

#### IV. Fiscal Year 2012 Application and Submission Information

A. *Address to request applications.* Annual Application, Contract, and Payment Request forms are available from the USDA, Rural Development State Office, Rural Development Energy Coordinator. The list of Rural Development Energy Coordinators is provided in the **SUPPLEMENTARY INFORMATION** section of this Notice.

B. *Content and form of submission.* The enrollment provisions, including application content and form of submission, are specified in 7 CFR 4288.120 and 4288.121.

##### C. *Submission dates and times.*

(1) *Enrollment.* Advanced biofuel producers who expect to produce eligible advanced biofuel at any time during Fiscal Year 2012 must have enrolled in the program by October 31, 2011, even if the producer has an existing contract with the Agency. Applications received after this date, regardless of their postmark, will not be considered by the Agency for Fiscal Year 2012 funds. Producers who participated in this Program in Fiscal Year 2009, Fiscal Year 2010, and/or Fiscal Year 2011 must have submitted a new application under this Notice to be considered for Fiscal Year 2012 funds.

(2) *Payment applications.* Advanced biofuel producers must submit Form RD 4288-3, "Advanced Biofuel Payment Program—Payment Request," for each of the four Federal fiscal quarters of Fiscal Year 2012. Each form must be submitted by 4:30 p.m. on January 31, 2012, for the first quarter; April 30, 2012, for the second quarter; July 31, 2012, for the third quarter; and October 31, 2012, for the fourth quarter. Neither complete nor incomplete payment applications received after such dates and times will be considered, regardless of the postmark on the application.

D. *Funding restrictions.* For Fiscal Year 2012, not more than 5 percent of the funds will be made available to eligible producers with a refining capacity (as determined for the prior fiscal year) exceeding 150,000,000 gallons of a liquid advanced biofuel per year or exceeding 15,900,000 million British Thermal Units of biogas and solid advanced biofuel per year. (In calculating whether a producer meets either of these capacities, production of all advanced biofuel facilities in which the producer has 50 percent or more ownership will be totaled.) The remaining funds will be made available to all other producers.

E. *Payment provisions.* Fiscal Year 2012 payments will be made according

to the provisions specified in 7 CFR 4288.130 through 4288.137.

#### V. Administration Information

A. *Notice of eligibility.* The provisions of 7 CFR 4288.112 apply to this Notice. These provisions include notifying an applicant determined to be eligible for participation and assigning such applicant a Contract number and notifying an applicant determined to be ineligible, including the reason(s) the applicant was rejected and providing such applicant appeal rights as specified in 7 CFR 4288.103.

B. *Administrative and National Policy requirements.*

(1) *Review or appeal rights.* A person may seek a review of an adverse agency decision or appeal to the National Appeals Division as provided in 7 CFR 4288.103.

(2) *Compliance with other laws and regulations.* The provisions of 7 CFR 4288.104 apply to this Notice, which includes requiring advanced biofuel producers to be in compliance with other applicable Federal, State, and local laws.

(3) *Oversight and monitoring.* The provisions of 7 CFR 4288.105 apply to this Notice, which includes the right of the Agency to verify all payment applications and subsequent payments and the requirement that each eligible advanced biofuel producer 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 are within the control of such advanced biofuel producer for not less than three years from each Program payment date.

(4) *Exception authority.* The provisions of 7 CFR 4288.107 apply to this Notice.

C. *Environmental review.* Rural Development's compliance with the National Environmental Policy Act of 1969 (NEPA) is implemented in its regulations at 7 CFR part 1940, subpart G. The Agency has reviewed the circumstances under which financial assistance may be provided under this Program and has determined that proposals that do not involve additional facility construction fall within the categorical exclusion from NEPA reviews provided for in 7 CFR 1940.310(c)(1). Applicants whose proposal involves additional facility construction should provide Form RD 1940-20, "Request for Environmental Information," as part of their application. Rural Development will then determine whether the proposal is

categorically excluded under 7 CFR 1940.310(c)(1) or whether additional actions are necessary to comply with 7 CFR part 1940, subpart G.

#### VI. Agency Contacts

For assistance on this payment program, please contact a USDA Rural Development Energy Coordinator, as provided in the **SUPPLEMENTARY INFORMATION** section of this Notice, or Diane Berger, USDA Rural Development, 1400 Independence Avenue SW., Room 6865, STOP 3225, Washington, DC 20250. Telephone: (202) 260-1508. Fax: (202) 720-2213. Email: [diane.berger@wdc.usda.gov](mailto:diane.berger@wdc.usda.gov).

#### VII. Nondiscrimination 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 program. (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 Adjudication and Compliance, 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, employer, and lender.

Dated: January 27, 2012.

**Judith A. Canales,**

*Administrator, Rural Business-Cooperative Service.*

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**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 and Rural Utilities Service, USDA.

**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. To be eligible for payments, biorefineries must have been in existence on or before June 18, 2008. The Notice announces the availability of approximately \$25 million to make payments to eligible biorefineries in Fiscal Year 2012, which includes carry-over funds from Fiscal Year 2011.

