

deadline falls on a weekend or a Federally observed holiday, the deadline will be the next Federal business day.

(c) *Incomplete applications.* Incomplete applications will be rejected. Lenders will be informed of the elements that made the application incomplete. If a resubmitted application is received by the applicable application deadline, the Agency will reconsider the application.

(d) *Application withdrawal.* During the period between the submission of an application and the execution of documents, the lender must notify the Agency, in writing, if the project is no longer viable or the borrower is no longer requesting financial assistance for the project. When the lender so notifies the Agency, the selection will be rescinded or the application withdrawn.

§ 4279.261 Application for loan guarantee content.

Approved lenders must submit an Agency-approved application form for each loan guarantee sought under this subpart. Loan guarantee applications from approved lenders must contain the information specified in paragraphs (a) through (n) of this section, organized pursuant to a table of contents in a chapter format, and in paragraph (o) of this section as applicable.

(a) *Project Summary.* Provide a concise summary of the proposed project and application information, project purpose and need, and project goals, including the following:

(1) *Title.* Provide a descriptive title of the project.

(2) *Borrower eligibility.* Describe how the borrower meets the eligibility criteria identified in § 4279.227.

(3) *Project eligibility.* Describe how the project meets the eligibility criteria identified in paragraph (c) of this section. Clearly state whether the application is for the construction and development of a biorefinery or for the retrofitting of an existing facility. Provide results from demonstration or pilot facilities that prove that the technology proposed to be used meets the definition of eligible technology. Additional project description information will be needed later in the application process.

(4) *Matching funds.* Submit a spreadsheet identifying sources, amounts, and availability of matching funds. The spreadsheet must also include a directory of matching funds source contact information. Attach any applications, correspondence, or other written communication between borrower and matching fund source.

(b) *Lender's analysis and credit evaluation.* This analysis shall conform to § 4279.232(b) and shall include:

(1) A summary of the technology to be used in the project;

(2) The viability of such technology for the particular project application;

(3) The development type (e.g., installation, construction, retrofit);

(4) The credit reports of the borrower, its principals, and any parent, affiliate, or subsidiary as follows:

(i) A personal credit report from an Agency-approved credit reporting company for individuals who are key employees of the borrower, as determined by the Agency, and for individuals owning 20 percent or more interest in the borrower or any owner with more than 10 percent ownership interest in the borrower if there is no owner with more than 20 percent ownership interest in the borrower, except for when the borrower is a corporation listed on a major stock exchange unless otherwise determined by the Agency; and

(ii) Commercial credit reports on the borrower and any parent, affiliate, and subsidiary firms;

(5) The credit analysis specified in § 4279.232(b);

(6) For loans of \$125 million or more, an evaluation and either a credit rating or a credit assessment of the total project's indebtedness, without consideration for a government guarantee, from a nationally-recognized rating agency; and

(7) Whether the loan note guarantee is requested prior to construction or after completion of construction of the project.

(c) *Financial statements.* Financial statements as follows:

(1) For businesses that have been in existence for one or more years,

(i) The most recent audited financial statements of the borrower if the guaranteed loan is \$3 million or more, unless alternative financial statements are authorized by the Agency; or

(ii) The most recent audited or Agency-acceptable financial statements of the borrower if the guaranteed loan is less than \$3 million.

(2) For businesses that have been in existence for less than one year, the most recent Agency-authorized financial statements of the borrower regardless of the amount of the guaranteed loan request.

(3) For all businesses, a current (not more than 90 days old) balance sheet; a *pro forma* balance sheet at startup; and projected balance sheets, income and expense statements, and cash flow statements for a period of not less than 3 years of stabilized operation. Projections should be supported by a list of

assumptions showing the basis for the projections.

(4) Depending on the complexity of the project and the financial condition of the borrower, the Agency may request additional financial statements and additional related information.

(d) *Environmental information.* Environmental information required by the Agency to conduct its environmental reviews (as specified in Exhibit H of 7 CFR part 1940, subpart G).

(e) *Appraisals.* Unless otherwise approved by the Agency, an appraisal conducted as specified under § 4279.244.

(f) *Feasibility study.* Elements in an acceptable feasibility study include, but are not limited to, the elements outlined in Table 1. In addition, as part of the feasibility study, a technical assessment of the project is required, as specified in paragraph (h) of this section.

TABLE 1—FEASIBILITY STUDY COMPONENTS

(A) Executive Summary:

Introduction/Project Overview (Brief general overview of project location, size, etc.).
Economic feasibility determination.
Market feasibility determination.
Technical feasibility determination.
Financial feasibility determination.
Management feasibility determination.
Recommendations for implementation.

