Biofuel Producer Program

Frequently Asked Questions (FAQs)

February 2022

Document Notes

We updated this document on February 2, 2022. Use the Adobe bookmarks in the left panel to view the FAQ categories and find the recently added FAQs.

Applicant Eligibility

Q. Line 12 of the application: What is considered an affiliated entity?

A. From our updated definition from the OneRD Guaranteed Loan Programs, Affiliate means a person where one of the following circumstances exists:

(1) The person controls or has the power to control another person, or a third party or parties' controls or has the power to control both. Factors such as ownership, management, current and previous relationships with or ties to another person, and contractual relationships, shall be considered in determining whether affiliation exists. It does not matter whether control is actually exercised, so long as the power to control exists. Entities owned and controlled by Indian Tribes, Alaskan Native Corporations (ANCs), Native Hawaiian Organizations (NHOs), Community Development Corporations (CDCs), or wholly owned entities of Indian Tribes, ANCs, NHOs, or CDCs, are not considered to be affiliated with other entities owned by these entities solely because of their common ownership or common management.

(2) There is a family relationship and identical or substantially identical business or economic interests amongst persons (such as where the immediate family operate entities in the same or similar industry in the same geographic area); however, a person may rebut such determination with evidence showing that the business or economic interests are not identical or substantially identical.

Q. If we own multiple production facilities under a holding company, but only the subsidiaries are registered with SAM.gov, does the holding company require a SAM.gov account for these funds?

A. The **Notice of Funding Opportunity,** NOFO, requires the applicant to have an active registration in SAM.

Q. In 2020 the facility operated at increased production capacity over the 2019. In 2020 the facility did not operate for 2 months due to market conditions. Overall, 2020 demonstrated increased gallons of ethanol over 2019. How can we request assistance?

A. There are two ways applicants can qualify. First is decreased production in calendar year 2020 relative to 2019. The second is production that was required to meet contractual commitments that resulted in gross profit loss. The gross profit loss may be for a period of time in 2020, say for example April – May, the facility continued to produce to meet contractual commitments and the production resulted in a gross profit loss.

Q. What is considered control for ownership purposes - is it only one hundred percent wholly owned subsidiaries? What about partial ownership percentages?

A. The NOFO states: "Eligible producers that are owned or controlled by an entity that owns or controls multiple eligible producers are not eligible applicants - in such cases, the entity that owns or controls multiple eligible producers may be an eligible applicant." Any amount of ownership that enables control.

Q. What if you have multiple entities and own slightly over 50% of another facility - what do you do with the facility with partial ownership? Does it get grouped with the other wholly owned facilities or is it reported separately?

A. The NOFO states that "Eligible producers that are owned or controlled by ….an entity that owns or controls multiple eligible producers are not eligible applicants - in such cases, the …. entity that owns or controls multiple eligible producers may be an eligible applicant." Over 50% ownership is clearly control.

Q. If I have a joint venture, in which my ownership is less than controlling, my assumption is I do not pick up volumes from this joint venture. Agree?

A. The NOFO states that "Eligible producers that are owned or controlled by an entity that owns or controls multiple eligible producers are not eligible applicants - in such cases, the…. entity that owns or controls multiple eligible producers may be an eligible applicant."

Q. We made contract commitments throughout 2020. If we lost on any of these contracts, does that count, or only if they were in place before going into 2020?

A. Producers applying for assistance based on production for contractual commitments that resulted in a gross profit loss need to furnish contracts sufficient to demonstrate that it was necessary for the facility to produce for the period that assistance is based. The contracts are used to demonstrate the need to continue to produce. The operating statement will need to demonstrate the gross profit loss.

Q. If you have a separate owner and controlling entity, does the controlling entity apply?

A. The NOFO states that "Eligible producers that are owned or controlled by an entity that owns or controls multiple eligible producers are not eligible applicant - in such cases, the entity that owns or controls multiple eligible producers may be an eligible applicant."

Q. Federal Register states that producers must be a BQ9000 facility. Surely that is not accurate, as it has not been a requirement in any past programs?

A. Under the Application and Submission Information (D.) of the NOFO, it states that that Biodiesel, Biomass-based diesel, and hydrocarbons derived from biomass type applicants must provide a copy of the BQ-9000 certification. There are other types of biofuel that are eligible to participate that will not have the BQ-9000 certification. Report only eligible biofuel.

Q. Are all producers required to be BQ9000 companies?

A. Eligible applicants need to be producers of biofuel that goes into the transportation industry, it is not limited to biodiesel.

Q. What if your plant started in 2019, but normal operating in 2020 would have been much higher after initial startup?

A. In this scenario, to be eligible for assistance, an applicant would need to demonstrate that production was necessary to meet contractual commitments that resulted in a gross profit loss.

Q. Who would be the applicant if a group of entities were owned by a parent entity in 2020, but then subsequently sold to an entirely new parent entity in 2021? The original owner or the subsequent owner?

A. An eligible applicant must be an eligible producer or the owner of an eligible producer. An eligible producer is defined in the NOFO as "a legal entity that produces an eligible biofuel." A producer who produced (past tense) but was dissolved, would not be considered an eligible biofuel producer. The new owner did not have decreased production from 2020 vs 2019 nor did they have a contractual commitment to produce that resulted in a gross profit loss so the new owner will not be eligible either. If the new owner took over in 2019 or 2020 and suffered some loss (gallons or $), the new owner would report the 2019 and 2020 production of the facilities.