**DATES:** Applications for participating in this program for Fiscal Year 2012 will be accepted from February 2, 2012 through June 1, 2012. Applications received after June 1, 2012, regardless of their postmark, will not be considered for Fiscal Year 2012 payments. If the actual deadline falls on a weekend or a federally-observed holiday, the deadline is the next Federal business day.

**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.

Submit applications to 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 Fred Petok, USDA, Rural Development, Business Programs Energy Division, 1400 Independence Avenue SW., Room 6870, STOP 3225, Washington, DC 20250-3225. Telephone: (202) 720-1400. Email: [frederick.petok@wdc.usda.gov](mailto:frederick.petok@wdc.usda.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with the Section 9004 Repowering Assistance Payments to Eligible Biorefineries program, as covered in this Notice, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570-0058.

##### **Overview**

*Federal Agency Name:* Rural Business-Cooperative Service (an agency of the United States Department of Agriculture in the Rural Development mission area).

*Payment Proposal Title:* Repowering Assistance Program.

*Announcement Type:* Initial announcement.

*Catalog of Federal Domestic Assistance Number.* The CFDA number for this Notice is 10.866.

*Dates:* The Repowering Assistance Program application period for Fiscal Year 2012 is February 2, 2012 to June 1, 2012.

*Availability of Notice and Rule.* This Notice and the interim rule for the Repowering Assistance Program are available on the USDA Rural Development Web site at [http://www.rurdev.usda.gov/BCP\\_RepoweringAssistance.html](http://www.rurdev.usda.gov/BCP_RepoweringAssistance.html).

#### **I. Funding Opportunity Description**

*A. Purpose of the Program.* The purpose of this program is to provide financial incentives to biorefineries in existence on or before 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.

*B. Statutory Authority.* This program is authorized under 7 U.S.C. 8104.

*C. Definition of Terms.* The definitions applicable to this Notice are published at 7 CFR 4288.2.

#### **II. Award Information**

*A. Available funds.* The Agency is authorizing approximately \$25 million for this program in Fiscal Year 2012, in addition to any carry-over funds from Fiscal Year 2011.

*B. Number of payments.* The number of payments will depend on the number of participating biorefineries.

*C. Amount of payments.* The Agency will determine the amount of payments to be made to a biorefinery by taking into consideration the percentage reduction in fossil fuel used by the biorefinery (including the quantity of fossil fuels a renewable biomass system is replacing) and the cost and cost-effectiveness of the renewable biomass system.

*D. Payment limitations.* There is no minimum payment amount that an individual biorefinery can receive. The maximum amount an individual biorefinery can receive under this Notice is 50 percent of total eligible project costs up to a maximum of \$10 million.

*E. Project costs.* Eligible project costs will be only for project related construction costs for repowering improvements associated with the equipment, installation, engineering, design, site plans, associated professional fees, permits and financing fees. Any project costs incurred by the

applicant prior to application for payment assistance under this Notice will be ineligible for payment assistance.

*F. Type of instrument.* Payment agreement.

#### **III. Eligibility Information**

*A. Eligible applicants.* Program requirements are found in 7 CFR 4288.10 published in the **Federal Register** on February 11, 2011. To be eligible for this program, an applicant must be a biorefinery that has been in existence on or before June 18, 2008, and will utilize renewable biomass for replacement fuel.

*B. Ineligible projects.* A project is not eligible under this Notice if it is using feedstocks for repowering that are feed grain commodities that received benefits under Title I of the Food, Conservation, and Energy Act of 2008.

#### **IV. Multiple Submissions**

Corporations and entities with more than one biorefinery can submit an application for only one of their biorefineries. However, if a corporation or entity has multiple biorefineries located at the same location, the entity may submit an application that covers such biorefineries provided the heat and power used in the multiple biorefineries are centrally produced.

#### **V. Scoring Advice**

*A. Cost Effectiveness.* To be credible and meet the minimum scoring criteria, the project must have a simple payback period of no more than 10 years (*i.e.*, must be awarded at least 5 points for cost-effectiveness under 7 CFR 4288.21(b)(1)).

*B. Percentage of reduction of fossil fuel use.* To be credible and meet the minimum scoring criteria, the applicant must demonstrate that the repowering project has an anticipated annual reduction in fossil fuel use of at least 40 percent (*i.e.*, the application must be awarded at least 5 points for percentage of reduction of fossil fuel use under 7 CFR 4288.21(b)(2)).

#### **VI. Project Financing**

The applicant must demonstrate that it has sufficient funds or has obtained commitments for sufficient funds to complete the repowering project taking into account the amount of the payment request in the application.

#### **VII. Fiscal Year 2012 Application and Submission Information**

*A. To request applications.* Application materials, including application forms, regulations, instructions, and other materials related

to this program, are available from the USDA Rural Development State Office, Renewable Energy Coordinator and the USDA Rural Development Web site at [http://www.rurdev.usda.gov/BCP\\_RepoweringAssistance.html](http://www.rurdev.usda.gov/BCP_RepoweringAssistance.html).

