



June 15, 2010

The Honorable Tom Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250-0742

RE: Proposed Rule on Biorefinery Assistance Guaranteed Loan Program

Dear Secretary Vilsack:

The Renewable Fuels Association (RFA), the national trade association representing the U.S. ethanol industry, is writing to express several concerns about the proposal rule for the U.S. Department of Agriculture's (USDA) Section 9003 Biorefinery Assistance Loan Guarantee program that was established in the Food, Conservation and Energy Act of 2008 (2008 Farm Bill).

The RFA is the primary national trade association representing the U.S. ethanol industry. The RFA membership includes a broad cross-section of ethanol producers and suppliers, ranging from early-stage cellulosic and advanced ethanol producers to larger scale grain ethanol producers, as well as other businesses, individuals and organizations dedicated to the expansion of the U.S. ethanol industry.

In 2009, the U.S. produced a record 10.6 billion gallons of ethanol, displacing the equivalent of 364 million barrels of crude oil valued at \$21.3 billion. Since an increasing share of our oil is imported, this displacement means that these dollars were spent and invested in the U.S. and not sent abroad to foreign suppliers. Ethanol today is the single most important value-added market for farmers and is revitalizing rural communities across the country.

The technology exists to process ethanol from cellulose feedstocks; however, the commercialization of cellulose ethanol remains a question of economics. The capital investment necessary to build cellulose facilities remain about five times that of grain-based facilities. Those costs will, of course, come down once the first handful of cellulose facilities are built, the bugs in those "first mover" facilities are worked out, and the technology continues to advance. To continue this technological revolution, however, continued government support will be critically important.

Access to capital is a critical need for next generation biofuel companies. Potential funding mechanisms, such as the loan guarantee program at the U.S. Department of Energy (DOE), are simply not functioning as efficiently and effectively as they should. As an advocate for ethanol from all feedstocks and technologies, the RFA is greatly troubled that with no cellulosic ethanol biorefineries currently qualifying for the DOE loan guarantee program, issues with the proposed rule for the USDA Biorefinery Assistance Loan Guarantee program for such emerging technologies must be addressed immediately if we are to meet the targets for advanced biofuels production and use established by the Energy Independence and Security Act of 2007.

As noted, the technology exists today to process ethanol from cellulose and other biomass feedstocks and dedicated energy crops. But the commercialization of next generation biofuels has been crippled by access to capital, and exacerbated by the global banking and economic crisis. That is why the future success of the USDA's Biorefinery Assistance Loan Guarantee Program is so critical and must be directed to reflect the intent of Congress that this program encourage emerging technologies by reducing market risk.

While protecting taxpayer dollars is always a priority, it is critical that the program not be hamstrung so as not to allow for some failures. As you stated last month at the White House's clean energy economy forum, we have to take bigger chances with business loan guarantees to finance energy plants that make a real difference in rural America. "We've got to be willing to take a chance" on projects large enough to reverse the economic decline in rural America.

There are five areas of the proposed rule that give the RFA cause for concern.

Loan Guarantee Percentages: The USDA is proposing lower guarantees:

- (1) If the loan amount is equal to or less than \$80 million, 80 percent.
- (2) If the loan amount is more than \$80 million and less than \$125 million, 80 percent on the first \$80 million and 70 percent on the loan amount that is greater than \$80 million.
- (3) If the loan amount is equal to or more than \$125 million, 60 percent on the entire loan amount.

The level of loan guarantees in the proposed rule may be appropriate for existing, commercially available technologies. However, the proposed loan guarantee levels do not provide sufficient risk reduction for new, emerging technologies. The statutory language in the 2008 Farm Bill allows for loan guarantees of up to 90 percent for the entire loan amount. Low loan guarantee amounts, such as those proposed by USDA, limit the number of lenders who will be willing to assume the risks associated with the high capital costs of building and operating a facility that employs a new, first-of-a-kind technology that has not been commercially proven – making capital harder (if not impossible) to obtain, and allowing fewer, if any, projects to be funded. As a result, new technologies will be deployed much more slowly. The public interest is not served by this approach.