Q. If a producing entity is owned by multiple other producing entities and none of those own greater than 50%. Who is the applicant?

A. Eligible producers that are owned or controlled by an entity that owns or controls multiple eligible producers, are not eligible applicants - in such cases, the entity that owns or controls multiple eligible producers may be an eligible applicant. If the ownership is diluted and there is not a controlling interest, the producing entity would apply as an independent producer.

Q. So, producers who sell fuel to be used for heating are not eligible for this program?

A. Only fuel sold into the transportation industry is eligible for assistance.

Q. Our plant completed an expansion towards the middle of 2019 that doubled our capacity as a biofuel producer. Obviously once this expansion was completed the total output produced and sold doubled as well. When Covid hit in 2020 we did have to dramatically reduce our output and experienced serious financial pain. However, because of our increased capacity the total gallons don't look like an actual decrease year over year, based purely on total gallons and it is a similar situation with our financial impact. We are wondering if it is possible to qualify for funds from this program if we tell that story, and are able to explain the situation we experienced, or if it is a bright line test and if our total gallons are not less than the previous year, there is no way we can qualify, even though our run rate as a percentage of capacity was significantly lower in 2020 compared to 2019?

A. There are two ways applicants can qualify. First is decreased production in calendar year 2020, relative to 2019. The second is production that was required to meet contractual commitments that resulted in gross profit loss. The gross profit loss may be for a period of time in 2020, say for example April – May, the facility continued to produce to meet contractual commitments and the production resulted in a gross profit loss.

Q. I appreciate the link. The form however seems to have a very simple calculation that simply compares 2019 gallons to 2020 gallons. Does this mean that no matter the reason or particulars if your production in 2020 is higher than 2019 you are not eligible? We are unable to use a calculation that shows our reduction in run rate as a percentage of capacity to qualify. We experienced the same pain as other biofuel producers, but had the unfortunate timing of bringing a large expansion online in 2019 not knowing that we would be experiencing the disruption that occurred in 2020, due to the pandemic.

A. There are two ways applicants can qualify. First is decreased production in calendar year 2020 relative to 2019. The second is production that was required to meet contractual commitments that resulted in gross profit loss. The gross profit loss may be for a period of time in 2020, say for example April – May, the facility continued to produce to meet contractual commitments and the production resulted in a gross profit loss.

Q. What if an owner owns multiple entities that produce biofuels, but only one of the entities is applying? In this instance, is the applicant always the owner?

A. Eligible producers that are owned or controlled by an entity that owns or controls multiple eligible producers are not eligible applicants - in such cases, the entity that owns or controls multiple eligible producers may be an eligible applicant. The applicant is required to include information on all facilities.

Q. Biofuel producer seems to indicate the program is for mills and factories; is there a segment or is there one coming that will support and promote new ag growers who are producing new vegetable oil sources like oil palm that can be grown on the available million acres of underutilized land in Hawaii which has NO vegetable source for biofuel!? I would also point out that Hawaii had the highest unemployment at Covid peak and is in need of sustainable jobs and industries in an economy dependent on tourism and DoD funding as main economic drivers.

A. This program is specific to biofuel producers, please check the usda.gov website for future opportunities.

Q. If a producer (or more than one) is in the US and is owned by a US holding company, but that holding company itself is owned by a foreign company, is the US producer and its holding company eligible?

A. The NOFO states that "Eligible producers that are owned or controlled by an entity that owns or controls multiple eligible producer are not eligible applicants - in such cases, the entity that owns or controls multiple eligible producers may be an eligible applicant." " If the applicant is an entity, the applicant must be at least 51% owned by persons who are either citizens or nationals."

Q. If a facility is owned all of 2019 but was sold in Q2 of 2020 is the facility eligible for any production loss on a quarterly or monthly basis?

A. The applicant would need to be eligible, and the application would need to contain documentation to support production for contractual commitments that resulted in a gross profit loss.

Q. If there is an entity who owns more than 50% of the shares of a biofuel producer, does the owning company have to do the application?

A. The NOFO states that "Eligible producers that are owned or controlled by an entity that owns or controls multiple eligible producer are not eligible applicants - in such cases, the entity that owns or controls multiple eligible producers may be an eligible applicant."

Q. We have 4 ethanol plants that we operate, and we have a holding company that has ownership in these plants. Three of the plants are 100% owned by the holding company, and the other is 55% owned by the holding company. Should we be submitting one application for the holding company, or should we file two separate applications; one for the holding company and one for the plant that has outside ownership as well?

A. If the holding company is the owner of 3 facilities and also owns controlling interest in a 4th facility, the holding company should be the applicant and include all 4 facilities in their application.

Q. We sold two facilities in 2020. How should we handle the 2019-2020 comparison?

A. Applicants must file program applications under their current ownership structure. Facilities that are no longer owned are not eligible for assistance.

Q. We sold two facilities in 2021, even though they are sold, do we still include them on the 2019 vs 2020 analysis? Will we get benefit of their margin loss or loss of production?

