

DEPARTMENT OF AGRICULTURE**Rural Business-Cooperative Service****7 CFR Part 5001****RIN 0570-AA73****BioRefinery Assistance Program****AGENCY:** Rural Business-Cooperative Service, USDA.**ACTION:** Advanced notice of proposed rulemaking.

SUMMARY: This Advanced Notice of Proposed Rulemaking (ANPRM) seeks comments for the development of a proposed rule to implement a BioRefinery Assistance guaranteed loan program. In conjunction with this ANPRM, USDA is publishing a separate notice in this **Federal Register** announcing a Notice of Funds Availability (NOFA) for a BioRefinery Assistance Program to provide guaranteed loans for the development and construction of commercial-scale biorefineries or for the retrofitting of existing facilities using eligible technology for the development of advanced biofuels. The comments being sought under this ANPRM reference the biorefinery assistance program described in a separate notice published elsewhere in this issue of the **Federal Register**.

DATES: Please submit your comments by January 20, 2009.**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250-0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., 7th Floor address listed above.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Agriculture, Rural Development, Energy Branch, Attention: BioRefinery Assistance Program, 1400 Independence Avenue, SW., STOP 3225, Washington, DC, 20250-3225. Telephone: (202) 720-1400.

I. Background

The purpose of section 9003 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) is to assist in the development of new and emerging technologies for the development of advanced biofuels in order to increase the energy independence of the United States; promote resource conservation, public health, and the environment; diversify markets for agricultural and forestry products and agriculture waste material; and create jobs and enhance the economic development of the rural economy. Thus, the purpose of the program presented in this NOFA is to assist in the development and construction of commercial-scale biorefineries and the retrofitting of existing facilities using eligible technology for the development of advanced biofuels. To that end, the program will promote the development of the first commercial scale biorefineries that do not rely on corn kernel starch as the feedstock. Preference for funding will be given to projects where first-of-a-kind technology will be deployed at the commercial scale.

The Agency will make guarantees available on loans for eligible projects that will provide for the development, construction, and/or retrofitting of commercial biorefineries using eligible technology. Eligible technology is (a) any technology that is being adopted in a viable commercial-scale operation of a biorefinery that produces an advanced biofuel and (b) any technology not described in (a) above that has been demonstrated to have technical and economic potential for commercial application in a biorefinery that produces an advanced biofuel.

Over the life of the program, it is likely that guarantees will be awarded to projects that are first-of-a-kind or projects with commercial applications that are expanded to new regions, modified to utilize different feedstocks.

II. Agency Intent

The Agency plans to issue a proposed rule for the BioRefinery Assistance guaranteed loan program, which is expected to be very similar to the requirements laid out in the aforementioned biorefinery assistance program NOFA. Consistent with the Agency's intent to develop a single, unified guaranteed loan regulation to reduce burden and simplify the requirements of the Agency's guaranteed loan programs, the Agency intends to incorporate the BioRefinery Assistance guaranteed loan program into the proposed guaranteed loan

program under 7 CFR part 5001 when that program is promulgated.

To assist the Agency in developing a proposed rule for the BioRefinery Assistance guaranteed loan program, the Agency is seeking input from interested parties on the questions detailed in Section III below.

III. Questions

1. Definitions/Terms (Section II.A. in the Biorefinery Assistance Program NOFA and Section 9003 of the 2008 Farm Bill)

The Agency is seeking comments on how the following two phrases should be defined as used in the definition of "eligible technology" as that term is defined in the 2008 Farm Bill:

- "Viable commercial-scale operation"
- "Technical and economic potential for commercial application"

One of the priorities in the 2008 Farm Bill for scoring guaranteed loan applications is "whether the applicant has *established a market* for the advanced biofuel and the *byproducts* produced." In the context of this scoring priority, the Agency is seeking comment on defining the following:

- "Established a market"
- "Byproducts"
- "Co-product" and its relationship to byproduct.

A second priority in the 2008 Farm Bill for scoring guaranteed loan applications is "the level of *local* ownership proposed in the application." In the context of this scoring priority, the Agency is seeking comment on defining the following:

- "Local ownership"

A third priority in the 2008 Farm Bill for scoring guaranteed loan applications is "whether the *area* in which the applicant proposes to place the biorefinery has other similar facilities." In the context of this scoring priority, the Agency is seeking comment on defining the following:

- "Area"

2. Oversight and Monitoring (Section II.E. in the Biorefinery Assistance Program NOFA)

What information and reports should be required once the project is established and stabilized? How should performance of the project/technology be evaluated and by whom? For example, Should there be a technology-specific protocol that is evaluated by an independent third party?

3. Eligible Borrowers (Section II.G. in the Biorefinery Assistance Program NOFA)

Given that much of the funding for National Laboratories comes from

Federal sources, which reduces the likelihood of their being awarded a loan guarantee under this program, what should their role in the program be?

4. Loan Applications (Section II.J. in the Biorefinery Assistance Program NOFA)

Should a separate technical report be required, what information would it contain, who would be qualified to complete it, and who would be qualified to review it? Would the applicant be willing to pay the cost of the environmental impact analysis?

What is the potential value added to the program, in support of the Agency's responsibilities for project credit assessment, in requiring a private sector credit rating on the biorefinery project as if the total debt anticipated in support of the project were not subject to Federal guarantees?

5. Evaluation of Guaranteed Loan Applications (Section II.K. in the Biorefinery Assistance Program NOFA)

Should specific scoring criteria carry more weight than others?

Should other evaluation criteria be considered?

How should the impacts on resource conservation, public health, and the environment, and the potential for rural development be evaluated?

Should priority consideration be given to technologies that add significant value to low-value feedstock even if it adversely impacts existing low-value added facilities that use similar feedstock?

In consideration of the 100 point scoring protocol depicted in the NOFA, at what level should the Agency set a minimum score in order for an application to receive consideration by the Agency for a potential guarantee?

6. Lender's Functions and Responsibilities—Origination (Section II.N. in the Biorefinery Assistance Program NOFA)

Credit Evaluation. Are the requirements of the lender's credit analysis found in paragraph (a), Credit evaluation, of Section II.N. adequate?

Equity. What should the equity requirements be? Should there be minimum equity requirements that may vary depending on the size of the project? Will it differ between construction and development versus retrofitting?

7. Basic Guarantee and Loan Provisions (Section II.Q. in the Biorefinery Assistance Program NOFA)

Project cost. What are eligible project costs?

Issuance of the Loan Note Guarantee. Should the Loan Note Guarantee be issued prior to construction or be limited to post-construction financing? What parameters or issues should be considered prior to issuance of the Guarantee?

Dated: November 7, 2008.

Ben Anderson,

Administrator, Rural Business-Cooperative Service.

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