(B) Economic Feasibility:

Information regarding project site;
Availability of trained or trainable labor;
Availability of infrastructure, including utilities, and rail, air and road service to the site.
Feedstock:

Feedstock source management;
Estimates of feedstock volumes and costs;
Collection, Pre-Treatment, Transportation, and Storage; and
Feedstock risks.

Documentation that woody biomass feedstock from National Forest system lands or public lands cannot be used for a higher-value product.

Impacts on existing manufacturing plants or other facilities that use similar feedstock if the borrower's proposed biofuel production technology is adopted.

Projected impact on resource conservation, public health, and the environment.

Detailed analysis of project costs including:

Project management and professional services;
Resource assessment;
Project design and permitting;
Land agreements and site preparation;
Equipment requirements and system installation;
Startup and shakedown; and
Warranties, insurance, financing, and operation and maintenance costs.

Overall economic impact of the project, including any additional markets created for agricultural and forestry products and agricultural waste material and the potential for rural economic development.

TABLE 1—FEASIBILITY STUDY COMPONENTS—Continued

	Feasibility/plans of project to work with producer associations or cooperatives, including estimated amount of annual feedstock, biofuel, and byproduct purchased from or sold to producer associations and cooperatives.
(C) Market Feasibility:	<p>Information on the sales organization and management;</p> <p>Nature and extent of market and market area;</p> <p>Marketing plans for sale of projected output—principal products and byproducts;</p> <p>Extent of competition, including other similar facilities in the market area;</p> <p>Commitments from customers or brokers—principal products and byproducts.</p> <p>Risks related to the Advanced Biofuel industry, including</p> <ul style="list-style-type: none"> Industry status; Specific market risks; and Competitive threats and advantages.
(D) Technical Feasibility:	<p>Suitability of the selected site for the intended use.</p> <p>Scale of development for which the process technology has been proven (<i>i.e.</i>, lab or bench, pilot, demonstration, or semi-work scale).</p> <p>Specific volume of the process (expressed either as volume of feedstock processed [tons per unit of time] or as product [gallons per unit of time]).</p> <p>Identification and estimation of project operation and development costs. Specify the level of accuracy of these estimates and the assumptions on which these estimates have been based.</p> <p>Ability of the proposed system to be commercially replicated.</p> <p>Risks related to:</p> <ul style="list-style-type: none"> Construction of the Biorefinery; Advanced Biofuel production; Regulation and governmental action; and Design-related factors that may affect project success.
(E) Financial Feasibility:	<p>Reliability of the financial projections and the assumptions on which the financial statements are based, including all sources and uses of project capital, private or public, such as Federal funds. Provide detailed analysis and description of projected balance sheets, income and expense statements, and cash flow statements over the useful life of the project.</p> <p>A detailed description of:</p> <ul style="list-style-type: none"> Investment incentives; Productivity incentives; Loans and grants; and Other project authorities and subsidies that affect the project. <p>Any constraints or limitations in the financial projections.</p> <p>Ability of the business to achieve the projected income and cash flow.</p> <p>Assessment of the cost accounting system.</p> <p>Availability of short-term credit or other means to meet seasonal business costs.</p> <p>Adequacy of raw materials and supplies.</p> <p>Sensitivity analysis, including feedstock and energy costs and product and byproduct prices.</p> <p>Risks related to:</p> <ul style="list-style-type: none"> The project; Borrower financing plan; The operational units; and Tax issues.
(F) Management Feasibility:	<p>Borrower and/or management's previous experience concerning:</p> <ul style="list-style-type: none"> Biofuel production; Acquisition of feedstock; Marketing and sale of off-take; and The receipt of Federal financial assistance, including amount of funding, date received, purpose, and outcome.

TABLE 1—FEASIBILITY STUDY COMPONENTS—Continued

Management plan for procurement of feedstock and labor, marketing of the off-take, and management succession.
Risks related to:
Borrower as a company (e.g., development-stage);
Conflicts of interest; and
Management strengths and weaknesses.
(G) Qualifications:
A resume or statement of qualifications of the author of the feasibility study, including prior experience, must be submitted.

(g) *Business plan.* The lender must submit a business plan that includes the information specified in paragraphs (g)(1) through (g)(10) of this section. Any or all of this information may be omitted if it is included in the feasibility study specified in paragraph (f) of this section.

- (1) The borrower's experience;
- (2) The borrower's succession planning, addressing both ownership and management;
- (3) The names and a description of the relationship of the borrower's parent, affiliates, and subsidiaries;
- (4) The borrower's business strategy;
- (5) Possible vendors and models of major system components;
- (6) The availability of the resources (e.g., labor, raw materials, supplies) necessary to provide the planned products and services;
- (7) Site location and its relation to product distribution (e.g., rail lines or highways) and any land use or other permits necessary to operate the facility;
- (8) The market for the product and its competition, including any and all competitive threats and advantages;
- (9) Projected balance sheets, income and expense statements, and cash flow statements for a period of not less than 3 years of stabilized operation; and
- (10) A description of the proposed use of funds.