A. Applicants must file program applications under their current ownership structure. Facilities that are no longer owned are not eligible for assistance.

Q. We have a plant that was under different ownership prior to July 2021. Who would need to apply for the assistance the previous owners or the new owners?

A. Under the Biofuel Producer Program, an eligible applicant must be an eligible producer or the owner of an eligible producer. An eligible producer is defined in the Notice of Funding Opportunity as "a legal entity that produces an eligible biofuel." The purpose of the program is to maintain a viable and significant biofuels market for agricultural producers that supply agricultural commodities to biofuel producers. A producer who produced (past tense) but was dissolved or divested of the production facility would not be considered an eligible biofuel producer. (Payment to entities who no longer produce biofuel would not meet the purpose of the program.) The program is authorized to make payments to eligible biofuel producers for unexpected market losses. The current owner will need to demonstrate that they had decreased production in 2020 compared to 2019 or that they had a contractual commitment to produce that resulted in a gross profit loss in 2020 or a part of 2020. Unfortunately, if the current owner took ownership in 2021, they would not be able to demonstrate that they suffered unexpected market losses in 2020, and will not be eligible.

New Applicant Eligibility (February 2, 2022)

Q. A parent entity owns 2 biofuel producers (two separate entities) that meet the definition of an eligible biofuel producer. The immediate ownership of the biofuel production facilities (the organizational structure of the biofuel producers) has not changed but the parent entity has undergone some organizational changes. Can the parent entity file for assistance on behalf of the 2 biofuel producers?

A. Provided the organizational structure of the 2 biofuel producers remains the same as it was during the period of the loss, the parent entity could file for assistance on behalf of the 2 biofuel producers. The application will need to contain supporting narrative.

Q. Who would be the applicant if a group of biofuel producers (separate entities) were owned by a parent entity in 2020, but then subsequently sold to a entirely new parent entity in 2021? The original owner or the subsequent owner?

A. **This is further clarification to a previous response contained in FAQ #1.** If the organizational structure of the biofuel producers remained the same, only the parent entity changed, the new parent entity could be eligible to apply on behalf of the biofuel producers. The application will need to provide a supporting narrative that explains the circumstances.

Q. Our organization is a U.S. publicly traded company, and we have no way to answer the U.S. citizenship questions. How do we handle it?

A. Please leave that section blank and provide a supporting documentation statement, including where the company stock is traded.

Application Development

Q. Are wages for production employees a fixed or variable cost? This was asked in the prepared questions and was not answered.

A. Fixed costs are costs that exist regardless of the production amount. Variable costs are costs that vary with the level of production. Wages for production employees are most frequently classified as variable costs and costs associated with salaried labor most frequently classified as fixed costs.

Q. Regarding the requirement of documentation of the most recent Renewable Identification Number (RIN) for a typical gallon of each type of Biofuel Produced, does this mean an RIN dated when we submit the application?

A. A Renewable Identification Number dated as close to the date of application would be acceptable.

Q. To support the loss on the gallons produced at a loss due to contractual obligation, are financial statements showing the revenue and costs on these specific gallons sufficient? Is there anything additional that needs to be provided?

A. Financial Statements with Operating Statements should be sufficient.

Q. Contracts' question: are all required, or some of each type of contract commitment?

A. Producers applying for assistance based on production for contractual commitments that resulted in a gross profit loss need to furnish contracts sufficient to demonstrate that it was necessary for the facility to produce for the period that assistance is being sought. It may be necessary to furnish one contract or multiple contracts.

Q. I believe the application requests RIN support. Is that for all RIN 's generated, or just a single documentation to show RIN generation and EMTS registration?

A. The most recent Renewable Identification Number assignment will be sufficient.

Q. Would it be acceptable to submit quarterly or monthly period information, or solely based on the entire year of 2020?

A. The NOFO requires financial statements, if the request is for assistance for a shorter period of time within 2020 (not the entire year) the financial statements can be supplemented with operating statements demonstrating the gross profit loss.

Q. Is biomass-based diesel tax credit included in sales revenue?

A. Sales Revenue is calculated by multiplying the price of the units sold by the number of units sold, including the sale of all co-products. Sales Revenue does not include associated production payments/incentives.

Q. The gallons produced under contract that resulted in a gross profit loss - are these gallons included in the biofuel produced for the year in the section above?

A. If the applicant is applying for assistance for production for contractual commitments that resulted in a gross profit loss and not decreased volume, only that production needs to be reported in Part B, the 3rd table.

Q. Regarding financial statements needed for the biofuel produced under contract, that resulted in a gross profit loss, do you only need the income statement of the month that the loss was incurred?

A. The NOFO states financial statements, supplement the annual financial statements with the monthly operating statements that will reflect the losses for the respective months that payment is being sought.

Q. Is there a benefit of applying early? Is the money on any sort of first come, first served basis? Does it make any difference at all if we apply on January 31st versus December 20th?

A. Applications will begin being processed upon receipt, the benefit to applying early is that if something is missing there is still time to submit it. The payment calculations cannot be started until all the applications have been submitted and processed.

Q. Can we count purchased in volumes to replace lost production to meet contractual commitments, thinking especially of by-products?

A. An applicant can apply for assistance based on decreased production for 2020 relative to that produced in 2019, or production that was required due to contractual commitments that resulted in a gross profit loss. Biofuel that was purchased is not eligible for assistance.