With a massive oil spill in the Gulf, prices at the pump creeping up in preparation for the summer travel season, two wars in the Middle East, and a DOE loan guarantee program that has to date proven unworkable for financing cellulosic ethanol biorefineries, the U.S. can no longer delay efforts to commercialize promising emerging technologies that can protect the environment and increase our energy security.

We urge the USDA, in the final rule, to allow for loan guarantees up to the maximum amount allowed by statute -- 90 percent on all loans up to \$250 million.

First lien position: The proposed rulemaking requires that the guarantee for a biorefinery assistance loan be secured by a first lien on all collateral necessary to run the project in the event of the borrower's default. The proposed rulemaking also references the 9003 Notice of Funding Availability (NOFA) first lien requirement. However, the proposed rulemaking appears to conflict with the 9003 NOFA in that it would put the unguaranteed lenders in a junior position to the USDA; whereas the 9003 NOFA states, "The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan."

The USDA added this requirement in the proposed rule, we believe, due to the size of the guaranteed loans under this program. This requirement puts lenders in a secondary position behind the Federal government. The lender's position is protected by the loan guarantee – but only up to the percentage amount of the guarantee. In case of default on a \$125 to \$250 million loan, the guarantee would protect only 60 percent of the lender's position, according to the proposed rule's current structure.

If USDA includes the first lien position as specified in the proposed rulemaking in the final rule, then a guarantee of up to the 90 percent level allowed by statute is certainly warranted for loan guarantees on first-of-a-kind technologies.

Lender retention: The USDA is proposing that a regulated bank, as the original lender and loan servicer, hold at least 50 percent of the unguaranteed portion of the loan amount. This level of unguaranteed loan retention by the original lender is not possible given today's market conditions. Banks remain extremely cautious to make loans to first-of-a-kind technologies. The RFA believes the original lender's role should be confined to that of servicer and administrator of the loans with the USDA relying on the lender eligibility requirements defined in the proposed rule and the lender's standard of care with respect to performing those duties.

We urge the USDA to eliminate in the final rule the requirement that the original lender hold a portion of the unguaranteed loan.

Domestic ownership: In its proposed rule, the USDA is requesting comment on whether biorefineries that do not meet the proposed citizenship requirements of at least 51 percent domestic ownership should be eligible for a loan guarantee under this program. These arbitrary requirements are problematic and counter-productive. Allowing some producers to utilize the program, while others cannot, creates severe distortions and inequities in the marketplace among entities that have made similar investments, produce the same product, and compete in the same markets. The U.S. jobs (both existing and potential) which are at stake should not be jeopardized based on the domicile of a producer's parent company or proximity to an urban area.

The domestic ownership and rural area requirements will unfairly exclude biorefineries that make quality fuels, utilize domestic feedstocks, and benefit American farmers and their communities. We believe that any biorefinery constructed in the United States, that provides jobs for U.S. workers and utilizes domestic agricultural feedstocks produced by American farmers should be eligible for a loan guarantee under the program. It is our belief that this was the intent of Congress, and we believe it is consistent with the national renewable energy and energy security goals.

The proposed citizenship requirement included in the proposed rule should be removed in the final rule.

Feedstocks: The USDA has limited the types of feedstocks in the proposed rule that can be used to produce biofuels under the Biorefinery Assistance Loan Guarantee Program.

The House Conference Report for the 2008 Farm Bill -- House Report 110-627, p. 1048, lines 3 -8 -- specifically provides that: *"Examples of lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis include dedicated energy crops and trees, wood and wood residues, plants, grasses, agricultural residues, fibers, animal wastes and other waste materials, and municipal solid wastes [emphasis added]."* There is no doubt that the Conference Managers intended that municipal solid waste can be used as a feedstock.

The public interest is not served by limiting the number and types of technologies that can be used to build biorefineries, or in limiting the types of feedstocks that are available for use and can provide an economic benefit to rural America.

We urge the USDA to specifically state in the final rule that municipal solid waste can be used as a feedstock.

We know the USDA understands and appreciates the difficulty today's financial climate creates for next generation renewable fuel companies that are working to commercialize new technologies. We

encourage the USDA to provide all of the assistance for emerging technologies like cellulosic biomass Congress intended in the 2008 Farm Bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Dinneen". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Bob Dinneen
President & CEO