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DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

[Docket Number: RBS-20-BUSINESS-0015]

7 CFR Parts 4279 and 4287

RIN 0570-AA73

Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program

AGENCY: Rural Business-Cooperative Service and Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (Agency), a Rural Development agency of the United States Department of Agriculture (USDA), hereinafter referred to as (the Agency), is issuing a final rule for the Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program (the Program) or (the 9003 Program), formerly the Biorefinery Assistance Program. This final rule incorporates the statutory definition changes as required in the Agricultural Act of 2018 (2018 Farm Bill) and, with one exception, adopts the interim rule published on June 24, 2015 in the **Federal Register**. This rule also addresses public comments received by the Agency regarding Program changes as published in the Interim final rule on June 24, 2015 in the **Federal Register**.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Aaron Morris, Rural Business-Cooperative Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 3225, Washington, DC 20250–3201; telephone (202) 720–1501.

SUPPLEMENTARY INFORMATION:

I. Background

The Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246), otherwise known as the 2008 Farm Bill, established the Biorefinery Assistance Program (9003 Program) under Title IX, Section 9003, for making loan guarantees to fund the development, construction, and Retrofitting of commercial-scale biorefineries using Eligible technology. The 2008 Farm Bill defined Eligible technologies as: technology that is being adopted in a viable Commercial-scale operation of a Biorefinery that produces an Advanced biofuel; and technology that has been demonstrated to have technical and economic potential for commercial application in a Biorefinery that produces an Advanced biofuel.

The 9003 Program’s authority was continued in the Agricultural Act of 2014 (2014 Farm Bill) (Pub. L. 113–79), with several specific changes: (1) renames the Program as the Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program; (2) revises the purpose statement for the Program to include Renewable chemicals and Biobased product manufacturing; (3) expands the Program to include Biobased product manufacturing facilities; (4) adds definitions for “Renewable Chemicals” and “Biobased Product Manufacturing;” and (5) Ensures diversity in the types of Projects approved.

Once again, under the Agricultural Act of 2018 (2018 Farm Bill) (Pub. L. 115-334), signed into law on December 20, 2018, the 9003 Program was reauthorized under Title IX and the 2018

Farm Bill also amended the definition of the terms ‘biorefinery’ and ‘eligible technology’ for the Program.

Eligible applicants for this Program include: individuals; entities; Indian Tribes; units of State or Local Government; corporations; Farm cooperatives; Farmer cooperative organizations; Associations of Agricultural Producers; national laboratories; Institutions of higher education; rural electric cooperatives; public power entities; and consortia of any of the foregoing entities.

II. Summary of Comments and Responses

As noted earlier, the Agency invited comments on the interim final rule published on June 24, 2015 in the *Federal Register* (80 FR 36410) on or before August 24, 2015. The Agency received three (3) comments which are summarized as follows:

Issue 1: Two organizations expressed support for the Program as published on June 24, 2015 in the *Federal Register*.

Agency Response: The Agency appreciates the two organizations that responded in support of the Interim final rule which implements the expansion of the Program to include facilities producing primarily renewable chemicals and biobased products and the potential to developing the renewable economy.

Issue 2: One organization wrote that several of these small innovative industrial biotechnology companies are not able to meet the interim final rule deadlines, which include demonstrating 120 days of continuous pilot operation, and cannot obtain an appropriate letter of intent from a lender for their projects within the time constraints set forth in the rule. The commenter strongly recommended that the USDA final rule extend these deadlines, so as to facilitate participation by a broader and more diverse array of innovative industrial biotechnology companies which include pre-revenue and emerging companies.

Agency Response: The Agency believes that evidence of 120 days of steady, continuous production is required to provide the necessary data to make a sound credit decision as well as make a reasoned determination about the project's ability to scale up their production to a commercial scale. Phase 1 applications are accepted year-round and competed on October 1 and April 1 of each fiscal year. Evidence of 120 days of continuous steady state production from an integrated demonstration unit is a Phase 2 application requirement and does not necessarily need to be complete prior to the Phase 1 application deadline. Applicants are encouraged to submit a Letter of Intent prior to submitting a full Phase 1 application. The Letter of Intent is due 30 days prior to the Phase 1 application deadline. The Program is a loan guarantee program and therefore an applicant is required to have a lender in order to submit a complete application, but a Letter of Intent may be submitted without a lender in place.

