



June 15, 2010

Section 9004 Repowering Assistance Proposed Rule Making
(Document ID RBS-10-BUSINESS-0008-0001)

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Part 4288

RIN 0570-AA74

**Repowering Assistance Payments to
Eligible Biorefineries**

AGENCY: Rural Business-Cooperative
Service, USDA.

ACTION: Proposed rule.

Comments of Biotechnology Industry Organization:
United States Department of Agriculture
Repowering Assistance Program

Submitted by:

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Introduction

The Biotechnology Industry Organization (“BIO”) would like to thank the United States Department of Agriculture (“USDA”) for its support of biorefineries and the many uses of renewable biomass and the opportunity to provide comments on the Section 9004 Repowering Assistance Program proposed rule as issued.

BIO is the world's largest biotechnology organization, providing advocacy, business development and communications services for more than 1,200 members worldwide. In our Industrial and Environmental Section our member companies represent the entire value chain of biofuels and biobased products from dedicated energy crop and other feedstock producers, enzyme companies, commercial scale integrated biorefinery developers and large chemical, energy and oil companies.

BIO supports the USDA Repowering Assistance Program goal of encouraging the use of renewable biomass as a replacement fuel source for fossil fuels used to provide process heat or power in the operation of biorefineries. However, we would like to stress that restricting financial incentives to biorefineries in existence on June 18, 2008 severely limits the potential for new biorefinery facilities to contribute to the program goal. While we realize that the department is bound by the parameters of the law, we would like to highlight the ability for much greater impact if post-2008 biorefineries producing advanced biofuels and biobased products were eligible. Also, advanced biofuels produced at modern biorefineries have the distinct duty of meeting another Congressional goal, producing 21 billion gallons of the Renewable Fuel Standard (“RFS”) passed as part of the Energy Independence and Security Act of 2007 (“EISA”) and therefore, supporting these facilities is of great import.

BIO looks forward to working with USDA to ensure this and other biorefinery related programs at the agency work efficiently to support the advanced biofuels and other biobased products industries. Below are BIO’s comments on issues of interest contained in the proposed rule for the Repowering Assistance Program, established in §9004 of the Food, Conservation, and Energy Act of 2008.

Eligibility

As stated above, this program excludes future advanced biofuels and biobased products facilities which hold great promise in achieving the program, Congressional and USDA goal of incentivizing the replacement of fossil fuels used to produce heat or power due to the statutory eligibility requirement that the incentives can only be awarded to biorefineries in existence on June 18, 2008. BIO recommends that USDA use a broad definition of “in existence” when evaluating the eligibility of a biorefinery so that the maximum numbers of facilities qualify.

In addition, BIO strongly disagrees with USDA’s proposal to evaluate the scoring and point value of projects based on whether the biorefinery primarily produces liquid transportation fuels. We also caution USDA against implementing a sole use requirement for biorefinery eligibility. The future biorefinery will likely develop much like the typical oil refinery of today. In other words, one feedstock will be utilized to produce several products at one facility. In the case of a biorefinery, renewable biomass will be the feedstock and multiple biofuels, biobased products and specialty renewable chemicals could be produced at the same plant or industrial facility. USDA should encourage the concept of industrial ecology and collocation of diverse product manufacturing units.

While there are significant benefits to incentivizing biopower at biorefineries in existence on June 18, 2008, there are equal if not greater benefits to opening eligibility to new, more efficient technologies as well. Allowing this incentive to only be available to facilities in existence before June 2008 gives an advantage to existing technologies and biorefineries over new technologies and facilities, thereby threatening to stifle innovation in commercialization of biotechnologies such as advanced biofuels, biobased products and renewable specialty chemicals that will be produced collectively at modern biorefineries. Incentivizing conventional technologies over advanced technologies in this manner will have significant effects on other programs such as renewable and low carbon fuel standards by giving these technologies an incentive to

improve their lifecycle greenhouse gas (“GHG”) emission reductions while not providing the same incentives to advanced technologies to do the same.

Recommendation: BIO requests that USDA uses a broad definition of “in existence” when evaluating the eligibility of a biorefinery so that the maximum numbers of facilities qualify. In addition, biorefineries that use energy efficient and cost effective business models like producing multiple bioproducts at one facility should not be disadvantaged.

Energy Integration

BIO would like USDA to clarify that energy integration synergies from co-locating an advanced biorefinery with an existing starch-based plant will qualify for this program in the final rulemaking. This is another way BIO member companies intend to participate in improving the economic viability and environmental sustainability of biofuel production facilities. Certain technologies for production of cellulosic biofuels will have substantial excess steam energy available for co-located users. When an advanced biorefinery is therefore co-located with an existing corn ethanol plant, it has the opportunity to reduce the natural gas requirement for the corn plant and allow it to qualify for this program. BIO companies’ technologies will help existing biorefineries to qualify for this program.

Recommendation: USDA should clarify that energy integration synergies from co-locating an advanced biorefinery with an existing starch-based plant will qualify for this program in the final rulemaking.

Production in Non-Rural Areas

USDA is seeking comment on whether eligibility for this program should be limited to facilities located in rural areas. While we recognize the importance for USDA to increase economic opportunity and improve the quality of life in rural communities, we caution against defining “Rural Area” with too much restriction, potentially disqualifying ideal sites for biorefineries that would, in fact, meet the program goals and increase economic opportunity in rural communities, but may be located in areas that do not fit the program definition. USDA’s proposed definition of Rural Area per the proposed rule:

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.

