DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

Rural Utilities Service

7 CFR Part 4284

RIN 0570–AA79

Value-Added Producer Grant Program

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

ACTION: Interim rule.

SUMMARY: The Food, Conservation, and Energy Act of 2008 (the Act), amends section 231 of the Agricultural Risk Protection Act of 2000, which established the Value-Added Producer Grant Program. This program will be administered by the Rural Business-Cooperative Service. Under the interim rule, grants will be made to help eligible producers of agricultural commodities enter into or expand value-added activities including the development of feasibility studies, business plans, and marketing strategies. The program will also provide working capital for expenses such as implementing an existing viable marketing strategy. The Agency will implement the program to meet the goals and requirements of the Act.

The program provides a priority for funding for projects that contribute to opportunities for beginning farmers or ranchers, socially disadvantaged farmers or ranchers, and operators of small- and medium-sized family farms and ranches. Further, it creates two reserved funds each of which will include 10 percent of program funds each year to support applications that support opportunities for beginning and socially disadvantaged farmers and ranchers and for proposed projects that develop mid-tier value marketing chains.

DATES: This interim rule is effective March 25, 2011. Written comments on this interim rule must be received on or before April 25, 2011.

ADDRESSES: You may submit comments to this interim rule by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments electronically.
- *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: Andrew Jermolowicz, USDA, Rural Development, Rural Business-Cooperative Service, Room 4016, South Agriculture Building, Stop 3250, 1400 Independence Avenue, SW., Washington, DC 20250–3250, *Telephone:* (202) 720–7558, E-mail *CPGrants@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule has been reviewed under Executive Order (EO) 12866 and has been determined not significant by the Office of Management and Budget. The EO defines a "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this EO.

The Agency conducted a cost-benefit analysis to fulfill the requirements of Executive Order 12866. The Agency has identified potential benefits to prospective program participants and the Agency that are associated with improving the availability of funds to help producers (farmers and harvesters) expand their customer base for the products or commodities that they produce. This results in a greater portion of the revenues derived from the value-added activity being made available to the producer of the product. These benefits are vital to the success of individual producers, farmer or rancher cooperatives, agriculture producer groups, and majority-controlled producer based business ventures.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) of Public Law 104–4 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, Rural Development must prepare, to the extent practicable, a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. With certain exceptions, section 205 of the UMRA requires Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This interim rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.,* an Environmental Impact Statement is not required.

Executive Order 12988, Civil Justice Reform

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. Except where specified, all State and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry Federal requirements. No person is required to apply for funding under this program, but if they do apply and are selected for funding, they must comply with the requirements applicable to the Federal program funds. This rule is not retroactive. It will not affect agreements entered into prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132, Federalism

It has been determined, under Executive Order 13132, Federalism, that this interim 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 Regulatory Flexibility Act (RFA) (5 U.S.C. 601–602) 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.

In compliance with the RFA, Rural Development has determined that this action will not have an economically significant impact on a substantial number of small entities for the reasons discussed below. While, the majority of producers of agricultural commodities expected to participate in this Program will be small businesses, the average cost to participants is estimated to be approximately 20 percent of the total mandatory funding available to the program in fiscal years 2009 through 2012. Further, this regulation only affects producers that choose to participate in the program. Lastly, small entity applicants will not be affected to a greater extent than large entity applicants.

Executive Order 12372, Intergovernmental Review of Federal Programs

This program is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. Intergovernmental consultation will occur for the assistance to producers of agricultural commodities in accordance with the process and procedures outlined in 7 CFR part 3015, subpart V.

Rural Development will conduct intergovernmental consultation using RD Instruction 1940–J, "Intergovernmental Review of Rural Development Programs and Activities," available in any Rural Development office, on the Internet at *http://www.rurdev.usda.gov/regs,* and in 7 CFR part 3015, subpart V. Note that not all States have chosen to participate in the intergovernmental review process. A list of participating States is available at the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.*

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

USDA will undertake, within 6 months after this rule becomes effective, a series of Tribal consultation sessions to gain input by elected Tribal officials or their designees concerning the impact of this rule on Tribal governments, communities and individuals. These sessions will establish a baseline of consultation for future actions, should any be necessary, regarding this rule. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

The policies contained in this rule would not have Tribal implications that preempt Tribal law.

Programs Affected

The Value-Added Producer Grant program is listed in the Catalog of Federal Domestic Assistance under Number 10.352.

Paperwork Reduction Act

The collection of information requirements contained in this interim rule have been submitted to the Office of Management and Budget (OMB) for clearance. In accordance with the Paperwork Reduction Act of 1995, the Agency will seek standard OMB approval of the reporting requirements contained in this interim rule. In the publication of the proposed rule on May 28, 2010, the Agency solicited comments on the estimated burden. The Agency received one public comment in response to this solicitation. This information collection requirement will not become effective until approved by OMB. Upon approval of this information collection, the Agency will publish a rule in the **Federal Register**.

Title: Value-Added Producer Grant Program.

OMB Number: 0570–XXXX.

Type of Request: New collection.

Expiration Date: Three years from the date of approval.

Abstract: The collection of information is vital to the Agency to make decisions regarding the eligibility of grant recipients in order to ensure compliance with the regulations and to ensure that the funds obtained from the Government are being used for the purposes for which they were awarded. Entities seeking funding under this program will have to submit applications that include information on the entity's eligibility, information on each of the evaluation criteria, certification of matching funds, verification of cost-share matching funds, a business plan, and a feasibility study. This information will be used to determine applicant eligibility and to ensure that funds are used for authorized purposes.

Once an entity has been approved and their application accepted for funding, the entity would be required to sign a Letter of Conditions and a Grant Agreement. The Grant Agreement outlines the approved use of funds and actions, as well as the restrictions and applicable laws and regulations that apply to the award. Grantees must maintain a financial system and, in accordance with Departmental regulations, property and procurement standards. Grantees must submit semi-annual financial performance reports that include a comparison of accomplishments with the objectives stated in the application and a final performance report. Finally, grantees must provide copies of supporting documentation and/or project deliverables for completed tasks (*e.g.,* feasibility studies, business plans, marketing plans, success stories, best practices).

The estimated information collection burden hours has increased from the proposed rule by 1,239 hours from 67,943 to 69,235 for the interim rule. The increase is attributable to reporting requirements that were inadvertently omitted from the proposed rule.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 11 hours per response.

Respondents: Producers of agricultural commodities.

Estimated Number of Respondents: 600.

Estimated Number of Responses per Respondent: 10.

Estimated Number of Responses: 6,239.

Estimated Total Annual Burden on Respondents: 69,235.

E-Government Act Compliance

The Agency is committed to complying with the E-Government Act of 2002 (Pub. L. 107–347, December 17, 2002) 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.

I. Background

This interim rule contains the provisions and procedures by which the Agency will administer the Value-Added Producer Grant (VAPG) Program. The primary objective of this grant program is to help Independent Producers of Agricultural Commodities, Agriculture Producer Groups, Farmer and Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures develop strategies to create marketing opportunities and to help develop Business Plans for viable marketing opportunities regarding production of bio-based products from agricultural commodities. As with all value-added efforts, generating new products, creating expanded marketing opportunities, and increasing producer income are the end goal.

Eligible applicants are independent agricultural producers, farmer and rancher cooperatives, agricultural producer groups, and majority-controlled producer-based business ventures.

Rural Development is soliciting comments regarding the participation of tribal entities including tribal governments in the VAPG Program. Specifically, we are seeking comment on ways to improve the ability of tribal entities participation in the VAPG Program and ways to overcome existing barriers to tribal entities' participation in the VAPG Program.

The program includes priorities for projects that contribute to opportunities for beginning farmers or ranchers, socially disadvantaged farmers or ranchers, and operators of small- and medium-sized family farms and ranches that are structured as Family Farms. Applications from these priority groups will receive additional points in the scoring of applications. In the case of equally ranked proposals, preference will be given to applications that more significantly contribute to opportunities for beginning farmers and ranchers, socially disadvantaged farmers and ranchers, and operators of small- and medium-sized farms and ranches that are structured as Family Farms.

Grant funds cannot be used for planning, repairing, rehabilitating, acquiring, or constructing a building or facility (including a processing facility). They also cannot be used to purchase, rent, or install fixed equipment.

This program requires matching funds equal to or greater than the amount of grant funds requested. The Act provides for both mandatory and discretionary funding for the program, as may be appropriated. Further, the program includes two reserved funds each of which will include ten percent of program funds each year to support applications that support projects that benefit beginning and socially disadvantaged farmers and ranchers and that develop mid-tier value marketing chains.

The number of grants awarded will vary from year to year, based on availability of funds and the quality of applications. The maximum grant amount that may be awarded is $500,000. However, the Agency may reduce that amount depending on the total funds appropriated for the program in a given fiscal year. This policy allows more grants to be awarded under reduced funding.

The Agency notes, pursuant to general Federal directives providing guidance on grant usage, that the matching funds requirement described in the Agricultural Risk Protection Act of 2000 may include a limited and specified in-kind contribution amount for the value of the time of the applicant/producer or the applicant/producer's family members only for their involvement in the development of the business and marketing plans associated with a planning grant project. *Please see* § 4284.902 definitions for Conflict of Interest, and Matching Funds; and § 4284.923(a) for applicant in-kind implementation protocol.

Interim Rule. The Agency is issuing this regulation as an interim rule, with an effective date of March 25, 2011. All provisions of this regulation are adopted on an interim final basis, are subject to a 60-day comment period, and will remain in effect until the Agency adopts final rules. The provisions of this subpart constitute the entire provisions applicable to this Program; the provisions of subpart A of this title do not apply to this subpart.

II. Summary of Changes to the Proposed Rule

This section presents changes from the May 28, 2010, proposed rule. Most of the changes were the result of the Agency's consideration of public comments on the proposed rule. Some changes, however, are being made to clarify proposed provisions. Unless otherwise indicated, rule citations refer to those in the interim rule.

A. Definitions

Numerous changes were made to the definitions, including revising, adding, and deleting definitions.

1. Revised definitions. Definitions that were revised included:

- *Agricultural commodity.* Incorporated the concept of agricultural product.
- *Agricultural producer.* Expanded the definition to incorporate concept of having legal right to harvest an agricultural commodity and how the term "directly engage" may be satisfied.
- *Agricultural producer group.* Added that independent producers, on whose behalf the value-added work will be done, must be confirmed as eligible and identified by name or class.
- *Conflict of interest.* Significant changes were made to ensure clarity between conflict of interest, in-kind contributions, and matching funds.
- *Emerging market.* Added the concept of "geographic market" and a two-year limitation.
- *Farmer or rancher cooperative.* Revised "independent agricultural producers" to read "independent producers" and added that independent producers must be confirmed as eligible and identified by name or class.
- *Independent producers.* Revised steering committee requirements and added harvesters as a new paragraph (3) to the definition.
- *Local or regional supply network.* Added "aggregators" to list of example entities that may participate in a supply network and added reference to "provide facilitation of services."
- *Majority-controlled producer-based business venture.* Added that Independent Producer members must be confirmed as eligible and must be identified by name or class, along with their percentage of ownership.
- *Matching funds.* Significant changes were made to ensure clarity between matching funds, in-kind contributions, and conflict of interest.
- *Medium-sized farm.* Increased the upper limit defining a medium-sized farm to $1 million.
- *Product segregation.* Removed reference to "product" because of the change in the definition for agricultural commodity.
- *Pro forma financial statement.* Added a minimum three year requirement for the projections included in the statement.
- *Project.* Added "eligible" so that the definition now refers to "eligible activities."
- *Qualified consultant.* Added the concept of no conflict of interest.

• *Value-added agricultural product.* Removed reference to "product" because of the change in the definition for agricultural commodity and reinstated text from the authorizing statute.

• *Venture.* Added "and its value-added undertakings" to the definition.

2. Added definitions. The following definitions were added:

• *Agricultural food product.* This term was added to help clarify what constitutes a "Locally-produced agricultural food product."

• *Applicant.* This term was added to emphasize applicant eligibility requirements.

• *Branding.* This term was added to clarify the implementation of the program with regard to branding activities.

• *Change in physical state.* This term is used in the Value-Added Agricultural Product definition and is being defined to increase understanding and Agency intention for this category and to mitigate problems that have presented during the history of the program.

• *Produced in a manner that enhances the value of the agricultural commodity.* This term is used in the Value-Added Agricultural Product definition and is being defined to increase understanding and implementation for this important product eligibility category in order to mitigate product eligibility problems and interpretations that have presented during the history of the program.

3. Deleted definitions. The following definitions were deleted:

• *Agricultural product.* The term is now incorporated into the definition of agricultural product.

• *Anticipate award date.* The term is not used in the rule.

• *Day.* Unnecessary to define.

• *Rural or rural area.* With the removal of the scoring criterion for being located in a rural or rural area, the term is not used in the rule.

B. Environmental Requirements

The Agency corrected this section by replacing the reference to Form 1940–22, "Environmental Checklist for Categorical Exclusions," with "Form RD 1940–20, Request for Environmental Information."

C. Applicant Eligibility

In addition to edits to clarify this section, changes included:

• Replacing "demonstrate" with "certify" in § 4280.920(c)(1) and (c)(2).

• Replacing reference to "immediate family members" with "entity owners" in § 4284.920(c)(2) to clarify the provision.

• Adding a requirement to evidence good standing as part of legal authority and responsibility (§ 4284.920(d)).

• Clarifying that "within 90 days" for closing out the currently active grant is based on the application submission deadline (§ 4284.920(f)).

D. Project Eligibility

Numerous changes were made throughout this section, including:

• Clarifying the conflict of interest provision in § 4284.922(b)(2).

• Adding exception to the requirement for submitting a feasibility study for applicants who can demonstrate that they are proposing market expansion for existing value-added products (*see* § 4284.922(b)(5)(i)).

• Adding an exception to the requirement for submitting a feasibility study and a business plan for working capital applicants requesting $50,000 or less and submitting simplified applications (*see* § 4284.922(b)(5)(ii)).

• Added reference to an emerging market "unserved by the applicant in the two previous years" to conform to change made in the definition of emerging market (*see* § 4284.922(b)(6)).

• Removing proposed paragraph § 4284.922(c), which results in removing the proposed limitations on branding activities.

• Revising reserved funds eligibility significantly to identify the type of documentation being requested (*see* § 4284.922(c)(1)(i) and (ii), § 4284.922(c)(2)(i) and (ii), and § 4284.922(c)(2)(iv)(A) and (B)).

• Adding a new paragraph (d) addressing requirements for applicants seeking priority points if they propose projects that contribute to increasing opportunities for beginning farmers or ranchers, socially disadvantaged farmer or ranchers, or operators of small- and medium-sized farms and ranches that are structured as a family farm.

E. Eligible Uses of Grant Funds

The Agency revised this section by including provisions to clearly allow the use of in-kind contributions and limiting in-kind contributions to 25 percent of total project costs.

F. Ineligible Uses of Grants and Matching Funds

In addition to adding new introductory text to this section to address conflict of interest and to clarify that use of funds is limited to only the eligible activities identified in § 4284.923, changes made include:

• Adding a new paragraph prohibiting paying for support costs for services or goods going to or coming from a person or entity with a real or apparent conflict of interest, except as specifically noted for limited in-kind matching funds in § 4284.923(a) and (b).

• Adding a new paragraph prohibiting paying for costs for scenarios with noncompetitive trade practices.

• Adding "for the processing and marketing of the value-added product" to the paragraph prohibiting paying expenses not directly related to the funded project.

• Adding "as identified by name or class" to the paragraph prohibiting paying for conducting activities on behalf of anyone other than a specifically identified independent producer or group of independent producers.

• Adding a new paragraph prohibiting paying owner or immediate family member salaries or wages.

• Adding a new paragraph prohibiting paying for goods or services from a person or entity that employs the owner or an immediate family member;

• Deleting proposed § 4284.924(p).

G. Preliminary Review

The Agency added text to reference applicant eligibility as part of the preliminary review conducted by the Agency.

H. Application Package

Substantive changes to this section include:

• Deleting the requirement to submit Form RD 400–1, Equal Opportunity Agreement.

• Adding the requirement to submit Form RD 1940–20.

• Adding that the performance criteria in the applicant's semi-annual and final reporting requirements can be requested by either the applicant or the Agency and will be detailed in either the grant agreement or the letter of conditions.

• Adding that the applicant must demonstrate the eligibility and availability of both cash and in-kind contributions (not just provide authentic documentation from the source as was proposed).

• Adding as acceptable matching funds a confirmed applicant or family member in-kind contribution that meets the requirements and limitations specified in § 4284.923(a) and (b) and non-federal grant sources (unless otherwise provided by law).

• Providing additional examples of ineligible matching funds.

• Providing exceptions as to when a business plan and a feasibility study are required.

• Changing the language in the product eligibility category "produced

in a manner that enhances the value of the agricultural commodity," to allow for the inclusion of planning grant applications in this category.

I. Filing Instructions

Changes to this section include:

• Replacing the fixed application deadline of March 15 each fiscal year with identification in an annual Federal Register notice of the application deadline, which will allow at least 60 days for applicants to submit their applications.

• Adding text to indicate that applications must contain all required components in their entirety.

• Adding text to indicate that emailed or faxed applications will not be accepted.

J. Processing Applications

The Agency revised § 4284.940(b) by limiting the Agency notifications under to applicants whose applications are found to be ineligible.

K. Proposal Evaluation Criteria and Scoring

Several changes were made to this section including:

• Adding text to indicate that applications whose scoring information is not readily identifiable will not be considered.

• Increasing the points to be awarded for the nature of the proposed project from 25 to 30.

• Decreasing the points to be awarded for the type of applicant from 15 to 10.

• Including points (10) to be awarded if the applicant is a cooperative.

• Deleting the rural or rural area location criterion.

L. Obligate and Award Funds (Grant Agreement at Proposal)

Two major revisions were made to this section as follows:

• Adding a new paragraph (c) detailing additional documentation that a grantee will need to execute in order for the Agency to obligate the award of funds.

• Adding details for the submittal of disbursement requests by the grantee (§ 4284.951(d)).

M. Monitoring and Reporting Program Performance

The Agency made several changes to this section, as follows:

• Adding text to § 4284.960(a) to indicate that grantees must complete the project per the terms and conditions specified in the approved work plan and budget, and in the grant agreement and letter of conditions.

• Revising the time allowed for submitting semi-annual performance reports from 30 to 45 days following March 31 and September 30 (*see* § 4284.960(b)(1)).

• Adding distribution network supply as an example of supporting documentation under § 4284.960(b)(3).

• Adding examples of the types of project and performance data that the Agency may request under § 4284.960(b)(4).

• Adding a new paragraph (§ 4284.960(b)(5)) identifying conditions under which the Agency may terminate or suspend the grant.

N. Transfer of Obligations

The Agency made two revisions to this section as follows:

• Adding to the introductory text that the transfer of obligation of funds is at the discretion of the Agency and will be made on a case-by-case basis.

• Revising § 4284.962(b) to condition the approval of a transfer of obligation of funds on the project continuing to meet "all product, purpose, and reserved funds eligibility requirements."

O. Grant Servicing

The Agency has revised this section to allow for an extension process that would not require the approval of the Administrator. Originally, the change was going to be made to 7 CFR part 1951 subpart E, however, the Agency decided that the information was a better fit under § 4284.961.

P. Grant Close Out and Related Activities

The Agency has revised this section to identify these activities more explicitly.

III. Summary of Comments and Responses

Purpose—(§ 4284.901)

Comment: One commenter recommends that "viable agricultural producers" be added to this language to clarify that the limited grant funds available in this discretionary funding program are intended to assist viable agricultural businesses that are financially prepared to progress to the next business level of planning for, or engaging in, value-added production.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Definitions—(§ 4284.902)

Comment: One commenter states that, in addition to the need for several new definitions related to program concepts, many of the current definitions in the proposed rule need revision for clarification and to ensure that the eligibility requirements dependent upon these definitions are included in the rule. Eligibility requirements depend upon and refer to the definitions, so the definitions must be comprehensive.

Response: The Agency agrees with the commenter and has revised definitions and provided additional definitions, as described in the following paragraphs.

Agricultural Commodity

Comment: One commenter states that there is no need to distinguish between "Agricultural Product" and "Agricultural Commodity," and recommends combining the definitions to read as follows:

Agricultural commodity. An unprocessed product of farms, ranches, nurseries, forests, and natural and man-made bodies of water, that the independent producer has cultivated, raised, or harvested with legal access rights. Agricultural commodities include plant and animal products and their by-products, such as crops, forestry products, hydroponics, nursery stock, aquaculture, meat, on-farm generated manure, and fish and seafood products. Agricultural commodities do not include horses or other animals raised or sold as pets, such as cats, dogs, and ferrets.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Agricultural Food Product

Comment: One commenter states that the definition for "Locally-produced agricultural food product" does not describe what an agricultural food product can and cannot be; it only describes the distance and geographic requirements for local foods. Thus, a definition consistent with the definition found in the Rural Business-Cooperative Service Business and Industry program is needed. The commenter recommends the following definition:

Agricultural food product. Agricultural food products can be a raw, cooked, or processed edible substance, beverage, or ingredient intended for human consumption. These products cannot be animal feed, live animals, non-harvested plants, fiber, medicinal products, cosmetics, tobacco products, or narcotics.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Agricultural Producer

Comment: One commenter recommends revising this definition to address "harvesters" as eligible agricultural producers, and to clarify past program conflicts of what it means to "directly engage" in production to strengthen the definition. The

commenter recommends the following definition:

Agricultural producer. An individual or entity directly engaged in the production of an agricultural commodity, or that has the legal right to harvest an agricultural commodity, that is the subject of the value-added project. Agricultural producers may "directly engage" either through substantially participating in the labor, management, and field operations themselves; or by maintaining ownership and financial control of the agricultural operation.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Agricultural Producer Group

Comment: One commenter recommends softening, for Mid-Tier Value Chain (MTVC) projects only, the definition of an Agricultural Producer Group (APG). Expand the APG definition to include nonprofits that have a mission to help promote farmer income through MTVC strategies, and reduce any requirement that the nonprofit be controlled by farmers. It is not necessary for a nonprofit with a MTVC to be controlled by farmers for it to be genuinely representative and committed to farmers and the MTVC. Such nonprofits are frequently the most likely to play a pivotal role in convening and organizing a complex web of entities along the value chain, and they should not be included as an eligible MTVC–APG.

Response: The Agency does not agree that it is necessary to change the definition of Agricultural Producer Group to allow for the participation of other entities. The Agency recognizes that nonprofit entities may provide valuable assistance within the supply chain and has added "nonprofit organizations" to the Reserved Fund Eligibility Requirements for MTVC.

Comment: One commenter suggests the following revised definition:

Agricultural producer group. A membership organization that represents independent producers and whose mission includes working on behalf of independent producers and the majority of whose membership and board of directors is comprised of independent producers. The independent producers, on whose behalf the value-added work will be done, must be confirmed as eligible and identified by name or class.

The commenter states that the added language instructs on the eligibility requirement that, for agricultural producer group, the Independent Producers must be identified. The commenter prefers to expand the definition by allowing identification by name or class. Because the regulation refers to the definitions for instruction on applicant eligibility, all eligibility requirements must be stated in the definition.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Agricultural Product

Comment: One commenter states that this definition is not needed and should be deleted. The commenter recommends combining this language with the "Agricultural Commodity" definition.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Beginning Farmer or Rancher

Comment: One commenter states that the final rule should facilitate applications from projects benefiting beginning farmers and ranchers. Supporting these projects is a statutory priority for the VAPG program. The statute also provides for a 10 percent reserved fund set-aside for projects that benefit beginning farmers or ranchers or socially disadvantaged farmers or ranchers. The specific wording of these two statutory provisions is very important.

The Agency is to give priority to projects that contribute to farming opportunities for beginning farmers and is to reserve funds for projects that benefit beginning farmers. Nowhere does the statute say that such priority projects must exclusively benefit beginning farmers and no one else. By statute, it is sufficient that the priority projects contribute to new farming opportunities and benefit beginning farmers. In implementing the intent of Congress, the Agency needs to provide guidance in regulations and/or in guidance to grant reviewers as to what constitutes a significant enough contribution or benefit to beginning farmers as to qualify a proposal as meeting the program priority or access to the reserved fund.

Stipulating the criteria in the rule has the negative effect of locking the criteria in place for all the years the rule remains in place. The alternative—dealing with the issue in the annual NOFA and/or grant review criteria—has the benefit of allowing for an iterative process to refine and fine tune the criteria based on actual experience.

The commenter prefers providing for iterative annual adjustments as needed to ensure the intent of Congress in creating the beginning farmer priority is actually achieved in the reality of program implementation. If, however, it is going to be stipulated in the rule, it is important that the rule is correct and clear as it is difficult and time consuming to change a final rule. In the case of individual farmer/rancher grants, there is no problem. The individual farmer or rancher is either a beginner or not. However, group proposals are an entirely different matter.

The proposed rule's beginning farmer definition dictates that all members of the farmer group, co-op, business, or other entity must be beginning farmers or ranchers, an extremely unlikely situation in the real world. The commenter believes the proposed rule negates the express will of Congress in creating the priority and reserved fund in the first place by creating a stipulation that renders the directive effectively null and void. Even if a 100 percent beginning farmer member co-op or business or farm group existed somewhere in the real world, requiring a new farm business made up of multiple farmers to be 100 percent beginners will preclude mentoring opportunities with more experienced farmers and increase risk of failure.

Hence, it would tend to defeat the purpose of the program. There are two operative provisions in the proposed rule related to beginning farmers and ranchers. The first is in reference to the reserved funds (proposed § 4284.922(d)(1)) and states: "If the applicant is applying for beginning farmer or rancher, or socially-disadvantaged farmer or rancher reserved funds, the applicant must provide documentation demonstrating that the applicant meets one of these definitions."

The second is a very indirect reference in the evaluation criteria and scoring of applications section, where up to 15 points are awarded for "Type of applicant." In the final analysis, therefore, everything in the rule hinges on the definition of beginning farmer or rancher in the definition section of the rule.

The commenter contends that this language indicates that proposals from individual beginning farmers or ranchers as well as applications from an agricultural producer group, co-op, and business must include exclusively beginning farmers or ranchers to qualify for the beginning farmer or rancher category. As it applies to group proposals, this definition flies in the face of the statutory language that projects simply contribute to beginning farmer opportunities and benefit beginning farmers.

The commenter states there are two remedies. One would be to change the

definition. The other would be to leave the definition as is, but add an operative provision elsewhere in the rule to ensure the rule complies with the law and common sense.

If the first alternative is chosen, the commenter recommends the definition of beginning farmer and rancher be amended as follows: "Beginning farmer or rancher. This term has the meaning given it in section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)) and is an entity in which none of the individual owners have operated a farm or a ranch for more than 10 years. In the event that there are multiple farmer or rancher owners of the applicant group, at least 25 percent of the ownership must be held by beginning farmers or ranchers. For the purposes of this subpart, a beginning farmer or rancher must currently own and produce the agricultural commodity to which value will be added."

Another commenter states the rule must not create barriers for beginning farmers and ranchers that are part of a producer group or entity seeking to establish a value added market. The proposed rule suggests that BFR entities must have a 100 percent of the membership meeting the beginning farmer definition to qualify for the set-aside funds and priority status. This is difficult at best and most operations they have worked with do not include 100 percent beginning farmers. This requirement must be changed to be less restrictive or they will lose the opportunity to enable beginning farmers to enter existing operations and be provided mentoring and new market opportunities. The commenter believes a 25 percent ownership/membership test would be appropriate.