III. Purpose of the Regulatory Action

This final rulemaking adopts almost all of the changes to 7 CFR part 4279, subpart C, and 7 CFR part 4287, subpart D, as published in the interim final rule on June 24, 2015 in the **Federal Register** which implemented the provisions contained in the 2014 Farm Bill, modified the Program to incorporate administrative improvements based on Agency experience in implementing the Program, and incorporated the applicable guaranteed loan provisions of the Agency's Business and Industry (B&I) Guaranteed Loan program to make the rule a "stand-alone" rule. This final rulemaking also incorporates the statutory definition changes as required in the Agricultural Act of 2018 (2018 Farm Bill) as well as an additional credit-driven requirement believed necessary by the Agency for projects incorporating technology that does not have a history of successful utilization in a commercial-scale operation.

IV. Summary of Changes

The changes to the 9003 Program regulation that are now being made are based on new statutory requirements in the 2018 Farm Bill and one non-statutory credit-driven need for the Program.

The 2018 Farm Bill amended the definition for the terms ‘biorefinery’ and ‘eligible technology’ for the 9003 Program.

The 2018 Farm Bill defines a biorefinery as a facility including equipment and processes that converts Renewable biomass or an intermediate ingredient or feedstock of Renewable biomass into any one or more, or a combination of Biofuels, Renewable chemicals, or Biobased products and may produce electricity.

The 2018 Farm Bill defines “Eligible Technology” as: (1) A technology that is being adopted in a viable Commercial-scale operation of a Biorefinery that produces any one or more, or a combination, of an Advanced biofuel; a Renewable chemical; or a Biobased product; and (2) a technology not described in item (1) that has been demonstrated to have technical and economic potential for commercial application in a biorefinery that produces any one or more, or a combination, of an Advanced biofuel, a Renewable chemical or a Biobased product.

The non-statutory change to the 9003 Program is a shift in timing for the requirement of the applicant to demonstrate 120 days of continuous, steady production from an integrated demonstration unit. Such demonstration which was previously required prior to loan closing will now be required prior to the issuance of a Conditional Commitment, Form RD 4279-3, which is the Agency's notice to the Lender that the loan guarantee it has requested is approved subject to the completion of all conditions and requirements set forth by the Agency and outlined in the attachment to the Conditional Commitment (see 7 CFR 4279.202) Specifically, the change will require the borrower to provide evidence to the

Lender and Agency of 120 days of continuous, steady state production from an integrated demonstration unit prior to the issuance of a Conditional Commitment instead of prior to loan closing. The Agency believes this change will decrease the time between the issuance of a Conditional Commitment and loan closing and lessen the credit risk to the Government.

V. Executive Orders/Acts

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Executive Order 12372 Intergovernmental Review of Federal Programs

This Program is not subject to the provisions of E.O. 12372, which require intergovernmental consultation with State and local officials.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effort will be given to this rule, and, in accordance with Sec. 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. Sec. 912(e)), administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Unfunded Mandates Reform Act

This final rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Therefore, this final rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

It has been determined, under E.O. 13132, Federalism, that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in the rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

Regulatory Flexibility Act

The Agency has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The Regulatory Flexibility Act (5U.S.C. 601–612) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have an economically significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. This final rule affects entities that utilize the 9003 Program and any prospective entities that may that may utilize the Program in the future.

National Environmental Policy Act Certification

The Agency Administrator has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The 9003 Program is listed in the Catalog of Federal Domestic Assistance (CFDA) under Number 10.865. This will be updated with the Program's new name, as changed by the 2014 Farm Bill, the "Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program."