Q. How do you handle a facility that contains 2 plants - one produces biofuel and the other one manufactures a different product? Since they operate under one company, FEIN, is the gross profit from the non-biofuel product excluded from the calculation?

A. To clarify, to be eligible, the biofuel produced in one of the plants is required to be sold into the transportation industry. If the biofuel is used in the second plant to manufacture a different product, it is not eligible. The application will need to demonstrate the gross profit loss from the biofuel produced based on contractual commitments.

Q. Is only the income from the biofuel and co-products included in gross sales?

A. Sales Revenue is calculated by multiplying the price of the units sold by the number of units sold, including the sale of all co-products. Sales Revenue does not include associated production payments/incentives.

Q. On the last page of application, RD4288-7, is it looking for you to check all of the boxes related to the definition and registration requirements?

A. Yes, please check all the areas that are applicable to the applicant.

Q. Can you give an example of acceptable RIN documentation for a typical gallon of biofuel produced?

A. An RFS2 EMTS RIN Generation Report would be acceptable. The RIN documentation is being used to help document the biofuel is being sold into the transportation industry, as opposed to confirming volumes.

Q. Could you please go back through the application forms slide #23? Where do you find the last 3-4 forms?

A. The forms are on the website, under the "To Apply" tab or contact us and we can send them.

Q. Does manufacturing costs include natural gas and electricity?

A. Definitions: Gross Profit - revenue minus the cost of goods sold. Gross profit only includes variable costs and does not account for fixed costs. Variable costs - costs that fluctuate with the volume produced (transportation/shipping, feedstock). Fixed costs - costs that do not change with changes in production volume (rent, advertising, insurance, salaries, depreciation). Based on these definitions natural gas and electricity costs would be considered variable costs.

Q. If ethanol production went to export in 2019 or 2020, would that be included in production figures?

A. The program is based on eligible biofuel produced, there is no requirement for where it was marketed.

Q. If ethanol production was exported, is that counted in the production figures?

A. The program is based on eligible biofuel produced, there is no requirement for where it was marketed.

Q. Is it the gross profit loss that is eligible, or is it a count of gallons that were processed at a loss, which would then be included in the total gallon allocation?

A. An applicant can apply for assistance for a specified period of time in 2020, for example a facility produced in April and May for contractual commitments that resulted in a gross profit loss. The application will need to contain all the required documentation including documentation specific to the loss suffered in April and May (monthly operating statements).

Q. I'm assuming that this program is separate from the current program for which we have registered.

A. We are interpreting the reference to "the current program" to be the Advanced Biofuel Payment Program." If this is a correct interpretation, yes this is a different program which requires a separate set of application documents.

Q. Do we have to use the whole calendar year? For example, could we use Q2-2019 compared to Q2-2020? Or a series of months?

A. Producers that are applying for decreased production volume will report all biofuel production for 2020 compared to 2019. Production is based on both entire calendar years. Producers that are applying for production based on contractual commitments that resulted in gross profit loss will report production for the entire 2020 calendar year. If the gross profit loss relates to a certain period within 2020, additional documentation will need to be provided to support the gross profit loss (for example if gross profit occurred in April and May, the application will need operating statements for April and May).

Q. On gross profit loss, is it based solely on the calendar year or is it on contract? If we had a contract for a partial year that was a loss, do those gallons get counted?

A. Production for contractual obligations that resulted in a gross profit loss can be for the entire year or a portion of the year. The application will need to provide operating statements that clearly demonstrate the gross profit loss for the relevant period of time.

Q. Will there be any coordination with the EPA EMTS to verify or provide RIN certifications? Or, can you elaborate on the application requirements, example: for a listing of each RIN generated/gallon produced, is a copy of each RIN certificate required?

A. The application should contain evidence the most recent RIN documentation. We do not anticipate coordinating with EPA on the amount of RINS, the RINS are being used to help validate the biofuel eligibility.

Q. Sales Revenue includes sale of all co-products, but the reported gallons is only the biodiesel gallons, correct?

A. Sales Revenue does include sale of all co-production. Assistance will only be calculated based on the amount of eligible biofuel.

Q. How do you go about getting an MPIN if you don't know your current MPIN, on the SAM registration?

A. We recommend working with the Federal Help Desk, available through the SAM website. Other applicants have found the chat feature to be helpful.

Q. You mentioned sales revenue vs variable cost of goods sold. Are all sales revenues and cost of goods, to be combined, prior to that calculation. For example: 1000 gallons lose $1 and 1000 gallons gain $1; there is no loss?

A. Definitions: **Gross Profit** - revenue minus the cost of goods sold. Gross profit only includes **variable costs** and does not account for fixed costs. **Variable costs** - costs that fluctuate with the volume produced (transportation/shipping, feedstock). Fixed costs - costs that do not change with changes in production volume (rent, advertising, insurance, salaries, depreciation). If the second 1000 gallons was produced at a gain, during a different time period, they could apply for the first time period, the period during the loss.

Q. Regarding the gross profit loss, we had a period of 3 months in which we were in a gross profit loss position. The other 9 months were positive. Is the period for the entire year, or can it be specific to a month?