Response: The Agency disagrees with the commenters. The definition of beginning farmer or rancher is stipulated by statute, which also stipulates that projects must 'benefit' beginning farmers or ranchers. It is the position of the Agency that Reserved funds are to benefit this priority category exclusively. The statute indicates that priority points are to be awarded to projects that "provide opportunities" to beginning farmers or ranchers. It is the position of the Agency that priority points may be awarded to entities or groups in which Beginning Farmers or Ranchers comprise at least 51 percent membership.

Comment: One commenter suggests revising this definition and adding language clarifying that the beginning farmer or rancher must first be an eligible independent producer that is currently producing the majority of the agricultural product to which value will be added. Nonproduction of product, even for a beginning farmer or rancher, would not be an eligible application. The suggested revised definition is as follows:

Beginning farmer or rancher. This term has the meaning given it in section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)) and is an entity in which none of the individual owners have operated a farm or a ranch for more than 10 years. For the purposes of this subpart, a beginning farmer or rancher must be an Independent Producer that, at time of application submission, currently owns and produces more than 50 percent of the agricultural commodity to which value will be added.

Response: The Agency disagrees with the suggested revision. A change in definition is not required to accomplish this goal. All program applicants must meet the criteria of one of the four applicant eligibility categories. The beginning farmer or rancher definition is statutory.

Change in Physical State

Comment: One commenter recommends adding a definition for "change in physical state." This terminology is used in the Value-Added agricultural product definition and should be defined to increase understanding and Agency intention for this category and to mitigate problems that have presented during the history of the program (pressure-ripened peaches, dehydrated corn: part of previous applications that were deemed ineligible by the program due to ineligible change in physical state).

Response: The Agency agrees with the recommendation and has added a definition for this term.

Conflict of Interest

Comment: One commenter states that the conflict of interest definition should be eliminated as it is confusing and inconsistent in application. First, the very receipt of a grant directly benefits the producer applicant(s) and could be considered a conflict. Secondly, what is the rationale for allowance of some activities by the producer applicant(s) while others are classified as having a conflict of interest? Application of the rule appears to be somewhat arbitrary in its current form.

The commenter also notes that this definition is confusing and misleading because applicant in-kind for the development of business plans and/or marketing plans is ruled to be an eligible match.

The commenter states that, if the term cannot be eliminated, further clarification of the definition is required. All exceptions to the rule must be clearly stated. As it stands now, applicant time contributed to the completion of a business and/or marketing plan is allowable (*See* § 4284.923, 75 FR 29929), but there is much confusion as to whether this would constitute a conflict of interest. The suggestion is to state more emphatically the ability of applicants to contribute time towards a business and/or marketing plan without incurring a conflict of interest.

The commenter further states that, for Working Capital applications, grant funds cannot pay the salaries of employees with an ownership interest to process and/or market and deliver the value-added product to consumers (as stated in proposed § 4284.923(b)) and asks why one payment is allowed and the other is not? Does this relate to conflict of interest? Clarification would aid in reader interpretation.

Response: The Agency agrees that guidance and clarification regarding Conflict of Interest is necessary.

The Agency considers the use of grant funds for direct personal financial gain to be a conflict of interest and will continue to prohibit use of grant funds to pay applicant/applicant family member salaries. However, the Agency recognizes the value of producer participation in planning activities, as well as the necessity of participating in eligible marketing activities. Therefore, both Planning and Working Capital applicants (and applicant family members, as necessary) may contribute time spent on eligible activities as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented, as provided for at § 4284.923.

Comment: Numerous commenters urge the Agency to reconsider the definition for conflict of interest to include an exception to allow applicants to contribute time (*e.g.* in-kind match) towards the development of business and/or marketing plans. The commenters believe it is in the applicant's best interest to be intimately involved in this part of the process. Furthermore, for small, beginning farmers or ranchers, and/or disadvantaged farmers or ranchers especially, allowable in-kind match of this nature is of critical importance because the project is still at the planning stage and revenues from the project have yet to be realized. As such, the applicant's ability to match the grant with 100 percent cash is often limited.

Numerous commenters recommend keeping business and enterprise planning of VAPG projects farmer-centered. Farmers and ranchers should directly participate in the development of VAPG projects and be allowed to count their time as a contribution toward the program's matching requirements.

Several commenters state that, as agricultural producers and past recipients of VAPGs to conduct planning and feasibility studies, they believe strongly in this program and have received first-hand benefits. As a beginning farmer, the ability to contribute in-kind match towards the completion of planning grant was crucial in making the project affordable. Moreover, being personally involved in the completion of the business and marketing plan was critically important as the owners of the new value-added businesses and the persons who would bear primary responsibility for implementing these plans.

One commenter states that concern over conflicts of interest began to emerge in VAPG NOFAs several years ago and has now led to an overly restrictive definition. Specifically, the example provided in the definition of conflict of interest implies that farmers and ranchers have an inherent bias in favor of their project ideas that trumps an equally compelling interest in not investing their resources in an idea that will not work. The commenter states that its members' experience, in contrast, shows that successful businesses are those in which participating farmers and ranchers are intimately engaged in all of the planning stages.

Given the example included as part of the definition, the continued references to conflict of interest in the proposed rule give the clear impression that participation by the producer, their family members, and/or staff creates huge problems and is prohibited. This undermines the fundamental principle of the VAPG program: that farmers and ranchers should be empowered through these grants to explore creative new businesses that will increase farm income and create or expand rural wealth. This broad definition of conflict of interest could easily lead to an interpretation that would prohibit farmer or rancher participation in any of the work necessary for planning grants and result in VAPG evolving into a grant program that benefits consultants rather than producers.

The commenter agrees that feasibility studies generally should be written by third party professionals, but disagrees that a conflict of interest exists that should preclude producers from being integral to the research and information collection necessary for a successful feasibility study. The economic realities of the farmer and rancher communities the VAPG program was created to help ameliorate require that the program allow producers' time and expenses be permitted as an allowable match for grant funds.

The businesses most likely to succeed are those in which producers are most actively engaged in the enterprise's planning. Their involvement should be encouraged and counted as an equally important contribution as cash to the project. The inclusion of the example in the second sentence of the proposed rule's definition of conflict of interest, when applied to sections of the rule that refer back to the conflict of interest definition, contradicts the statute at 7 U.S.C. 1621(b)(1)(A) and (b)(3)(A) as well as the allowance made in proposed § 4284.923(a) and must be fixed to provide consistency and clarity. The commenter, therefore, recommends that the example be eliminated from the definition as follows:

"A situation in which a person or entity has competing professional or personal interests that make it difficult for the person or business to act impartially."

Response: The Agency agrees that the definition and application of "Conflict of Interest" needs clarification. The Agency also recognizes the value of producer participation in Planning activities, while, at the same time acknowledging that an unbiased, third party is necessary for the evaluative portions of these activities. Therefore, the Agency will retain its requirement that feasibility studies be performed by independent third-parties. However, applicants (and applicant family members, as necessary) are encouraged to participate in the non-evaluative portions of Planning grants and may contribute time as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented, as described at § 4284.923.

Comment: One commenter recommends clearing up the confusion surrounding "conflict of interest." The proposed rule makes strides in addressing producer participation, however, it is confusing at best as to many areas regarding producer involvement. The most troublesome involves "conflict of interest" as it appears in several places throughout the rule and often times directly contradicts other areas of the rule.

The commenter recommends eliminating the inclusion of the example within the conflict of interest definition. The very nature of this program serving farmers and ranchers should indicate that their involvement would not be considered a "conflict of interest". The grant is for their purposes and their involvement is critical to the success of the project. Therefore, the rule must clear up this confusion and can begin by eliminating the example provided within the definition of conflict of interest.

The rule must also clear up all the inconsistencies where they appear regarding conflict of interest, producer involvement and direction indicating certain aspects must be through a third-party consultant.

Response: The Agency agrees and the example has been removed from the conflict of interest definition. In addition, the Agency has added language at § 4284.923(a) and (b) that clarifies that applicants (and applicant family members, as necessary) may participate in the non-evaluative portions of Planning grants and may contribute time as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented.

Comment: One commenter recommends revising this definition and [deleting the line "An example is a grant recipient or an employee of a recipient that conducts or significantly participates in conducting a feasibility study for the recipient."

According to the commenter, conflict of interest has been a major problem in the program for years, and is largely responsible for the high volume of ineligible applications received annually. The conflict of interest definition and its implementation parameters need to be very clear in the regulation. The commenter suggested that the definition of "conflict of interest" read as follows:

"A situation in which a person or entity has competing personal, professional or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, or their immediate family members having a financial or other interest in the outcome of the project; or that restrict open and free competition for unrestrained trade. Examples of conflicts of interest include, but are not limited to, organizational conflicts,

noncompetitive practices, and support of costs for goods or services provided by a person or entity with a conflict of interest. Specifically, grant and matching funds may not be used to support costs for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members. See § 4284.923(a) for one limited exception to this definition and practice for VAPG."

According to the commenter, the suggested definition is consistent with Federal procurement standards that apply to VAPG, including 7 CFR part 3019 and 2 CFR part 230. An exception to the rule for limited applicant in-kind on BP and MP tasks is detailed in proposed § 4284.923(a), but the exception is not the rule, and conflict of interest should be clearly defined in the regulation.

Response: The Agency agrees and the definition has been revised for clarity, to remove the example, and to reference § 4284.923(a) and (b), which contain two limited exceptions to its implementation.

Day

Comment: One commenter asks why day needs to be defined.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Emerging Market

Comment: One commenter recommends the following revised definition:

Emerging market. A new or developing product, geographic, or demographic market that is new to the applicant or the applicant's product. To qualify as new, the applicant cannot have supplied this product, geographic or demographic market for more than two years at time of application submission.

The commenter states that the added clarification for "new" is necessary so that its interpretation is universal and it is not left open to subjectivity. The emerging market criterion only applies to agricultural producer groups, cooperatives, and majority controlled producer-based business venture type applicants as part of Project Purpose eligibility requirements.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Farm- or Ranch-based Renewable Energy

Comment: One commenter states that the definition for Value-Added Agricultural Product refers to "farm or ranch based renewable energy," but does not offer a definition. The following definition clarifies what is eligible and ineligible renewable energy in this program. Although, given the new definition for agricultural commodity, (bodies of water), the commenter now questions whether hydro energy would be an eligible renewable energy product.

Farm- or Ranch-based Renewable Energy. An agricultural commodity that is used to generate renewable energy on a farm or ranch owned or leased by the independent producer applicant that produces the agricultural commodity. On-farm generation of energy from wind, solar, geothermal, or hydro sources are not eligible.

Response: The Agency agrees with the commenter and has added a definition to the rule.

Farmer or Ranch Cooperative

Comment: One commenter recommends the following revised definition:

Farmer or rancher cooperative. A business owned and controlled by independent producers that is incorporated, or otherwise identified by the state in which it operates as a cooperatively operated business. The independent producers, on whose behalf the value-added work will be done, must be confirmed as eligible and identified by name or class.

The commenter stated that the added language instructs on the eligibility requirements that include: (1) The cooperative must be comprised of Independent producers (and not simply agricultural producers), a definition wherein lies primary applicant eligibility requirements for all four applicant types; and (2) the independent producers on whose behalf the work will be done must be identified. Because the regulation refers to the definitions for instruction on applicant eligibility requirements, all eligibility requirements must be stated in the definitions.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Feasibility Study

Comment: One commenter states that the rule's definition of "feasibility study" contradicts the statute at 7 U.S.C. 1621(b)(3)(A) and would also contradict the proposed rule in § 4284.923(a), if modified as the commenter suggests. The commenter recommends the following conforming language be added to that definition to provide consistency and clarity:

Feasibility study: An analysis of the economic, market, technical, financial, and management capabilities of a proposed project or business in terms of the project's expectation for success. Applicants may use a qualified consultant to perform the feasibility study, in which case applicants and family members of applicants may participate in collecting data and providing input required by the qualified consultant in the development of a feasibility study and may either receive payment for their time or may count their time as an in-kind contribution of matching funds to the extent that the value of such work can be appropriately valued.

Response: The Agency disagrees with the commenter. The Agency's definition of Feasibility Study does not contradict the statute at 7 U.S.C. 1621(b)(3)(A) or the eligible uses of grant and matching funds in § 4284.923(a).

Comment: One commenter states that, in the past, the qualified consultant has been an independent, third party without a conflict of interest. If that is still the intent, it would be helpful if that was listed in the definition.

Response: The Agency agrees with the commenter and the definition of Qualified Consultant has been revised to add reference to "without a conflict of interest."

Independent Producers

Comment: One commenter states that requiring the producer retain ownership through the entire value-added process is often legally difficult to accomplish and may be undesirable for a number of reasons, such as the creation of legal liability during transportation, processing, etc. An agricultural producer should be free to part with ownership of the commodity at any stage during the value-chain provided the end result is an increase in profits and market share. The logic of this is recognized in an allowance of this kind of flexibility with handling MTVC proposals. It should also be offered for regular VAPG projects as well. If an eligible VAPG applicant can show their profits will be increased from a project, the stage at which ownership transfers should be irrelevant.

Response: The Agency disagrees with extending the ownership exception as suggested. The mid-tier value chain exception is relevant because of the required alliances and agreements that provide for mutually-beneficial distribution of revenue based on the agreed upon end-product and market. Agricultural producers applying without the benefit of this structure do not necessarily gain these benefits

where title changes hands before value is added and gains from that added-value realized.

Comment: One commenter recommends the following revised definition:

Independent producers.

(1) Individual agricultural producers or entities that are solely owned and controlled by agricultural producers. Independent producers must produce and own the majority of the agricultural commodity to which value will be added as the subject of the project proposal. Independent producers must maintain ownership of the agricultural commodity from its raw state through the production and marketing of the value-added product. Producers who produce the agricultural commodity under contract for another entity, but do not own the agricultural commodity or value-added product produced, are not considered independent producers. Entities that contract out the production of an agricultural commodity are not considered independent producers.

(2) A steering committee comprised only of specifically identified agricultural producers in the process of organizing one of the four program eligible entity types that will operate a value-added venture and that will be owned and controlled by those same agricultural producers identified in the steering committee at time of application, and will supply the majority of the agricultural commodity for the value-added project during the grant period.

(3) A harvester of an agricultural commodity that can document their legal right to access and harvest the majority of the agricultural commodity that will be used for the value-added product. Harvesters do not meet the Agricultural Producer definition and may only apply as an Independent Producer applicant type.

The commenter states that applicant ownership and control is the consistent language used throughout the program definitions and should be maintained in the independent producer definition. "Marketing," "agricultural commodity," and "value-added product" are conforming uses previously noted. Steering committees need to be included as eligible independent producer applicants, and Cooperative Programs determined to allow as eligible, formation of any one of the four applicant entity types from steering committee. Harvesters must be included as independent producers for eligibility, and can only apply as independent producers because they do not meet the Agricultural Producer definition requirements.

Response: The Agency agrees and has revised the rule as suggested by the commenter with the following exceptions. The revision of the Steering Committee portion should not restrict the Agency from granting prior approvals to changes in ownership structure which conform to eligibility requirements. Paragraph 2 has been revised as follows:

(2) A steering committee comprised of specifically identified agricultural producers in the process of organizing one of the four program eligible entity types that will operate a value-added venture and will supply the majority of the agricultural commodity for the value-added project during the grant period.

The Agency disagrees with the wording proposed regarding Agricultural Harvesters. All applicants must meet the definition of Agricultural Producer, which is inclusive of Agricultural Harvesters. A paragraph addressing harvesters has been added to read as follows:

(3) A harvester of an agricultural commodity that can document their legal right to access and harvest the majority of the agricultural commodity that will be used for the value-added product.

Local or Regional Supply Network

Comment: One commenter proposes the following adjustments to the local or regional supply network definition.

Local or regional supply network: An interconnected group of entities through which agricultural based products move from production through consumption in a local or regional area of the United States. Examples of participants in a supply network may include agricultural producers, aggregators, processors, distributors, wholesalers, retailers, consumers, and entities that organize or provide facilitation services and technical assistance for development of such networks.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Locally-Produced Agricultural Food Product

Comment: One commenter recommends the following revised definition:

Locally-produced agricultural food product. An agricultural food product, as defined in this subpart, that is raised, produced, and distributed in:

(1) The locality or region in which the final product is marketed, so that the total distance the product is transported is less than 400 miles from the origin of the product; or

(2) The State in which the product is produced.

The commenter states that this definition includes a reference to Agricultural Food Product, which they believe needs a definition of its own.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Majority-Controlled Producer-Based Business Venture

Comment: One commenter recommends revising this term by deleting "venture", because the applicant must be a legal business entity and not a venture: Majority-controlled producer-based business.

Response: The Agency disagrees with the commenter and has retained the term as proposed because the ability to refer to activities beyond those specific to the grant allows for more precise communication.

Marketing Plan

Comment: One commenter states that the statute at 7 U.S.C. 1621(b)(1)(A) and (b)(3)(A) clearly states that VAPG grants are to assist an eligible producer in developing a business plan for viable marketing opportunities or in developing strategies that are intended to create marketing opportunities for the producer. The definition contradicts the statute by granting consultants exclusive rights to awards for marketing plans. Moreover, this definition also directly contradicts the allowance in § 4284.923(a) for producers to count their time in developing marketing plans as in-kind matching contributions. Therefore, the commenter proposes that the definition be fixed to read: "Marketing plan: A plan for the project that identifies a market window, potential buyers, a description of the distribution system and possible promotional campaigns."

Response: The Agency disagrees. The definition of Marketing Plan is not inconsistent with the statute at 7 U.S.C. 1621(b)(1)(A) and (b)(3)(A) or language on eligible uses of grant and matching funds in the proposed rule in § 4284.923(a).

Matching Funds

Comment: One commenter states that applicant in-kind as an eligible match is not listed, though it is stated as being allowable for the development of business plans and/or marketing plans and suggests revising for greater clarity. The commenter requests guidance on determining appropriate valuation for applicant in-kind match.

Response: The Agency will provide guidance on the valuation of matching funds in the application package.

Comment: One commenter suggests the following revised definition:

Matching funds. A cost-sharing contribution to the project via confirmed cash or funding commitments from eligible sources without a real or apparent conflict of interest, that are used for eligible project purposes during the grant funding period. Matching funds must be at least equal to the grant amount, and combined grant and matching funds must equal 100 percent of the total project costs. All matching funds must be verified by authentic documentation from the source as part of the application. Matching funds must be provided in the form of confirmed applicant cash, loan, or line of credit, or provided in the form of a confirmed applicant or family member in-kind contribution that meets the requirements and limitations in § 4284.923(a); or confirmed third-party cash or eligible third-party in-kind contribution; or confirmed non-federal grant sources (unless otherwise provided by law). *See* examples of ineligible matching funds and matching funds verification requirements in §§ 4284.924 and 4284.931.

The commenter states that using the terms "real or apparent" conflict of interest is more consistent with Federal procurement standards and replaces the term, "potential" conflict of interest. Note, this definition has been significantly modified from the proposed rule definition to be consistent with the Agency intention to allow limited applicant in-kind contributions as match. Also, a significant amount of the proposed rule definition (examples) has been moved to § 4284.931 for "verifying match funds."

Response: The Agency agrees and the definition has been revised to include the allowance of limited applicant in-kind contributions.

Comment: One commenter states that this paragraph is not, on the whole, a definition, but rather a set of substantive rule provisions that probably belong in the body of the rule rather than in the definition section. Mixing detailed operational provisions into a definition is generally not considered good rule writing practice. Second, and far more importantly, the omission of any mention of producer in-kind matches while specifically referencing third-party in-kind match clearly implies that applicant time is not an eligible match and, combined with the proposed rule's broadly defined conflict of interest definition, will have a chilling effect on potential farmer and rancher applicants.

To be consistent with the allowance in § 4284.923(a), the rule must clearly state that producer time, travel expenses, purchased materials, and other expenses incurred working on the project are eligible in-kind matching contributions for grants and do not present a conflict of interest. Therefore, the commenter recommends the following modifications to the definition:

Matching funds: "A cost-sharing contribution to the project via confirmed cash or funding commitments or via anticipated in-kind contributions from eligible sources without a conflict of interest that are used for eligible project purposes during the grant period. Eligible matching funds include confirmed applicant cash, loan or line of credit, non-Federal grant sources (unless otherwise provided by law), and eligible in-kind contributions, and third party cash or eligible third-party in-kind contributions. Matching funds must be at least equal to the grant amount, and combined grant and matching funds must equal 100 percent of the total project costs. All eligible cash and in-kind matching funds contributions must be spent on eligible expenses during the grant period, and are subject to the same use restrictions as grant funds."

Response: The Agency has revised the definition of Matching Funds to include allowance of limited applicant in-kind matching contributions.

Comment: One commenter asks why matching funds can only be provided by "eligible sources without a conflict of interest." Doesn't providing matching funds create an inherent conflict of interest? It appears that by adding the "without a conflict of interest" restriction, it conflicts with many other parts of the definition. For instance, the applicant would have a conflict of interest, yet the definition states that applicant cash is permissible.

Response: The Agency disagrees with the commenter. The matching funds requirement does not constitute an inherent conflict of interest.

Comment: One commenter states that text in the proposed rule concerning conflict of interest, in-kind contributions, and matching funds is confusing and contradictory to other text and needs to be consistent. The commenter points to the following text:

- Also, note that in-kind matching funds may not be provided by a person or entity that has a conflict of interest or an appearance of a conflict of interest. (proposed § 4284.924)
- Matching funds must be from eligible sources without a conflict of interest and without the appearance of a conflict of interest. (proposed § 4284.931(b)(4)(ii))
- Matching funds must be provided in the form of confirmed applicant cash, loan, or line of credit; or confirmed third-party cash or eligible third-party in-kind contribution. (proposed § 4284.931(b)(4)(v))
- Examples of ineligible matching funds include funds used for an ineligible purpose, contributions donated outside the proposed grant period, third-party in-kind contributions that are over-valued, expected program income at time of application, or instances where the potential for a conflict of interest exists, including applicant in-kind contributions in § 4284.923(a). (proposed § 4284.931(b)(4)(vi))

The commenter specifically asks: Is applicant match ineligible as a matter of being a conflict of interest (as inferred here) or is it allowed as states in § 4284.923(a)?

Response: The Agency agrees with the commenter that the proposed text as given is confusing. The Agency has revised § 4284.923(a) and (b) to include limited applicant in-kind match. In addition, the Agency has revised § 4284.924 to make the rule clearer.

Medium-Sized Farm

Comment: One commenter states that the final rule should provide a more reasonable definition of medium-sized farms and ranches. The proposed rule defines the medium-sized farms and ranches as those with average annual sales between $250,000 and $700,000. The commenter recommends the following amendment to the medium-sized farm definition: "Medium-sized farm: A farm or ranch that has averaged between $250,001 and $1,000,000 in annual gross sales of agricultural products in the previous three years."

According to USDA data, all sales classes above $5,000 and below $1,000,000 are declining in numbers. The proposed rule defines small farms as those with sales below $250,000. The sales classes between $250,000 and $1,000,000 are the so-called "disappearing middle" of agriculture that Secretary Vilsack has so eloquently addressed in his public speeches. This is the segment of agriculture perfectly tailored for the VAPG program and its value-added income opportunities. While nearly 60 percent of the total value of agricultural production is captured by farms of over $1 million in sales, the disappearing middle still represents a substantial amount of

production—25 percent but declining—and a large number of total producers.

They are well-situated, as the Secretary repeatedly points out, to take advantage of value-added opportunities in local and regional food systems and in bioenergy and bioproducts. While their ability to compete in the raw, undifferentiated commodity market is unlikely to be a path to survival and prosperity without further farm consolidation and the lost economic opportunity that goes with it, competing in the value-added market can be a good bet for these farms. It is reasonable to expect that those farms with successful value-adding enterprises are more likely than others to be in that higher profit margin category. From a family farm and rural development perspective, policy, including the VAPG program, should do everything it can to increase their numbers.

The higher the reliance on on-farm income, the more important value-adding strategies become. Targeting the program's small and medium-sized family farm priority toward the larger small farm class plus the disappearing middle makes a great deal of sense. These farms rely on farm income for a majority of household income, but need to tap into value-adding enterprises and markets to secure a long-term financial future.

Creating a single farm size threshold for all of agriculture is a difficult proposition given the great diversity of U.S. agriculture. For instance, specialty crop and dairy farms have a much higher percentage of farms over the $1 million sales threshold than the rest of agriculture and for both the vast majority of production comes from those largest farms. While the $700,000 threshold in the proposed rule might be roughly adequate for grain farms, and far more than adequate for poultry farms, it is significantly too low for dairy and produce farms. While one could imagine a more complex rule with thresholds that vary by type of farm, if the final rule sticks with a single threshold, it is important that it works and makes sense for agriculture as a whole. While not perfect, the $1 million threshold is more defensible than the proposed rule's $700,000.

One commenter proposes that the average annual gross sales be between $250,001 and $750,000, so that it matches the SBA's size standard for crop and animal production.

One commenter states that $500,000 is more appropriate for the upper limit. The commenter states that anything over $500,000 would be considered large by the majority of farmers and the farm industry in their region/area. The majority of farm or ranch producer's income will be below $250,000. Keeping the upper limit at $700,000 could make it more difficult for a medium size farm to compete for VAPG funding, if that $700,000 farm income was really a feasible and viable operation.

One commenter suggests that the current definition of "mid-size farmer" (*i.e.,* gross farm income up to $750,000) is an appropriate standard, and should be maintained. The segment of production agriculture in the Midwest that has experienced greatest contraction is the "ag in the middle", independent "family farm scale" farmers that try to make a full time living, typically in commodity agriculture. This group would most benefit from value-added strategies because they typically already have production ability, and using value-added strategies (individually or as members of a co-op or LLC) would provide a useful hedge to their income. In the Midwest, a $750,000 operation would only represent a dairy operation of a 200 cow dairy (23,000 lb herd average, $17/cwt), or a 1250 acre commodity crop operation (corn at $3/bushel, 200 bushel/acre yield). Neither of these size operations are "big" by modern standards, yet they are the size operation that is being lost the fastest. Providing support to this scale of operation maintains working families on the land, independent ownership in the supply chain, and supports rural economies.

Response: It is the position of the Agency that the "$1 million average annual gross sales of agricultural commodities in the previous three years" is more consistent with expert commentary on the subject of "agriculture in the middle," and is consistent with the Agency prerogative to be more inclusive. The upper limit of gross sales for a medium sized farm will be changed to $1,000,000.

Mid-Tier Value Chain

Comment: One commenter asks if the only type of eligible applicant is an independent producer. The commenter suggests expanding this text for clarification purposes to include all eligible applicant types (*e.g.,* APG, Cooperative, and MCPBBV).

The commenter adds that **Federal Register** Vol. 74, No. 168, 9/1/2009 (45168–9) explicitly states that all 4 producer types are eligible for the Mid-Tier Value Chain and suggests revising the Definition section for Mid-Tier Value Chain to reflect this. The commenter states that independent producers have hesitated to be the applicant as that person then must bear the entire tax burden related to the grant (though the grant will most likely benefit multiple producers). If other members of the supply network were able to be listed as co-applicants, the tax burden could be shared.

Response: The mid-tier value chain applicant must be one of the four eligible applicant types and the project eligibility requirements at § 4284.922 have been revised accordingly. Other members of the supply network may not be listed as co-applicants, but should be referenced in accordance with project eligibility requirements.

Comment: One commenter states that the final rule should make small improvements to the mid-tier value chain provisions to ensure maximum responsiveness and effectiveness. The rules should be written in a way that is properly descriptive of what characterizes these marketing relationships without inadvertently precluding non-traditional marketing alliances that achieve the desired result of increasing markets for producers and improving their ability to achieve fair prices. For instance, mid-tier value chains may include non-profit organizations that provide aggregation, processing, or transportation services for producers to facilitate sales to local institutions and markets. Community supported agriculture projects are sometimes organized by an individual producer acting on behalf of and with the support of allied farmers or ranchers to market of their aggregated product to institutional and other emerging markets. As various kinds of mid-tier value chains like those above are still emerging, the final rule should be as inclusive and flexible as possible.

