

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

if the project does not produce an advanced biofuel that meets an applicable renewable fuel standard, 0 points will be awarded.

(ii) If the business has a greater than 50 percent commitment for any one or two of the following: feedstocks, marketing agreements for the advanced biofuel, and the byproducts produced and if the project produces an advanced biofuel that meets an applicable renewable fuel standard, 5 points will be awarded.

(iii) If the business has a greater than 50 percent commitment for each of the following: Feedstocks, marketing agreements for the advanced biofuel, and the byproducts produced and if the project produces an advanced biofuel that meets an applicable renewable fuel standard, 10 points will be awarded.

(2) Whether the area in which the borrower proposes to place the biorefinery, defined as the area that will supply the feedstock to the proposed biorefinery, has any other similar advanced biofuel facilities. A maximum of 5 points can be awarded. Points to be awarded will be determined as follows:

(i) If the area that will supply the feedstock to the proposed biorefinery does not have any other similar advanced biofuel biorefineries, 5 points will be awarded.

(ii) If there are other similar advanced biofuel biorefineries located within the area that will supply the feedstock to the proposed biorefinery, 0 points will be awarded.

(3) Whether the borrower is proposing to use a feedstock not previously used in the production of advanced biofuels. A maximum of 15 points can be awarded. Points to be awarded will be determined as follows:

(i) If the borrower proposes to use a feedstock previously used in the production of advanced biofuels in a commercial facility, 0 points will be awarded.

(ii) If the borrower proposes to use a feedstock not previously used in production of advanced biofuels in a commercial facility, 15 points will be awarded.

(4) Whether the borrower is proposing to work with producer associations or cooperatives. A maximum of 5 points

can be awarded. Points to be awarded will be determined as follows:

(i) Five (5) points will be awarded if any one of the three conditions specified in paragraphs (d)(4)(i)(A) through (d)(4)(i)(C) of this section is met.

(A) At least 60 percent of the dollar value of feedstock to be used by the proposed biorefinery will be supplied by producer associations and cooperatives;

(B) At least 60 percent of the dollar value of the advanced biofuel to be produced by the proposed biorefinery will be sold to producer associations and cooperatives; or

(C) At least 60 percent of the dollar value of the biobased products to be produced by the proposed biorefinery will be sold to producer associations and cooperatives.

(ii) Three (3) points will be awarded if any one of the three conditions specified in paragraphs (d)(4)(ii)(A) through (d)(4)(ii)(C) of this section is met.

(A) At least 30 percent of the dollar value of feedstock to be used by the proposed biorefinery will be supplied by producer associations and cooperatives;

(B) At least 30 percent of the dollar value of the advanced biofuel, or an advanced biofuel converted to electricity, to be produced by the proposed biorefinery will be sold to producer associations and cooperatives; or

(C) At least 30 percent of the dollar value of the biobased products to be produced by the proposed biorefinery will be sold to producer associations and cooperatives.

For example, consider a proposed biorefinery that will purchase \$1,000,000 of feedstock and produce \$5,000,000 worth of biofuel and \$2,000,000 worth of biobased products. In order to receive the 5 points under this criterion, at least \$600,000 worth of feedstock purchases must be from producer associations or cooperatives, at least \$3,000,000 worth of biofuel must be sold to producer associations or cooperatives, or at least \$1,200,000 worth of biobased products must be sold to producer associations or cooperatives.

(5) The level of financial participation by the borrower, including support from non-Federal government sources

and private sources. Other direct Federal funding (*i.e.*, direct loans and grants) will not be considered as part of the borrower's equity participation. A maximum of 15 points can be awarded. Points to be awarded will be determined as follows:

(i) If the borrower's equity plus other resources results in a debt-to-tangible net worth ratio equal to or less than 3 to 1, but greater than 2.5 to 1, 8 points will be awarded.

(ii) If the borrower's equity plus other resources results in a debt-to-tangible net worth ratio equal to or less than 2.5 to 1, 15 points will be awarded.

(iii) If a project uses other Federal direct funding, 10 points will be deducted.