(h) *Technical Assessment.* As part of the feasibility study required under paragraph (f) of this section, a detailed technical assessment is required for each project. The technical assessment must demonstrate that the design, procurement, installation, startup, operation and maintenance of the project will permit it to operate or perform as specified over its useful life in a reli-

able and a cost effective manner, and must identify what the useful life of the project is. The technical assessment must also identify all necessary project agreements, demonstrate that those agreements will be in place at or before the time of loan closing, and demonstrate that necessary project equipment and services will be available over the useful life of the project. The technical assessment must be based upon verifiable data and contain sufficient information and analysis so that a determination can be made on the technical feasibility of achieving the levels of income or production that are projected in the financial statements. All technical information provided must follow the format specified in paragraphs (h)(1) through (h)(9) of this section. Supporting information may be submitted in other formats. Design drawings and process flow charts are required as exhibits. A discussion of a topic identified in paragraphs (h)(1) through (h)(9) of this section is not necessary if the topic is not applicable to the specific project. Questions identified in the Agency's technical review of the project must be answered to the Agency's satisfaction before the application will be approved. All projects require the services of an independent, third-party professional engineer.

(1) *Qualifications of project team.* The project team will vary according to the complexity and scale of the project. The project team must have demonstrated expertise in similar advanced biofuel technology development, engineering, installation, and maintenance. Authoritative evidence that project

team service providers have the necessary professional credentials or relevant experience to perform the required services for the development, construction, and retrofitting, as applicable, of technology for producing advanced biofuels must be provided. In addition, authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the biorefinery to operate over its useful life must be provided. The application must:

(i) Discuss the proposed project delivery method. Such methods include a design-bid-build method, where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the borrower's risk, and a design-build method, often referred to as "turnkey," where the borrower establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(ii) Discuss the manufacturers of major components of advanced biofuels technology equipment being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(iii) Discuss the project team members' qualifications for engineering, designing, and installing advanced biofuels refineries, including any relevant certifications by recognized organizations or bodies. Provide a list of the same or similar projects designed, installed, or supplied and currently operating, with references if available; and

(iv) Describe the advanced biofuels refinery operator's qualifications and experience for servicing, operating, and maintaining such equipment or projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating, with references if available.

(2) *Agreements and permits.* The application must identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (h)(2)(i) through (h)(2)(vi) of this section.

(i) Advanced biofuels refineries must be installed in accordance with applicable local, State, and national codes and applicable local, State, and Federal regulations. Identify zoning and code requirements and necessary permits and the schedule for meeting those requirements and securing those permits.

(ii) Identify licenses where required and the schedule for obtaining those licenses.

(iii) Identify land use agreements required for the project, the schedule for securing those agreements, and the term of those agreements.

(iv) Identify any permits or agreements required for solid, liquid, and gaseous emissions or effluents and the schedule for securing those permits and agreements.

(v) Identify available component warranties for the specific project location and size.

(vi) Identify all environmental issues, including environmental compliance issues, associated with the project.

(3) *Resource assessment.* The application must provide adequate and appropriate evidence of the availability of the feedstocks required for the advanced biofuels refinery to operate as designed. Indicate the type and quantity of the feedstock, and discuss storage of the feedstock, where applicable, and competing uses for the feedstock. Indicate shipping or receiving methods and required infrastructure for shipping, and other appropriate transportation mechanisms. For proposed projects with an established resource, provide a summary of the resource.

(4) *Design and engineering.* The application must provide authoritative evidence that the advanced biofuels refinery will be designed and engineered so as to meet its intended purposes, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified entity. Each biorefinery must be engineered as a complete, integrated facility. The engineering must be comprehensive, including site selection, systems and component selection, and

systems monitoring equipment. Biorefineries must be constructed by a qualified entity.

(i) The application must include a concise but complete description of the project, including location of the project; resource characteristics, including the kind and amount of feedstocks; biorefinery specifications; kind, amount, and quality of the output; and monitoring equipment. Address performance on a monthly and annual basis. Describe the uses of or the market for the advanced biofuels produced by the biorefinery. Discuss the impact of reduced or interrupted feedstock availability on the biorefinery's operations.

(ii) The application must include:

(A) A description of the project site that addresses issues such as site access, foundations, and backup equipment when applicable;

(B) A completed Form RD 1940-20 and an environmental assessment prepared in accordance with Exhibit H of 7 CFR part 1940, subpart G; and

(C) Identification of any unique construction and installation issues.

(iii) Sites must be controlled by the eligible borrower for at least the financing term of the loan note guarantee.

(5) *Project development schedule.* The application must describe each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline including resource assessment, project and site design, permits and agreements, equipment procurement, and project construction from excavation through startup and shakedown.