The commenter proposed the following small adjustments to the mid-tier value chain definition.

Mid-tier value chain: Local and regional supply networks that link independent producers with businesses and cooperatives that market value-added agricultural products in a manner that:

(1) Targets and strengthens the profitability and competitiveness of small and medium-sized farms and ranches that are structured as a family farm; and

(2) Obtains agreement from eligible individual producers or an eligible agricultural producer group, farmer or rancher cooperative, or majority controlled producer-based business venture that is engaged in the value chain on a marketing strategy.

(3) For mid-tier value chain projects the Agency recognizes that, in a supply chain network, a variety of raw agricultural commodity and value-

added product ownership and transfer arrangements may be necessary. Consequently, applicant ownership of the raw agricultural commodity and value-added product from raw through value-added is not necessarily required, as long as the mid-tier value chain proposal can demonstrate an increase in customer base and an increase in revenue returns to the applicant producers supplying the majority of the raw agricultural commodity for the project.

Response: The Agency agrees and recognizes that mid-tier value chains are intended to be relatively flexible and inclusive of many types of entities that can facilitate and find mutual benefit in partnership. The Agency has revised the eligibility requirements at § 4284.922 for Mid-Tier Value Chain to include nonprofit organizations as possible participants.

Comment: One commenter recommends clarifying the definition to indicate that a minimum of two small/medium-sized farms must benefit from the MTVC project and that the eligibility requirement of ownership of raw commodity through to the VA product is waived only for MTVC projects.

Response: The Agency disagrees with the first item because it is inconsistent with statutory language. The Agency agrees with the commenter on the second item and has revised the rule accordingly.

Planning Grant

Comment: One commenter states that this definition makes clear that planning grants are to be used to develop a feasibility study which may include a business and/or marketing plan. The statute provides for two types of grants, one to perform feasibility studies and one for working capital. Clearly what the Agency and the proposed rule refer to as planning grants are the first of the two statutory grant strategies. The statute directs the Agency to make grants to producers to perform feasibility studies and develop business plans. Thus, the statute requires the Agency to make planning grants to producers who in turn will perform feasibility studies and development business plans.

The "planning grant" definition must be changed to conform to the statute at 7 U.S.C. 1621 1621(b)(1)(A) and (b)(3)(A) and to clarify that these grants are designed to benefit producers who by statute may perform the feasibility study. The commenter supports the notion that use of a "qualified (third-party) consultant" may be strongly encouraged. Applicant producers should have the option to hire consultants, and should be encouraged to do so, but they cannot be required to do so by rule.

Otherwise the rule is in direct conflict with the statute.

The commenter recommends the following definition: Planning grant: "A grant to facilitate the development of a defined program of economic planning activities to determine the viability of a potential value-added venture, and specifically for the purpose of paying for a qualified (third-party) consultant including to conduct and develop a feasibility study, business plan, and/or marketing plan associated with the processing and/or marketing of a value-added agricultural product. A planning grant may be used in whole or in part for the purpose of paying for a qualified third party consultant. Use of third party consultants is strongly encouraged."

Response: The Agency disagrees with the commenter. The statute provides that grants are made to eligible applicants to "assist" in the development of feasibility studies, marketing plans, business plans and the definition of Planning Grant is consistent with statute.

Pro Forma Financial Statement

Comment: One commenter recommends revising this definition to require a minimum of three years for the projections included in the statement. The commenter states that standard business practice for financial projections for a new venture is a minimum 3 years, and is often between 5–10 years. A 3-year minimum standard for financials is appropriate for VAPG ventures that may then move on to use working capital funding for a 3-year project.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Produced in a Manner That Enhances the Value of the Agricultural Commodity

Comment: One commenter states that the term "produced in a manner that enhances the value of the agricultural commodity, which is used in the Value-Added Agricultural Product definition, needs to increase understanding and implementation for this important product eligibility category (1 of the 5) in order to mitigate product eligibility problems or interpretations that have presented during the history of the program (pot-in-pot produce, T-bar grape vine, plugs, container grown trees: all previous products that were ultimately (and correctly) deemed ineligible due to not meeting a differentiated agricultural production eligibility standard that demonstrated added value to the product). According to the commenter, without a definition for this term, its interpretation will be left open to many various reviewers across the United States and will be applied in a non-uniform manner. The National Office will be called upon continuously to discern eligibility on a case-by-case basis, which is very inefficient. Eligibility for this category should rely upon differentiated or non-standard agricultural production practices that are demonstrated in the application using a quantifiable comparison with products produced in the standard manner.

Response: The Agency agrees with the recommendation and has added a definition for this term.

Project

Comment: One commenter recommends revising the definition of "project" to refer to "eligible" activities.

Response: The Agency agrees with the suggested edit and has revised the definition as suggested.

Rural Development

Comment: One commenter states that the term needs to be moved in the rule for proper alphabetizing.

Response: The Agency has placed this term in alphabetical order.

Socially Disadvantaged Farmer or Rancher

Comment: One commenter states that a provision reserving a portion of VAPG funding for members of socially disadvantaged groups that was introduced in 2009 is continued in the 2010 proposed rules. According to the commenter, this provision raised a question last year as to whether the qualifying 51 percent all had to belong to the same socially disadvantaged group or could belong to different groups (*e.g.,* qualified ethic groups, Caucasian females). USDA staff had no firm guidance on this last year, which is understandable for a new rule. The commenter would like to see it clarified in the 2010 rules. The 2009 rules states that the 51 percent was decided by head count rather than ownership share; the proposed 2010 rule seems more ambiguous.

Response: The statute provides a reservation of funding for projects "to benefit" Socially Disadvantaged Farmers and Ranchers. It is the position of the Agency that an applicant must meet the statutory definition of Socially-Disadvantaged Farmer or Rancher to qualify for reserved funding. Therefore, the applicant must be an individual

independent producer or an entity comprised of 100 percent Socially-Disadvantaged Farmers or Ranchers.

The statute also gives priority to projects that "contribute to increasing opportunities" to Socially Disadvantaged Farmers or Ranchers. This priority is implemented through the award of additional points in the scoring process. It is the position of the Agency that entities comprised of at least 51 percent Socially-Disadvantaged Farmers or Ranchers are eligible to receive priority points. The Socially-Disadvantaged Farmer or Rancher members of such an entity do not have to be members of the same Socially-Disadvantaged group.

Comment: One commenter notes that the definition of socially-disadvantaged farmers and ranchers includes a 51 percent threshold for group applications. While there are a number of producer cooperatives that are made up exclusively or almost exclusively of socially disadvantaged farmers and ranchers, the commenter does not know of any cooperatives or businesses that consist exclusively of beginning producers. The needs and realities of the two groups are distinct. A majority of members of socially disadvantaged producer groups and co-ops often have many years of agricultural experience and can work with any beginning producers in the group.

So while a 51 percent standard makes sense for socially-disadvantaged groups, it does not make sense for beginning farmers and ranchers. Rules, to be effective, must reflect the facts on the ground and not some nonexistent ideal world. Moreover, mentoring by more experienced farmers is a need and an opportunity specific to enterprises including beginning farmers and ranchers which also makes the 25 percent threshold for beginners an appropriate measure to qualify a project for this reserved fund.

The commenter prefers to leave the specific threshold to the annual, iterative NOFA process, so the Agency and the public can learn from experience about what works best to ensure the intent of Congress is fulfilled. If that route is chosen, the language of the NOFA must be crystal clear about the 25 percent standard and not preclude a reasonable result by way of a super restricted definition.

Response: The statute provides a reservation of funding for projects "to benefit" Beginning Farmers and Ranchers. It is the position of the Agency that an applicant must meet the statutory definition of Beginning Farmer or Rancher to qualify for reserved funding. Therefore the applicant must be an individual independent producer or an entity comprised of 100 percent Beginning Farmers or Ranchers.

The statute also gives priority to projects that "contribute to increasing opportunities" to Beginning Farmers or Ranchers. This priority is implemented through the award of additional points in the scoring process. It is the position of the Agency that entities comprised of at least 51 percent Beginning Farmers or Ranchers are eligible to receive priority points.

Value-Added Agricultural Product

Comment: One commenter recommends deleting "or product" from this term, as the commenter recommends combining the terms "agricultural commodity" and "agricultural product" and labeling them as "agricultural commodity".

Response: The Agency agrees with the suggested edit and has revised the definition as suggested.

Venture

Comment: One commenter recommends adding "and its value-added undertakings" to this definition. The commenter states that the venture includes the value-added undertakings and is not limited to the business alone. However, the venture may include initiatives that are not grant or value-added project eligible, hence, the "other related activities."

Response: The Agency agrees with the suggested edit and has revised the definition as suggested.

Environmental Requirements (§ 4284.907)

Comment: Two commenters suggest, in reference to working capital grants, replacing reference to Form RD 1940–22 with Form RD 1940–20. The commenters note that, for other Agency applications, the applicant provides Form RD 1940–20, and the Agency completes Form RD 1940–22.

Response: The Agency has revised this section to refer to Form RD 1940–20, rather than Form RD 1940–22.

Application Windows and Deadlines (§ 4284.915(d)(2))

Comment: One commenter states that the proposed rule indicates that the annual application period must be open within 60 days of the due date. However, due to the requirement to submit an independent feasibility study and business plan that is specific to the proposed project with working capital proposals, a 90-day application period seems more appropriate. This would allow for better and less costly studies, and be less likely to dissuade some applicants from applying.

Two commenters recommend providing a 90-day notice rather than a 60-day notice. One of the commenters states that, providing a 90-day notice is more useful to producers than a 60 day notice. While the existence of a fixed annual application deadline would allow farmers and support systems to be planning for applications throughout the year, the commenter's experience is that most new applicants only hear about the program once it is announced. Having the longer time frame helps increase the pool of eligible and qualified applicants, plus providing adequate time to adjust to any new changes in the annual NOSA.

The other commenter states that, due to the requirement to submit an independent feasibility study and business plan that is specific to the proposed project with working capital proposals, a 90-day application period seems more appropriate. This would allow for better and less costly studies, and be less likely to dissuade some applicants from applying.

One commenter notes that the **Federal Register** (Vol. 74, No. 168, 9/1/2009) states: "This notice announces the availability of approximately $18 million in competitive grants for FY 2009 to help independent agricultural producers enter into or expand value-added activities, with the following clarifications and alterations: (8) provides a 90-day application period." The commenter asks, going forward, will the 90-day period become standardized?

One commenter requests that the application period be open for 90-days to allow us the maximum amount of time to properly prepare and submit our grant request.

One commenter states that much more critical for the improvement of the VAPG program is not the date applications are due, but that the application window for applications will always be sufficiently long to allow applicants to develop good proposals. Thus, the rule should require that not less than 90 days be allowed from the time Rural Development invites applications to the time Rural Development closes its application window. The commenter further states that the proposed rule's provision that applications be submitted each year on or before March 15 is unwise. There is no way to assure this date will always be honored based on the experiences of any given fiscal year. The commenter states that the rule should state that application dates will be set by Rural Development annually via **Federal**

Register notice or in RD Instruction 1940–L.

Response: The Agency agrees that there should be at least a 60-day application window, but will provide notification via the annual NOFA rather than revising the rule text.

Applicant Eligibility (§ 4284.920)

Comment: One commenter believes that the definition of "beginning farmer or rancher," as it applies to group proposals, should be changed to fix a very serious problem with the proposed rule and suggests language for this. If the Agency does not change the definition, then the commenter recommends the following language be added under § 4284.920, as a new paragraph(c) as follows and re-designate the remaining sections accordingly:

(c) Beginning farmers or ranchers. To qualify for the priority for projects that contribute to opportunities for beginning farmers or ranchers or for the reserved fund for projects that benefit beginning farmers or ranchers, an applicant that is an agricultural producer group, a farmer or rancher cooperative, or a majority-controlled producer-based business venture must be comprised of at least 25 percent beginning farmers or ranchers.

Response: The statute provides a reservation of funding for projects "to benefit" Beginning Farmers and Ranchers. It is the position of the Agency that an applicant must meet the statutory definition of Beginning Farmer or Rancher to qualify for reserved funding. Therefore, the applicant must be an individual independent producer or an entity comprised of 100 percent Beginning Farmers or Ranchers.

The statute also gives priority to projects that "contribute to increasing opportunities" to Beginning Farmers or Ranchers. This priority is implemented through the award of additional points in the scoring process. It is the position of the Agency that entities comprised of at least 51 percent Beginning Farmers or Ranchers are eligible to receive priority points.

Comment: One commenter requests that the VAPG program not have a requirement to list owners and owners of owners. The commenter states that, when this requirement was in place in the past, it precluded them from applying for a grant at all. As a marketing association with nearly 400 members, the commenter states it is impossible for them to provide this information and hope this requirement will not be part of the upcoming grant program.

Response: The Agency has revised the definition of Farmer or Rancher Cooperative, Agricultural Producer Group and Independent Producer to allow members of applicant entities to be identified by individual name or by class.

Comment: One commenter applauds the Agency for eliminating previous language requiring cooperatives to identify all members of the cooperative. The rule as currently proposed provides reasonable eligibility requirements for cooperatives to apply for VAPG funding. Previous language should not be introduced in the final rule that would add the burdensome requirement of providing the names, addresses, etc. of all co-op members.

Response: As noted in the response to the previous comment, the Agency has revised the definitions of Farmer or Rancher Cooperatives to allow members of applicant cooperatives to be identified by individual name or by class.

Type of Applicant—Independent Producer (§ 4284.920(a)(1))

Comment: One commenter states that they have no written record of why they did not qualify for the VAPG, the awards for which were recently announced in late May 2010. The commenter states that, as a commercial fishing operation, they could not qualify for any of the 15 points associated with criteria, "Type of Applicant." This disqualification makes it extremely difficult, if not impossible, for commercial fishing families to earn sufficient points to win an award, though they were invited to apply. The criterion represents the largest block of points of any of the criteria. The fact that fishing families cannot receive these points is never mentioned in the application. The commenter states they spent months writing their grant; time they would not have spent had this crucial fact been made at all apparent. Without the benefit of actually reading the critique, it is their understanding that commercial fishing people are considered 'harvesters' not 'producers,' or some such hair-splitting that struggles to make meager sense. Therefore, they cannot be considered, as a "medium-sized farm or ranch that is structured as a family farm." Though water-based, commercial fishing families take as much care, attention and nurturance to their surroundings as any land-based agricultural operation. The Alaska salmon industry was first in the nation to receive the Marine Stewardship Council award for sustainable management of this precious national resource. That coveted award is proof positive that the fishing families foster and protect this resource with all the passion of a land based farm operation.

In addition, the commenter feels they fully qualify as a 'family farm' as defined in the context of the VAPG. The VAPG definition of a family farm is as follows; "A Family Farm produces agricultural commodities for sale in sufficient quantity to be recognized as a farm and not a rural residence, owners are primarily responsible for daily physical labor and management, hired help only supplements family labor, and owners are related by blood or marriage or are immediate family."

The commenter states their fishing boat is most assuredly not a recreational vessel, but a "machine shop on the water." The commenter and her husband are the primary owners and operators, working year around to keep the business afloat. They do hire seasonal helpers, but their labor is temporary and highly seasonal. The commenter states that she and her husband are related by 33 years of marriage and cannot understand why they would be considered anything other than a "family farm."

Response: It is Agency practice to provide feedback to applicants determined ineligible or which were unsuccessful in competition. Failure to do so was an oversight. The "Type of Applicant" category provided priority points for applicants that could document that they were Beginning Farmers or Ranchers, Socially-Disadvantaged Farmers or Ranchers, or proposing a Mid-Tier Value Chain. The Agency's position has been that Agricultural Harvesters, though considered Independent Producers, do not meet the definition of Farmer or Rancher.

Comment: One commenter notes that, in the past, eligible grantees have included such producers as fishers and forest gatherers. The commenter recommends that this be clearly reaffirmed in the new rule—it is implied, perhaps, but not clearly stated.

The commenter states that the proposed rule continues the requirement that every owner of the agricultural producer entity themselves be involved in farming. According to the commenter, this is a very unrealistic requirement. Recent USDA studies have noted that successful farms frequently rely on nonfarm income. Furthermore, family farms invariably become divided in their ownership among members who farm and members who retain a link to the farm but have moved off the farm. Therefore, the commenter recommends that the rule be revised to a simple requirement that the farm be operated by at least one owner of the farm entity.

Response: The Agency has revised Independent Producer definition to explicitly include "agricultural harvesters" such as foresters and fishermen and revised the definition of Agricultural Producer to indicate what constitutes direct involvement in farming.

Type of Applicant—Agricultural Producer Group (§ 4284.920(a)(2))

Comment: Numerous commenters recommend allowing producer groups or entities made up of more than 25 percent beginning farmers and ranchers to apply for the funds reserved by the Farm Bill specifically for projects benefitting beginning farmers and ranchers. The proposed rule dictates that all members of the farmer group or co-op must be beginning farmers or ranchers, a very unlikely situation in the real world. The requirement will preclude mentoring opportunities with more experienced farmers.

Three commenters point out that, while there are many new farmers and many of them will cooperate on these projects, it is the mentoring and collaboration with more experienced farmers that can ensure success. The more experienced farmers as well need to be supported and allowed to develop their businesses for the mutual benefit of the new farmers. Also, it is unlikely that all members of the farmer group or co-op would be beginning farmers or ranchers. Therefore, the Agency should ensure the final rule includes a reasonable standard to measure significant benefit to beginning farmers.

Response: The statute provides a reservation of funding for projects "to benefit" Beginning Farmers and Ranchers. It is the position of the Agency that an applicant must meet the statutory definition of Beginning Farmer or Rancher to qualify for reserved funding. Therefore the applicant must be an individual independent producer or an entity comprised of 100 percent Beginning Farmers or Ranchers.

The statute also gives priority to projects that "contribute to increasing opportunities" to Beginning Farmers or Ranchers. This priority is implemented through the award of additional points in the scoring process. It is the position of the Agency that entities comprised of at least 51 percent Beginning Farmers or Ranchers are eligible to receive priority points.

Emerging Market (§ 4284.920(b))

Comment: One commenter does not object to the expectation that all applicants, except Independent Producers, be subject to an emerging market test.

The commenter recommends that specific guidance about the characteristics or attributes of an "emerging market" be clearly stated in the rule. The commenter notes that the rule does not quantify or appear to give specific guidance to what constitutes an emerging market, particularly as it pertains to the amount of time that the applicant has been working in developing that emerging market. According to the commenter, previous interpretations of the emerging market rule were that applicants had to be active in that market less than 2 years at the time of application. The commenter states, however, it may entirely appropriate for such guidance to not be incorporated into this proposed rule, for two reasons:

First, during this current rule writing process, the VAPG program has experienced an extended period of time when no applications were received: *i.e.* July 2008, November 2009, and now presumably March 2011. The impact is that organizations that were not "ready" in 2008 or even parts of 2009 might not meet a 2-year emerging markets test if such were applied in a March 2011 application. This would unfairly disadvantage those particular applicants.

Second, there is merit in requiring an applicant to justify how the specific application meets the definition of an "emerging market."

Response: The Agency has revised the definition of Emerging Market to clarify its meaning and to indicate that in order to meet the definition, an applicant must not have supplied the product, geographic, or demographic market for more than two years at time of application submission.

Citizenship (§ 4284.920(c)(2))

Comment: One commenter states that the "51 percent citizenship" requirement is prohibitive for associations with large membership bases. Gathering ownership and citizenship information from hundreds of entities is impossible, not only because of the sheer number, but also because many simply will not share it for confidentiality reasons.

Response: The Agency agrees with the concern raised by the commenter. The grant agreement requires the grantee to certify that it meets the citizenship requirement. Information collection is not required.

Comment: One commenter recommends revising § 4284.920(c)(2) by replacing "immediate family member" with "entity owners," to clarify that at least one entity "owner" must be a citizen or national. Otherwise, as originally drafted, none of the owners would have to be citizens or nationals as long as they had one immediate family member meet citizenship requirements; thereby allowing a 100 percent non-US-owned entity to be eligible for public federal grant dollars.

Response: The Agency agrees that the suggested revision clarifies the intent of this paragraph and has revised the paragraph as suggested by the commenter.

Multiple Grant Eligibility (§ 4284.920(e))

Comment: One commenter believes allowing producers to submit separate VAPG applications under multiple entities provided the producer owns no more than 75 percent of any one of the entities is too generous and could lead to abuse and work against the wide distribution of VAPG assistance to many unaffiliated producers. The commenter recommends that the 75 percent level be either reduced to 5 percent or simply prohibited. According to the commenter, one VAPG per year is plenty for anyone given the scarcity of funds and the plethora of good ideas.

Response: The Agency disagrees with the commenter. Seventy-five percent is suitable to discourage multiple applications.

Comment: One commenter recommends revising § 4284.920(e) by replacing "this notice" with "a solicitation." According to the commenter, there is a need for applicants to explicitly designate the category in which they wish to compete so it is not a judgment call by reviewers.

Response: The Agency agrees that the suggested revision clarifies the intent of this paragraph and has revised the paragraph as suggested by the commenter.

Active VAPG Grant (§ 4284.920(f))

Comment: One commenter states that past VAPG rules have included similar provisions regarding active VAPG grants. However, 2009 was the first year that project periods could be as long as 36 months (as opposed to the previous 12 month limit). This means more repeat applicants are likely to have open projects when the next proposal period comes around. Also, the commenter would like clarification as to whether "within 90 days" means before or after the NOFA date.

The commenter adds that, like last year, VAPG projects were permitted to run up to 36 months. The 2009 rules contained a provision that projects running over 12 months had to have "unique tasks" each year, rather than a repeat of previous similar tasks (presumably such as advertising). The latter restriction is not included in the

proposed 2010 rule, which, based on past experience, does not necessarily mean that it would not be in the final rules and the commenter hopes it is not.

Response: The Agency does not agree with the commenter's assertion that active grant eligibility standard is a deterrent to repeat applicants. In order to continue to fund a diverse array of projects from as many applicants as possible, the Agency will retain the active grant eligibility standard that requires active grants to be closed within 90 days of the application submission deadline, as published in the annual NOFA.

In response to the comment on the requirement for ''separate and unique tasks'' for multi-year working capital grants, it is not included in the rule and will not be a program requirement.

Comment: Three commenters note that the requirement for an applicant with an active value-added grant at the time of a subsequent application to close out the current grant within 90 days of the annual NOFA could be a concern with project periods as long as 36 months. With the longer projects, more repeat applicants are likely to have open projects during subsequent proposal periods. One commenter expresses concern that meritorious projects benefiting significant numbers of producers would be excluded from consideration simply because a separate project was approved in a previous funding cycle. Perhaps there could be exceptions to this provision.

Two commenters note that, by adding arbitrary time constraints, such a prohibition would appear to undermine one of the goals of the program, in providing funding for projects that are likely to become self-sustaining in the future.

Response: The VAPG program is a popular and over-subscribed program. In order to continue to fund a diverse array of projects from as many applicants as possible, the Agency will retain the active grant eligibility standard.

Comment: One commenter recommends deleting "anticipated award date" in this section and substituting "application submission deadline" as a more stable date and requiring closeout of the prior grant more effectively to efficiently commence the undertaking of the new project, thereby promoting responsible use of public funds.

Response: The Agency agrees that "application submission deadline" is a more appropriate for closing date and has revised the rule text accordingly.

Project Eligibility (§ 4284.922)

Purpose Eligibility (§ 4284.922(b))

Comment: One commenter states that the Agency should clarify that majority, farmer-owned community wind projects are eligible this year, like they have been every year except for last round. The commenter further states the Agency should expand grant funding purposes such that funding can be used for farmer-owned community wind projects that are merchant plants (providing kilowatt-Hours to the grid) (as well as for on-site electrical needs). In Maine, like many deregulated electricity generation States, it is prohibited for a generation project larger than 660 kilowatt (kw) nameplate capacity to both provide electricity for on-site needs, and to sell excess generation to the grid. Maine law does allow net-metering to be used for generators with up to 660 kw nameplate capacity, but not for larger generators.

Response: The project eligibility category related to renewable energy was set by the 2008 Farm Bill and states that a Value-Added Agricultural Product is "a source of farm- or ranch-based renewable energy, including E–85 fuel." The Agency's position is that wind is not an agricultural commodity or a Value-Added agricultural product.

Comment: One commenter recommends revising § 4284.922(b)(1) by replacing "annually" with "in the annual" and adding reference to § 4294.915. The rule cites up to $500,000 grant amount, and the annual notice or solicitation will reduce that amount for both planning and working capital grants. The commenter suggests the following text:

The grant funds requested must not exceed the amount specified in the annual solicitation for planning and working capital grant requests, per § 4284.915.

Response: The Agency agrees with the suggested revision and has revised the paragraph as suggested by the commenter.

Comment: One commenter recommends adding a reference to conflict of interest in proposed § 4284.922(b)(2) for conformity with standard conflict of interest federal language. The commenter suggests that this paragraph be revised as follows:

(2) The matching funds required for the project budget must be eligible and without a real or apparent conflict of interest, available during the project period, and source verified in the application.

Response: The Agency agrees with the suggested revision and has revised the paragraph as suggested by the commenter.

Comment: One commenter recommends revising § 4284.922(b)(4) because it is the primary budget and work plan description of requirements, and should be augmented to include all necessary elements. The commenter suggests the following revised text:

(4) The project work plan and budget must:

(i) Present a detailed description of the eligible planning or working capital activities and specific tasks related to the processing and/or marketing of the value-added product, along with a detailed breakdown of all estimated costs associated with and allocated to those activities and tasks;

(ii) Identify the key personnel that will be responsible for overseeing and/or actually conducting the activities and tasks, and provide reasonable and specific timeframes for completion of the activities and tasks;

(iii) Identify the sources and uses of grant and matching funds for all activities and tasks specified in the budget, and indicate that matching funds will be spent at a rate equal to or in advance of grant funds; and

(iv) Present a project budget period that commences within the specified start date range indicated in the annual solicitation, concludes not later than 3 years after the proposed start date, and is scaled to the complexity of the project.

Response: The Agency agrees. The suggested additions are necessary for determination of eligibility.

Comment: Four commenters recommend that feasibility studies under § 4284.922(b)(5) not be required for simplified applications for working capital grants. The nature of projects applying via a simplified application is such that feasibility studies add little or no value in assessing the success of the venture. This eligibility requirement contributes little value to simplified projects, but significantly increases costs and burden for simplified applications.

Response: The Agency agrees with the commenters and has revised the rule to indicate that simplified applications for working capital grants of $50,000 or less are not required to submit feasibility studies or business plans, but must provide information demonstrating increased customer base and revenue expected to result from the project (see § 4284.922(b)(5)(ii)).

Comment: One commenter states that § 4284.922(b)(5) is the first of the operational provisions of the proposed rule that is in conflict with 7 U.S.C. 1621 (b)(1)(A) and (b)(3)(A) and with

§ 4284.923(a) of the proposed rule. To be in accord with the statute, the use of consultants may be encouraged but cannot be required and, therefore, recommended deleting "by a qualified consultant" from proposed § 4284.922(b)(5).

The commenter also stated that, to be consistent with the producer in-kind contribution of the proposed rule, producer in-kind matching contributions must be recognized in proposed 4284.922(b)(5) in order to avoid it seeming to override § 4284.923(a).

Response: The Agency disagrees that § 4284.922(b)(5) conflicts with 7 U.S.C. 1621 (b)(1)(A) and (b)(3)(A). The statute provides that grants are made to eligible applicants to "assist" in the development of feasibility studies, marketing plans, business plans. The manner in which the Agency directs that the funds be used beyond this statutory requirement is determined by Federal grant regulation and Agency policy.