For a biorefinery, the cost of feedstock can typically represent 80% of the total cost of finished product. As a general rule, a majority of the feedstock will inherently come from the rural community, and be produced/collected/harvested by a local labor force. Similarly construction and operation workforces will be predominantly local. The rural economic development potential resulting from a biorefinery is substantial. One advantage of advanced biofuels is that they can be produced all over the country utilizing a variety of feedstocks. Projects should not be evaluated negatively on one the advanced biofuels industry’s greatest assets, flexibility. Offering eligibility to facilities in non-rural communities is critical to the success of the program goals and the advanced biofuels industry. Restricting the location of these facilities is not necessary to maintain the spirit of enhancing rural development and the geographic diversity of advanced biofuels production. More flexibility of site selection, not less, should be installed in these programs.

Further, having a consistent, cost competitive regional supply of feedstock is key to the success of any project. Non rural plants that use agricultural feedstocks will most certainly rely on the surrounding rural communities to produce, harvest, store, and handle feedstock needs. With feedstock cost representing the largest operational

cost of a biorefinery, this in turn means that most of what the plant spends goes to the rural community in paying for that feedstock. This should demonstrate that the biorefinery does not need to be in a rural area to fulfill program goals. Excluding plants that are not in rural areas denies the supporting rural community significant opportunity.

Recommendation: BIO strongly recommends USDA not impose location restrictions on placement of eligible biorefineries.

Citizenship of Applicant

The citizenship status of the applicant should not be an eligibility requirement of a facility as it has no effect on the program goal of replacing fossil fuels with energy derived from renewable biomass for the operation of biorefineries. As stated above, the rural economic development potential resulting from the local construction and operation of a biorefinery is substantial and these facilities use local feedstocks and employ U.S. workers. Therefore, the ability for a biorefinery to provide substantial local economic development opportunities is directly related to the location of the facility, not the citizenship of the owner.

Illustratively, the U.S. clean tech sector will need \$10 trillion of capital in the next ten years if we expect to reach climate change goals.¹ Currently in the U.S., this sector struggles to shift from research and development to large-scale deployment in an uncertain economic and regulatory environment. Private equity investors readily recognize the investment risk of bringing these technologies across the commercialization gap. Many U.S. private equity investors are simply unwilling to take on the burden of helping green tech companies to cross into full-scale commercialization, what they call the “Valley of Death,” without the same regulatory certainty that exists today in China and Europe.

U.S. equity investment incentives, already limited in scope by government programs, are cut down further by a 10% reduction in the capital costs of new technology deployed on foreign soil i.e. the Middle East, China, Malaysia. In addition, as technology deployment costs are lower overseas, foreign governments have gone far and beyond U.S. government commitments to clean technology. The China Development Bank has allocated \$11.7 Billion for solar production alone over the next ten years – with regulatory certainty in place for the next ten years. These are the competitive realities of the clean tech sector on a global scale.

U.S. government grants, loans, and loan guarantees are a large piece of incentivizing private financing for large-scale commercial projects. This incentive is diminished by §4279.227 (a) (2) requiring at least 51 percent domestic ownership. It presents the green business world with a conundrum. We need government grants, loans and loan guarantees to attract investors who understand green investment. The investors who understand a green investment framework are often foreign where the clean tech investment framework is readily understood. Yet the U.S. loan guarantees put a 51 percent limitation on foreign investment. In the age of a global economy, this citizenship requirement is impractical and ineffective. It inhibits the purpose of the program to incentivize private equity investment in the sector.

Finally, as a regulatory matter, a 51 percent determination of domestic investors is untenable. An investor’s domicile often cannot be discerned as foreign or domestic. A successful, ready to scale biochemical company is usually funded by a number of sources, both foreign and domestic, often made up of venture funds with investment from around the world, funds of funds, and independent investors alike. To discern whether or not the fund that owns a fund, that is invested in a particular portfolio company has 51% U.S. ownership, is not only impractical, it is impossible.

¹ Green Private Equity Conference Panel, June 1, 2010 The Goldman Sachs Center for Environmental Markets The Goldman Sachs Center for Environmental Markets, The Harvard Business School Green Business Alumni Association, The HBS Green Business Alumni Association

As green tech companies struggle to find funding from U.S. and foreign investors alike, the U.S. government clings to an outmoded policy that limits the substantial investment incentives of grants, loans and loan guarantees that will bring the U.S. green economy to scale. We ask that the USDA remove the 51 percent domestic ownership limitation from this program.

Recommendation: The USDA should eliminate the 51% U.S. citizen ownership requirement in this program.

Qualification of Retrofit Projects

BIO requests that USDA clarify that projects that retrofit biorefineries in existence prior to June 18, 2008 with additional equipment are eligible for this program provided the heat and power are centrally produced.

Conclusion

In conclusion, BIO commends USDA for streamlining and accelerating programs such as the Repowering Assistance Program to assist in the commercialization of fuels and other products produced at biorefineries. We thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Brent Erickson". The signature is fluid and cursive, with a prominent flourish at the end.

Brent Erickson
Executive Vice President
Industrial and Environmental Section
Biotechnology Industry Organization