(6) *Equipment procurement.* The application must demonstrate that equipment required by the biorefinery is available and can be procured and delivered within the proposed project development schedule. Biorefineries may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering,

warranties, shipping, receiving, and on-site storage or inventory.

(7) *Equipment installation.* The application must provide a full description of the management of and plan for site development and systems installation, details regarding the scheduling of major installation equipment needed for project construction, and a description of the startup and shakedown specification and process and the conditions required for startup and shakedown for each equipment item individually and for the biorefinery as a whole.

(8) *Operations and maintenance.* The application must provide the operations and maintenance requirements of the biorefinery necessary for the biorefinery to operate as designed over its useful life. The application must also include:

(i) Information regarding available biorefinery and component warranties and availability of spare parts;

(ii) A description of the routine operations and maintenance requirements of the proposed biorefinery, including maintenance schedules for the mechanical, piping, and electrical systems and system monitoring and control requirements, as well as provision of information that supports expected useful life of the biorefinery and timing of major component replacement or rebuilds;

(iii) A discussion of the costs and labor associated with operating and maintaining the biorefinery and plans for in-sourcing or outsourcing. A description of the opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator; and

(iv) Provision and discussion of the risk management plan for handling large, unanticipated failures of major components.

(9) *Decommissioning.* A description of the decommissioning process, when the project must be uninstalled or removed. A description of any issues, requirements, and costs for removal and disposal of the biorefinery.

(i) *Scoring information.* The application must contain information in a format that is responsive to the scoring criteria specified in § 4279.265(d).

(j) *Loan Agreement.* A proposed loan agreement or a sample loan agreement

with an attached list of the proposed loan agreement provisions as specified in § 4279.161(b)(11).

(k) *Lender certifications.* The lender must provide certification in accordance with § 4279.161(b)(16). In addition, the lender must certify that the lender concludes that the project has technical merit.

(l) *Intergovernmental consultation.* Intergovernmental consultation comments in accordance with RD Instruction 1940–J and 7 CFR part 3015, subpart V.

(m) *DUNS Number.* For borrowers other than individuals, a Dun and Bradstreet Universal Numbering System (DUNS) number, which can be obtained online at <http://fedgov.dnb.com/webform>.

(n) *Bioenergy experience.* Identify borrower's, including its principals', prior experience in bioenergy projects and the receipt of Federal financial assistance, including the amount of funding, date received, purpose, and outcome, for such projects.

(o) *Other information.* Any other information determined by the Agency to be necessary to evaluate the application.

[76 FR 8461, Feb. 14, 2011, as amended at 77 FR 3379, Jan. 24, 2012]

§§ 4279.262–4279.264 [Reserved]

§ 4279.265 Guarantee application evaluation.

Instead of evaluating applications using the provisions of § 4279.165, the Agency will evaluate and award applications according to the provisions specified in paragraphs (a) through (h) of this section.

(a) *Application processing.* Upon receipt of a complete application, the Agency will conduct a review to determine if the borrower, lender, and project are eligible; if the project has technical merit as determined under paragraph (b) of this section; and if the minimum financial metric criteria under paragraph (c) of this section are met.

(1) If the borrower, lender, or the project is determined to be ineligible for any reason, the Agency will inform the lender, in writing, of the reasons.

No further evaluation of the application will occur.

(2) If the Agency determines it is unable to guarantee the loan, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee.

(b) *Technical merit determination.* The Agency's determination of a project's technical merit will be based on the information in the application. Projects determined by the Agency to be without technical merit will not be selected for funding.

(c) *Financial metric criteria.* The borrower must meet the financial metric criteria specified in paragraphs (c)(1) through (c)(3) of this section. These financial metric criteria shall be calculated from the realistic information in the pro forma statements or borrower financial statements, submitted in accordance with § 4279.261(c), of a typical operating year after the project is completed and stabilized.

(1) A debt coverage ratio of 1.0 or higher.

(2) A debt-to-tangible net worth ratio of 4:1 or lower for startup businesses and of 9:1 or lower for existing businesses.

(3) A discounted loan-to-value ratio of no more than 1.0.

(d) *Scoring applications.* The Agency will score each complete and eligible application it receives on or before May 1 in the fiscal year in which it was received. The Agency will score each eligible application that meets the minimum requirements for financial and technical feasibility using the evaluation criteria identified below. A maximum of 100 points is possible.

(1) Whether the borrower has established a market for the advanced biofuel and the byproducts produced and whether the advanced biofuel meets an applicable renewable fuel standard. A maximum of 10 points can be awarded. Points to be awarded will be determined as follows:

(i) If the business has less than or equal to a 50 percent commitment for each of the following: feedstocks, marketing agreements for the advanced biofuel, and the byproducts produced or