(6) Whether the borrower has established that the adoption of the process proposed in the application will have a positive effect on three impact areas: resource conservation (e.g., water, soil, forest), public health (e.g., potable water, air quality), and the environment (e.g., compliance with an applicable renewable fuel standard, greenhouse gases, emissions, particulate matter). A maximum of 10 points can be awarded. Based on what the borrower has provided in either the application or the feasibility study, points to be awarded will be determined as follows:

(i) If process adoption will have a positive impact on any one of the three impact areas (resource conservation, public health, or the environment), 3 points will be awarded.

(ii) If process adoption will have a positive impact on two of the three impact areas, 6 points will be awarded.

(iii) If process adoption will have a positive impact on all three impact areas, 10 points will be awarded.

(iv) If the project proposes to use a feedstock that can be used for human or animal consumption as a feedstock, 5 points will be deducted from the score.

(7) Whether the borrower can establish that, if adopted, the biofuels production technology proposed in the application will not have any economically significant negative impacts on existing manufacturing plants or other facilities that use similar feedstocks. A

maximum of 10 points can be awarded. Points to be awarded will be determined as follows:

(i) If the borrower has not established, through an independent third party feasibility study, that the biofuels production technology proposed in the application, if adopted, will not have any economically significant negative impacts on existing manufacturing plants or other facilities that use similar feedstocks, 0 points will be awarded.

(ii) If the borrower has established, through an independent third party feasibility study, that the biofuels production technology proposed in the application, if adopted, will not have any economically significant negative impacts on existing manufacturing plants or other facilities that use similar feedstocks, 10 points will be awarded.

(iii) If the feedstock is wood pellets, no points will be awarded under this criterion.

(8) The potential for rural economic development. If the project is located in a rural area and the business creates jobs with an average wage that exceeds the County median household wages where the biorefinery will be located, 10 points will be awarded.

(9) The level of local ownership of the biorefinery proposed in the application. A maximum of 5 points can be awarded. Points to be awarded will be determined as follows:

(i) If local owners have an ownership interest in the biorefinery of more than 20 percent but less than or equal to 50 percent, 3 points will be awarded.

(ii) If local owners have an ownership interest in the biorefinery of more than 50 percent, 5 points will be awarded.

(10) Whether the project can be replicated. A maximum of 10 points can be awarded. Points to be awarded will be determined as follows:

(i) If the project can be commercially replicated regionally (e.g., Northeast, Southwest, etc.), 5 points will be awarded.

(ii) If the project can be commercially replicated nationally, 10 points will be awarded.

(11) If the project uses a particular technology, system, or process that is not currently operating in the advanced biofuel market as of October 1

of the fiscal year for which the funding is available, 5 points will be awarded.

(12) The Administrator can award up to a maximum of 10 bonus points to applications that promote partnerships and other activities that assist in the development of new and emerging technologies for the development of advanced biofuels so as 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. These partnerships and other activities will be identified in a FEDERAL REGISTER notice each fiscal year. However, the Administrator's bonus points may not raise an applicant's score to more than 100 points.

(e) *Ranking of applications.* The Agency will rank all scored applications to create a priority list of scored applications for the program. Unless otherwise specified in a notice published in the FEDERAL REGISTER, the Agency will rank applications by approximately January 31 for complete and eligible applications received on or before November 1 and by approximately July 31 for complete and eligible applications received on or before May 1.

(1) All applications received on or before November 1 and May 1 will be ranked by the Agency and will be competed against the other applications received on or before such date. All applications that are ranked will be considered for selection for funding for that application cycle.

(2) When an application scored in first set of applications is carried forward into the second set of applications, it will be competed against all of the applications in the second set using its score from the first set of applications.

(f) *Selection of applications for funding.* Using the priority list created under paragraph (e) of this section, the Agency will select applications for funding based on the criteria specified in paragraphs (f)(1) through (f)(3) of this section. The Agency will notify, in writing, lenders whose applications have been selected for funding.

(1) *Ranking.* The Agency will consider the score an application has received compared to the scores of other applications in the priority list, with higher scoring applications receiving first consideration for funding. A minimum score of 55 points is required in order to be considered for a guarantee.