Comment: One commenter does not believe that a good business plan must always or only be written by a third party. Rather, the commenter believes that the producer or producer group members planning the enterprise often have the "knowledge, expertise, and experience to perform the specific task required in an efficient, effective, and authoritative manner"—the proposed rule's definition for qualified consultant.

Furthermore, the rule gives the Agency the right and responsibility to assess the merits of the feasibility study and business plan, which removes any possible justification for having them done solely by non-producers. Grant applications are reviewed at the local, state and national level and proposal feasibility is a criterion for funding. Potential inadequacies with proposals can be determined in this review process without resorting to sweeping disqualifications that will make VAPG grants less accessible to the producers who need them most.

The commenter believes that dropping the reference to mandatory, exclusive use of qualified consultants is critical to conform to the statute and create an internally consistent rule, and recommends deleting reference to "by a qualified consultant" from § 4284.922(b)(5).

Response: The Agency disagrees with the suggested edit that would remove reference to a "qualified consultant." The Agency recognizes the value of producer participation in planning activities, while, at the same time acknowledging that an unbiased, third party is necessary for the evaluative portions of these activities. Therefore, the Agency will retain its requirement that feasibility studies be performed by independent third-parties. However, applicants (and applicant family members, as necessary) are encouraged to participate in the non-evaluative portions of planning grants and may contribute time as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented, as described at § 4284.923.

Comment: One commenter supports the requirement that applicants for working capital be required to submit copies of their feasibility studies and business plans at the time of application. The commenter states that it is aware of applicants who have submitted working capital applications with the intent of "doing the paperwork" or "writing up the business plan" in the period of time after the announcement of the award of grant funds, but before the date when grant obligations must be honored.

The commenter recommends that the statute's requirement that there be a business plan should not prevent the use of VAPG to further plan branding activities and the rule should include this permission. The commenter points out that the VAPG statute includes among the five categories of "value-added agricultural product", "any agricultural commodity or product that * * * (ii) was produced in a manner that enhances the value of the agricultural commodity or product, as demonstrated through a business plan that shows the enhanced value * * *" According to the commenter, the Agency has consistently misapplied the language of the statute to assert that no planning activity involving branding or nonstandard production method could be supported by VAPG. The logic used was to say, the statute calls for a business plan, and therefore it must be that any and all planning has been completed and therefore no further planning is needed; leaving VAPG only to support working capital projects when branding/nonstandard production is proposed. According to the commenter, this interpretation overreaches the statute's mandate—yes, there must be "a business plan that shows enhanced value", but the nature of business planning is that such a plan is often an entrepreneur's first effort to outline a business strategy. This first step is prudently followed by further testing (through a feasibility study, for instance) and elaboration (through a marketing plan, for instance).

Response: The statutory language has been interpreted to mean that the Secretary may determine whether a business plan requirement for this category is in the best interest of the program. The Secretary has determined that the business plan is not in the best interest of the program at this time. As a result, a business plan is no longer required for this product eligibility category and the category is open to both planning and working capital applicants.

Comment: One commenter recommends clarifying § 4284.922(b)(6) because, according to the commenter, not all applicants will know there is a definition for, or remember to check, the definition for, "emerging market," and may jump to their own conclusions about what that means. The suggested revised text would read as follows:

(6) If the applicant is an agricultural producer group, a farmer or rancher cooperative, or a majority-controlled producer-based business, the applicant must demonstrate that it is entering an emerging market unserved by the applicant in the previous two years.

Response: The Agency disagrees with the suggested revision because the definition is sufficient and is more explicit than the text suggested by the commenter. Therefore, the Agency has not revised this paragraph as suggested.

Comment: One commenter states that agricultural producer groups are at an immediate disadvantage because of not being eligible for the Reserved Funds pool. If the program still intends to benefit producer groups, a portion of the funds could be reserved for these applicants.

Response: If by "producer groups," the commenter means farmer or rancher cooperatives, the Agency has determined to assign priority scoring points to cooperatives in the "Priority Points" scoring criterion. The Agency is unable to assign a portion of reserved funds to cooperatives, because reserved fund priorities are set by statute.

Branding Activities (Proposed § 4284.922(c))

Comment: Numerous commenters express concern over the 25 percent limitation on branding activities, recommending either removing it in its entirety or lowering the 25 percent. The specific comments received are presented below.

Three commenters recommend not capping branding/marketing activities. One of the commenters understands that the original intent of the VAPG program was a pronounced focus on enhancing marketing and related activities. From the commenter's perspective, branding

is an essential component of a marketing strategy/plan. As an eligible grant category (*e.g.* marketing activities), it should not be capped. If the regulatory interpretation is different, the terms branding and product differentiation should be defined in the § 4284.902, with examples provided for both eligible and ineligible activities.

One commenter states that limiting these very valuable tools to 25 percent (or any significant limitation) would impact a large number of applicants, raise interpretation issues, and seems to directly conflict with the purpose of the VAPG program. The commenter is uncertain of the purpose of limiting some of the most important tools to accomplish the goals of the VAPG program.

There are many examples of value created by packaging and branding alone. For example, a current Frito Lay campaign for its Sun Chips brand touts "The World's First 100% Compostable Chip Bag"; the proposed rules would exclude growers from VAPG funding to add value with similar green packaging.

The term "product differentiation" covers a lot of territory; product differentiation in several forms is the very purpose of a value-added process. Asking one to create a value-added product without product differentiation is arguably an oxymoron.

One of the commenters states that as an agricultural producer group, branding activities are primarily what they do and hopes that there will not be restrictions placed on this very important part of their activities under which they might apply for grant consideration.

One commenter states that the branding, packaging, or product differentiation activities percent should not be more than 10 percent of the total project cost (for those projects that otherwise eligibility under one of the five value-added methodologies specified in paragraphs (1)(i) through (v) of the definition of a value-added agriculture product). If the proposed activities exceed 10 percent, this could put the feasibility of the project at a higher risk. There is an indication in the VAPG program that branding activity type proposals have not provided strong, detailed evidence that the income estimated is actually realistic. Packaging can be somewhat of a risky, feasible expense, in terms of can it make enough difference in a new value-added venture. These activities proposed at 25 percent of the total project cost could put the project in a high risk situation. A quarter of the project is too much to allow to be at risk, for a value-added project to be assisted with federal government dollars.

One commenter states that some cooperatives have built recognized name brands, which has helped build consumer loyalty and confidence and help to differentiate products in a competitive marketplace. The VAPG has been instrumental in leveraging farmers' investment in their own products to create and expand markets. The earnings from those sales flow through the cooperative to the farmer-members ultimately increasing their income.

However, the proposed rule states: "Branding activities. Applications that propose only branding, packaging, or other similar means of product differentiation are not eligible under this subpart. However, applications that propose branding, packaging, or other product differentiation activities that are no more than 25 percent of total project costs of a value-added project for products otherwise eligible in one of the five value-added methodologies specified in paragraphs (1)(i) through (v) of the definition of value-added agricultural product are eligible."

Limiting those activities to 25 percent (or any significant percentage) would constrain the ability of organizations to use some of the best marketing tools available to expand marking opportunities. This seems to be in direct conflict with the purpose of the VAPG program.

One commenter points out that its members have built recognized name brands, which has in turn built consumer loyalty and confidence, differentiating their products in a competitive marketplace. The VAPG program has been instrumental in leveraging farmers' investment in their own products to create and expand markets. The earnings from those sales flow through the cooperative to the farmer-members ultimately increasing their income. The commenter states that limiting those activities to 25 percent (or any significant percentage) would constrain the ability of organizations to use some of the best marketing tools available to expand marking opportunities. This is in direct conflict with the purpose of the VAPG program. Thus, the commenter recommends removing this limitation from the rule.

One commenter states that it is unclear as to what issue or program outcome is being addressed by the proposed limitation on the amount of expenditures that can be used for "branding, packaging, and product differentiation." For a value-added consumer product, product differentiation is a critical element of developing an alternative market proposition. Use of packaging and branding are sometimes absolutely essential to that process. Funding for these types of activities, especially for small ventures, is perhaps the most useful part of the Working Capital program, as these dollars are incredibly hard to come by for most producer-owned ventures that we are familiar with. Thus, limiting expenditures to 25 percent of total project costs seem to arbitrarily limit the usefulness of the program to producers. The limitation is also vague: What expenses would be included in the limitation? Ad copy development? PR consultants? Sales samples? Demos? All activities that can be construed as "branding and differentiation"? The commenter suggests that, if there is to be a limitation on branding, packaging and product differentiation, a more reasonable limit might be 50 percent of total project expenses. The commenter's work with over 25 applications in 8 years suggests that their clients have requested a maximum of marketing related expenses between 25 and 50 percent of total project costs.

One commenter states that the VAPG statute includes among the five categories of "value-added agricultural product," "any agricultural commodity or PRODUCT that * * * (ii) was produced in a manner that enhances the value of the agricultural commodity or product." According to the commenter, RD recently changed its rules to limit this category to commodities grown in a "nonstandard" manner, such as organic. Note that the statute is not restricted to just the way a commodity is raised; it also recognizes that PRODUCTS also have value-added to them through the way they are produced. Quite simply, this means that branding is an allowable, bona fide value-added activity supported by VAPG statute. The ability to use VAPG to promote branding should be permitted. The proposed rule would restrict branding to just 25 percent of a VAPG grant's purpose. This percentage is arbitrary to begin with, and it also begs the question, if branding is 25 percent eligible, must not it be 100 percent eligible? The answer is, by statute, it is entirely eligible and should be entirely permitted.

One commenter states that the verbiage in proposed § 4284.922(c) is problematic for many of its members. Building a brand name is one goal of creating value-added products. Brand names help create consumer confidence and loyalty in a competitive marketplace. The VAPG has been instrumental in leveraging farmers' investments in their own brands to

create and expand markets. The earnings from those sales flow through the cooperative to the farmer-members ultimately increasing their income. Limiting those activities would constrain the ability of organizations to use some of the best marketing tools available to expand marketing opportunities. This seems to be in direct conflict with the purpose of the VAPG program.

One commenter believes the 25 percent cap is not needed as long as the eligible product for the project meets one of the five value-added methodologies and the other project eligibility criteria. However, if capped, the program will need to define or illustrate what budget activities constitute "branding" in order to calculate and confirm that application expenses do not exceed the limitation in the budget. This commenter states that, for clarity of branding eligibility message, the language should be revised to read, "no more than 25 percent of the total project costs of a value-added project with products otherwise eligible, having resulted from one of the five value-added methodologies."

Response: The Agency recognizes that branding and packaging are important components of value-added marketing strategies. In consideration of all of these comments, the Agency has removed in its entirety proposed § 4284.922(c), which would have imposed a 25 percent limitation on the uses of grant and matching funds for these activities. Thus, the rule does not contain any funding limitation on eligible branding and packaging activities proposed as part of an otherwise eligible project.

Reserved Funds Eligibility (Proposed § 4284.922(d))

Comment: One commenter recommends revising proposed § 4284.922(d) by adding "if applicants choose to compete for reserved funds" for clarification and to record documentation standards to read as follows:

In addition to the requirements specified in paragraphs (a) through (c) of this section, the requirements specified in paragraphs (d)(1) and (2) of this section must be met, as applicable, if applicants choose to compete for reserved funds. All eligible, but unfunded reserved funds applications will be eligible to compete for general funds in that same fiscal year, as funding levels permit.

Response: The Agency agrees with the suggested revision and has revised the rule accordingly (*see* § 4284.922(c)).

Reserved Funds Eligibility (Proposed § 4284.922(d)(1))

Comment: One commenter recommends revising proposed § 4284.922(d)(1), stating that documentation standards need to be specified in the rule to establish uniform expectations, and to be enforceable for eligibility determinations. The commenter suggested the following text:

(1) If the applicant is applying for beginning farmer or rancher, or socially-disadvantaged farmer or rancher reserved funds, the applicant must provide the following documentation to demonstrate that the applicant meets all requirements for one of these definitions.

For beginning farmer or rancher, documentation must include a description from each of the individual owner(s) of the applicant farm or ranch organization, addressing the qualifying elements in the BFR definition, including the length and nature of their individual owner/operator experience at any farm in the previous 10 years, along with one IRS income tax form from the previous 10 years showing that each of the individual owner(s) did not file farm income; or a detailed letter from a CPA or attorney certifying that each owner meets the reserved funds BFR eligibility requirements.

For socially disadvantaged farmer or rancher, documentation must include a description of the applicant's farm or ranch ownership structure and demographic profile that indicates the owner(s)' membership in a socially disadvantaged group that has been subjected to racial, ethnic or gender prejudice; including identifying the total number of owners of the applicant organization, as well as the number of owners that identify themselves as a SDFR; along with a self-certification statement from the individual owner(s) evidencing their membership in said socially disadvantaged group. At least 51 percent of the farmer or rancher owners must be members of the socially disadvantaged group.

Response: The Agency agrees with the suggested revisions and has revised the rule as suggested by the commenter except for the suggested text that 51 percent of the owners must be members of socially-disadvantaged groups. Instead, the Agency is requiring that, for reserved funding, 100 percent of owners must be members of socially-disadvantaged groups. This requirement is set by statute.

Reserved Funds Eligibility (Proposed § 4284.922(d)(2))

Comment: One commenter recommends clarifying proposed § 4284.922(d)(2) to read as follows:

(2) If the applicant is applying for mid-tier value chain reserved funds, the application must provide documentation demonstrating that the project meets the Mid-Tier Value Chain definition, and must:

Response: The Agency agrees with the suggested revision and has revised the paragraph as suggested by the commenter.

Comment: One commenter recommends revising proposed § 4284.922(d)(2)(i) by adding reference to commodities and value-added, because both terms are possible in this MTVC context, to read in part: "Through which agricultural commodities and value-added products move from production through consumption."

Response: The Agency agrees with the suggested revision and has revised the paragraph as suggested by the commenter.

Comment: One commenter recommends revising proposed § 4284.922(d)(2)(ii) by adding reference to commodities for consistency with the combined agricultural product/agricultural commodities definition.

Response: The Agency agrees with the suggested revision and has revised the paragraph as suggested by the commenter. The Agency also revised this paragraph to make reference to value-added products as part of the revision to the definition referenced by the commenter.

Comment: One commenter states that proposed § 4284.922(d)(2)(ii) requires applicants to "describe at least two alliances, linkages or partnerships", whereas proposed § 4284.922(d)(2)(iv) requires the applicant to document that they have "obtained at least one agreement with another member of the supply network." The commenter asks: Are alliances materially different from agreements? Thus, is it one or two alliances? Do two alliances only apply to applicants that are Independent Producers?

Response: For the purposes of § 4284.922(d)(2)(ii), alliances are different from agreements. An alliance is a relationship or strategic partnership in the chain that may or may not include a formal written commitment. An "agreement" is a written commitment in the form of a contract or letter of intent.

In addition to the other requirements described in § 4284.922(d)(2), the application must describe "at least two

alliances, linkages, or partnerships, plus one agreement." This is a requirement of all applicant types, not just Independent Producers.

Comment: One commenter states that the reserved funds eligibility section (proposed § 4284.922(d)(2)(ii)) would be improved by allowing linkages with "other independent producers" such that this paragraph would read as follows:

(d)(2)(ii) Describe at least two alliances, linkages or partnerships within the value chain that link independent producers with other independent producers or with businesses and cooperatives that market value-added agricultural products in a manner that benefits small or medium-sized farms and ranches that are structured as a family farm, including the names of the parties and the nature of their collaboration;

Response: The Agency disagrees as this portion of the eligibility requirement is based on the statutory definition of Mid-Tier Value Chain.

Comment: One commenter recommends expanding "mid-tier value chain" projects to include those that market farm-sited renewable energy products. There is a recognizable, but undervalued niche to farmer-owned wind generation.

Response: The Agency disagrees with the commenter's recommendation. The project eligibility category related to renewable energy was set by the 2008 Farm Bill and states that a Value-Added Agricultural Product is "a source of farm- or ranch-based renewable energy, including E–85 fuel". The Agency's position is that wind is not an agricultural commodity or a Value-Added agricultural product. Thus, the Agency has not revised the rule as suggested by the commenter.

Comment: One commenter recommends adding a new category of funding for "locally-produced agricultural-sited energy projects"; similar to the new category "locally-produced agricultural food products".

Response: The Agency disagrees with the commenter's recommendation. The project eligibility category related to renewable energy is prescribed by statute.

Comment: One commenter recommends spelling out documentation requirements and expectations for applicant awareness and uniformity in implementation in proposed § 4284.922(d)(2)(iii). The commenter recommends that this paragraph read as follows:

(iii) Demonstrate how the project, due to the manner in which the value-added product is marketed, will increase the profitability and competitiveness of at least two, eligible, small or medium-sized farms or ranches that are structured as a family farm, including documentation to confirm that the participating small or medium-sized farms are structured as a family farm and meet these program definitions. A description of the two farms or ranches confirming they meet the Family Farm requirements, and IRS income tax forms evidencing eligible farm income is sufficient;

Response: The Agency agrees with the suggested revision and has revised the paragraph as suggested by the commenter.

Comment: One commenter recommends spelling out documentation requirements and expectations for applicant awareness and uniformity in implementation in proposed § 4284.922(d)(2)(iv). The commenter recommends that this paragraph read as follows:

(iv) Document that the eligible agricultural producer group/cooperative/majority-controlled producer-based business applicant organization has obtained at least one agreement with another member of the supply network that is engaged in the value-chain on a marketing strategy; or that the eligible independent producer applicant has obtained at least one agreement from an eligible agricultural producer group/cooperative/majority-controlled producer-based business engaged in the value-chain on a marketing strategy.

For Planning grants, agreements may include letters of commitment or intent to partner on marketing, distribution or processing; and should include the names of the parties with a description of the nature of their collaboration. For Working Capital grants, demonstration of the actual existence of the executed agreements is required.

Note that Independent Producer applicants must provide documentation to confirm that the non-applicant APG/Coop/MAJ partnering entity meets program eligibility definitions, except that, in this context, the partnering entity does not need to supply any of the raw agricultural commodity for the project.

Response: The Agency agrees with the suggested revisions and has revised the rule as suggested by the commenter.

Comment: In referring to proposed § 4284.922(d)(2)(v), one commenter states that the proposed rule continues the requirement that the applicant be the producer of the majority of the commodity to which value is added. According to the commenter, this is a very unrealistic requirement, particularly to small producers who, if they have a promising value-added product, must quickly outstrip their own agricultural production levels. In Oregon, for example, the commenter stated that we have again and again seen bona fide farmers with exciting value-added products disqualified by this rule. In order for a farmer to justify capital costs to produce a value-added product, they need commodity in volume, and thus they turn to neighboring farmers to supplement their own crops. To limit VAPG to producers growing 50 percent or more of the commodity as we currently do, too often mean limiting VAPG's assistance for unviable, undercapitalized enterprises. Instead, the rule could retain its purpose—to assure that VAPG assistance goes to producers and not processors—by reducing the requirement and only insisting that the producer raise 10 percent or more of the commodity to which value is added.

Response: The Agency disagrees. Applicants have a number of options to form entities with other producers prior to application, which would allow them to aggregate necessary product volume for a project.

Eligible Uses of Grant and Matching Funds (§ 4284.923)

Comment: One commenter states that there needs to be some investigation of these grants beyond believing what is written. The commenter states that recent grants to this area are "sinful" and contends that giving money for unneeded research to millionaires makes no sense. Example one was given a few years ago to research feasibility of making/selling hard cider. The commenter states that a State university had already done a study and that there were existing cider makers in that State. A new grant for $150K was just given to an applicant and the commenter expressed views about the use of funds in previously conducted studies.

Response: The Agency disagrees. Grants are made to eligible producers of all sizes, including small farmers. Funds for planning purposes are intended to evaluate feasibility at the individual enterprise level, which precludes the use of studies performed for other businesses.

Comment: One commenter recommends clarifying the language as to whether stand-alone marketing programs (completely independent from the processing) are eligible. The commenter also recommended more clearly defining the term "branding."

Response: As noted in a response to previous comments, the Agency recognizes that branding and packaging

are important components of value-added marketing strategies and, subject to the satisfaction of all other eligibility criteria, the rule no longer has any funding limitation on the uses of grant and matching funds for these activities.

Planning Funds (§ 4284.923(a))

Comment: Numerous commenters recommend keeping the business and enterprise planning of VAPG projects farmer-centered. The proposed rule includes conflicting provisions on this matter.

Helpfully, it says farmers may count their time spent on development of business and marketing plans as an in-kind contribution for purposes of matching funds. Yet the rule also includes conflict of interest rules and several program definitions that seem to prohibit active participation by the producer in project development and planning. This undermines the fundamental principle of the VAPG program: That farmers and ranchers should be empowered through these grants to explore creative new businesses that will increase farm income and create rural wealth. USDA should ensure that the final rule is totally consistent on this point—farmers and ranchers should directly participate in the development of VAPG projects and be allowed to count their time as a contribution toward the program's matching requirements.

Response: The Agency recognizes the necessity and benefit of direct participation of farmers and ranchers in project development and planning. The Agency also recognizes the necessity of independent, third party analysis of project feasibility. Therefore, the Agency will allow applicants to participate in the direction and data collection of the analysis and allow contribution of time valued at up to 25 percent of total project costs as in-kind match. The applicant must be able to document the valuation of time contributed.

Comment: One commenter states that elements of the proposed rule that contradict the statute and the statement in § 4284.923(a) providing for in-kind matching for participation in development of business and marketing plans should be corrected so the rule as a whole is consistent and clear and does not lead to arbitrary implementation decisions. The commenter is concerned that a variety of sections in the proposed rule contradict, or at the very least confuse, the otherwise clear directive in the proposed rule that farmers and ranchers are encouraged to write or help write business and marketing plans for their proposed projects and have the time they invest in the work accepted as an eligible in-kind match for a grant.

The statute clearly states that grants will be awarded to: An eligible independent producer (as determined by the Secretary) of a value-added agricultural product to assist the producer "(i) in developing a business plan for viable marketing opportunities for the value-added agricultural product ; or (ii) in developing strategies that are intended to create marketing opportunities for the producer". (7 U.S.C. 1621 (b)(1)(A))

Preserving this producer-centered approach to grants is fundamental to VAPG's success. Our member organizations that have been engaged in education and technical assistance on VAPG grants believe that successful value-added projects are the result of a profound understanding of the complexities of farming businesses that can only be provided by the farmers and ranchers who will be participating in the enterprise. Conversely, projects that fail most often do so because they did not incorporate the insights and experience of the producers the business will rely on for its success.

Response: The Agency recognizes the value of producer participation in Planning activities, at the same time acknowledging that an unbiased, third party is necessary for the evaluative portions of these activities. Therefore, the Agency will retain its requirement that feasibility studies be performed by independent third-parties with the only limitation on applicant involvement being the provision a § 4284.923 that allows applicants to claim time on Planning grants as in-kind match amounting to up to 25 percent of total project costs, provided that a realistic and relevant valuation of their time can be documented.

Comment: One commenter recommends emphasizing the importance of the marketing element of the VAPG Marketing Grant. Having the funds to come out of the gate with a great marketing plan is imperative particularly when you are involved in a competitive industry such as wine production. The commenter attached one of their labels where marketing has been key to its success which has contributed to the early success and profitability of this particular wine.

Response: The Agency agrees with the commenter's suggestion to emphasize the marketing element of the program and has revised the rule to remove limitations on funding of branding and packaging activities.

Comment: One commenter states that, as in the proposed rule, the final rule should allow for grant payment and in-kind matching credit for producer participation in the development of business and marketing plans, but also extend the same treatment to feasibility studies.

The 2009 VAPG NOFA for the first time explicitly excluded farmer and rancher time as an allowable in-kind contribution for planning grants, substantially reducing the number of applicants that had the means to apply and reversing almost a decade of understanding in the field of how the VAPG grant works. This was a serious mistake that would do severe damage to the program if left uncorrected.

VAPG grants are at their core producer grants for entrepreneurial producer-based projects. It is vital that producers be able to contribute their sweat equity to building and launching their project. Participation by consultants and outside experts can also be very important. But the program should not ever be viewed primarily as a grant program that passes funding through farmers and ranchers to paid outside consultants. Such a view is contrary to law and contrary to the intent of Congress in designing the program.

In addition to providing grant funds to pay for the time of the applicant or the applicant's family members in the project, it is also critical that producers be able to choose to contribute in-kind services as part of their matching requirements. If they were not allowed to do so, it would tilt the program to only the well-off, those with access to sufficient capital to fully fund their match requirements. Such a result would contradict the very reason for the program's existence.

The commenter strongly supports the provision at § 4284.923(a) and urges that it be retained, but also strengthened, in the final rule. The final rule on this point should be strengthened in two ways. First, the proposed rule's preamble refers appropriately to both the applicant and the applicant's family. The sentence in § 4284.923(a), however, refers only to the applicant and does not mention the applicant's family. This oversight should be fixed by adding a specific reference to the applicant's family, to match the clear intent as rendered in the preamble.

Second, the major element that is still missing from this provision in § 4284.923(a) is an allowance for producer participation in planning grants and for in-kind producer matching contributions in the development of a value-added business feasibility study. The statute is reasonably clear on this matter: A grantee under paragraph (1) shall use

the grant—(A) to develop a business plan or perform a feasibility study to establish a viable marketing opportunity for a value-added agricultural product; (7 U.S.C. 1621(b)(3)(A)).

The statute provides that producers may perform feasibility studies as part of planning grants. If a producer receiving an award can use the grant to themselves perform a feasibility study then certainly they should also be able to count portions of their time working on a feasibility study as an in-kind match.

Feasibility studies can be conducted by a qualified consultant, and in many cases should be, but with input and contributions from the producer(s). The commenter notes that marketing and business plans are critical components for the feasibility study and the proposed rule in § 4284.923(a) already allows producers and their families to count their marketing and business plan development time as part of their in-kind match. It would be logically inconsistent to say they can count time toward the two critical components of the feasibility study, but not the feasibility study per se. Moreover, consultants will be relying on the producer(s) to supply much of the additional information that will provide the basic background and parameters of the feasibility study without which they cannot proceed. For these reasons, the commenter recommends adding an explicit reference to feasibility studies to § 4284.923(a).

To address both of these issues—family members and feasibility studies—the commenter recommends modifying § 4284.923(a) as follows:

(a) Planning funds may be used by applicants for the costs associated with conducting and developing a feasibility study, business plan, and/or marketing plan associated with the processing and/or marketing of a value-added product, including costs required to pay for a qualified consultant to conduct and develop a feasibility study, business plan, and/or marketing plan associated with the processing and/or marketing of a value-added product. In-kind contribution of matching funds to cover applicant or family members of the applicant participation in development of feasibility studies, business plans and/or marketing plans is allowed to the extent that the value of such work can be appropriately valued. Funds may not be used to evaluate the agricultural production of the commodity itself, other than to determine the project's input costs related to the feasibility of processing and marketing the value-added product.

Response: The Agency recognizes the value of producer participation in Planning activities, at the same time acknowledging that an unbiased, third party is necessary for the evaluative portions of these activities. Therefore, the Agency will retain its requirement that feasibility studies be performed by independent third-parties. Applicants (and applicant family members, as necessary) are encouraged to participate in the non-evaluative portions of the study and may contribute time as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented. The Agency considers the use of grant funds for direct personal financial gain to be a conflict of interest and will continue to prohibit use of grant funds to pay applicant/applicant family member salaries.

