appropriated mandatory budget authority of \$35 million over the life of the 2008 Farm Bill. However, in FY 2009, the program was allotted \$20 million. The Agency will now authorize up to \$8 million in additional budget authority for this program for fiscal year (FY) 2010.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA), the paperwork burden associated with this notice has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570-0058.

The PRA burden associated with the original Notice was approved by OMB, with an opportunity to comment on the burden associated with the program.

Biorefineries seeking funding under this program have to submit applications that include specified information, certifications, and agreements. All of the forms, information, certifications, and agreements required to apply for this program under this Notice have been authorized under OMB Control Number 0570-0058.

Overview Information

Federal Agency Name. Rural Business—Cooperative Service.

Payment Proposal Title. Repowering Assistance Program.

Announcement Type. Initial announcement.

OMB Control Number. 0570-0058.

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 2010 is May 6, 2010 through July 20, 2010.

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

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