All active CFDA programs and the CFDA Catalog can be found at the following web site: <https://beta.sam.gov/>. The website also contains a PDF file version of the Catalog that, when printed, has the same layout as the printed document that the Government Publishing Office (GPO) provides. GPO prints and sells the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at 202-512-1800 or toll free at 866-512-1800, or access GPO's online bookstore at <https://bookstore.gpo.gov>

Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under OMB control number 0570-0065 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Civil Rights Impact Analysis

Rural Development has reviewed this rule in accordance with USDA Regulation 4300-4, Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on

program participants on the basis of age, race, color, national origin, sex or disability. After review and analysis of the rule and available data, it has been determined that based on the analysis of the program purpose, application submission and eligibility criteria, issuance of this final rule will not likely neither adversely nor disproportionately impact very low, low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their race, color, national origin, sex, age, disability, or marital or familiar status.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at

https://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

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Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This final rule will not have any adverse impact on energy supply, distribution or use. A regulatory impact analysis was conducted for the interim final rule (80 FR 36410) which met the requirements for E.O. 13211, which states that an agency undertaking regulatory actions related to energy supply, distribution, or use is to prepare a Statement of Energy Effects. The finding in the analysis for the interim final rule was that the rule would not have any adverse impacts on energy supply, distribution, or use.

Executive Order 12372, Intergovernmental Review of Federal Programs

This Program is not subject to the provisions of E.O. 12372, which require intergovernmental consultation with State and local officials.

Executive Order 13175, Consultation and Coordination with Indian Tribes

This E.O. imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that this rule does not have a substantial direct effect on one or more Indian Tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal

Government and the Indian Tribes. Thus, this rule is not subject to the requirements of E.O. 13175.

E-Government Act Compliance

Rural Development is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects for 7 CFR Parts 4279 and 4287

Direct loan programs, Economic development, Energy, Energy efficiency improvements, Grant programs, Guaranteed loan programs, Loan programs—Business and industry, Loan programs—Rural development assistance, Renewable energy systems, Rural areas.

Accordingly, the interim rule amending 7 CFR parts 4279 and 4287 which was published at 80 FR 36410 on June 24, 2015, is adopted as final with the following changes:

PART 4279—GUARANTEED LOANMAKING

1. The authority citation for part 4279 continues to read as follows:

Authority: 5 U.S.C. 301; and 7 U.S.C. 1989.

Subpart C—Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Loans

2. Amend § 4279.202 by revising the definitions of “Biorefinery” and “Eligible technology” to read as follows:

§ 4279.202 Definitions and abbreviations.

* * * * *

Biorefinery. A facility (including equipment and processes) that converts Renewable biomass or an intermediate ingredient or feedstock of Renewable biomass into any one or more, or a combination, of Biofuels, Renewable chemicals or Biobased products, and may produce electricity.

* * * * *

Eligible technology. The term “Eligible technology” means, as determined by the Secretary:

(1) A technology that is being adopted in a viable Commercial-scale operation of a Biorefinery that produces any one or more, or a combination, of an Advanced biofuel; a Renewable chemical; or a Biobased product; and

(2) A technology not described in paragraph (1) of this definition that has been demonstrated to have technical and economic potential for commercial application in a Biorefinery that produces any one or more, or a combination, of an Advanced biofuel, a Renewable chemical or a Biobased product.

* * * * *

3. Amend § 4279.265 by revising paragraph (b)(2) to read as follows:

§ 4279.265 Guarantee application processing.

* * * * *

(b) * * *

(2) The Agency's determination of a Project's technical feasibility will be based on the technical report. In addition, prior to the issuance of the Conditional Commitment for a Project utilizing technology that does not have a history of successful utilization in a Commercial-scale operation of a Biorefinery that produces an Advanced biofuel, Renewable chemical, or Biobased product, evidence demonstrating 120 days of continuous, steady state production from an

integrated demonstration unit must be provided by the Borrower to the Lender and the Agency for review and determination of technical feasibility. Authoritative demonstration campaign results must be provided in 30-day intervals. The integrated demonstration unit must prove out the Project's ability to utilize Project-relevant biomass and produce Advanced biofuel at a yield and quality consistent with the design basis of the Project. The Borrower must provide to the Agency, for review and approval, sufficient information on the integrated campaign design so as to ensure operation duration, quality, and quantity specifications are met and incorporated into the final design criteria for the commercial facility.

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Bette B. Brand,

Deputy Under Secretary, Rural Development.

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