Comment: One commenter believes planning grants should allow for producer involvement in feasibility studies, and for them to count their time as in-kind match. The proposed rule makes progress in this area by recognizing the importance of their involvement in business and marketing planning, but is still lacking regarding feasibility studies. Working with many farmers and ranchers over the years, their involvement in all aspects "feasibility studies, business planning and marketing planning" was absolutely key to successful projects. Through the feasibility studies they have helped with in the past, the farmers or ranchers have assisted with surveys, product testing, data collection, and many other activities. This work was critical for compiling the feasibility study.

Also, all of the farmers and ranchers they were seeking to assist during the 2009 VAPG round dropped out because they were not able to count their time as in-kind match for these activities. To ensure this program serves the folks it is designed to make a priority (small and mid-size family farmers and ranchers) the in-kind contribution in this regard must be fixed and their involvement in feasibility studies must be allowed to be counted as in-kind contributions. In the absence of such they will only stand to serve the well-healed who do not need the assistance in order to launch a value-added business.

Response: The Agency recognizes the value of producer participation in Planning activities, at the same time acknowledging that an unbiased, third party is necessary for the evaluative portions of these activities. Therefore, the Agency will retain its requirement that feasibility studies be performed by independent third-parties. Applicants (and applicant family members, as necessary) are encouraged to participate in the non-evaluative portions of the study and may contribute time as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented.

Comment: One commenter recommends revising § 4284.923(a) to reflect more recent RBS determinations to allow limited applicant and family member in-kind contributions for planning grant match purposes, and to establish implementation parameters to balance applicant in-kind contributions with federal conflict of interest law. The Agency may consider limiting this conflict of interest exception for planning grants only to applicants that are "Small-Farms structured as a Family Farm"; "to 10 percent of total project costs for planning grants"; or "for all planning grant applicants that seek grant amounts of $50,000 or less as part of a simplified grant request." conflict of interest and applicant in-kind contribution issues have been highly problematic in the past, and account for a large percentage of applications submitted but deemed ineligible due to conflict of interest. Federal procurement standards prohibit transactions with a real or apparent conflict of interest, including owner and family member in-kind contributions. If an exception is allowed as above, the regulation must be clear as to what is and is not acceptable in order to mitigate this issue going forward.

Response: The Agency recognizes the value of producer participation in Planning activities, at the same time acknowledging that an unbiased, third party is necessary for the evaluative portions of these activities. Therefore, the Agency will retain its requirement that feasibility studies be performed by independent third-parties. Applicants (and applicant family members, as necessary) are encouraged to participate in the non-evaluative portions of the study and may contribute time as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented. In addition, applicants for Working Capital grants may also contribute their time on eligible working capital tasks as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented.

Working Capital Funds (§ 4284.923(b))

Comment: One commenter asks if this is a new clause (exclusion of grant funds

for an owner's salary for eligible activities) or has this always been the case? Are owners able to use time spent processing and/or marketing and delivering the value-added product as an in-kind match? The commenter believes eligible grant activities should qualify to receive federal funds or to be used for match (cash and in-kind) to the greatest extent possible—the only possible exception would be applicant time spent on the feasibility study.

Response: The Agency considers the use of grant funds for direct personal financial gain to be a conflict of interest and will continue to prohibit use of grant funds to pay applicant/applicant family member salaries. However, the Agency recognizes the value of producer participation in Planning activities, as well as the necessity of participating in eligible marketing activities. Therefore, both Planning and Working Capital applicants (and applicant family members, as necessary) may contribute time spent on eligible activities as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented, as provided for at § 4284.923.

Comment: One commenter recommends expanding § 4284.923(b) to allow the payment of salaries to owners/family members of the value-added venture. The VAPG primary objective, as defined in this proposed rule, is to help the independent producer of agricultural commodities increase the producer's income as the end goal. The commenter believes that it is counterintuitive to say that paying an owner or family members to run their business is a conflict of interest. The commenter understands that and agrees that the amount paid has to be reasonable and has to be commensurate with the duties preformed.

To say that it is an eligible cost to pay someone else to run their business but that it is not an eligible cost to pay themselves a reasonable wage to run their business does not make sense. The commenter asks the Agency to consider making this change to 7 CFR parts 4284 and 1951. If not, then the rule needs to be stated such that this is not an allowable expense and needs to be specifically listed in § 4284.924.

Response: The purpose of the program, as given in § 4284.901, is to "enable viable agricultural producers to develop businesses that produce and market value-added agricultural products." The Agency considers the use of grant funds for direct personal financial gain to be a conflict of interest and will continue to prohibit use of grant funds to pay applicant/applicant family member salaries. However, the Agency recognizes the value of producer participation in Planning activities, as well as the necessity of participating in eligible marketing activities. Therefore, both Planning and Working Capital applicants (and applicant family members, as necessary) may contribute time spent on eligible activities as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented, as provided for at § 4284.923.

Comment: One commenter states that, for stand-alone marketing programs, which do not lend themselves to creating feasibility or business plans, a marketing plan with clear results should be sufficient.

Response: If the commenter use of "stand-alone marketing programs" refers to applicants already producing a value-added product, but desiring to expand their market, the Agency agrees that a feasibility study is unnecessary. However, the Agency disagrees that a business plan is unnecessary. The Agency has revised the rule to allow Independent Producer applicants requesting $50,000 or more who can demonstrate that they are proposing market expansion for existing value-added products to submit a business or marketing plan in lieu of a feasibility study (see § 4284.922(b)(5)(i)).

Comment: One commenter states that the working capital paragraph at § 4284.923(b) needs to clarify that grant payment of salaries, etc. to not only ownership, but also "immediate family interests" constitutes a conflict of interest and is prohibited.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Ineligible Uses of Grant and Matching Funds (§ 4284.924)

Comment: Four commenters state that this section should clearly state which uses of funds are ineligible. For example, the rule should clearly state applicants are not allowed to use grant funds for owner salaries. It is unnecessarily confusing to imply such expenses are ineligible because they are a conflict of interest.

Response: The Agency agrees with the commenter and has revised this section accordingly. In addition, the Agency notes that the rule now clearly states that applicants are not allowed to use grant funds for either owner salaries or for immediate family member salaries (see § 4284.924(n)).

Comment: Several commenters state that this section should clearly state if some uses of funds are eligible as matching funds, but are not an eligible use of grant funds. Section 4284.931(b)(4)(i) of the rule states: "Matching funds are subject to the same use restrictions as grant funds," but this has not been the practice. For example, the rule should clearly state if applicants are allowed to contribute inventory they have produced as a match, but cannot use grant funds to purchase the same inventory from themselves.

Response: The Agency agrees and has provided clarification and additional examples at §§ 4284.923 and 4284.924. However, it is unrealistic to anticipate and list every possible example and, therefore, the Agency must have the ability to exercise discretion.

Comment: One commenter states that, as a small producer, he believes that eliminating the ability of a producer to use in kind options to help match grant funds would disadvantage many lower income participants. Driving the grant/research sector into the hands of corporate, state, and entities other than small farmers is obviously not in the spirit of the program, and the commenter states that this direction would be a move towards much more severe conflicts of interest between the reciprocation of officials between government agencies and corporations. The commenter believes these grant funds are best spent with our local producers, not on what the commenter perceives of as wasteful university research, and contends that local producers are more efficient at disposing of funds than almost any other type of researchers.

Response: The Agency recognizes the value of producer participation in planning activities, at the same time acknowledging that an unbiased, third party is necessary for the evaluative portions of these activities to assist the Agency determining the merits of a particular applicant's planned activities. Therefore, the Agency will retain its requirement that feasibility studies be performed by independent third-parties. Applicants (and applicant family members, as necessary) are encouraged to participate in the non-evaluative portions of the study and may contribute time as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented.

Comment: One commenter recommends allowing applicants to be paid for professional services, as eligible project costs.

Response: The Agency considers the use of grant funds for direct personal financial gain to be a conflict of interest

and will continue to prohibit use of grant funds to pay applicant/applicant family member salaries. However, the Agency recognizes the value of producer participation in Planning activities, as well as the necessity of participating in eligible marketing activities. Therefore, both Planning and Working Capital applicants (and applicant family members, as necessary) may contribute time spent on eligible activities as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented, as provided for at § 4284.923.

Comment: One commenter states that, with regard to ineligible matching funds—donated services that are also paid for with VAPG funds—if a consultant or other party will receive cash payments from the VAPG project, a conflict of interest exists as to the donation of their services. For instance, a consultant should not be able to set a high price for their services and then "donate" some of that price as match. This should be expressly prohibited.

Response: The Agency does not agree that a change to the rule is necessary because it would limit the ability of smaller applicants to utilize the services of consultants.

Comment: One commenter states that, with regard to ineligible matching funds—commodity, the existence of a crop is a necessary precondition of any value-adding activity. Thus, growers should not be able to assert the value of the commodities they raise as part of their match.

Response: The Agency disagrees with the comment and will continue to allow applicants to contribute commodity inventory as in-kind, as appropriate because the practice is not prohibited under uniform administrative requirements regarding cost-sharing.

Comment: One commenter states that the conflict of interest requirement in the proposed rule is suggestive, but bears some elaboration to prevent abuse. No owner should be able to pledge their assistance as valid "in kind" match; their compensation for their efforts on a project is the potential increased profit they expect to realize. If they are not convinced of such a return, they should not be undertaking the project.

Response: The Agency agrees that the use of grant funds for direct personal financial gain is a conflict of interest and will continue to prohibit use of grant funds to pay applicant/applicant family member salaries. However, the Agency recognizes the value of producer participation in Planning activities, as well as the necessity of participating in eligible marketing activities. Therefore, both Planning and Working Capital applicants (and applicant family members, as necessary) may contribute time spent on eligible activities as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented, as provided for at 4284.923.

Comment: One commenter states that this section needs to be revised to connect conflict of interest issues with procurement transactions, to illustrate conflict of interest for owners and family members, and to clarify what is not an eligible use of funds.

Response: The Agency agrees and has revised rule text at §§ 4284.923 and 4284.924, and in the definition of Conflict of Interest.

Comment: One commenter states that this section should make clear that the identity of independent producers may be by name or class, but still prohibit industry-wide templates.

Response: The Agency agrees with the suggestion and has revised proposed § 4284.924(k) (now § 4284.924(m) in the interim rule) as suggested by the commenter in order to balance the interests of applicants ease of application with the Agency's need to identify applicant owners.

Pay Any Costs of the Project Incurred Prior to the Date of Grant Approval (Proposed § 4284.924(m))

Comment: One commenter states that the proposed rule restricts the use of grant and matching funds for any costs incurred prior to the date of grant approval. It would be beneficial for the applicants if they could start their project after the application is submitted. This should be changed to any cost incurred prior to the application submission. Other Agency programs such as the REAP and B&I programs, allow the start of the project prior to the award approval. This has been successful as long as the applicant is aware that they may not receive the grant. Many of the value-added products are created in a sensitive timeframe dependant on the commodity's growing season. Often the growing season is in conflict with the grant's timeframes.

Response: Prohibitions on incurring reimbursable costs prior to grant approval is standard procedure under Federal grant administrative guidelines. This protects applicants—especially small applicants of limited means—from incurring costs for a project that might not be completed if they did not receive a grant. In addition, timeframes of up to 36 months are allowed and could be tailored to accommodate growing seasons.

Comment: One commenter believes that matching funds should be allowed from the date of the NOFA because many expenses are incurred to start the project during the application period and time prior to the funding of the grants. Many of the projects are incurring legal and accounting expenses to get prepared if the VAPG is funded. If they do not incur these expenses then they are not prepared to start the projects as soon as they are awarded. If these expenses are not allowed, then the project has to stop and wait for the announcement date which can be delayed for months.

Response: Prohibitions on incurring reimbursable costs prior to grant approval is standard procedure under Federal grant administrative guidelines. This protects applicants—especially small applicants of limited means—from incurring costs for a project that might not be completed if they did not receive a grant.

Pay for Any Goods or Services Provided by a Person or Entity That Has a Conflict of Interest or an Appearance of a Conflict of Interest (Proposed § 4284.924(p))

Comment: Two commenters state that proposed § 4284.924(p) is in conflict with the provision at § 4284.923(a). The emphasis on conflict of interest or an appearance of conflict of interest is misplaced in reference to in-kind matching funds. All matching contributions must be verifiable and the time, or "sweat equity", that farmers, ranchers and/or their families invest to design and develop these value-added enterprises are necessary to their success, as the rule otherwise provides in § 4284.923(a).

One of the commenters states it would be worthwhile to delete the definition for conflict of interest entirely or redefine it with specific examples and/or exclusions. The other commenter recommends deleting the second sentence, to read as follows: (p) Pay for any goods or services provided by a person or entity that has a conflict of interest or an appearance of conflict of interest.

One commenter states he was recently notified that he received a working capital VAPG and this would have never been possible if he were not allowed to contribute in-kind match for his time to develop the business plan and feasibility study. The commenter asks USDA to please consider removing the conflict of interest clause, because, the commenter believes, it hinders small producers and businesses from applying because they cannot meet the match

requirements without being able to provide in-kind match.

Response: The Agency has revised the text at § 4284.924(a) to note the exceptions to the conflict of interest language allowing limited contributions of applicant time to in-kind match.

Funding Limitations (§ 4284.925)

Comment: One commenter suggests that the maximum grant amount remain at $300,000, not be increased to $500,000.

Response: The Agency agrees with the commenter. The statute allows a maximum of $500,000 at Agency discretion. It is the Agency's intention to retain the $300,000 maximum for working capital grants.

Comment: Four commenters recommend that the final rule include a reasonable standard to measure significant benefit to beginning farmers.

Response: The statute has a 10 percent reserve to fund projects that benefit beginning farmers or ranchers or socially disadvantaged farmers and ranchers as well as giving priority to projects that contribute to increasing opportunities for beginning farmers or ranchers. The Agency will fully implement the designations stipulated in the statute.

Comment: One commenter recommends creating a 10 percent set-aside for farmer-owned community wind projects, similar to the same for mid-tier value chain projects, or beginning farmers and ranchers.

Response: The Agency disagrees with the commenter's recommendation. Reserved funds designations are stipulated by statute.

Comment: One commenter recommends allocating the 10 percent set aside for beginning and socially disadvantaged farmers to the states along with the regular VAPG state allocations with the understanding that those funds are exclusively designated for such applicant categories. In the event a state is unable to award at least 10 percent of their state allocation to such categories, these funds should be pooled in a timely manner and made available to states with an excess of such applicants. This will ensure that 10 percent or more of the funds awarded go to these statutorily designated categories. Because these applicant types receive priority points as well, it is very unlikely RD will have trouble awarding funds at the required level.

Response: The Agency disagrees with the commenter's recommendation. Allocation of funds to States is counter to statutory direction that the VAPG program be a nationally competitive program.

Comment: One commenter states that the mid-tier value chain (MTVC) aspect of VAPG is highly specialized and the 10 percent set aside required for such projects does not lend itself well to state allocations. Thus, unlike with regular VAPG project, it makes sense to conduct a single, nationwide competition for MTVC projects.

Response: The Agency agrees that allocation of funds to States is counter to statutory direction that the VAPG program be a nationally competitive program.

Preliminary Review (§ 4284.930)

Comment: One commenter states that primary eligibility determinations are based on both applicant and project eligibility requirements. Therefore, the commenter recommends that the language in this section be revised to maintain consistency throughout the regulation.

Response: The Agency agrees with the suggested revision and has added reference to applicant eligibility in this section.

Application Package (§ 4284.931)

Comment: One commenter states that, with regard to ideal application content, a much more preferable application requirement would consist of: (1) A proposed Form RD 4284–1, VAPG Application, with all of the requisite certifications pre-printed on the form; (2) a business plan; and perhaps (3) current balance sheet (to reflect capacity to perform). A feasibility study could be included working capital applications when applicable (although it should not be required when non-emerging markets projects are proposed, as already discussed above).

Response: The Agency understands the concern for ease of the application process and will consider these points when developing application material.

Forms

Comment: One commenter notes that currently there are no forms available for the customer to complete in identifying the required criteria, and recommends using Form RD 4279–1, Application for Loan Guarantee.

One commenter states that, regarding the application form, the SF–424, Application for Federal Assistance, SF–424A, Budget Information—Non-Construction Programs, and SF–424B, Assurances—Non-Construction Programs, are generic forms poorly suited and confusing to farmers. The commenter recommends that Rural Development develop a VAPG application form specifically designed for the VAPG program.

Two commenters state that the proposed rule does not reference a single, comprehensive form for the applicant to complete in addressing the required criteria. The proposed rule should reference a standard form. The majority of items applicants must address should be basic, check-the-box certifications. Only a few, subjective items should call for a narrative statement and the form should provide adequate space for most applicants to provide the information. Many Rural Development programs can be accessed by completing a comprehensive form and the form is often referenced in the rule. The application process for the VAPG program should be driven by a standard form, similar to Form RD 4279–1.

Response: The Agency understands the concern for ease of the application process and will consider these points when developing application material.

Comment: One commenter recommends adding Form RD 1940–20.

Response: The Agency agrees with the recommendation and has added reference to Form RD 1940–20.

Comment: One commenter recommends removing Form RD 400–1 because it covers construction projects, which are ineligible for VAPG projects.

Response: The Agency agrees with the commenter and has removed Form RD 400–1 as a requirement from the rule.

Comment: One commenter states that § 4284.931(a)(6) needs to be changed to remove the need for a DUNS number for an individual and sole proprietor to be consistent with other Rural Development programs (*i.e.* REAP). The DUNS number is a number that is designed for businesses. Individuals and sole proprietors are eligible entities for the VAPG program and a DUNS number should not be required in these circumstances.

Response: The DUNS requirement for all applicants for Federal assistance is by OMB directive.

Application Content (§ 4284.931(b))

Comment: One commenter states that the 2009 VAPG rules required applicants to list their owners/members by name and the owners of all their owners/members organized as any type of legal entity other than as individuals. According to the commenter, this poses a significant problem for cooperatives, agricultural trade associations, and other applicants with multiple owners/members that might be LLCs, partnerships, corporations, etc. In many cases, the applicants did not have the required information on the owners of their owners/members on file, and found it challenging or impossible to get

it. Legal issues were also raised regarding the release of such information in certain states, even if it were available. The commenter states several potential applicants declined to apply in 2009 due to this requirement. The proposed rule is silent on the matter, which presumably means that the requirement has been dropped, and the commenter hopes this is the case.

Response: The Agency agrees and has revised the definitions of Farmer or Rancher Cooperative, Agricultural Producer Group, Independent Producers, and Majority Controlled Producer-Based Business Ventures to indicate that entities may list owner/members by name or by class.

Eligibility Discussion (§ 4284.931(b)(2))

Comment: One commenter recommends deleting "using the format prescribed by the application package," in § 4284.931(b)(2) through (4), and rewording so the regulation is not dependent upon an Agency package, but so the regulation with notifications cited comprise the format for the application.

Response: The Agency disagrees with the proposed change as its intention is to provide a comprehensive application package to convey format details. All sustentative requirements which are reflected in the application are contained in the regulation.

Comment: One commenter recommends breaking out applicant and project eligibility as § 4284.931(b)(1)(i) and (ii) respectively—they are two distinct eligibility components.

Response: The Agency agrees with the commenter and has revised the rule as suggested.

Evaluation Criteria (§ 4284.931(b)(2))

Comment: One commenter recommends that the performance evaluation criteria indicate that applicant or Agency requested performance criteria will be incorporated into applicant reporting requirements and give examples, as these elements will be detailed in the grant agreement or letter of condition.

Response: The Agency agrees with the commenter and has revised the rule as suggested. Additional instruction will be provided in the annual notice of funding availability.

Comment: One commenter recommends that the Agency indicate that the proposal evaluation criteria are applicable to both planning and working capital applicants.

Response: The Agency agrees with the commenter and has revised the rule as suggested.

Comment: One commenter recommends that the Agency clarify how applicants verify eligible matching funds, especially with regard to applicant or family member in-kind contributions that meet to be documented requirements and limitations in § 4284.923(a), or non-federal grant sources.

Response: The Agency agrees with the commenter and will provide guidance in the application package on verification of matching funds.

Comment: One commenter believes that the narrative requirement of VAPG applications is excessive and burdensome to the farmer. The commenter recommends that it be replaced by succinct sections of the recommended Form RD 4284–1, asking for what is specifically needed and no more. Farmers should not be expected to enter into a writing contest to receive VAPG assistance. Doing so turns this program into a benefit for grant-writers and not farmers.

Response: The Agency agrees with the commenter and is developing a comprehensive application package, which will provide forms and templates that encourage succinct responses.

Certification of Matching Funds (§ 4284.931(b)(3))

Comment: One commenter recommends replacing the requirement for multiple certifications on matching funds, etc., by a simple preprinted certification on a Form RD 4284–1.

Response: The Agency agrees that multiple certifications can be addressed at one place in the application.

Verification of Cost-share Matching Funds (§ 4284.931(b)(4))

Comment: One commenter states that § 4284.931(b)(4)(v) and (vi) represent a third operational provision of the proposed rule in conflict with the allowance provided in § 4284.923(a). Although the proposed rule in § 4284.923(a) states that applicant producer's time is an acceptable in-kind contribution, these two provisions each contradict that statement. Omitting mention of applicant time or other in-kind match in paragraphs (b)(4)(v) and (vi), while including a specific reference to eligible third-party contributions implies that the only kind of match that applicants can provide are in the form of cash. The commenter also states that § 4284.931(4)(vi) unnecessarily raises the specter of rejecting the in-kind contributions of producers permitted by § 4284.923(a) by cross-reference to the conflict of interest definition. The commenter recommends these paragraphs be rewritten as follows: Verification of cost-share matching. Using the format prescribed by the application package, the applicant must provide authentic documentation from the source to confirm the eligibility and availability of both cash and in-kind contributions that meet the following requirements:

(v) Matching funds must be provided in the form of confirmed applicant cash, loan, or line of credit, and may include payment for the time of the applicant/producer or the applicant producer's family members to the extent that the value of such work can be appropriately valued; or confirmed third-party cash or eligible third-party in-kind contribution.

(vi) Examples of ineligible matching funds include funds used for an ineligible purpose, contributions donated outside the proposed grant period, third-party or applicant in-kind contributions that are over-valued, expected program income at time of application or instances where the potential for a conflict of interest exists.

Response: The Agency has considered the commenter's suggested revisions and agrees that revision to these two paragraphs is needed. Therefore, the Agency has revised the elements in § 4284.931(b)(4)(v) and (vi) to be consistent with the Agency's intention to allow specified and limited applicant in-kind contributions for a portion of the project's matching funds for planning and working capital grants, and to be consistent with §§ 4284.902, 4284.923(a) and (b), and 4284.924.

Comment: One commenter states that the requirement for verification of matching funds at the time of application is burdensome and unnecessary. The farmer should not be expected to have funds on hand or committed and then tied up for months while RD reviews the applications. There is no harm done if the farmer proves ultimately unable to raise matching funds because if the farmer fails to do so, then no VAPG funds are going to be disbursed. So why require funds to be tied up so far in advance of the project's uncertain selection and start date?

Response: The Agency acknowledges the commenter's concern and will provide guidance in the instructions to the rule to balance flexibility regarding verification requirements with the need for ascertaining and documenting applicant commitment.

Comment: One commenter wants to know how conflict of interest applies to allowable applicant in-kind match for the development of business plans and/or marketing plans.

Response: The allowance of limited contributions of applicant time to both Planning and Working Capital grants is an exception to the Agency's conflict of

interest policy and is noted in revised text in §§ 4284.923 and 4284.924.

Comment: Three commenters state that the proposed rule is conflicting on the eligibility of applicant, in-kind matching funds. Nothing in this section allows for applicant in-kind matching funds. Specifically, § 4284.931(b)(4)(v) lists the eligible forms of matching funds and does not include applicant, in-kind matching funds. This is contrary to § 4284.923(a), which allows for applicant, in-kind matching funds for planning grants under qualified circumstances. The proposed rule should be clearer on the eligibility of applicant, in-kind matching funds.

One commenter states that applicant in-kind as an eligible match (for the development of business plans and/or marketing plans) is not included.

Response: The Agency agrees with the commenters concerning the conflicting nature of the proposed rule. Therefore, the Agency has revised the elements in § 4284.931(b)(4)(v) and (vi) to be consistent with the Agency's intention to allow specified and limited applicant in-kind contributions for a portion of the project's matching funds for planning and working capital grants and to be consistent with §§ 4284.902, 4284.923(a) and (b), and 4284.924.

Business Plan (§ 4284.931(b)(5))

Comment: Three commenters state that the proposed rule requires all working capital applications to include a copy of the business plan and a third-party feasibility study completed for the proposed project. The Agency is required to concur in the acceptability or adequacy of these documents. The National Office should provide guidance to allow for a standardized review process around the country. The review process must consider two competing issues. First, the process must be simple enough to allow the Agency to complete the review in a timely manner. Second, the review process must be flexible enough to accommodate business plans and feasibility studies written for ventures in a variety of different industries.

Response: The Agency agrees with the commenter and will develop guidance for State Office review of feasibility studies and business plans.

Feasibility Study (§ 4284.931(b)(6))

Comment: Two commenters state that the proposed rule requires all working capital applications to include a copy of the business plan and a third-party feasibility study completed for the proposed project. The Agency is required to concur in the acceptability or adequacy of these documents. The National Office should provide guidance to allow for a standardized review process around the country. The review process must consider two competing issues. First, the process must be simple enough to allow the Agency to complete the review in a timely manner. Second, the review process must be flexible enough to accommodate business plans and feasibility studies written for ventures in a variety of different industries.

Response: The Agency agrees with the commenter and will develop guidance for State Office review of feasibility studies and business plans.

Comment: One commenter states that a standardized review process is needed for every state. It must be simple and timely and flexible to accommodate business plans and feasibility studies written for ventures in a variety of different industries. Not everyone is making wine out of grapes.

Response: The Agency agrees with the commenter and will develop guidance for State Office review of feasibility studies and business plans.

Comment: One commenter suggests the requirement for a feasibility study be waived in the case of an individual producer who has been successfully operating for six years and beyond.

Response: The Agency has revised the rule for Independent Producer applicants proposing market expansion for existing value-added products to require only a business or marketing plan, rather than a feasibility study, provided the applicant has produced and marketed the value-added product for at least two years.

Comment: One commenter states that the issuance of a new VAPG regulation could greatly encourage the strategy of promoting local and regional foods as an important rural development by recognizing local foods as a valid value-adding strategy and thus exempting this strategy from any feasibility study requirement regardless of whether the producer has a history of participating in local foods (*i.e.,* regardless of whether the local food strategy would be an "emerging market" opportunity for a given producer). The commenter states that such a rule would greatly simplify the ability of farmers to apply for and receive VAPG assistance to begin or continue participate in farmers markets, etc.

The commenter further states that RD has consistently and unrealistically required that all applications for working capital grants be supported by a feasibility study. The value of such studies may be important in many cases, such as when a project involves an "emerging market". Their value is less clear and serves only as a barrier in instances where the VAPG project is not for an emerging market. An independent producer who has a track record of producing a value-added product should not be required to undertake the time and expense of a feasibility study when their proven history supports their business plan. The commenter states that, in such cases, feasibility studies should be optional and if completed and their content is persuasive, it could result in greater priority being assigned to such projects.

Response: The Agency generally agrees and will require only a business or marketing plan rather than a feasibility study for Independent Producer applicants requesting $50,000 or more in working capital funds and proposing market expansion for existing value-added products.

Simplified Application (§ 4284.932)

Comment: Four commenters recommend including a description of the simplified application process in the rule for two reasons. First, the simplified application process should be included in the rule, as opposed to the annual NOSA. Applicants want to prepare applications packages as early as possible to elevate the burden of a narrow timeline between program announcement and application deadline. Second, the simplified application process should be an abbreviated version of a standard form to compete for program funds. The form should be similar to Form RD 4279–1A, "Application for Loan Guarantee—Business and Industry Short Form."

