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Subparts H–I [Reserved]

Subpart J—Value-Added Producer Grant Program

SOURCE: 76 FR 10122, Feb. 23, 2011, unless otherwise noted.

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 appar-

ent 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

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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.