[http://www.rurdev.usda.gov/BCP\\_ReapLoans.html](http://www.rurdev.usda.gov/BCP_ReapLoans.html).

**B. Content and form of submission.**

Applicants must submit a signed original and one copy of an application containing all the information specified in 7 CFR 4288.20(b) and (c).

**C. Submission dates and times.**

Applications to participate in this program for Fiscal Year 2012 must be submitted between February 2, 2012 and June 1, 2012. Applications received after 4:30 p.m. June 1, 2012, regardless of their postmark, will not be considered by the Agency for Fiscal Year 2012 payments.

**D. Payment provisions.** Fiscal Year 2012 payments will be made according to the provisions specified in 7 CFR 4288.13(b) and (c) and in 7 CFR 4288.24.

**VIII. Application Review and Selection Information**

The Agency will evaluate projects based on the cost, cost-effectiveness, and capacity of projects to reduce fossil fuels. The cost of the project will be taken into consideration in the context of each project's ability to economically produce energy from renewable biomass to replace its dependence on fossil fuels. Projects with higher costs that are less efficient will not score well. The scoring criteria are designed to evaluate projects on simple payback as well as the percentage of fossil fuel reduction.

**A. Review.** The Agency will review applications submitted under this Notice in accordance with 7 CFR 4288.21(a).

**B. Scoring.** The Agency will score applications submitted under this Notice in accordance with 7 CFR 4288.21(b).

**C. Ranking and selecting applications.** All scored applications will be ranked by the Agency as soon after June 1, 2012 as possible. The Agency will consider the score an application has received compared to the scores of other applications in the priority list, with higher scoring applications receiving first consideration for payments. Using the application scoring criteria point values specified in 7 CFR 4288.21, the Agency will select applications for payments.

**D. Availability of funds.** As applications are funded, if insufficient funds remain to pay the next highest scoring application, the Agency may elect to pay a lower scoring application.

Before this occurs, the Agency will provide the applicant of the higher scoring application the opportunity to reduce the amount of its payment request to the amount of funds available. If the applicant agrees to lower its payment request, it must certify that the purposes of the project can be met, and the Agency must determine the project is feasible at the lower amount.

**IX. Administration Information**

**A. Notice of eligibility.** The provisions of 7 CFR 4288.23 apply to this Notice. These provisions include notifying an applicant determined to be eligible for participation and notifying an applicant determined to be ineligible, including their application score and ranking and the score necessary to qualify for payments.

**B. Administrative and National Policy requirements.**

(1) **Review or appeal rights.** A person may seek a review of an agency adverse decision or appeal to the National Appeals Division as provided in 7 CFR 4288.3.

(2) **Compliance with other laws and regulations.** The provisions of 7 CFR 4288.4 apply to this Notice, which includes requiring participating biorefineries to be in compliance with other applicable Federal, State, and local laws.

(3) **Oversight and monitoring.** The provisions of 7 CFR 4288.5(a) and (b) apply to this Notice, which includes the right of the Agency to verify all payment applications and subsequent payments and the requirement that each biorefinery must make available, at one place at all reasonable times for examination by the Agency, all books, documents, papers, receipts, payroll records, and bills of sale adequate to identify the purposes for which, and the manner in which, funds were expended for all eligible project costs for a period of not less than 3 years from the final payment date.

(4) **Reporting.** Upon completion of the repowering project funded under this Notice, the biorefinery must submit a report, in accordance with 7 CFR 4288.5(c), to the Agency annually for the first 3 years after completion of the project. The reports are to be submitted as of October 1 of each year.

(5) **Exception authority.** The provisions of 7 CFR 4288.7 apply to this Notice.

(6) **Succession and control of facilities and production.** The provisions of 7 CFR 4288.25 apply to this Notice.

**C. Environmental review.** All recipients under this Notice are subject

to the requirements of 7 CFR Part 1940, subpart G.

**X. Agency Contacts**

For further information about this Notice, please contact Fred Petok, USDA, Rural Development, Business Programs Energy Division, 1400 Independence Avenue SW., Room 6870, STOP 3225, Washington, DC 20250-3225. Telephone: (202) 720-1400. Email: [frederick.petok@wdc.usda.gov](mailto:frederick.petok@wdc.usda.gov).

**XI. Nondiscrimination Statement**

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Dated: January 23, 2012.

**Judith A. Canales,**

*Administrator, Rural Business-Cooperative Service.*

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**DEPARTMENT OF COMMERCE**

[Docket No. 110906558-1551-01]

**Privacy Act of 1974; System of Records**

**AGENCY:** Office of Inspector General (OIG), Department of Commerce (DOC).

**ACTION:** Notice of Proposed Amendment to Privacy Act System of Records, "Investigative and Inspection Records—COMMERCE/DEPT-12."

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4) and (11), and Office of Management and Budget (OMB) Circular A-130, Appendix I, "Federal Agency Responsibility for Maintaining Records about Individuals," DOC OIG