A. If an applicant is requesting assistance for production based on contractual commitments that resulted in a gross profit loss, the period where the applicant experienced the gross profit loss can be for a specified period of time. In addition to the financial statements required for the year, it may be necessary to supplement with monthly operating statements to support the specific period of time for which the assistance is being requested.

Q. For the commitments/contracts that are for co-products such as distillers dried grains with solubles (DDGS) , how do we apply those to gallons that are produced at a gross profit loss? Does this mean that we have to associate all co-product sales together by gallon produced?

A. The contracts are required to document that the facility needed to continue to produce and not necessarily tie to the gallons. The financial statements/operating statements will be used to verify the gross profit loss. The application and supporting production records will support the gallons produced because the facility was contractually required to produce, and the production resulted in a gross profit loss. We would associate the sales and expenses with the time period, not a specific gallon of fuel.

Q. Are producers able to claim both 1) Loss in production gallons and 2) Loss due to contractual commitments/gross profit loss? Or is it one or the other?

A. Producers can claim assistance in both categories. The NOFO states that eligible biofuel produced by the eligible producer in 2020 to meet contractual commitments resulting in a gross profit loss will be deducted from 2020.

Q. Is the contractual obligation gross profit loss only connected to ethanol contractual obligations, or if a producer had a contractual obligation to produce distiller grains, and therefore had to produce ethanol, does that count?

A. Contractual obligations include any type of contracts that required the facility to continue to produce, it is not limited to contracts for the biofuel itself.

Q. Can you provide a clear definition of what constitutes variable COGS?

A. One of the ways applicants can be eligible to receive assistance through the Biofuel Producer Program is demonstrating that they were required to produce based on contractual commitments and in doing so suffered a gross profit loss. There are a number of things that go into demonstrating eligibility under this category. Gross Profit Loss = Sales Revenue – Cost of Goods Sold; only includes variable costs and does not account for fixed costs. Sales Revenue – includes fuel sales and sale of all co-products. Cost of Goods Sold – includes material costs and manufacturing costs. Fixed Costs – Do not change with increases/decreases in production/volume. Examples: Rent, Advertising, Insurance, Depreciation. Variable Costs – fluctuate with the volume produced. Examples: Shipping, Feedstock, Wages for production employees are most frequently classified as variable costs, and costs associated with salaried labor are most frequently classified as fixed costs.

Q. What are the requirements for the supporting documentation regarding financial statements?

A. The applicant's financial statements should be sufficient. If the application is for a specific period of time within 2020 (for example April and May) we anticipate that monthly operating statements may be needed to document the gross profit loss.

Q. When calculating the loss, I understand that we have to complete a separate part B attachment for each facility, but when calculating the loss, is it based on the combined loss or based on each facility's loss?

A. Yes, a Part B Attachment is completed for each facility. There are 3 ways an applicant can request assistance: 1) production volume loss in 2020 vs 2019 (supported with production records), 2) production that was done as a result of contractual commitments that resulted in a gross profit loss (these applications will be supported with: contracts demonstrating contractual commitments; Financial Statements for the year. If assistance is being sought for a specific period in 2020, then monthly operating statements may be required, 3) assistance in both categories. If assistance is being sought for both categories, the Part B Attachment will need to be completed for both categories and the supporting documentation for each category will need to be added. If an applicant owns multiple facilities, ultimately, we will combine to calculate the loss. If they had a gross profit loss on 100,000 gal in one facility and a gain of production of 25,000 in another, their net loss and payment would be based on 75,000.

Q. We have a question that may impact the contracts we identify to include in the 'Statement of Operations – Eligible biofuel produced under contract(s) that resulted in gross profit loss' table. Our question relates to the use of the terms 'COGS' and 'Gross Profit Loss,' both of which are defined terms under U.S. Generally Accepted Accounting Principles ("GAAP").

Under GAAP, COGS includes all material costs and manufacturing costs (consistent with the Application's footnote to COGS), where those manufacturing costs include certain production-related fixed costs such as (for example) depreciation on facilities and equipment used in the manufacturing process. The inclusion of these types of fixed production costs is consistent with the SEC's definitions and the way we determine cost of sales and gross profit in our GAAP financial statements, and is important to fully evaluate which sales contracts are profitable and which are not under GAAP. However, on the USDA's webcast discussion, there was mention that fixed costs should be excluded from the determination of "gross profit loss" for this table, which would require a departure from GAAP.

Please confirm whether we should follow the U.S. GAAP requirements for determining the COGS and the gross profit loss, or whether you intend for the form to have an alternative measure that would EXCLUDE manufacturing-related fixed costs (and would represent a departure from U.S. GAAP)?

A. The Biofuel Producer Program excludes manufacturing-related fixed costs in the determination of COGS. We acknowledge that this would represent a departure from U.S. GAAP.

Q. If an entity produced eligible biofuel for only part of 2019, can it calculate the difference in production versus 2020 on a partial-year basis, such as quarterly or monthly?

A. The notice references in the notice all state "calendar year 2019," there are no provisions for partial years under the decreased volume category. We would suggest that they consider applying under the category of "produced based on contractual commitments that resulted in a gross profit loss."