Response: The Agency understands the concern for ease of the application process and will consider these points when developing application material.

Comment: Two commenters believe the Agency should create a simplified application for grants of less than $50,000. One of the commenters states that the 2008 Farm Bill explicitly calls on Rural Development to offer a simplified application for small grants of less than $50,000 as recognition that the proposal process is so cumbersome that many excellent, inexpensive projects do not get the support they deserve. The FY 2009 NOFA, however, did not offer a substantive improvement in this regard, and the proposed rule contains only a one sentence reference that says "Applicants requesting less than $50,000 will be allowed to submit a simplified application, the contents of which will be announced in an annual notice issued pursuant to § 4284.915." This issue deserves serious attention and should be dealt with in the 2010 NOFA. Given the missed opportunity

last year and the lack of any substantive proposal in the proposed rule, the commenter suggests, if necessary, that Rural Development staff work with other agencies, including AMS, FSA, and NIFA, that currently use simplified application forms in a variety of grant and loan programs, to adopt lessons learned about grants and loan documents that are user-friendly for under-resourced groups but still provide necessary assurances of merit or credit worthiness.

The other commenter adds that the simplified application process should be an abbreviated version of the full application similar to the B&I's use of Form RD 4279–1A for loans less than $600,000. For FY 09, the same application materials were required for both the simplified applicants and full applicants; however the simplified applicants did not need to submit certain information unless they were funded. So essentially the same application had to be submitted, the timeframes were just different.

Response: The Agency agrees that the Simplified Application process needs improvement and will consider the commenters' points when developing application material.

Comment: One commenter states that the proposed rule is far too vague on what is proposed for less than $50,000 grants. The commenter recommends such grant applications be limited to a Form RD 4284–1, plus a business plan of 5 or less pages, with no requirement for financial statements or feasibility study regardless of whether the project involves an emerging market.

Response: The Agency agrees the Simplified Application process requires improvement and will consider the commenter's points when developing.

Filing Instructions (§ 4284.933)

Comment: One commenter asks if, going forward, USDA will be applying a set release/due date annually. Collectively, their organizations are in favor of this. Also, could there be more than one award date annually to better facilitate the applicant's timeframe for applying for working capital and launching the business? As it now stands, the time lag between grant application, award, and implementation dissuades many potential applicants.

Response: The Agency will not set a permanent application deadline. Because the program is oversubscribed, it is not feasible to have multiple application dates.

Comment: One commenter supports the concept of a fixed annual date of application and states that March 15 is a reasonable date.

Another commenter states that RBS will need to determine whether the March 15 annual application deadline is feasible or whether the submission deadline should be specified annually with instructions added to § 4284.915.

Response: The Agency disagrees that a fixed annual application date is necessary and has revised the rule text to remove the March 15 date to provide flexibility to meet unforeseen circumstances.

Processing Applications (§ 4284.940)

Comment: One commenter states that the requirement in § 4284.940(b) requiring writing feedback to all applicants is probably either unworkable because of its burden on employees faced with processing many applications or it will be not particularly meaningful because many bland written responses will be given. The commenter recommends that USDA simply say that Rural Development employees will endeavor to provide meaningful feedback to all prospective applicants.

Response: The Agency disagrees and has retained the text at § 4284.940 requiring written notification to include reasons for ineligible or incomplete findings in order to provide useful feedback should the applicant re-apply in the future.

Proposal Evaluation Criteria and Scoring Applications (§ 4284.942)

Comment: One commenter states that the specific elements of scoring criteria are not contained in the proposed rule. Presumably this allows the Agency to allow the program to evolve to meet changing needs. The commenter also encourages the Agency to continue to incorporate strong evidence of business viability as critical components of the scoring systems.

Response: The Agency has determined that it needs to provide more specific elements in the rule text. Although this diminishes flexibility, it facilitates consistency and applicant awareness. The Agency agrees that evidence of business viability in the form of strong financial, technical and logistical support to successfully complete the project should continue to be a critical component of scoring.

Comment: One commenter recommends that the Agency revise this section to clarify that all scoring references must be readily identified information cited within the proposal itself and not to external sources of information, or it will not be considered.

Response: The Agency agrees with the recommendation and has revised the paragraph accordingly.

Comment: One commenter states that the operative provisions in the rule itself for the priority categories need to be significantly strengthened to make them actual priorities rather than minor preferences. The commenter recommends that § 4284.942 be strengthened as follows:

(b) Scoring applications. The maximum number of points that will be awarded to an applicant is 100, plus an additional 10 points if the project is located in a rural area. The criteria specified in paragraphs (b)(1) through (7) of this section will be used to score each application. The Agency will specify how points are awarded for each criterion in a Notice published each fiscal year.

(1) Nature of the proposed project (maximum 20 points).

(2) Personnel qualifications (maximum 20 points).

(3) Commitments and support (maximum 10 points).

(4) Work plan/budget (maximum 20 points).

(5) Contribution to priority beneficiaries (maximum 25 points).

(6) Administrator priority categories and points (maximum 5 points).

(7) Rural or rural area location (10 points may be awarded).

(c) Priority groups. In the event of applications equally ranked but in which one application substantially serves one or more of the priority groups and the other does not, or one serves a priority group or groups to a significantly greater degree than the other, the one that better serves the priority group shall be the higher ranked proposal.

The commenter states it is difficult to see how the intent of Congress has been met in a proposed rule that proposes to provide just 15 points out of 110 points to proposals which fulfill the statutory priority. They feel there needs to be a more substantial weighting of the ranking criteria to create a real priority.

Assuming the Agency prefers to keep the point total constant, they adjusted the numbers to give more weight to the statutory priority while not doing damage to the overall construct of the scoring system.

Also, the "type of applicant" phrase in the proposed rule's scoring system is vague and potentially very misleading. The commenter recommends that clear and unambiguous language be substituted to tie these points directly to the statutory priorities.

Language should also be added to the final rule to make clear that "priority"

means, among other things, that if applications are otherwise equally ranked but one application substantially serves one or more of the priority groups and the other does not, or one does so to a significantly greater degree than the other, the one that better serves the priority group is the higher ranked proposal.

Another commenter states that the approach proposed in § 4284.942(b) continues the past practices. The commenter proposed the following 100 point system as more likely to result in wider distribution of VAPG awards to projects that meet VAPG goals and that better rewards merit and project types that fit into the VAPG mission:

50 points. Merits of the project (awarded by independent review panels). Essentially a business plan competition, looking at each project's prospect for success and impact on revenue and market share. If the request is for working capital, 40 points maximum if no feasibility study is included (thus encouraging but not requiring a feasibility study).

10 points. If the project involves an emerging market (leaving it up to the independent review panel to determine the project is in fact legitimately new and not just an established enterprise under a different name). (thus encouraging innovative new ideas over continuation of past practices).

15 points. Smaller grant size requests. 10 points if seeking a grant of 50 percent of less than the maximum permitted by the NOSA; 15 points if seeking a grant of 25 percent or less than the maximum permitted by the NOSA. (thus encouraging many small grants, increasing the number of applicants that may be assisted)

5 points. If 50 percent or more of the commodity to which value is to be added is grown by the producer (thus encouraging this, without requiring it).

5 points. If all of the owners of the applicant entity are involved in farming (thus encouraging this, without requiring it).

5 points. If all cash match (thus encouraging a higher level of commitment, versus the softer use of "in kind" match, while discouraging projects that lack financial strength).

10 points. If Beginning/Socially Disadvantaged/or Small/Medium Family Farm (thus, honoring the statute's requirement for such priority, without overly prioritizing a category that already lays statutory claim to 10 percent of the VAPG funds). The current proposal of 15 points is excessive.

10 point penalty. If Planning Grant Applicant that received a Planning Grant within the past 3 years; If working capital Grant Applicant that received a working capital Grant within the past 3 years. (Thus discouraging repeat grantees somewhat and encouraging the distribution of VAPG awards to more, different farmers.)

Response: The Agency reviewed the various comments and has not been persuaded to make changes other than reducing the number of points for type of applicant from 15 to 10. The 5 points removed here have been inserted into nature of the proposed project. This reduction is based on the Agency's experience in the FY 2009 funding in which 65 percent of awards were made to applicants that received 15 points in one of the priority categories. It is the position of the Agency that reducing priority points from 15 to 10 will result in a better balance between applicants in priority categories and other applicants who do not qualify for priority points who also submit worthy applications.

Comment: One commenter states their grant represented a cost of $167,300 per independent producer, and they did not get any points under Section V.A.2. vii. The NOSA issued in September of 2009 states: "2 points will be awarded to applications with a project cost per owner-producer of $100,001–$200,000." A man and wife are considered two independent producers. Shouldn't we get these two points?

It is easy, in reading the grant application, to confuse the "Planning Grant Criteria" and the "Working Capital Criteria." The commenter wonders whether the reviewer confused the two in grading their grant. There is a sea of black and white in the grant application and the commenter wonders whether clever use of print types and sizes couldn't help in that department.

Response: This is an administrative item about a specific application and is not appropriately addressed in regulations comments.

Comment: One commenter recommends that additional weight be provided to applications that spread the benefits among a number of producers in the aggregate. The commenter states that, in doing so, this would ensure that the funds invested by USDA and the benefits of a future project generated through a VAPG award would be distributed to a wider number of producers, while lowering overall costs to the government.

Response: The Agency agrees with the commenter as to the benefits that may be obtained by providing additional weight to applications that spread the benefits among a number of producers in the aggregate. To do this, the Agency has revised the rule by including 10 points for cooperatives as a priority category under the Type of Applicant scoring criterion.

Comment: One commenter states that they support small farmers and would like the VAPG to allow small farmers to explore their new business ideas, to create a sustainable environment for the community. Sustainability saves the planet!

Response: The Agency agrees with the commenter and notes that small farmers are a program priority as mandated by statute.

Type of Applicant

Comment: Numerous commenters state that the Agency should ensure that the legislative priority for projects that targeted to small and mid-sized family farms and ranches and socially disadvantaged farmers and ranchers set by the 2008 Farm Bill are clearly expressed in the final rule and in the scoring/evaluation process. Congress has spoken—these are mandated VAPG priorities. Yet, the proposed rule would award only 15 ranking points out of a potential 110 ranking points for projects targeted to this group. USDA should ensure the final rule awards 25 total points for the priority group, and target small, mid-sized and socially disadvantaged farmers and ranchers should take priority over projects that are not targeted in that fashion if proposals are otherwise equally ranked.

Response: The Agency disagrees with the suggestion to increase the points for this criterion to 25. It is the position of the Agency that reducing priority points from 15 to 10 will result in a better balance among applicants in priority categories and other applicants who do not qualify for priority points who also submit worthy applications.

Comment: One commenter states that the program should target small, mid-sized and socially disadvantaged farmers as defined by the 2008 Farm Bill and award extra points to these targeted groups.

Response: The Agency notes that the program does target these farmers with the reserved funding and priority points.

Comment: One commenter recommends awarding all the points for the priority group defined in the 2008 Farm Bill and adding clear language that states proposals targeting small, mid-sized and socially disadvantaged farmers and ranchers should take priority over projects that are not targeted in that fashion if proposals are otherwise equally ranked.

Response: The statute targets the specific categories mentioned by the commenter, as well and Beginning

Farmers and Ranchers and requires that they receive priority in the form of reserved funding and additional points.

Comment: One commenter states that the evaluation and scoring should be changed to better reflect Congressional intent in establishing priority beneficiaries for the program. The commenter believes the 15 points for beginning farmers and ranchers, socially disadvantaged farmers and ranchers and small and mid-size family farmers and ranchers should be increased to at least 25 points for projects that propose to provide contributions and opportunities for farmers and ranchers meeting these definitions.

One commenter encourages USDA not to increase the number of points for New and Beginning Farmers beyond the current 15. The commenter states that the VAPG program should continue to benefit a wide range of producers. While recent actions to set aside program funds for New and Beginning Farmers and Ranchers is appropriate, the substantial majority of funds should be awarded based on projected viability of the business, and be accessible to a wide number of active farmers. The commenter states that, for those individuals/families that are just getting into agriculture, it is a terribly challenging task to capitalize and "get good" at agricultural production AND to participate in the creation/launch of a value-added enterprise. To this extent, New and Beginning Farmers should be given modest special support through the VAPG program, but USDA should not transform this program into a special form of subsidy for this group of producers at the expense of other eligible categories of farmers. Awarding 15 points for New and Beginning Farmers is an appropriate way of supporting these ventures.

Response: It is the position of the Agency that reducing priority points from 15 to 10 will result in a better balance between applicants in priority categories and other applicants who do not qualify for priority points who also submit worthy applications.

Rural or Rural Area

Comment: Numerous commenters raised concern on this proposed scoring criterion. These concerns are presented below.

One commenter states that the proposed rule adds a new priority that awards 10 points to projects that are "rural". This is confusing because almost by definition all commodities start out as rural and are then tailored to an urban consumer. How a project's "rural" character is assessed is highly unclear and confusing. The commenter states that this new priority is not necessary and it is not part of the statutory logic behind the program, which is to support agricultural producers, with no regard to the geographic or urban/rural location.

Two commenters state that the standards are vague as to how the "projects located in a rural area" language would be applied and the reasoning given for the additional weight. The additional classification of "rural" provides cooperatives with packinghouses or other facilities in an urban area at a competitive disadvantage for grant funds. Although the beneficiary of a project is the farmer and most likely located in a rural area, many activities such as processing, packaging and marketing of products do not take place in rural areas. Many cooperatives have infrastructure located closer to urban markets. The commenters believe this language conflicts with the goal of providing additional benefits to rural producers, especially in the state of California.

One of the commenters states that, depending on the definition of "rural area," proposals from states such as California could be precluded from the points entirely and put at a disadvantage nationally. The commenter states that using the proposed scoring criteria would cause additional confusion while being irrelevant to the goal of increasing producer income, which ultimately supports those rural areas. The commenter encourages USDA to adjust the proposed scoring criteria, keeping these concerns in mind.

Another commenter states that the definition of projects that "will take place in rural places" is vague. The commenter supports the idea that entities that are headquartered and based in rural communities should get increased points compared to those that are headquartered in urban centers. However, the commenter does not support the idea that all tasks (*i.e.* advertising, promotions, contract manufacturing, etc) must also be located in rural places in order to qualify for the additional 10 points.

One commenter states that the proposed rule § 4284.942 grants 10 additional scoring points (above the 100 ordinarily possible) to "projects located in a rural area," generally defined as areas with less than 50,000 in population. This could pose many applicants problems—including those located in rural areas.

The VAPG is a marketing grant. Marketing projects are often performed in areas with large populations because that is where the people are. This rule would apparently penalize projects that involve market launches, promotions, and advertizing campaigns conducted in areas with the highest concentration of customers. A similar question arises when a planning project involves contracting with advertising venues, specialists, or consultants located in urban areas, which would presumably conduct much of their work in their hometowns.

Many cooperatives, agricultural trade associations, and other applicants are headquartered in locations that exceed 50,000 in population, however the growers that actually benefit are by-and-large rural. The new rule would seem to penalize an applicant conducting a project in its headquarters city even though the benefits would flow to rural areas. This scoring bias seems contrary to the VAPG's stated purpose of increasing income to growers.

One commenter states that the proposed rule grants 10 additional scoring points (above the 100 ordinarily possible) to "projects located in a rural area," generally defined as areas with less than 50,000 in population. The meaning of this is clearly not defined and ultimately may run counter to the program's intent. Although the beneficiary of a project is ultimately the rural producer, many activities such as processing, packaging, marketing of products does not take place in "rural" areas; nor are cooperatives necessarily headquartered in "rural" areas while their profits are channeled back to those areas. Using this as scoring criteria does not seem relevant to the goal of increasing producer income, which ultimately supports those rural areas.

One commenter hopes there will not be restrictions placed on their ability to receive grant support if their marketing activities take place in metropolitan areas. The commenter states that, while they often do market in rural communities, including the one in which they live and work, the majority of the customers of their producers are in major markets, like New York, Southern California, Texas, Chicago, and Florida.

Response: The Agency agrees with the concerns raised by the commenters. Further, the statute does not include a rural area requirement for this program. Therefore, the Agency has removed this provision from the rule.

Grant Agreement (§ 4284.951)

Comment: One commenter states that the title of this section should be changed to, "Obligate and Award Funds." The commenter suggested reworking the sections as follows:

(a) Letter of conditions (must include 90 day provision for grantee to meet LOC conditions (remove from (b) GA section)).

(b) Grant agreement and conditions.

(c) Other documentation, (should document the various other forms the grantee will execute in connection with the grant).

(d) Grant disbursements (must clarify the process for disbursing funds, including SF 270, Request for Advancement or Reimbursement, and supporting documentation expectations).

The commenter states that these changes provide the applicant/grantee with a more comprehensive understanding of the process and requirements associated with the award.

Response: The Agency agrees with the commenter's suggestion and has revised the rule accordingly.

Monitoring and Reporting Program Performance (§ 4284.960)

Comment: One commenter states that the Agency should clarify that the project must be completed per terms and conditions specified in the approved work plan and budget, grant agreement and Letter of Conditions. The commenter states that this brings the work plan and budget concept back to project performance as the performance benchmark for all eligible activities.

Response: The Agency agrees with the suggested revision and has revised the paragraph accordingly.

Comment: In referring to § 4284.960(b)(4), one commenter states that the Agency should provide examples of what additional project and/or performance data might be requested by the Agency to meet 2008 Farm Bill categories and expectations, such as jobs created, increased revenues, renewable energy capacity or emissions reductions, results of supply chain arrangements, BFR or SDFR. The commenter states that this is a heads up on the grant agreement requirements.

Response: The Agency agrees with the suggested revision and has revised the paragraph as suggested by the commenter.

Comment: One commenter suggests adding a new paragraph to § 4284.960(b) that states that, as part of the monitoring process, RBS may terminate or suspend the grant for lack of adequate or timely progress, reporting, or documentation, or for failure to comply with Agency requirements.

Response: The Agency agrees with the suggested revision and has added a new paragraph (see § 4284.960(b)(5)) as suggested by the commenter.

Transfer of Obligations (§ 4284.962)

Comment: One commenter recommends revising this section to indicate that any transfer of obligation is at the discretion of the Agency and determined on a case-by-case basis. The commenter also recommends augmenting the language relating to requirements for the substituted applicant so that all eligibility requirements are spelled out, including maintaining the applicant type of the original applicant, and maintaining the identity and number of independent producers originally committed to the project for both general and reserved funds. The commenter also suggests that the Agency emphasize that the project must continue to meet all Product, Purpose, Branding, and Reserved Funds eligibility requirements. The commenter states that, for anything less than this, it would be better to return the funds to the program for use by another competitive grantee that has endured the process and eligibility analysis.

Response: The Agency agrees with the suggested revisions and has revised the rule as suggested by the commenter except for the suggested text regarding maintaining applicant type, maintaining the identity and number of independent producers originally committed to the project, because this would unnecessarily limit the Agency's flexibility.

Grant Close Out and Related Activities (§ 4284.963)

Comment: One commenter recommends revising this section to indicate actual closeout practices. Grant closeout is not usually about suspension or termination of a grant prematurely, and that message will be provided to the grantee in § 4284.960(b)(5). Closeout is usually about administrative wrap-up post the completion of the grant project or funding period. The commenter states that typical closeout activities include a Letter to Grantee with final closeout instructions and reminders for amounts de-obligated for any unexpended grant funds, final project performance reports due, submission of necessary deliverables, audit requirements, any outstanding items of closure.

Response: The Agency agrees with the commenter and has revised the rule § 4284.963 and added additional text describing grant closeout activities.

Preamble

Comment: One commenter states that the final rule should give proper acknowledgement of the statutory VAPG priorities by strengthening the grant evaluation criteria and scoring section. The 2008 Farm Bill amended the VAPG program in several important ways, including identifying priority groups for funding and establishing two program reserved funds. The commenter believes that these program modifications are significant and should be addressed in the preamble to the rule in the Summary section and in the Supplemental Information section. Most importantly, the proposal evaluation criteria and scoring applications section (§ 4284.942) needs to be strengthened to make the statutory priorities actual programmatic priorities.

The statutory priorities and set-asides are clearly intended to ensure that these producer groups and this type of rural development marketing model are more likely to be supported with VAPG grant funds. Because the language changes in the 2008 Farm Bill fundamentally address the character of the VAPG grant program Congress intended to create, the commenter believes that they should be clearly referenced in the discussion of the rule. They find the omission of such a discussion in the preamble to the proposed rule to be quite glaring.

Response: The Agency agrees that discussion of 2008 Farm Bill priorities should be included in the preamble. However, the Agency's experience in implementing the reserved funding and priority scoring in 2009 highlighted the need to balance statutory priorities with fairness to other applicants who also submitted worthy applications.

Preamble—Summary

Comment: One commenter suggests adding the following language to the Summary section when issuing the final rule:

The program provides a priority for funding for projects that contribute to opportunities for beginning farmers or ranchers, socially disadvantaged farmers or ranchers, and operators of small- and medium-sized family farms and ranches. Further, it creates two reserved funds each of which will include 10 percent of program funds each year to support applications that support opportunities for beginning and socially disadvantaged farmers and ranchers and for proposed projects that develop mid-tier value marketing chains.

Response: The Agency agrees and has added the suggested text to the Preamble Summary.

Preamble—Supplementary Information

Comment: One commenter suggests the addition of the following language to the **SUPPLEMENTARY INFORMATION** section:

SUPPLEMENTARY INFORMATION:

I. Background

B. Nature of the Program

This subpart contains the provisions and procedures by which the Agency will administer the Value-Added Producer Grant (VAPG) Program. The primary objective of this grant program is to help Independent Producers of Agricultural Commodities, Agriculture Producer Groups, Farmer and Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures develop strategies to create marketing opportunities and to help develop Business Plans for viable marketing opportunities regarding production of bio-based products from agricultural commodities. As with all value-added efforts, generating new products, creating expanded marketing opportunities, and increasing producer income are the end goal.

Eligible applicants are independent agricultural producers, farm and rancher cooperatives, agricultural producers groups, and majority-controlled producer-based business ventures.

Added text: "The program includes priorities for projects that contribute to opportunities for beginning farmers or ranchers, socially disadvantaged farmers or ranchers, and operators of small- and medium-sized family farms and ranches. Applications from these priority groups will receive additional points in the scoring of applications. In the case of equally ranked proposals, preference will be given to applications that more significantly contribute to opportunities for beginning farmers and ranchers, socially disadvantaged farmers and ranchers, and operators of small- and medium-sized family farms and ranches.

Further, the program includes two reserved funds each of which will include ten percent of program funds each year to support applications that support projects that benefit beginning and socially disadvantaged farmers and ranchers and that develop mid-tier value marketing chains."

Response: The Agency agrees and has added the suggested text to the description of the program.

General

Comment: One commenter states that the widespread opinion of the VAPG program is that it is a "grant program with barriers." The commenter states that, during Rural Development-sponsored jobs forums in Oregon in January 2010 and in many other settings, this analysis has been repeated by a number of producers who cited VAPG's complex rules poorly suited to modern agricultural realities, its difficult narrative application content, and its lengthy application process. The commenter states that the proposed rule does little more than institutionalize the design and delivery of the VAPG program that Rural Development has used in past NOSA's. The commenter recommends that it would be better to leave the existing RD Instructions 4284–A and 4284–J in place with the few changes required by the 2008 Farm Bill than to go forward with this proposed rule.

The commenter also encourages Rural Development's leadership to take a step back from this proposed rule and instead engage the agricultural community in a series of listening sessions with VAPG constitutes to find a more sensitive program design. While this will delay the implementation of a new rule and may temporarily delay VAPG program delivery, it will ultimately result in a program that is far more effective and efficient in meeting the needs for which it was designed.

Response: The Agency acknowledges the commenter's concerns and welcomes feedback and suggestions from the agricultural community. The Agency is attempting to address these concerns within the context of the proposed rule.

General—Program Design

Comment: One commenter recommends full utilization of Rural Development's core strength—the field office structure. The commenter states that delivery of VAPG should be accomplished by allocating all or nearly all VAPG funds to the state level for delivery via local competitions conducted by local experts most familiar with local conditions and local opportunities. This will assure a nationwide geographic distribution of VAPG funds, and it will defuse the current high hurdle presented to local producers who are asked to submit projects for review and selection/non-selection by remote national players. The commenter states that despite noble efforts by national Rural Development staff, the VAPG program has been repeatedly delayed and interrupted in its delivery, with extremely short NOSA application windows followed by long months of waiting for award selections and announcements. This is inevitable when the staffing strengths of state offices are bypassed and work must pass through the inevitable bottleneck of a small national office staff no matter how motivated.

The commenter also states VAPG selection process should be redesigned as a straightforward business plan competition on a state by state basis. Every state would receive an allocation, similar to the approach currently used with the Rural Business Enterprise Grant program. Every state would conduct a competition overseen by its own independent review panel constituted as currently outlined in RD Instruction 4284–J, § 4284.912(a). In creating these panels, states could even be encouraged to allow applicants to present their business plans and answer questions, so that the heavy burden of grant writing could be further reduced and program accessibility increased.

The commenter states that, in making awards, RD state offices should be given the authority to reduce award sizes to assure an efficient use of their state allocation. The current process of making awards on an all or nothing basis is an inefficient use of scarce federal grant dollars.

Response: The Agency acknowledges the commenter's concerns and is continuing to work to streamline the program and support field staff that implement the program. However, the Agency does not have the authority to institute state allocations.

List of Subjects in 7 CFR Part 4284

Agricultural commodities, Grant programs, Housing and community development, Rural areas, Rural development, Value-added activities.

For the reasons set forth in the preamble, Chapter XLII of title 7 of the Code of Federal Regulations is amended as follows:

PART 4284—GRANTS

■ 1. The authority citation for part 4284 continues to read as follows:

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

■ 2. Part 4284 is amended by revising subpart J to read as follows:

Subpart J—Value-Added Producer Grant Program

Sec. General
4284.901 Purpose.
4284.902 Definitions.
4284.903 Review or appeal rights.
4284.904 Exception authority.
4284.905 Nondiscrimination and compliance with other Federal laws.
4284.906 State laws, local laws, regulatory commission regulations.
4284.907 Environmental requirements.
4284.908 Compliance with other regulations.
4284.909 Forms, regulations, and instructions.
4284.910–4284.914 [Reserved]

Funding and Programmatic Change Notifications

4284.915 Notifications.
4284.916–4284.919 [Reserved]

Eligibility

4284.920 Applicant eligibility.
4284.921 Ineligible applicants.
4284.922 Project eligibility.
4284.923 Eligible uses of grant and matching funds.
4284.924 Ineligible uses of grant and matching funds.
4284.925 Funding limitations.
4284.926–4284.929 [Reserved]

Applying for a Grant

4284.930 Preliminary review.
4284.931 Application package.
4284.932 Simplified application.
4284.933 Filing instructions.
4284.934–4284.939 [Reserved]

Processing and Scoring Applications

4284.940 Processing applications.
4284.941 Application withdrawal.
4284.942 Proposal evaluation criteria and scoring applications.
4284.943–4284.949 [Reserved]

Grant Awards and Agreement

4284.950 Award process.
4284.951 Obligate and award funds.
4284.952–4284.959 [Reserved]

Post Award Activities and Requirements

4284.960 Monitoring and reporting program performance.
4284.961 Grant servicing.
4284.962 Transfer of obligations.
4284.963 Grant close out and related activities.
4284.964–4284.999 [Reserved]

General

§ 4284.901 Purpose.