(2) *Availability of budgetary authority.* The Agency will consider the size of the request relative to the budgetary authority that remains available to the program during the fiscal year.

(i) If there is insufficient budgetary authority during a particular funding period to select a higher scoring application, the Agency may elect to select the next highest scoring application for further processing. Before this occurs, the Agency will provide the borrower of the higher scoring application the opportunity to reduce the amount of its request to the amount of budgetary authority available. If the borrower agrees to lower its request, it must certify that the purposes of the project can be met, and the Agency must determine the project is financially feasible at the lower amount.

(ii) If the amount of funding required is greater than 25 percent of the program's outstanding budgetary authority, the Agency may elect to select the next highest scoring application for further processing, provided the higher scoring borrower is notified of this action and given an opportunity to revise their application and resubmit it for an amount less than or equal to 25 percent of the program's outstanding budgetary authority.

(3) *Availability of other funding sources.* If other financial assistance is needed for the project, the Agency will consider the availability of other funding sources. If the lender cannot demonstrate that funds from these sources are available at the time of selecting applications for funding or potential funding, the Agency may instead select the next highest scoring application for further processing ahead of the higher scoring application.

(g) *Ranked applications not funded.* A ranked application that is not funded in the application cycle in which it was submitted will be carried forward one additional application cycle, which may be in the next fiscal year. The

Agency will notify the lender in writing. If an application has been selected for funding, but has not been funded because additional information is needed, the Agency will notify the lender of what information is needed, including a timeframe for the lender to provide the information. If the lender does not provide the information within the specified timeframe, the Agency will remove the application from further consideration and will so notify the lender.

(h) *Wage rates.* As a condition of receiving a loan guaranteed under this subpart, each borrower shall ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with guaranteed loan funds under this subpart shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141 through 3144, 3146, and 3147 of title 40, U.S.C. Awards under this subpart are further subject to the relevant regulations contained in title 29 of the Code of Federal Regulations.

§§ 4279.266–4279.278 [Reserved]

§ 4279.279 Domestic lamb industry adjustment assistance program.

The provisions of §4279.175 do not apply to this subpart.

§ 4279.280 Changes in borrowers.

All changes in borrowers must be in accordance with §4279.180, but the eligibility requirements of this program apply.

§ 4279.281 Conditions precedent to issuance of loan note guarantee.

The loan note guarantee will not be issued until the lender certifies to the conditions identified in §4279.181(a) through (o) of subpart B of this part and paragraphs (a) through (h) of this section. If the lender is unable to provide any of the certifications required under this section, the lender must provide an explanation satisfactory to the Agency as to why the lender is unable to provide the certification. The lender can request the guarantee prior

to construction, but must still certify to all conditions in this section.

(a) For loans exceeding \$150,000, the lender has certified its compliance with the Anti-Lobby Act (18 U.S.C. 1913). Also, if any funds have been, or will be, paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to guarantee a loan, the lender shall completely disclose such lobbying activities in accordance with 31 U.S.C. 1352.

(b) Where applicable, the lender must certify that the borrower has obtained:

(1) A legal opinion relative to the title to rights-of-way and easements. Lenders are responsible for ensuring that borrowers have obtained valid, continuous, and adequate rights-of-way and easements needed for the construction, operation and maintenance of a facility.

(2) A title opinion or title insurance showing ownership of the land and all mortgages or other lien defects, restrictions, or encumbrances, if any. It is the responsibility of the lender to ensure that the borrower has obtained and recorded such releases, consents, or subordinations to such property rights from holders of outstanding liens or other instruments as may be necessary for the construction, operation and maintenance of the facility and to provide the required security. For example, when a site is for major structures for utility-type facilities (such as a gas distribution system) and the lender and borrower are able to obtain only a right-of-way or easement on such site rather than a fee simple title, such a title opinion must be provided.

(c) The minimum financial criteria, including those financial criteria contained in the Conditional Commitment, have been maintained through the issuance of the loan note guarantee. Failure to maintain these financial criteria shall result in an ineligible application.

(d) Each borrower shall certify to the lender that all laborers and mechanics