Q. If an entity completed an expansion during the course of 2019 and produced more eligible gallons overall in 2020 than 2019, but it can document that it had to substantially reduce or idle production for part of 2020, would this qualify as a production-based market loss that could be calculated on a partial-year basis?

A. Applicants applying for assistance under the category of decreased volume are comparing 2020 production relative to 2019. If 2020 production exceeded 2019, the applicant should explore eligibility under the second category, "production based on contractual commitments that resulted in a gross profit loss." It is permissible for applicants to have a loss in a specified period within 2020, the loss does not have to span the entire calendar year for it to qualify.

Q. Producers often sell ethanol under contracts that extend for a calendar quarter (or longer), including contracts based off a benchmark price or index. If a producer incurred a gross profit loss for only certain months during the contract term, can you confirm that this would qualify as a market loss under the BPP, and how should the producer document which months ethanol was produced at a loss?

A. The contracts will need to document the commitment to produce, we envision that they will be within a relatively close window to when the production loss occurred. We have not set a specific time, but it would seem a stretch that gross profit losses that occurred in April and May relate to contracts for November production. The production loss will be documented with production logs (monthly production) and the gross profit loss will be supported with monthly operating statements, unless the gross profit loss spans the entire year, and the 2020 operating statements support it.

Q. Can you clarify which cost categories qualify for inclusion in the calculation of a gross profit loss? Typically, the cost of goods sold for an ethanol producer would include direct material and manufacturing costs (e.g., corn, chemicals, other supplies, utilities, and wages for employees involved in production), repairs and maintenance, and transportation costs. However, the USDA webinar indicated that depreciation is to be excluded. Can you confirm that these costs (excluding depreciation) would qualify under the BPP, and indicate what other expense categories would qualify since they can be included in the cost of goods sold (e.g., equipment rental and inventory changes)?

A. We think it best to look at all the definitions and how they relate. Gross Profit - revenue minus the cost of goods sold. Gross profit only includes variable costs and does not account for fixed costs. Variable costs - costs that fluctuate with the volume produced (transportation/shipping, feedstock). Fixed costs - costs that do not change with changes in production volume (rent, advertising, insurance, salaries, depreciation). Based on these definitions corn, chemicals, other supplies, utilities, and wages for employees involved in production, repairs and maintenance, and transportation costs would all be considered Variable costs. It seems that if equipment rental meets the definition of a Variable cost it could be included but it seems that inventory changes would be captured in the corn/feedstock associated with the biofuel and would be included as a variable cost. Perhaps we are not interpreting the inventory changes the same as is meant.

Q. When calculating production gallons, are these undenatured or denatured gallons we should report?

A. Undenatured gallons should be reported.

Q. Please confirm the requirements for reporting production and associated certifications of biofuel gallons not reported on RINS, for example we export product out of our bio-refineries.

Should non-denatured production, such as anhydrous ethanol that will ultimately be processed into fuel, be considered in the reported production? Example: gallons that were exported without RINS.

Further, can you clarify what certification would be required for these gallons, since RINs would not have been produced?

A. The Notice requires eligible biofuel to be used to replace or reduce the quantity of fossil fuel present in a transportation fuel. The application requirements state that RIN documentation will be provided. The RIN documentation is being used by the Agency to document that the fuel is being sold into the transportation industry.

Non-denatured production, such as anhydrous ethanol that will ultimately be processed into fuel without RINS, is not considered eligible for assistance.

Q. Per the definition of Gross Profit provided, a profit was made during calendar year 2020. However, at the height of the pandemic, we experienced losses, and incurred losses in 5 out of the 12 months. Please confirm that these losses are eligible for assistance through the program.

A. Provided the production was under contract or other commitment, the production for the 5 months could be eligible. The application would need to provide the contracts or other commitments as supporting documentation.

Q. We have a plant that was under different ownership prior to July 2021. Who would need to apply for the assistance the previous owners, or the new owners?

A. Under the Biofuel Producer Program, an eligible applicant must be an eligible producer or the owner of an eligible producer. An eligible producer is defined in the Notice of Funding Opportunity as "a legal entity that produces an eligible biofuel." The purpose of the program is to maintain a viable and significant biofuels market for agricultural producers that supply agricultural commodities to biofuel producers. A producer who produced (past tense) but was dissolved or divested of the production facility would not be considered an eligible biofuel producer. (Payment to entities who no longer produce biofuel would not meet the purpose of the program.) The program is authorized to make payments to eligible biofuel producers for unexpected market losses. The current owner will need to demonstrate that they had decreased production in 2020 compared to 2019, or that they had a contractual commitment to produce, that resulted in a gross profit loss in 2020, or a part of 2020. Unfortunately, if the current owner took ownership in 2021, they would not be able to demonstrate that they suffered unexpected market losses in 2020 and will not be eligible.

Q. If contracts need to be provided, can we provide a spreadsheet of all applicable contracts, that includes terms, pricing etc., instead of individually printed documents, which may be more than 20,000?

A. The application requirements in the Notice require copies of contracts as part of the documentation for assistance in the category of "production produced to meet contractual requirements that resulted in a gross profit loss."