This subpart implements the value-added agricultural product market development grant program (Value-Added Producer Grants (VAPG)) administered by the Rural Business-Cooperative Service whereby grants are made to enable viable agricultural producers (those who are prepared to progress to the next business level of planning for, or engaging in, value-added production) to develop businesses that produce and market value-added agricultural products. The provisions of this subpart constitute the entire provisions applicable to this Program; the provisions of subpart A of this part do not apply to this subpart.

§ 4284.902 Definitions.

The following definitions apply to this subpart:

Administrator. The Administrator of the Rural Business-Cooperative Service or designees or successors.

Agency. The Rural Business-Cooperative Service or successor for the programs it administers.

Agricultural commodity. An unprocessed product of farms, ranches, nurseries, and forests and natural and man-made bodies of water, that the independent producer has cultivated, raised, or harvested with legal access rights. Agricultural commodities include plant and animal products and their by-products, such as crops, forestry products, hydroponics, nursery stock, aquaculture, meat, on-farm generated manure, and fish and seafood products. Agricultural commodities do not include horses or other animals raised or sold as pets, such as cats, dogs, and ferrets.

Agricultural food product. Agricultural food products can be a raw, cooked, or processed edible substance, beverage, or ingredient intended for human consumption. These products cannot be animal feed, live animals, non-harvested plants, fiber, medicinal products, cosmetics, tobacco products, or narcotics.

Agricultural producer. An individual or entity directly engaged in the production of an agricultural commodity, or that has the legal right to harvest an agricultural commodity, that is the subject of the value-added project. Agricultural producers may "directly engage" either through substantially participating in the labor, management, and field operations themselves or by maintaining ownership and financial control of the agricultural operation.

Agricultural producer group. A membership organization that represents independent producers and whose mission includes working on behalf of independent producers and the majority of whose membership and board of directors is comprised of independent producers. The independent producers, on whose behalf the value-added work will be done, must be confirmed as eligible and identified by name or class.

Applicant. The legal entity submitting an application to participate in the competition for program funding. The applicant must be legally structured to meet one of the four eligible applicant types: Independent Producer, Agricultural Producer Group, Farmer or Rancher Cooperative, or Majority-Controlled Producer Based Business.

Beginning farmer or rancher. This term has the meaning given it in section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)) and is an entity in which none of the individual owners have operated a farm or a ranch for more than 10 years. For the purposes of this subpart, a beginning farmer or rancher must be an Independent Producer that, at the time of application submission, currently owns and produces more than 50 percent of the agricultural commodity to which value will be added and has an applicant ownership or membership of 51 percent or more beginning farmers or ranchers. Except as provided, for the purposes of § 4284.922(c)(1)(i), to compete for reserved funds, for applicant entities with multiple owners, all owners must be eligible beginning farmers or ranchers.

Branding. The activities involved in the practice of creating a name, symbol or design that identifies and differentiates a product from other products that attracts and retains customers or encourages confidence in the quality and performance of that individual or firm's products or services.

Business plan. A formal statement of a set of business goals, the reasons why they are believed attainable, and the plan for reaching those goals, including pro forma financial statements appropriate to the term and scope of the project and sufficient to evidence the viability of the venture. It may also contain background information about the organization or team attempting to reach those goals.

Change in physical state. An irreversible processing activity that alters the raw agricultural commodity into a marketable value-added product. This processing activity must be something other than a post-harvest process that primarily acts to preserve the commodity for later sale. Examples of eligible value-added products in this category include, but are not limited to, fish fillets, diced tomatoes, bio-diesel fuel, cheese, jam, and wool rugs. Examples of ineligible products include, but are not limited to, pressure-ripened produce, raw bottled milk, container grown trees, plugs, and cut flowers.

Conflict of interest. A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, or their immediate family members having a financial or other interest in the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, grant and matching funds may not be used to support costs for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members. See § 4284.923(a) and (b) for limited exceptions to this definition and practice for VAPG.

Departmental regulations. The regulations of the Department of

Agriculture's Office of Chief Financial Officer (or successor office) as codified in 7 CFR parts 3000 through 3099, including, but not necessarily limited to, 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts.

Emerging market. A new or developing, geographic or demographic market that is new to the applicant or the applicant's product. To qualify as new, the applicant cannot have supplied this product, geographic, or demographic market for more than two years at time of application submission.

Family farm. The term has the meaning given it in § 761.2 of title 7, Code of Federal Regulations as in effect on November 8, 2007 (*see* 7 CFR parts 700–799, revised as of January 1, 2007), in effect that, a Family Farm produces agricultural commodities for sale in sufficient quantity to be recognized as a farm and not a rural residence, owners are primarily responsible for daily physical labor and management, hired help only supplements family labor, and owners are related by blood or marriage or are immediate family.

Farm or ranch. Any place from which $1,000 or more of agricultural products were raised and sold or would have been raised and sold during the previous year, but for an event beyond the control of the farmer or rancher.

Farm- or Ranch-based renewable energy. An agricultural commodity that is used to generate renewable energy on a farm or ranch owned or leased by the independent producer applicant that produces the agricultural commodity. On-farm generation of energy from wind, solar, geothermal or hydro sources are not eligible.

Farmer or rancher cooperative. A business owned and controlled by independent producers that is incorporated, or otherwise identified by the state in which it operates, as a cooperatively operated business. The independent producers, on whose behalf the value-added work will be done, must be confirmed as eligible and identified by name or class.

Feasibility study. An analysis by a qualified consultant of the economic, market, technical, financial, and management capabilities of a proposed project or business in terms of the project's expectation for success.

Financial feasibility. The ability of a project or business to achieve the income, credit, and cash flows to financially sustain a venture over the long term.

Fiscal year. The Federal government's fiscal year.

Immediate family. Individuals who are closely related by blood, marriage, or adoption, or live within the same household, such as a spouse, domestic partner, parent, child, brother, sister, aunt, uncle, grandparent, grandchild, niece, or nephew.

Independent producers.

(1) Individual agricultural producers or entities that are solely owned and controlled by agricultural producers. Independent producers must produce and own the majority of the agricultural commodity to which value will be added as the subject of the project proposal. Independent producers must maintain ownership of the agricultural commodity or product from its raw state through the production and marketing of the value-added product. Producers who produce the agricultural commodity under contract for another entity, but do not own the agricultural commodity or value-added product produced are not considered independent producers. Entities that contract out the production of an agricultural commodity are not considered independent producers. Independent producer entities must confirm their owner members as eligible and must identify them by name or class.

(2) A steering committee comprised of specifically identified agricultural producers in the process of organizing one of the four program eligible entity types that will operate a value-added venture and will supply the majority of the agricultural commodity for the value-added project during the grant period. Such entity must be legally authorized before the grant agreement will be approved by the Agency.

(3) A harvester of an agricultural commodity that can document their legal right to access and harvest the majority of the agricultural commodity that will be used for the value-added product.

Local or regional supply network. An interconnected group of entities through which agricultural based products move from production through consumption in a local or regional area of the United States. Examples of participants in a supply network may include agricultural producers, aggregators, processors, distributors, wholesalers, retailers, consumers, and entities that organize or provide facilitation services and technical assistance for development of such networks.

Locally-produced agricultural food product. Any agricultural food product, as defined in this subpart, that is raised, produced, and distributed in:

(1) The locality or region in which the final product is marketed, so that the total distance that the product is transported is less than 400 miles from the origin of the product; or

(2) The State in which the product is produced.

Majority-controlled producer-based business venture. An entity (except farmer or rancher cooperatives) in which more than 50 percent of the financial ownership and voting control is held by independent producers. Independent Producer members must be confirmed as eligible and must be identified by name or class, along with their percentage of ownership.

Marketing plan. A plan for the project conducted by a qualified consultant that identifies a market window, potential buyers, a description of the distribution system and possible promotional campaigns.

Matching funds. A cost-sharing contribution to the project via confirmed cash or funding commitments from eligible sources without a real or apparent conflict of interest, that are used for eligible project purposes during the grant funding period. Matching funds must be at least equal to the grant amount, and combined grant and matching funds must equal 100 percent of the total project costs. All matching funds must be verified by authentic documentation from the source as part of the application. Matching funds must be provided in the form of confirmed applicant cash, loan, or line of credit, or provided in the form of a confirmed applicant or family member in-kind contribution that meets the requirements and limitations in § 4284.923(a) and (b); or confirmed third-party cash or eligible third-party in-kind contribution; or confirmed non-federal grant sources (unless otherwise provided by law). See examples of ineligible matching funds and matching funds verification requirements in §§ 4284.924 and 4284.931.

Medium-sized farm. A farm or ranch that is structured as a family farm that has averaged $250,001 to $1,000,000 in annual gross sales of agricultural commodities in the previous three years.

Mid-tier value chain. Local and regional supply networks that link independent producers with businesses and cooperatives that market value-added agricultural products in a manner that:

(1) Targets and strengthens the profitability and competitiveness of small and medium-sized farms and ranches that are structured as a family farm; and

(2) Obtains agreement from an eligible agricultural producer group, farmer or rancher cooperative, or majority-

controlled producer-based business venture that is engaged in the value chain on a marketing strategy.

(3) For mid-tier value chain projects, the Agency recognizes that, in a supply chain network, a variety of raw agricultural commodity and value-added product ownership and transfer arrangements may be necessary. Consequently, applicant ownership of the raw agricultural commodity and value-added product from raw through value-added is not necessarily required, as long as the mid-tier value chain proposal can demonstrate an increase in customer base and an increase in revenue returns to the applicant producers supplying the majority of the raw agricultural commodity for the project.

Planning grant. A grant to facilitate the development of a defined program of economic planning activities to determine the viability of a potential value-added venture, and specifically for the purpose of paying for a qualified consultant to conduct and develop a feasibility study, business plan, and/or marketing plan associated with the processing and/or marketing of a value-added agricultural product.

Produced in a manner that enhances the value of the agricultural commodity. The use of a recognizably coherent set of agricultural production practices in the growing or raising of the raw commodity, such that a differentiated market identity is created for the resulting product. Examples of eligible products in this category include, but are not limited to, sustainably grown apples, eggs produced from free-range chickens, or organically grown carrots.

Product segregation. Separating an agricultural commodity or product on the same farm from other varieties of the same commodity or product on the same farm during production and harvesting, with assurance of continued separation from similar commodities during processing and marketing in a manner that results in the enhancement of the value of the separated commodity or product.

Pro forma financial statement. A financial statement that projects the future financial position of a company. The statement is part of the business plan and includes an explanation of all assumptions, such as input prices, finished product prices, and other economic factors used to generate the financial statements. The statement must include projections for a minimum of three years in the form of cash flow statements, income statements, and balance sheets.

Project. All of the eligible activities to be funded by grant and matching funds.

Qualified consultant. An independent, third-party, without a conflict of interest, possessing the knowledge, expertise, and experience to perform the specific task required in an efficient, effective, and authoritative manner.

Rural Development. A mission area of the Under Secretary for Rural Development within the U.S. Department of Agriculture (USDA), which includes Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service and their successors.

Small farm. A farm or ranch that is structured as a Family Farm that has averaged $250,000 or less in annual gross sales of agricultural products in the previous three years.

Socially disadvantaged farmer or rancher. This term has the meaning given it in section 355(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2003(e)): A farmer or rancher who is a member of a "socially disadvantaged group." In this definition, the term farmer or rancher means a person that is engaged in farming or ranching or an entity solely owned by individuals who are engaged in farming or ranching. A socially disadvantaged group means a group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. In the event that there are multiple farmer or rancher owners of the applicant organization, the Agency requires that at least 51 percent of the ownership be held by members of a socially disadvantaged group. Except as provided, for the purposes of § 4284.922(c)(1)(ii), to compete for reserved funds, all farmer and rancher owners must be members of a socially disadvantaged group.

State. Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

State director. The term "State Director" means, with respect to a State, the Director of the Rural Development State Office.

State office. USDA Rural Development offices located in each state.

Total project cost. The sum of all grant and matching funds in the project budget that reflects the eligible project tasks associated with the work plan.

Value-added agricultural product. Any agricultural commodity that meets the requirements specified in paragraphs (1) and (2) of this definition.

(1) The agricultural commodity must meet one of the following five value-added methodologies:

(i) Has undergone a change in physical state;

(ii) Was produced in a manner that enhances the value of the agricultural commodity;

(iii) Is physically segregated in a manner that results in the enhancement of the value of the agricultural commodity;

(iv) Is a source of farm- or ranch-based renewable energy, including E–85 fuel; or

(v) Is aggregated and marketed as a locally-produced agricultural food product.

(2) As a result of the change in physical state or the manner in which the agricultural commodity was produced, marketed, or segregated:

(i) The customer base for the agricultural commodity is expanded and

(ii) A greater portion of the revenue derived from the marketing, processing, or physical segregation of the agricultural commodity is available to the producer of the commodity.

Venture. The business and its value-added undertakings, including the project and other related activities.

Working capital grant. A grant to provide funds to operate a value-added project, specifically to pay the eligible project expenses related to the processing and/or marketing of the value-added product that are eligible uses of grant funds.

§ 4284.903 Review or appeal rights.

A person may seek a review of an Agency decision under this subpart from the appropriate Agency official that oversees the program in question or appeal to the National Appeals Division in accordance with 7 CFR Part 11.

§ 4284.904 Exception authority.

Except as specified in paragraphs (a) and (b) of this section, the Administrator may make exceptions to any requirement or provision of this subpart, if such exception is necessary to implement the intent of the authorizing statute in a time of national emergency or in accordance with a Presidentially-declared disaster, or, on a case-by-case basis, when such an exception is in the best financial interests of the Federal Government and is otherwise not in conflict with applicable laws.

(a) *Applicant eligibility.* No exception to applicant eligibility can be made.

(b) *Project eligibility.* No exception to project eligibility can be made.

§ 4284.905 Nondiscrimination and compliance with other Federal laws.

(a) *Other Federal laws.* Applicants must comply with other applicable Federal laws, including the Equal Employment Opportunities Act of 1972, the Americans with Disabilities Act, the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and 7 CFR part 1901, subpart E.

(b) *Nondiscrimination.* The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). Any applicant that believes it has been discriminated against as a result of applying for funds under this program should contact: USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice) or (202) 720–6382 (TDD) for information and instructions regarding the filing of a Civil Rights complaint. USDA is an equal opportunity provider, employer, and lender.

(c) *Civil rights compliance.* Recipients of grants must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973. This includes collection and maintenance of data on the basis of race, sex and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR Part 1901, subpart E. For grants, initial compliance review will be conducted after Form RD 400–4, "Assurance Agreement," is signed and one subsequent compliance review after the last disbursement of grant funds have been made, and the facility or programs has been in full operations for 90 days.

(d) *Executive Order 12898.* When a project is proposed and financial assistance is requested, the Agency will conduct a Civil Rights Impact Analysis (CRIA) with regards to environmental justice. The CRIA must be conducted and the analysis documented utilizing Form RD 2006–38, "Environmental Justice (EJ) and Civil Rights Impact Analysis (CRIA) Certification." This certification must be done prior to grant approval, obligation of funds, or other commitments of Agency resources, including issuance of a Letter of Conditions, whichever occurs first.

§ 4284.906 State laws, local laws, regulatory commission regulations.

If there are conflicts between this subpart and State or local laws or regulatory commission regulations, the provisions of this subpart will control.

§ 4284.907 Environmental requirements.

All grants awarded under this subpart are subject to the environmental requirements in subpart G of 7 CFR part 1940 or successor regulations. Applications for planning grants are generally excluded from the environmental review process by § 1940.333 of this title. Applicants for working capital grants must submit Form RD 1940–20, "Request for Environmental Information."

§ 4284.908 Compliance with other regulations.

(a) *Departmental regulations.* Applicants must comply with the regulations of the Department of Agriculture's Office of Chief Financial Officer (or successor office) as codified in 7 CFR parts 3000 through 3099, including, but not necessarily limited to, 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts.

(b) *Cost principles.* Applicants must comply with the cost principles found in 2 CFR part 230 and in 48 CFR part 31.2.

(c) *Definitions.* If a term is defined differently in the Departmental Regulations, 2 CFR part 230, or 48 CFR 31.2 and in this subpart, such term shall have the meaning as found in this subpart.

§ 4284.909 Forms, regulations, and instructions.

Copies of all forms, regulations, instructions, and other materials related to the program referenced in this subpart may be obtained through the Agency.

§§ 4284.910–4284.914 [Reserved]

Funding and Programmatic Change Notifications

§ 4284.915 Notifications.

In implementing this subpart, the Agency will issue notifications addressing funding and programmatic changes, as specified in paragraphs (a) and (b) of this section, respectively. The methods that the Agency will use in making these notifications is specified in paragraph (c) of this section, and the timing of these notifications is specified in paragraph (d) of this section.

(a) *Funding and simplified applications.* The Agency will issue notifications concerning:

(1) The funding level and the minimum and maximum grant amount and any additional funding information as determined by the Agency; and

(2) The contents of simplified applications, as provided for in § 4284.932.

(b) *Programmatic changes.* The Agency will issue notifications of the programmatic changes specified in paragraphs (b)(1) through (4) of this section.

(1) The following is the set of Administrator priority categories that may be considered if the provisions specified in § 4284.942(b)(6) are not to be used for awarding Administrator points:

(i) Unserved or underserved areas.

(ii) Geographic diversity.

(iii) Emergency conditions.

(iv) Priority mission area plans, goals, and objectives.

(2) Additional reports that are generally applicable across projects within a program associated with the monitoring of and reporting on project performance.

(3) Any requirement specified in § 4284.933.

(4) Preliminary review information.

(c) *Notification methods.* The Agency will issue the information specified in paragraphs (a) and (b) of this section in one or more **Federal Register** notices. In addition, all information will be available at any Rural Development office.

(d) *Timing.* The Agency will make the information specified in paragraphs (a) and (b) of this section available as specified in paragraphs (d)(1) through (3) of this section.

(1) The Agency will make the information specified in paragraph (a) of this section available each fiscal year.

(2) The Agency will make the information specified in paragraph (b)(1) of this section available at least 60 days prior to the application deadline, as applicable.

(3) The Agency will make the information specified in paragraphs (b)(2) through (4) of this section available on an as needed basis.

§§ 4284.916–4284.919 [Reserved]

Eligibility

§ 4284.920 Applicant eligibility.

To be eligible for a grant under this subpart, an applicant must demonstrate

that they meet the requirements specified in paragraphs (a) through (d) of this section, as applicable, and are subject to the limitations specified in paragraphs (e) and (f) of this section.

(a) *Type of applicant.* The applicant must demonstrate that they meet all definition requirements for one of the following applicant types:

(1) An independent producer;

(2) An agricultural producer group;

(3) A farmer or rancher cooperative; or

(4) A majority-controlled producer-based business venture.

(b) *Emerging market.* An applicant that is an agricultural producer group, a farmer or rancher cooperative, or a majority-controlled producer-based business venture must demonstrate that they are entering into an emerging market as a result of the proposed project.

(c) *Citizenship.*

(1) Individual applicants must certify that they:

(i) Are citizens or nationals of the United States (U.S.), the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa, or

(ii) Reside in the U.S. after legal admittance for permanent residence.

(2) Entities other than individuals must certify that they are at least 51 percent owned by individuals who are either citizens as identified under paragraph (c)(1)(i) of this section or legally admitted permanent residents residing in the U.S. This paragraph is not applicable if the entity is owned solely by members of one immediate family. In such instance, if at least one of the entity owners is a citizen or national, as defined in paragraph (c)(1) of this section, then the entity is eligible.

(d) *Legal authority and responsibility.* Each applicant must demonstrate that they have, or can obtain, the legal authority necessary to carry out the purpose of the grant, and they must evidence good standing from the appropriate state agency or equivalent.

(e) *Multiple grant eligibility.* An applicant may submit only one application in response to a solicitation, and must explicitly direct that it compete in either the general funds competition or in one of the named reserved funds competitions. Separate entities with identical or greater than 75 percent common ownership may only submit one application for one entity per year. Applicants who have already received a planning grant for the proposed project cannot receive another planning grant for the same project. Applicants who have already received a working capital grant for the proposed project cannot receive any additional grants for that project.

(f) *Active VAPG grant.* If an applicant has an active value-added grant at the time of a subsequent application, the currently active grant must be closed out within 90 days of the application submission deadline for the subsequent competition, as published in the annual NOFA.

§ 4284.921 Ineligible applicants.

(a) Consistent with the Departmental regulations, an applicant is ineligible if the applicant is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

(b) An applicant will be considered ineligible for a grant due to an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court), is delinquent on the payment of Federal income taxes, or is delinquent on Federal debt.

§ 4284.922 Project eligibility.

To be eligible for a VAPG grant, the application must demonstrate that the project meets the requirements specified in paragraphs (a) through (c) of this section, as applicable.

(a) *Product eligibility.* Each product that is the subject of the proposed project must meet the definition of a value-added agricultural product, including a demonstration that:

(1) The value-added product results from one of the value-added methodologies identified in paragraphs (1)(i) through (v) of the definition of value-added agricultural product;

(2) As a result of the project, the customer base for the agricultural commodity or value-added product is expanded; and

(3) As a result of the project, a greater portion of the revenue derived from the marketing or processing of the value-added product is available to the applicant producer of the agricultural commodity.

(b) *Purpose eligibility.*

(1) The grant funds requested must not exceed the amount specified in the annual solicitation for planning and working capital grant requests, per § 4284.915.

(2) The matching funds required for the project budget must be eligible and without a real or apparent conflict of interest, available during the project period, and source verified in the application.

(3) The proposed project must be limited to eligible planning or working capital activities as defined at § 4284.923, as applicable, with eligible tasks directly related to the processing and/or marketing of the subject value-added product, to be demonstrated in the required work plan and budget as described at § 4284.922(b)(5).

(4) Applications that propose ineligible expenses in excess of 10 percent of total project costs will be deemed ineligible to compete for funds. Eligible applications selected for award must eliminate any ineligible expenses from the project budget.

(5) The project work plan and budget must demonstrate eligible sources and uses of funds and must:

(i) Present a detailed narrative description of the eligible activities and tasks related to the processing and/or marketing of the value-added product along with a detailed breakdown of all estimated costs allocated to those activities and tasks;

(ii) Identify the key personnel that will be responsible for overseeing and/or conducting the activities or tasks and provide reasonable and specific timeframes for completion of the activities and tasks;

(iii) Identify the sources and uses of grant and matching funds for all activities and tasks specified in the budget; and indicate that matching funds will be spent at a rate equal to or in advance of grant funds; and

(iv) Present a project budget period that commences within the start date range specified in the annual solicitation, concludes not later than 36 months after the proposed start date, and is scaled to the complexity of the project.

(6) Except as noted in paragraphs (b)(6)(i) and (ii) of this section, working capital applications must include a feasibility study and business plan completed specifically for the proposed value-added project by a qualified consultant. The Agency must concur in the acceptability or adequacy of the feasibility study and business plan for eligibility purposes.

(i) An Independent Producer applicant seeking a working capital grant of $50,000 or more, who can demonstrate that they are proposing market expansion for an existing value-added product(s) that they currently own and produce from at least 50 percent of their own agricultural commodity and that they have produced and marketed for at least 2 years at time of application submission, may submit a business or marketing plan for the value-added project in lieu of a feasibility study. These applications must still document for increased customer base and increased revenues

returning to the applicant producers as a result of the project, and meet all other eligibility requirements. Further, the waiver of the independent feasibility study does not change the proposal evaluation or scoring elements that pertain to issues that might be supported by an independent feasibility study, so applicants are encouraged to well-document their project plans and expectations for success in their proposals.

(ii) All four applicant types that submit a Simplified Application for working capital grant funds of less than $50,000 are not required to provide an independent feasibility study or business plan for the project/venture but must provide adequate documentation to demonstrate the expected increases in customer base and revenues resulting from the project that will benefit the producer applicants supplying the majority of the agricultural commodity for the project. All other eligibility requirements remain the same. The waiver of the requirement to submit a feasibility study and business plan does not change the proposal evaluation or scoring elements that pertain to issues that might be supported by a feasibility study or business plan, so applicants are encouraged to well-document their project plans and expectations for success in their proposals.

(7) If the applicant is an agricultural producer group, a farmer or rancher cooperative, or a majority-controlled producer-based business venture, the applicant must demonstrate that it is entering an emerging market unserved by the applicant in the previous two years.

(8) All applicants requesting working capital funds must either be currently marketing each value-added agricultural product that is the subject of the grant application, or be ready to implement the working capital activities in accord with the budget and work plan timeline proposed.

(c) *Reserved funds eligibility.* In addition to the requirements specified in paragraphs (a) and (b) of this section, the requirements specified in paragraphs (c)(1) and (2) of this section must be met, as applicable, if applicants choose to compete for reserved funds. All eligible, but unfunded reserved funds applications will be eligible to compete for general funds in that same fiscal year, as funding levels permit.

(1) If the applicant is applying for beginning farmer or rancher, or socially-disadvantaged farmer or rancher reserved funds, the applicant must provide the following documentation to demonstrate that the applicant meets all the requirements for one of these definitions.

(i) For beginning farmers and ranchers, documentation must include a description from each of the individual owner(s) of the applicant farm or ranch organization, addressing the qualifying elements in the beginning farmer or rancher definition, including the length and nature of their individual owner/operator experience at any farm in the previous 10 years, along with one IRS income tax form from the previous 10 years showing that each of the individual owner(s) did not file farm income; or a detailed letter from a certified public accountant or attorney certifying that each owner meets the reserved funds beginning farmer or rancher eligibility requirements. For applicant entities with multiple owners, all owners must be eligible beginning farmers or ranchers.

(ii) For socially disadvantaged farmers and ranchers, documentation must include a description of the applicant's farm or ranch ownership structure and demographic profile that indicates the owner(s)' membership in a socially disadvantaged group that has been subjected to racial, ethnic or gender prejudice; including identifying the total number of owners of the applicant organization; along with a self-certification statement from the individual owner(s) evidencing their membership in a socially disadvantaged group. All farmer and rancher owners must be members of a socially disadvantaged group.

(2) If the applicant is applying for Mid-Tier Value Chain reserved funds, the applicant must be one of the four VAPG applicant types and the application must provide documentation demonstrating that the project meets the Mid-Tier Value Chain definition, and must:

(i) Demonstrate that the project proposes development of a local or regional supply network of an interconnected group of entities (including nonprofit organizations, as appropriate) through which agricultural commodities and value-added products move from production through consumption in a local or regional area of the United States, including a description of the network, its component members, either by name or by class, and its purpose;

(ii) Describe at least two alliances, linkages, or partnerships within the value chain that link independent producers with businesses and cooperatives that market value-added agricultural commodities or value-added products in a manner that benefits small or medium-sized farms and ranches that are structured as a family farm, including the names of the parties and the nature of their collaboration;

(iii) Demonstrate how the project, due to the manner in which the value-added product is marketed, will increase the profitability and competitiveness of at least two, eligible, small or medium-sized farms or ranches that are structured as a family farm, including documentation to confirm that the participating small or medium-sized farms are structured as a family farm and meet these program definitions. A description of the two farms or ranches confirming they meet the Family Farm requirements, and IRS income tax forms evidencing eligible farm income is sufficient;

(iv) Document that the eligible agricultural producer group/cooperative/majority-controlled producer-based business venture applicant organization has obtained at least one agreement with another member of the supply network that is engaged in the value chain on a marketing strategy; or that the eligible independent producer applicant has obtained at least one agreement from an eligible agricultural producer group/cooperative/majority-controlled producer-based business venture engaged in the value-chain on a marketing strategy;

(A) For Planning grants, agreements may include letters of commitment or intent to partner on marketing, distribution or processing; and should include the names of the parties with a description of the nature of their collaboration. For Working Capital grants, demonstration of the actual existence of the executed agreements is required.