Q. Will this information be held confidentially with in the USDA only?

A. We sought advice from USDA Rural Development's Chief Records and Information Branch and received this guidance:

Before a borrower's information is released, in whole or in part, they are provided with a proposed redacted copy. A letter is also provided with guidance on how to prepare justifications for additional redactions or withholdings, along with a copy of the request letter. This procedure is conducted in accordance with Executive Order 12,600 Pre-disclosure Notification (for business submitters). Prior to a disclosure, borrowers (business submitters) are provided with an advance copy of the redacted copy and a Notice of Intent to Release that contains a date as to when a release will be made. The exception is general loan/grant information, example: amount, interest rate, project name, which can be released.

The Supreme Court decision in the Food Marketing Institute vs. Argus Leader Media in 2019, changed the confidential standard under FOIA Exemption 4. As a result, the U.S. Department of Justice issued guidance to Federal Agencies on how to determine if confidential information meets the new standard to be withheld under FOIA Exemption 4. The links below speaks to this.

Supreme Court Issues Decision on Exemption 4 of the FOIA | OIP | Department of Justice

Step-by-Step Guide for Determining if Commercial or Financial Information Obtained from a Person is Confidential Under Exemption 4 of the FOIA (justice.gov)

Q. We had a question that may impact the contracts that we identify to include in the 'Statement of Operations – Eligible biofuel produced under contract(s) that resulted in gross profit loss' table. Our question relates to the use of the terms 'COGS' and 'Gross Profit Loss,' both of which are defined terms under U.S. Generally Accepted Accounting Principles ("GAAP").

Under GAAP, COGS include all material costs and manufacturing costs (consistent with the Application's footnote to COGS), where those manufacturing costs include certain production-related fixed costs such as (for example) depreciation on facilities and equipment used in the manufacturing process. The inclusion of these types of fixed production costs is consistent with the SEC's definitions, and the way we determine cost of sales and gross profit, in our GAAP financial statements; it is important to fully evaluate which sales contracts are profitable and which are not, under GAAP. However, on the USDA's webcast discussion, there was discussion that fixed costs should be excluded from the determination of "gross profit loss" for this table, which would require a departure from GAAP.

Please confirm whether we should follow the U.S. GAAP requirements for determining the COGS and the gross profit loss, or whether you intend for the form to have an alternative measure that would EXCLUDE manufacturing-related fixed costs (and would represent a departure from U.S. GAAP)?

A. The Biofuel Producer Program excludes manufacturing-related fixed costs in the determination of COGS. We acknowledge that this would represent a departure from U.S. GAAP.

Q. Per the information provided, producers need to submit financial statements to document the gross profit loss. In order to arrive at gross profit as defined, costing estimates and statements are produced. Are these statements sufficient, or does financial statements mean Income Statement, Balance Sheet, Cash Flow?

A. Detailed income statement with income, COGs, and gross profit will be adequate. The Income Statement, Balance Sheet, and Cash Flow are not required documents.

New Application Development (February 2, 2022)

Q. With the change to include "fulfill or maintain essential markets" and the addition of language the gross profit loss can be based on either the entire 2020 year or a specified period in 2020?

Does that mean if an applicant can support that they produced to maintain essential markets and had a gross profit loss for the entire 2020 year, but not necessarily every single month during the year, they can report 100% of the 2020 gallons as being for essential markets, even though they generated a gross profit

in an individual month, or more, but not enough to overcome the gross profit losses in the remaining months?

A. To apply for assistance in the category of biofuel production "to meet required contractual commitments, marketing obligations, or fulfill or maintain essential markets, resulting in a gross profit loss," gross profit loss must be demonstrated for the specific production period defined as:

1. The timeframe stated in the contract or other agreement.
2. The timeframe implied by business cycle or sales cycle when there is not a contract or stated agreement. (e.g., CO2 sales on a 2-week recurring cycle.)
3. Monthly, when 1 or 2 are not applicable, or if financial records are not available for the specific timeframe.

The operating statements will need to support the gross profit loss for the period-of-time.

Definitions:

Gross Profit - revenue minus the cost of goods sold. Gross profit only includes variable costs and does not account for fixed costs.

Variable costs - costs that fluctuate with the volume produced (transportation/shipping, feedstock).

Fixed costs - costs that do not change with changes in production volume (rent, advertising, insurance, salaries, depreciation).

Q. What kind of documentation or details are you looking for in the description for maintaining essential markets?

A. Documentation must demonstrate meeting the definition of essential markets. Essential market means markets for biofuel, co-products, and byproducts where there are limited alternative replacement buyers and a biofuel producer’s failure to maintain supply has the potential to result in current buyers moving to other suppliers. Essential markets also include critical supply markets to the buyer and local and regional markets are dependent on the supply of products provided by the biofuel producer. Limited alternative near-term supply markets exist, and the loss of supply has the potential to have an adverse impact on buyers’ viability. In summary, the documentation should demonstration that the buyer is essential to biofuel producer or that the biofuel producer's product is essential to the buyer. The application will also need to contain documentation on the volume of product being produced, the timeframe, and the 2 parties involved.

Q. When is the SF LLL required?

A. The 1940-Q certification is a required document. Item #2 on the certification states that if any funds have been paid or will be paid to any person for influencing or attempting to influence an employee of Congress, or an employee of a Member of Congress in connection with this award, an SF LLL will be completed.

Q. What parts of the SF 3881 need to be completed?

A. Agency Information section can be left blank. Payee/Company Information section - only the Name section needs to be completed. Financial Institution Information section - complete in entirety.