(B) Independent Producer applicants must provide documentation to confirm that the non-applicant agricultural producer group/cooperative/majority-controlled partnering entity meets program eligibility definitions, except that, in this context, the partnering entity does not need to supply any of the raw agricultural commodity for the project;

(v) Demonstrate that the applicant organization currently owns and produces more than 50 percent of the raw agricultural commodity that will be used for the value-added product that is the subject of the proposal; and

(vi) Demonstrate that the project will result in an increase in customer base and an increase in revenue returns to the applicant producers supplying the majority of the raw agricultural commodity for the project.

(d) *Priority.* In addition, applicants that demonstrate eligibility may apply for priority points if they propose projects that contribute to increasing opportunities for beginning farmers or ranchers, socially disadvantaged farmers or ranchers, or if they are Operators of small- or medium-sized farms or ranches that are structured as a family farm, propose Mid-Tier Value Chain projects, or are a farmer or rancher Cooperative.

(1) Applicants seeking priority points as beginning farmers or ranchers or as socially disadvantaged farmers or ranchers must provide the documentation specified in paragraphs (c)(1)(i) or (ii), as applicable, of this section. For entities with multiple owners or members, 51 percent of owners or members must be eligible beginning farmers or ranchers or socially disadvantaged farmers or ranchers, as applicable.

(2) Applicants seeking priority points as Operators of small- or medium-sized farms and ranches that are structured as a family farm must:

(i) Be structured as family farm;

(ii) Meet all requirements in the associated definitions; and

(iii) Provide the following documentation:

(A) A description from the individual owner(s) of the applicant organization addressing each qualifying element in the definitions, including identification of the average annual gross sales of agricultural commodities from the farm in the previous three years, not to exceed $250,000 for small operators or $1,000,000 for medium operators;

(B) The names and identification of the blood or marriage relationships of all applicant/owners of the farm; and

(C) A statement that the applicant/owners are primarily responsible for the daily physical labor and management of the farm with hired help merely supplementing the family labor.

(3) Applicants seeking priority points for Mid-Tier Value Chain proposals must be one of the four eligible applicant types and provide the documentation specified in paragraphs (c)(2)(i) through (c)(2)(vi) of this section, demonstrating that the project meets the Mid-Tier Value Chain definition.

(4) Applicants seeking priority points for a Farmer or Rancher Cooperative must:

(i) Demonstrate that it is a business owned and controlled by Independent Producers that is legally incorporated as a Cooperative; or that it is a business owned and controlled by Independent Producers that is not legally incorporated as a Cooperative, but is identified by the state in which it operates as a cooperatively operated business;

(ii) Identify, by name or class, and confirm that the Independent Producers on whose behalf the value-added work will be done meet the definition requirements for an Independent Producer, including that each member is an individual agricultural producer, or an entity that is solely owned and controlled by agricultural producers, that is directly engaged in the production of the majority of the agricultural commodity to which value will be added; and

(iii) Provide evidence of "good standing" as a cooperatively operated business in the state of incorporation or operations, as applicable.

§ 4284.923 Eligible uses of grant and matching funds.

In general, grant and cost-share matching funds have the same use restrictions and must be used to fund only the costs for eligible purposes as defined in paragraphs (a) and (b) of this section.

(a) Planning funds may be used to pay for a qualified consultant to conduct and develop a feasibility study, business plan, and/or marketing plan associated with the processing and/or marketing of a value-added agricultural product. Planning funds may not be used to compensate applicants or family members for participation in feasibility studies. However, in-kind contribution of matching funds to cover applicant or family member participation in planning activities is allowed so long as the value of such contribution does not exceed a maximum of 25 percent of the total project costs and an adequate explanation of the basis for the valuation, referencing comparable market values, salary and wage data, expertise or experience of the contributor, per unit costs, industry norms, etc., is provided. Final valuation for applicant or family member in-kind contributions is at the discretion of the Agency. Planning funds may not be used to evaluate the agricultural production of the commodity itself, other than to determine the project's input costs related to the feasibility of processing and marketing the value-added product.

(b) Working capital funds may be used to pay the project's operational costs directly related to the processing and/or marketing of the value-added product. Examples of eligible working capital expenses include designing or purchasing a financial accounting system for the project, paying salaries of employees without ownership or immediate family interest to process and/or market and deliver the value-added product to consumers, paying for inventory supply costs from a third party necessary to produce the value-added product from the agricultural commodity, and paying for a marketing campaign for the value-added product. In-kind contributions may include appropriately valued inventory of raw commodity to be used in the project. In-kind contributions of matching funds may also include contributions of time spent on eligible tasks by applicants or applicant family members so long as the value of such contribution does not exceed a maximum of 25 percent of the total project costs and an adequate explanation of the basis for the valuation, referencing comparable market values, salary and wage data, expertise or experience of the contributor, per unit costs, industry norms, etc. is provided. Final valuation for applicant or family member in-kind contributions is at the discretion of the Agency.

§ 4284.924 Ineligible uses of grant and matching funds.

Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, or their immediate family members having a personal, professional, financial or other interest in the outcome of the project; including organizational conflicts, and conflicts that restrict open and free competition for unrestrained trade. In addition, the use of funds is limited to only the eligible activities identified in § 4284.923 and prohibits other uses of funds. Ineligible uses of grant and matching funds awarded under this subpart include, but are not limited to:

(a) Support costs for services or goods going to or coming from a person or entity with a real or apparent conflict of interest, except as specifically noted for limited in-kind matching funds in § 4284.923(a) and (b);

(b) Pay costs for scenarios with noncompetitive trade practices;

(c) Plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility);

(d) Purchase, lease purchase, or install fixed equipment, including processing equipment;

(e) Purchase or repair vehicles, including boats;

(f) Pay for the preparation of the grant application;

(g) Pay expenses not directly related to the funded project for the processing and marketing of the value-added product;

(h) Fund research and development;

(i) Fund political or lobbying activities;

(j) Fund any activities prohibited by 7 CFR parts 3015 and 3019, 2 CFR part 230, and 48 CFR subpart 31.2.

(k) Fund architectural or engineering design work;

(l) Fund expenses related to the production of any agricultural commodity or product, including seed, rootstock, labor for harvesting the crop, and delivery of the commodity to a processing facility;

(m) Conduct activities on behalf of anyone other than a specifically identified independent producer or group of independent producers, as identified by name or class. The Agency considers conducting industry-level feasibility studies or business plans, that are also known as feasibility study templates or guides or business plan templates or guides, to be ineligible because the assistance is not provided to a specific group of Independent Producers;

(n) Pay owner or immediate family member salaries or wages;

(o) Pay for goods or services from a person or entity that employs the owner or an immediate family member;

(p) Duplicate current services or replace or substitute support previously provided;

(q) Pay any costs of the project incurred prior to the date of grant approval, including legal or other expenses needed to incorporate or organize a business;

(r) Pay any judgment or debt owed to the United States;

(s) Purchase land; or

(t) Pay for costs associated with illegal activities.

§ 4284.925 Funding limitations.

(a) Grant funds may be used to pay up to 50 percent of the total eligible project costs, subject to the limitations established for maximum total grant amount.

(b) The maximum total grant amount provided to a grantee in any one year shall not exceed the amount announced in an annual notice issued pursuant to § 4284.915, but in no event may the total amount of grant funds provided to a grant recipient exceed $500,000.

(c) A grant under this subsection shall have a term that does not exceed 3 years, and a project start date within 90 days of the date of award, unless otherwise specified in a notice pursuant to § 4284.915. Grant project periods should be scaled to the complexity of the objectives for the project. The Agency may extend the term of the grant period, not to exceed the 3-year maximum.

(d) The aggregate amount of awards to majority controlled producer-based businesses may not exceed 10 percent of the total funds obligated under this subpart during any fiscal year.

(e) Not more than 5 percent of funds appropriated each year may be used to fund the Agricultural Marketing Resource Center, to support electronic capabilities to provide information regarding research, business, legal, financial, or logistical assistance to independent producers and processors.

(f) Each fiscal year, the following amounts of reserved funds will be made available:

(1) 10 percent to fund projects that benefit beginning farmers or ranchers, or socially-disadvantaged farmers or ranchers; and

(2) 10 percent to fund projects that propose development of mid-tier value chains.

(3) Funds not obligated by June 30 of each fiscal year shall be available to the Secretary to make grants under this subsection to eligible entities as determined by the Secretary.

§§ 4284.926–4284.929 [Reserved]

Applying for a Grant

§ 4284.930 Preliminary review.

The Agency encourages applicants to contact their State Office well in advance of the application submission deadline, to ask questions and to discuss applicant and project eligibility potential. At its option, the Agency may establish a preliminary review deadline so that it may informally assess the eligibility of the application and its completeness. The result of the preliminary review is not binding on the Agency. To implement this section, the Agency will issue a notification addressing this issue in accordance with § 4284.915.

§ 4284.931 Application package.

All applicants are required to submit an application package that is comprised of the elements in this section.

(a) *Application forms.* The following application forms (or their successor forms) must be completed when applying for a grant under this subpart.

(1) Form SF–424, "Application for Federal Assistance."

(2) Form SF–424A, "Budget Information-Non-Construction Programs."

(3) Form SF–424B, "Assurances—Non-Construction Programs."

(4) Form RD 400–4, "Assurance Agreement."

(5) Form RD 1940–20, "Request for Environmental Information." Applications for planning grants are generally excluded from the environmental review process by § 1940.333 of this title.

(6) All applicants are required to have a DUNS number (including individuals and sole proprietorships).

(b) *Application content.* The following content items must be completed when applying for a grant under this subpart:

(1) *Eligibility discussion.* The applicant must demonstrate in detail how the:

(i) Applicant eligibility requirements in §§ 4284.920 and 4284.921 are met;

(ii) Project eligibility requirements in § 4284.922 are met;

(iii) Eligible use of grant and matching funds requirements in §§ 4284.923 and 4284.924 are met; and

(iv) Funding limitation requirements in § 4284.925 are met.

(2) *Evaluation criteria.* Using the format prescribed by the application package, the applicant must address each evaluation criterion identified below.

(i) *Performance Evaluation Criteria.* As part of the application, applicants for both planning and working capital grants must suggest one or more relevant criterion that will be used to evaluate the performance of the grant project during its operational phase post-award, as benchmarks to ascertain whether or not the primary goals and objectives proposed in the work plan are accomplished during the project period. These benchmarks should relate to the overall project goal of creating and serving new markets, with a resulting increase in customer base and increase in revenues returning to the producer applicants; as well as to the practical and/or logistical activities and tasks to be accomplished during the project period. The Agency application package will provide additional instruction to assist applicants when responding to this criterion. Applicant suggested performance criteria will be incorporated into the applicant's semi-annual and final reporting requirements if selected for award, and will be specified in the grant agreement associated with the award. In addition, applicants for both planning and working capital grants must identify the number of jobs anticipated to be created or saved as a direct result of the project. Planning grant applicants should identify the number of jobs expected to be created or saved as a result of continuing the project into its operational phase. Working capital grant applicants should identify the actual number of jobs created or saved as a result of the project.

(ii) *Proposal evaluation criteria.* Applicants for both planning and working capital grants must address each proposal evaluation criterion identified in § 4284.942 in narrative form, in the application package.

(3) *Certification of matching funds.* Using the format prescribed by the application package, applicants must certify that:

(i) Cost-share matching funds will be spent in advance of grant funding, such that for every dollar of grant funds disbursed, not less than an equal amount of matching funds will have been expended prior to submitting the request for reimbursement; and

(ii) If matching funds are proposed in an amount exceeding the grant amount, those matching funds must be spent at a proportional rate equal to the match-to-grant ratio identified in the proposed budget.

(4) *Verification of cost-share matching funds.* Using the format prescribed by the application package, the applicant must demonstrate and provide authentic documentation from the source to confirm the eligibility and availability of both cash and in-kind contributions that meet the definition requirements for Matching Funds and Conflict of Interest in § 4284.902, as well as the following criteria:

(i) Matching funds are subject to the same use restrictions as grant funds, and must be spent on eligible project expenses during the grant funding period.

(ii) Matching funds must be from eligible sources without a real or apparent conflict of interest.

(iii) Matching funds must be at least equal to the amount of grant funds requested, and combined grant and matching funds must equal 100 percent of the total eligible project costs.

(iv) Unless provided by other authorizing legislation, other Federal grant funds cannot be used as matching funds.

(v) Matching funds must be provided in the form of confirmed applicant cash, loan, or line of credit; or provided in the form of a confirmed applicant or family member in-kind contribution that meets the requirements and limitations specified in § 4284.923(a) and (b); or provided in the form of confirmed third-party cash or eligible third-party in-kind contribution; or non-federal grant sources (unless otherwise provided by law).

(vi) Examples of ineligible matching funds include funds used for an ineligible purpose, contributions donated outside the proposed grant funding period, third-party in-kind contributions that are over-valued, or are without substantive documentation for an independent reviewer to confirm a valuation, conducting activities on behalf of anyone other than a specific Independent Producer or group of Independent Producers, expected program income at time of application, or instances where a real or apparent conflict of interest exists, except as detailed in § 4284.923(a) and (b).

(5) *Business plan.* For working capital grant applications, applicants must provide a copy of the business plan that was completed for the proposed value-added venture, except as provided for in §§ 4284.922(b)(6) and 4284.932. The Agency must concur in the acceptability or adequacy of the business plan. For all planning grant applications including those proposing product eligibility under "produced in a manner that enhances the value of the agricultural commodity," a business plan is not required as part of the grant application.

(6) *Feasibility study.* As part of the application package, applicants for working capital grants must provide a copy of the third-party feasibility study that was completed for the proposed value-added project, except as provided for at §§ 4284.922(b)(6) and 4284.932. The Agency must concur in the acceptability or adequacy of the feasibility study.

§ 4284.932 Simplified application.

Applicants requesting less than $50,000 will be allowed to submit a simplified application, the contents of which will be announced in an annual notice issued pursuant to § 4284.915. Applicants requesting working capital grants of less than $50,000 are not required to provide feasibility studies or business plans, but must provide information demonstrating increases in customer base and revenue returns to the producers supplying the majority of the agricultural commodity as a result of the project. *See* § 4284.922(b)(6)(ii).

§ 4284.933 Filing instructions.

Unless otherwise specified in a notification issued under § 4284.915, the requirements specified in paragraphs (a) through (e) of this section apply to all applications.

(a) *When to submit.* Complete applications must be received by the Agency on or before the application deadline established for a fiscal year to be considered for funding for that fiscal year. Applications received by the Agency after the application deadline established for a fiscal year will not be considered.

(b) *Incomplete applications.* Incomplete applications will be rejected. Applicants 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.

(c) *Where to submit.* All applications must be submitted to the State Office of Rural Development in the State where the project primarily takes place, or on-line through grants.gov.

(d) *Format.* Applications may be submitted as paper copy, or electronically via grants.gov. If submitted as paper copy, only one original copy should be submitted. An application submission must contain all required components in their entirety. Emailed or faxed submissions will not be acknowledged, accepted or processed by the Agency.

(e) *Other forms and instructions.* Upon request, the Agency will make available to the public the necessary forms and instructions for filing applications. These forms and instructions may be obtained from any State Office of Rural Development, or the Agency's Value-Added Producer Grant program Web site in *http://www.rurdev.usda.gov/rbs/coops/vadg.htm*.

§§ 4284.934–4284.939 [Reserved]

Processing and Scoring Applications

§ 4284.940 Processing applications.

(a) *Initial review.* Upon receipt of an application on or before the application submission deadline for each fiscal year, the Agency will conduct a review to determine if the applicant and project are eligible, and if the application is complete and sufficiently responsive to program requirements.

(b) *Notifications.* After the review in paragraph (a) of this section has been conducted, if the Agency has determined that either the applicant or project is ineligible or that the application is not complete to allow evaluation of the application or sufficiently responsive to program requirements, the Agency will notify the applicant in writing and will include in the notification the reason(s) for its determination(s).

(c) *Resubmittal by applicants.* Applicants may submit revised applications to the Agency in response to the notification received under paragraph (b) of this section. If a revised grant application is received on or before the application deadline, it will be processed by the Agency. If a revised application is not received by the specified application deadline, the Agency will not process the application and will inform the applicant that their

application was not reviewed due to tardiness.

(d) *Subsequent ineligibility determinations.* If at any time an application is determined to be ineligible, the Agency will notify the applicant in writing of its determination.

§ 4284.941 Application withdrawal.

During the period between the submission of an application and the execution of award documents, the applicant must notify the Agency in writing if the project is no longer viable or the applicant no longer is requesting financial assistance for the project. When the applicant notifies the Agency, the selection will be rescinded or the application withdrawn.

§ 4284.942 Proposal evaluation criteria and scoring applications.

(a) *General.* The Agency will only score applications for which it has determined that the applicant and project are eligible, the application is complete and sufficiently responsive to program requirements, and the project is likely feasible. Any applicant whose application will not be reviewed because the Agency has determined it fails to meet the preceding criteria will be notified of appeal rights pursuant to § 4284.903. Each such viable application the Agency receives on or before the application deadline in a fiscal year will be scored in the fiscal year in which it was received. Each application will be scored based on the information provided and/or adequately referenced in the scoring section of the application at the time the applicant submits the application to the Agency. Scoring information must be readily identifiable in the application or it will not be considered.

(b) *Scoring Applications.* The criteria specified in paragraphs (b)(1) through (b)(6) of this section will be used to score all applications. For each criterion, applicants must demonstrate how the project has merit, and provide rationale for the likelihood of project success. Responses that do not address all aspects of the criterion, or that do not comprehensively convey pertinent project information will receive lower scores. The maximum number of points that will be awarded to an application is 100. Points may be awarded lump sum or on a graduated basis. The Agency application package will provide additional instruction to assist applicants when responding to the criteria below.

(1) *Nature of the Proposed Venture (graduated score 0–30 points).* Describe the technological feasiblity of the project, of the project, as well as the operational efficiency, profitability, and overall economic sustainability resulting from the project. In addition, demonstrate the potential for expanding the customer base for the value-added product, and the expected increase in revenue returns to the producer-owners providing the majority of the raw agricultural commodity to the project. Applications that demonstrate high likelihood of success in these areas will receive more points than those that demonstrate less potential in these areas.

(2) *Qualifications of Project Personnel (graduated score 0–20 points).* Identify the individuals who will be responsible for completing the proposed tasks in the work plan, including the roles and activities that owners, staff, contractors, consultants or new hires may perform; and demonstrate that these individuals have the necessary qualifications and expertise, including those hired to do market or feasibility analyses, or to develop a business operations plan for the value-added venture. Include the qualifications of those individuals responsible to lead or manage the total project (applicant owners or project managers), as well as those individuals responsible for actually conducting the various individual tasks in the work plan (such as consultants, contractors, staff or new hires). Demonstrate the commitment and the availability of any consultants or other professionals to be hired for the project. If staff or consultants have not been selected at the time of application, provide specific descriptions of the qualifications required for the positions to be filled. Applications that demonstrate the strong credentials, education, capabilities, experience and availability of project personnel that will contribute to a high likelihood of project success will receive more points than those that demonstrate less potential for success in these areas.

(3) *Commitments and Support (graduated score 0–10 points).* Producer commitments to the project will be evaluated based on the number of independent producers currently involved in the project; and the nature, level and quality of their contributions. End-user commitments will be evaluated on the basis of potential or identified markets and the potential amount of output to be purchased, as evidenced by letters of intent or contracts from potential buyers referenced within the application. Other Third-Party commitments to the project will be evaluated based on the critical and tangible nature of the contribution to the project, such as technical assistance, storage, processing, marketing, or distribution arrangements that are necessary for the project to proceed; and the level and quality of these contributions. Applications that demonstrate the project has strong direct financial, technical and logistical support to successfully complete the project will receive more points than those that demonstrate less potential for success in these areas.

(4) *Work Plan and Budget (graduated score 0–20 points).* In accord with § 4284.922(b)(5), applicants must submit a comprehensive work plan and budget. The work plan must provide specific and detailed narrative descriptions of the tasks and the key project personnel that will accomplish the project's goals. The budget must present a detailed breakdown of all estimated costs associated with the activities and allocate those costs among the listed tasks. The source and use of both grant and matching funds must be specified for all tasks. An eligible start and end date for the project itself and for individual project tasks must be clearly indicated and may not exceed Agency specified timeframes for the grant period. Points may not be awarded unless sufficient detail is provided to determine that both grant and matching funds are being used for qualified purposes and are from eligible sources without a conflict of interest. It is recommended that applicants utilize the budget format templates provided in the Agency's application package.

(5) *Priority Points (lump sum score 0 or 10 points).* Priority points may be awarded in both the General Funds competition, as well as the Reserved Funds competitions. Qualifying applicants may request priority points if they meet the requirements for one of the following categories and provide the documentation specified in § 4284.922(d), as applicable. Priority categories include: Beginning Farmer or Rancher, Socially Disadvantaged Farmer or Rancher, Operator of a Small or Medium-sized farm or ranch that is structured as a Family Farm, Mid Tier Value Chain proposals, and Farmer or Rancher Cooperative. It is recommended that applicants utilize the Agency application package when documenting for priority points and refer to the documentation requirements specified in § 4284.922(d). All qualifying applicants in this category will receive 10 points.

(6) *Administrator Priority Categories (graduated score 0–10 points).* Unless otherwise specified in a notification issued under § 4284.915(b)(1), the Administrator of USDA Rural Development Business and Cooperative

Programs has discretion to award up to 10 points to an application to improve the geographic diversity of awardees in a fiscal year.

§§ 4284.943–4284.949 [Reserved]

Grant Awards and Agreement

§ 4284.950 Award process.

(a) *Selection of applications for funding and for potential funding.* The Agency will select and rank applications for funding based on the score an application has received in response to the proposal evaluation criteria, compared to the scores of other value-added applications received in the same fiscal year. Higher scoring applications will receive first consideration for funding. The Agency will notify applicants, in writing, whether or not they have been selected for funding. For those applicants not selected for funding, the Agency will provide a brief explanation for why they were not selected.

(b) *Ranked applications not funded.* A ranked application that is not funded in the fiscal year in which it was submitted will not be carried forward into the next fiscal year. The Agency will notify the applicant in writing.

(c) *Intergovernmental review.* If State or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within 90 days of the Agency's award announcement date, the Agency will rescind the award and will provide the applicant with a written notice to that effect. The Agency, in its sole discretion, may extend the 90-day period if it appears resolution is imminent.

§ 4284.951 Obligate and award funds.

(a) *Letter of conditions.* When an application is selected subject to conditions established by the Agency, the Agency will notify the applicant using a Letter of Conditions, which defines the conditions under which the grant will be made. Each grantee will be required to meet all terms and conditions of the award within 90 days of receiving a Letter of Conditions unless otherwise specified by the Agency at the time of the award. If the applicant agrees with the conditions, the applicant must complete, sign, and return the Agency's Form RD 1942–46, "Letter of Intent to Meet Conditions." If the applicant believes that certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any proposed changes to the Letter of Conditions by the applicant before the application will be further processed. If the Agency agrees to any proposed changes, the Agency will issue a revised or amended Letter of Conditions that defines the final conditions under which the grant will be made.

(b) *Grant agreement and conditions.* Each grantee will be required to sign a grant agreement that outlines the approved use of funds and actions under the award, as well as the restrictions and applicable laws and regulations that pertain to the award.

(c) *Other documentation.* The grantee will execute additional documentation in order to obligate the award of funds including, but not limited to,

(1) Form RD 1940–1, "Request for Obligation of Funds;"

(2) Form AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transaction;"

(3) Form AD–1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions;"

(4) Form AD–1049, "Certification Regarding Drug-Free Workplace Requirements;"

(5) Form RD 400–4, "Assurance Agreement (under Title VI, Civil Rights Act of 1964);"

(6) Form SF–3881, "ACH Vendor/Miscellaneous Payment Enrollment Form;"

(7) RD Instruction 1940–Q, Exhibit A–1, "Certification for Contracts, Grants and Loans;" and

(8) Form SF–LLL, "Disclosure of Lobbying Activities."

(d) *Grant disbursements.* Grant disbursements will be made in accordance with the Letter of Conditions, and/or the grant agreement, as applicable. A disbursement request may be submitted by the grantee not more frequently than once every 30 days by using Form SF 270, "Request for Advance or Reimbursement." The disbursement request is typically in the form of a reimbursement request for eligible expenses incurred by the grantee during the grant funding period. Adequate supporting documentation must accompany each request, and may include, but is not limited to, receipts, hourly wage rates, personnel payroll records, contract progression certification, or other similar documentation.

§§ 4284.952–4284.959 [Reserved]

Post Award Activities and Requirements

§ 4284.960 Monitoring and reporting program performance.

The requirements specified in this section shall apply to grants made under this subpart.

(a) Grantees must complete the project per the terms and conditions specified in the approved work plan and budget, and in the grant agreement and letter of conditions. Grantees are responsible to expend funds only for eligible purposes and will be monitored by Agency staff for compliance. Grantees must maintain a financial management system, and property and procurement standards in accordance with Departmental Regulations.

(b) Grantees must submit prescribed narrative and financial performance reports that include a comparison of accomplishments with the objectives stated in the application. The Agency will prescribe both the narrative and financial report formats in the grant agreement.

(1) Semi-annual performance reports shall be submitted within 45 days following March 31 and September 30 each fiscal year. A final performance report shall be submitted to the Agency within 90 days of project completion. Failure to submit a performance report within the specified timeframes may result in the Agency withholding grant funds.

(2) Additional reports shall be submitted as specified in the grant agreement or Letter of Conditions, or as otherwise provided in a notification issued under § 4284.915.

(3) Copies of supporting documentation and/or project deliverables for completed tasks must be provided to the Agency in a timely manner in accord with the development or completion of materials and in conjunction with the budget and project timeline. Examples include, but are not limited to, a feasibility study, marketing plan, business plan, success story, distribution network study, or best practice.

(4) The Agency may request any additional project and/or performance data for the project for which grant funds have been received, including but not limited to,

(i) Information about jobs created and/or saved as a result of the project;

(ii) Increases in producer customer base and revenues as a result of the project;

(iii) Data regarding renewable energy capacity or emissions reductions resulting from the project;

(iv) The nature of and advantages or disadvantages of supply chain arrangements or equitable distribution of rewards and responsibilities for mid-tier value chain projects; and

(v) Recommendations from Beginning Farmers or Socially Disadvantaged Farmers.

(5) The Agency may terminate or suspend the grant for lack of adequate or timely progress, reporting, or documentation, or for failure to comply with Agency requirements.

§ 4284.961 Grant servicing.

All grants awarded under this subpart shall be serviced in accordance with 7 CFR part 1951, subparts E and O, and the Departmental Regulations with the exception that delegation of the post-award servicing of the program does not require the prior approval of the Administrator.

§ 4284.962 Transfer of obligations.

At the discretion of the Agency and on a case-by-case basis, an obligation of funds established for an applicant may be transferred to a different (substituted) applicant provided:

(a) The substituted applicant:

(1) Is eligible;

(2) Has a close and genuine relationship with the original applicant; and

(3) Has the authority to receive the assistance approved for the original applicant; and

(b) The project continues to meet all product, purpose, and reserved funds eligibility requirements so that the need, purpose(s), and scope of the project for which the Agency funds will be used remain substantially unchanged.

§ 4284.963 Grant close out and related activities.

Grant closeout is the administrative wrap-up of a grant that has concluded or has been terminated. Typical closeout activities include a letter to the grantee with final instructions and reminders for amounts to be de-obligated for any unexpended grant funds, final project performance reports due, submission of outstanding deliverables, audit requirements, or other outstanding items of closure.

§§ 4284.964–4284.999 [Reserved]

Dated: February 4, 2011.

Dallas Tonsager,

Under Secretary, Rural Development.

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