Q. Can you please provide additional explanation regarding what is required on the last page of the part B Attachment – "Registration Number (AFT, ASTM, State Registration #) (As applicable)

A. Complete with the AFT, ASTM, EPA state registration number, if one does not exist, leave it blank.

Q. Does the 400-04 form needed to be notarized, or require a company seal?

A. The 400-4 needs a signature, a notary, or company seal is not required.

NOTE: These FAQ's are intended to provide guidance. Final decisions will be based on the application and supporting documentation.

Biofuel Eligibility

Q. Are advanced biofuels referenced in the application equivalent to the definition of section 9005 Advance Biofuel Payment Program?

A. Yes, the definitions for advanced biofuel are the same for both the Biofuel Producer Program and 9005 Advanced Biofuel Payment Program. Keep in mind that for the Biofuel Producer Program more than advanced biofuel is eligible and that not all advanced biofuels under 9005 are eligible for the Biofuel Producer Program. Only transportation fuels are eligible for the Biofuel Producer Program.

Q. If a plant only produces fuel ethanol in 2019 but produced fuel ethanol and hand sanitizer in 2020, do they exclude the hand sanitizer gallons from the 2020 production numbers?

A. This program covers biofuel produced, not hand sanitizer and other alcohol-based products.

Q. Is forestry biomass eligible?

A. The biofuel that is produced must be used in the transportation industry.

Q. Is forest biomass eligible for this program?

A. The biofuel that is produced must be used in the transportation industry.

Q. Is forest biomass eligible?

A. The biofuel that is produced must be used in the transportation industry.

Q. Is Renewable Natural Gas (RNG) produced from an anaerobic digester eligible to participate?

A. If the RNG is going into the transportation industry it could be an eligible biofuel.

Miscellaneous

Q. Will these USDA funds be reduced by any other Federal Funds received such as PPP monies?

A. There is nothing that requires USDA to consider other Federal funds that have been received when determining the amount of assistance.

Q. Will awards made under this program be publicly disclosed?

A. Yes, absolutely.

Q. Is the information that we submit available to the public? For example, our financial information and contract details?

A. Information provided is subject to the Freedom of Information (FOIA) laws. Upon request we can facilitate a discussion with FOIA staff to provide more details. Additional information on Rural Development's Availability of Information Under the Privacy Act can be found at: https://www.rd.usda.gov/sites/default/files/2015e.pdf

Q. Will the information provided (supporting financial statements etc.) become part of public record, or will it be kept confidential?

A. Information provided is subject to the Freedom of Information (FOIA) laws. Upon request we can facilitate a discussion with FOIA staff to provide more details.

Q. Will this webinar and power point presentation be able for viewing after today?

A. Yes, but please feel free to contact us for the presentation or for any questions. A recording of the webinar is now available at: https://www.rd.usda.gov/programs-services/energy-programs/biofuel-producer-program.

Q. Will you be sending out the recording? I thought it started at 1 PM CST and joined late. Thanks

A. The webinar is posted on the program website at https://www.rd.usda.gov/programs-services/energy-programs/biofuel-producer-program.

Q. Our thinking at Hawaii Oil Seed Producers is that an island based vegetable oil source would provide not only oil for edibles and biofuel but for spin off industries such as cosmetics, pharmaceuticals, bioplastics and others with wastes going to production of animal feed, ethanol and compost to create a circular bioeconomy in Hawaii, perhaps a whole society model. All or most of the products mentioned above are now imported so dollars flow out of the island economy and do not stay to build the island economy.

A. Statement, no response required.

Q. Will we receive a copy of this seminar?

A. Please email us and we will provide a copy of the presentation. The recording will be posted to the website.

Q. This program is separate from the current program?

A. The Biofuel Producer Program is specific to COVID relief. We think the reference to "current program" is referring to the Advanced Biofuel Payment Program which USDA/Rural Development/Rural Business Cooperative Service also administers. They are two separate programs with separate guidelines and applications.

Q. Will the recording of this presentation be available to view later?

A. A recording will be posted on the website.

Q. Is there a stipulation on how the money can be used?

A. The purpose of the program is to provide assistance to eligible biofuel producers for unexpected market loss as a result of COVID-19. There are no requirements on how the payments can be used.

Payment

Q. For volume loss, how are you quantifying the payout per gallon for both Ethanol and Biodiesel?

A. Biodiesel and ethanol will both receive the same rate per gallon.

Q. Can you explain the basis of how the loss is calculated with RIN and sale of the gas? Is the RIN cost basis as of date of application, ex $3.55 vs 2020 fluctuating value?

A. The RINS are used to help validate the eligibility of the biofuel, at this point we do not intend to reconcile production volumes with RIN's.

Q. I understand the program caps payment to eligible producers to $50 million. Is it possible the entire $700 million will not be distributed? If so, what happens to the balance?

A. Payments will be calculated based on the distribution of the $700 million, the $50 million limitation will then be applied. We will run additional calculations to disburse the entire amount.

Q. Will applications be approved on a rolling basis?

A. All the eligible applicants and the associated amount of biofuel will be part of the calculations so all applications will need to be processed and the amount of biofuel determined before the calculations can be run.